ents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation, or distribution in commerce, as 'commerce' is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of wool batting or other 'wool products,' as such products are defined in and subject to the Wool Products Labeling Act of 1939, which products contain, purport to contain, or in any way are represented as containing 'wool,' 'reprocessed wool,' or 'reused wool,' do forthwith cease and desist from misbranding such products by:

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

2. Failing to affix labels to such products showing each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939."

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

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

IN THE MATTER OF

UNITED FELT COMPANY, ET AL.

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

Docket 7132. Complaint, Apr. 29, 1958—Decision, Oct. 21, 1959

Order requiring a Chicago manufacturer to cease violating the Wool Products Labeling Act by labeling as "70% reprocessed wool, 30% man-made fibers" and as "95% reprocessed wool, 5% other fibers," rolled battings which in each instance contained substantially less wool and more non-woolen fibers than was thus indicated; and by failing to comply in other respects with the labeling provisions of the Act.

Before *Mr. William L. Pack*, hearing examiner.

Mr. William A. Somers for the Commission.

Mr. Hymen S. Gratch, of Chicago, Ill., for respondents.

FINDINGS AS TO THE FACTS, CONCLUSIONS AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission on April 29, 1958, issued and subsequently served its complaint in this proceeding upon respondents, charging them with violation of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder, and, as specified under the provisions of the aforesaid Act, with engaging in unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act. After the filing of answer, and amended answer, by respondents, hearings were held before a duly designated hearing examiner of the Commission and testimony and other evidence in support of, and in opposition to, the allegations of the complaint were received into the record. In an initial decision filed March 6, 1959, the hearing examiner held that jurisdiction over respondents had not been established. Accordingly, he ordered that the complaint be dismissed.

The Commission having considered the appeal filed from the initial decision by counsel supporting the complaint, briefs submitted by counsel on both sides, and the entire record, has determined that the appeal should be granted and that the initial decision should be vacated and set aside. The Commission further finds that this proceeding is in the public interest and now makes this its findings as to the facts, conclusions drawn therefrom and order to cease and desist, the same to be in lieu of those contained in the initial decision.

FINDINGS AS TO THE FACTS

1. Respondent United Felt Company is a corporation organized, existing and doing business under any by virtue of the laws of the State of Illinois. Respondents Arnold Willis and Max Sussman are individuals and are President-Treasurer, and Secretary, respectively, of the corporate respondent. Said individual respondents formulate, direct and control the acts, practices and policies of said corporate respondent. Respondents' office and principal place of business is located at 3729 South St. Louis Avenue, Chicago 32, Illinois.

2. Respondent United Felt Company is engaged in the manufacture of wool batting by garnetting it from raw material supplied by sources in Illinois. Wool batting is a "wool product" within the meaning of the Wool Products Labeling Act of 1939. Subsequent to the effective date of that Act, and more particularly since September, 1955, respondents have manufactured for introduction into

commerce and have sold, transported, distributed, delivered for shipment and offered for sale in commerce, as "commerce" is defined in that Act, their wool batting.

3. The wool batting in question consists of five rolls sold and delivered by respondents within the City of Chicago—two rolls to Allan Quilting Company and three rolls to LaSalle Quilting Company. These two concerns are engaged in the quilting business, that is, they quilt fabrics or yard goods sent to them by their customers to wool batting purchased from respondents and then return the finished goods to their customers. Those customers use the finished, or quilted, fabrics in linings for men's and women's coats and jackets, in bed comforters, etc. Both Allan and LaSalle do quilting for, and ship the finished goods to, customers located both within and without the State of Illinois.

4. Approximately 97 percent of respondents' wool batting is sold within the State of Illinois, the remaining three percent outside that State, all the latter to one customer.

5. The respondents in the course and conduct of their business were and are in competition in commerce with other corporations, firms and individuals likewise engaged in the manufacture and sale of wool products, including rolled wool batting.

6. Certain rolled wool batting manufactured by respondents for introduction into commerce and sold to Allan Quilting Company and to LaSalle Quilting Company was misbranded within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act in that it was falsely and deceptively labeled or tagged with respect to the character and amount of the constituent fibers contained therein.

7. Labels attached by respondents to rolls of batting concerning which evidence was adduced in this proceeding showed the fiber content of the batting to have been "70% reprocessed wool, 30% man made fibers" and "95% reprocessed wool, 5% other fibers." A Commission expert tested two samples of each roll and the results of those tests show the actual fiber content to have been as follows.

As to the two rolls sold to *Allan Quilting Company*:

Respondents' Label	*Commission Test Results*
Com. Ex. 1B	*Com. Ex. 1A*
70% wool	47% wool
30% man made fibers	53% residue—acetate, rayon and other fibers
Com. Ex. 2B	*Com. Ex. 2A*
95% reprocessed wool	88.5% wool
5% other fibers	11.5% residue—cotton, rayon, nylon and traces of other fibers

As to the three rolls sold to *LaSalle Quilting Company*:

Respondents' Label	*Commission Test Results*
Com. Ex. 3B	*Com. Ex. 3A*
70% reprocessed wool	38.2% wool
30% man made fibers	61.8% residue—cotton, rayon, orlon and nylon
Com. Ex. 4B	*Com. Ex. 4A*
70% reprocessed wool	34.7% wool
30% man made fibers	65.3% residue—cotton, rayon, nylon, dacron and orlon
Com. Ex. 5B	*Com. Ex. 5A*
70% reprocessed wool	52.2% wool
30% man made fibers	47.8% residue—cotton, rayon, nylon and orlon

8. From the foregoing summary, it is seen that respondents have overstated the wool content of the rolls of batting in question by percentage points ranging from 6.5 to 35.3. (The testimony of the Commission expert as to the results of the above tests does not purport to show a breakdown of the wool content of each sample as between the percentage of wool, reprocessed wool, or reused wool, as such terms are defined in the Wool Products Labeling Act of 1939.)

9. Certain rolls of said wool batting were further misbranded in that they did not have on or affixed to them a stamp, tag, label or other means of identification showing each fiber other than wool contained in said batting in quantities of 5% or more by weight as required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act of 1939. Tests of samples of several of these rolls, as summarized above, disclose that fibers other than wool were present as follows: Com. Ex. 3A—four fibers comprising 61.8% of the fiber weight of the product; Com. Ex. 4A—five fibers comprising 65.3% of the fiber weight of the product; Com. Ex. 5A—four fibers comprising 47.8% of the fiber weight of the product. On the face of the results of these tests, it is apparent in each of the instances here cited that at least one of those fibers other than wool was present in each product in an amount of 5% or more of the total fiber weight of such product. Thus it is clear that respondents' failure to affix labels to their rolls of wool batting showing "each fiber other than wool if * * * [the] percentage by weight of such fiber is 5 percentum or more" constitutes a violation of Section 4(a)(2) of the Act.

10. While the complaint also charged, in Paragraphs Seven and Eight thereof, that misrepresentations, similar to those mentioned above in paragraphs 6 and 9, had been made by respondents on sales invoices and shipping memoranda, this portion of the com-

plaint, upon motion of counsel supporting the complaint, was dismissed at the conclusion of the hearings. Accordingly, provision is made for dismissal of said paragraphs 7 and 8 of the complaint in the order appearing hereafter.

CONCLUSIONS

From all of the foregoing facts, the Commission has reached the following conclusions of law:

1. Respondents have misbranded wool products within the intent and meaning of Sections 4(a)(1) and 4(a)(2) of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder.

2. The acts and practices of respondents are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair and deceptive acts or practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

3. The Federal Trade Commission has jurisdiction over all of the respondents' acts and practices which have been hereinabove found to be violative of the Wool Products Labeling Act of 1939 and the Federal Trade Commission Act.

ORDER

It is ordered. That respondent United Felt Company, a corporation, and its officers, and Arnold Willis and Max Sussman, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of wool batting or other "wool products," as such products are defined in and subject to the Wool Products Labeling Act of 1939, which products contain, purport to contain, or in any way are represented as containing "wool," "reprocessed wool," or "reused wool," do forthwith cease and desist from misbranding such products by:

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

2. Failing to affix labels to such products showing each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

It is further ordered, That the charges of the complaint contained in paragraphs 7 and 8 thereof be, and they hereby are, dismissed.

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

OPINION OF THE COMMISSION

By KINTNER, *Chairman:*

This matter is before the Commission for final determination on the merits upon the appeal of counsel supporting the complaint from the hearing examiner's initial decision dismissing the complaint on the ground that jurisdiction has not been established. The complaint alleges that respondents have violated the Federal Trade Commission Act,[1] and the Wool Products Labeling Act[2] and the Rules and Regulations[3] promulgated thereunder. The appeal was submitted on briefs, oral argument not having been requested.

On the basis of the whole record before it, the Commission has determined that the action of the hearing examiner in dismissing the complaint was erroneous. Accordingly, for the reasons hereinafter set forth, the appeal of counsel supporting the complaint is being granted and the Commission is entering its own findings, conclusions and order to cease and desist.

Specifically, the complaint charges that respondents have misbranded rolled batting in violation of Section 4(a)(1) of the Wool Products Labeling Act by labeling such batting to show that it contained certain stated percentages of wool, reprocessed wool, and other fibers when actually the stated percentages of wool and other fiber content were false and deceptive. It also charges that respondents have further misbranded their batting by not stamping, tagging, or labeling it as required under the provisions of Section 4(a)(2) of the Act.[4]

Respondents manufacture wool batting, which is a "wool product" as that term is defined in the Wool Products Labeling Act, by garnetting it from raw material supplied by sources in Illinois. They sell 97% of their batting to customers within the State of Illinois.

[1] 15 U.S.C.A. 41 et seq.

[2] 15 U.S.C.A. 68 et seq.

[3] 16 C.F.R. 300.1 et seq.

[4] Similar misrepresentations were charged as having been made by respondents on sales invoices and shipping memoranda; but this portion of the complaint, on motion of counsel supporting the complaint, was dismissed at the conclusion of the hearings. Such portion of the complaint, therefore, is not involved in this appeal.

The remaining 3% is sold to a single customer outside the state, but there is nothing in the evidence to indicate that any of that 3% has been misbranded.

The case here involves five rolls of batting sold and delivered by respondents to two customers in Chicago who are engaged in the quilting of fabrics for use in the linings of men's and women's coats and jackets, in bed comforters, etc. The evidence is uncontradicted that the batting sold to these two customers—two rolls to Allan Quilting Company and three rolls to LaSalle Quilting Company—contained smaller percentages of wool or reprocessed wool than those set forth on the labels attached thereto by respondents. The overstatement of wool content of the rolls of batting in question ranges in percentage points from 6.5 to 35.3. It is thus clear that the products with which we are concerned were misbranded within the meaning of Section 4 of the Wool Products Labeling Act. The question for decision is whether, in the circumstances disclosed by the record, respondents are subject to the requirements of the Act. Respondents contend they are not, first, because they did not introduce into commerce, nor sell, transport or distribute in commerce, the batting in issue, and secondly, because there is no evidence that the batting ever actually found its way into commerce, that is, that it was used in the quilting of fabrics which moved in commerce, or that respondents had knowledge that the products manufactured by them were ultimately to be shipped in commerce. Hence, they say, it cannot be found that the batting was manufactured for introduction into commerce.[5]

Oscar R. Johnson, Vice President of the Allan Quilting Company, testified that his company purchases all of its wool batting from respondent, United Felt Company; that the batting is quilted to fabrics which Allan's customers send it for processing, after which the quilted batting is incorporated by those customers in products which they manufacture; and that Allan's customers are located throughout the United States, but that it does not ship into all states. Mr. Johnson, in response to a direct question, stated that during his dealings and conversations with Mr. Willis, President

[5] Section 3 of the Wool Products Labeling Act reads as follows:

"The introduction, or *manufacture for introduction, into commerce*, or the sale, transportation, or distribution, in commerce, of any wool product which is misbranded within the meaning of this Act or the rules and regulations hereunder, is unlawful and shall be an unfair method of competition, and an unfair and deceptive act or practice, in commerce under the Federal Trade Commission Act; and any person who shall manufacture or deliver for shipment or ship or sell or offer for sale in commerce, any such wool product which is misbranded within the meaning of this Act and the rules and regulations hereunder is guilty of an unfair method of competition, and an unfair and deceptive act or practice, in commerce within the meaning of the Federal Trade Commission Act." 15 U.S.C.A. 68a. [Emphasis supplied.]

of respondent, United Felt Company, he had informed Mr. Willis that Allan Quilting Company did have customers outside the State of Illinois, to wit: "On occasion I think I have mentioned the fact, certainly, yes." On cross and re-cross examination, Mr. Johnson recanted somewhat his testimony that respondents had knowledge of where his company's customers are located. The record also discloses a course of dealing between respondent, United Felt Company, and its customer, Allan Quilting Company, over a period of from eight to ten years.

As to LaSalle Quilting Company, the evidence shows that, for a period of six or more years, respondent, United Felt Company, has been the former's sole source of supply for wool batting. It also discloses that LaSalle puts the respondents' batting with material submitted by LaSalle's customers through a quilting process after which it is returned to such customers in yardage form. The foregoing is established by the testimony of Mr. Arthur D. Rifas, President, LaSalle Quilting Company, who also testified that his customers are located principally throughout the midwest.

While there is some conflict in the evidence as to respondents' actual knowledge of the ultimate destination of their products, we think the record clearly establishes that the misbranded batting did in fact find its way into commerce in the form of quilted products sold and delivered by Allan and LaSalle to their customers outside the State of Illinois. Both these companies, the record discloses, over a long period of dealing, have depended upon respondents as their sole source of supply for wool batting and both have shipped in commerce substantial amounts of quilted material containing respondents' batting. While respondents may not have had any actual pre-knowledge of that fact, they certainly should have anticipated it. In the circumstances, we do not consider actual knowledge to be essential.

Any other view, it seems to us, would do violence to the obvious intention of Congress in the enactment of the Wool Products Labeling Act. Section 3 clearly covers those who introduce misbranded wool products into commerce. By adding to Section 3 the further classification of those who "manufacture for introduction," it is clear that the Congress intended to include in the Act's coverage manufacturers who do not themselves "introduce" wool products, but whose goods are in fact introduced into commerce by subsequent handlers or processors. Congress obviously did not intend the Act to be enforceable only against those who actually ship misbranded goods across state lines. The plain language of the Act clearly shows that everyone in the chain of events commencing with the

initial manufacturer down to the ultimate consumer is expected to fully discharge his responsibilities and duties under the Act and answer for any violations thereof attributable to him. In the instant case, while the record forecloses any finding that respondents sold, transported or distributed misbranded wool products in interstate commerce, we think the circumstances are such that we may reasonably infer that they did manufacture the misbranded wool products here involved for introduction into commerce.

The meaning of the phrase with which we are immediately concerned in this proceeding, as used in the Wool Products Labeling Act of 1939, has not been resloved heretofore by the Commission or by the Courts. However, a similar term in the Fair Labor Standards Act [6] has on a number of occasions been construed by the Courts.

Under that Act, a manufacturer of cigar boxes who sold and delivered such boxes in intrastate commerce to cigar manufacturers, who later packaged cigars in the boxes and sold them in interstate commerce, has been held to be "one engaged in the production of goods for commerce." Specifically, the Court said:

> It is of no consequence that its activities in connection with the product were at an end prior to any shipment of the boxes in interstate commerce. *Enterprise Box Co.* v. *Fleming*, 125 F. 2d 897 (C.A. 5, 1942), cert. denied 316 U.S. 704.

And, in a case involving concerns who were contractors in the garment industry in New York whose production was sold to wholesalers and other processors in New York City, who, in turn, sold and shipped the goods in interstate commerce, the Supreme Court said:

> Certainly if these tenants had not only manufactured but also shipped their products interstate, no one would doubt that they were producers for commerce. Mere separation of the economic processes of production for commerce between different industrial units, even without any degree of common ownership does not destroy the continuity of production for commerce. *Producers may be held to know the usual routes for distribution of their products. Schulte* v. *Gangi*, 328 U.S. 108 (1946). [Emphasis added.]

In the recent case of *DeGorter* v. *Federal Trade Commission*, 244 F. 2d 270 (C.A. 9, 1957), Judge Yankwich, in interpreting the commerce clause of the Fur Products Labeling Act, which contains a provision identical to the one herein questioned, said:

> In regulating interstate transactions it is not necessary that the regulation be confined to persons who are also engaged in interstate commerce.

From the foregoing, we conclude that the appeal of counsel supporting the complaint is well taken and that it should be, and it

[6] 29 U.S.C.A. 201 et seq.

hereby is, granted. An appropriate order will issue vacating and setting aside the initial decision and substituting in lieu therefor the Commission's own findings as to the facts, conclusions and order to cease and desist.

IN THE MATTER OF

SOUTH VILLAGE MILLS, INC., ET AL.

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

Docket 7217. Complaint, Aug. 4, 1958—Decision, Oct. 21, 1959

Order requiring the general manager of a manufacturer of wool products in Webster, Mass., to cease violating the Wool Products Labeling Act by tagging and invoicing as "100% Vicuna," woolen fabrics which did not contain vicuna or contained substantially less than said quantity, and by failing to label wool products as required by the Act.

The other respondents in the proceeding agreed to a consent order effective Dec. 20, 1958, 55 F.T.C. 906.

Before *Mr. William L. Pack*, hearing examiner.

Mr. Thomas F. Howder and *Mr. Thomas A. Ziebarth* for the Commission.

Ely, Bartlett & Brown, of Boston, Mass., for respondent.

FINDINGS AS TO THE FACTS, CONCLUSIONS AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, the Federal Trade Commission on August 4, 1958, issued and subsequently served upon the respondents, South Village Mills, Inc., a corporation, and Edward Kunkel, individually and as an officer of such corporation, and Joseph Crowley, individually and as General Manager of such corporation, its complaint, charging said respondents with the misbranding of wool products in commerce in violation of the provisions of the aforementioned Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act.

On November 7, 1958, the hearing examiner filed an initial decision as to respondents, South Village Mills, Inc., and Edward Kunkel, which decision was based on an agreement containing a consent order to cease and desist. This decision became the decision of the Commission on December 20, 1958.

On November 7, 1958, the hearing examiner also filed an initial decision as to respondent Joseph Crowley based on his default in

failing to file an answer or to enter an appearance at the scheduled hearing. The examiner found the facts to be as alleged in the complaint with respect to this respondent and entered an order to cease and desist the unlawful practices. Said respondent on November 21, 1958, filed a document treated as a notice of intention to appeal. The Commission, thereafter, on January 26, 1959, ordered that the initial decision as to respondent Crowley be set aside and remanded to the hearing examiner to provide said respondent with an opportunity to present his defense. A hearing was held in due course. On June 8, 1959, the hearing examiner filed another initial decision as to respondent Joseph Crowley dismissing the charges as to him on the ground that the practices found to be unlawful were voluntarily discontinued.

Within the time permitted by the Commission's Rules of Practice, counsel in support of the complaint filed an appeal from the initial decision as to respondent Joseph Crowley filed on June 8, 1959, and the Commission, after considering said appeal, no answer having been filed by respondent Crowley, and the entire record herein, rendered its decision granting the appeal and vacating and setting aside the initial decision.

The Commission, now having the matter before it for final consideration, makes the following findings as to the facts, conclusions drawn therefrom, and order, which, together with the aforesaid decision on the appeal, shall be in lieu of the initial decision of the hearing examiner as to respondent Joseph Crowley filed June 8, 1959.

FINDINGS AS TO THE FACTS

1. Respondent Joseph Crowley was General Manager of the corporate respondent, South Village Mills, Inc., at or about the time the complaint herein was issued. For the period during which the acts and practices herein alleged took place, Joseph Crowley cooperated in the formulation, direction and control of the acts and practices of the corporate respondent. The address of Joseph Crowley is now P.O. Box 177, Webster, Massachusetts. He is no longer employed by the corporate respondent as its General Manager or in any other capacity. He is now engaged in the same general type of work as he was during the time the acts and practices alleged in the complaint took place.

2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, and more especially since October, 1957, respondent Crowley, as General Manager of corporate respondent, has manufactured for introduction into commerce, introduced into commerce,

sold, transported, distributed, delivered for shipment and offered for sale in commerce, as "commerce" is defined in said Act, wool products, as "wool products" are defined therein.

3. Certain of said wool products were misbranded by respondent Crowley, as General Manager of corporate respondent, within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act and the Rules and Regulations thereunder, in that said products were falsely and deceptively stamped, tagged and labeled with respect to the character and amount of the constituent fibers therein. Among such misbranded products were woolen fabrics labeled and tagged as "100% Vicuna," whereas, in truth and in fact, said fabrics either did not contain Vicuna, or contained substantially less than said quantity of Vicuna.

4. Said products were further misbranded within the intent and meaning of said Act and the Rules and Regulations thereunder, in that they were not stamped, tagged or labeled as required under the provisions of Section 4(a)(2) of said Act.

5. Respondent Crowley, as General Manager of corporate respondent, in the conduct of his business, was in competition, in commerce, with others engaged in the sale of wool products identified as Vicuna.

6. Respondent Crowley, as General Manager of corporate respondent, in the course and conduct of his business, as aforesaid, in commerce, as "commerce" is defined in the Federal Trade Commission Act, has misbranded the fiber content of certain wool products, in that they have been falsely and deceptively described and identified in sales invoices and memoranda related thereto as "100% Vicuna," whereas, in truth and in fact, said products either did not contain Vicuna, or contained substantially less than said quantity of Vicuna.

7. Such acts and practices have had, and now have, the tendency and capacity to mislead and deceive purchasers of said wool products as to the true fiber content thereof and cause them to misbrand products manufactured by them in which said materials were used.

CONCLUSIONS

The acts and practices found in Paragraphs 3 and 4 hereof constitute misbranding of wool products and are in violation of the Wool Products Labeling Act. Such acts and practices as well as those set out in Paragraph 6 are to the prejudice of the public and of respondent's competitors and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondent Joseph Crowley, and his agents, representatives and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of "wool products," as such products are defined in and subject to the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

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

2. Failing to affix labels to such products showing each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

It is further ordered, That respondent Joseph Crowley and his agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of wool products or any other products or materials in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from directly or indirectly:

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

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

OPINION OF THE COMMISSION

By TAIT, *Commissioner:*

This matter is before the Commission upon the appeal of counsel in support of the complaint from the initial decision of the hearing examiner filed June 8, 1959, dismissing the charges of the complaint as to respondent Joseph Crowley, who was therein named individually and as general manager of the corporate respondent.

The respondents in this case were charged with violating the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder and the Federal Trade Commission Act. An initial

decision filed November 7, 1958, based on an agreement for a consent order to cease and desist, which was adopted as the decision of the Commission on December 20, 1958, disposes of the proceeding as to respondents, South Village Mills, Inc., and Edward Kunkel. An initial decision filed June 8, 1959, dismisses the charges as to respondent Crowley on the ground that the practices found to be unlawful were discontinued voluntarily. Counsel in support of the complaint have appealed from the dismissal. Respondent Crowley has not filed an answer to the appeal.

The question before us is whether the hearing examiner properly dismissed the complaint as to respondent Crowley on the ground of discontinuance or abandonment.

The examiner found, among other things, that the manufacture and sale of the fabric in question was discontinued more than a year ago, although he does not mention the date from which the year is calculated. He further found that there seemed to be no probability of a renewal of the practice. We have considered these and other circumstances mentioned by the examiner and conclude that they fail to justify the dismissal.

There is no record basis for the finding of a voluntary discontinuance. The record indicates that respondents were on notice as to possible misbranding in connection with the questioned fabric as early as March, 1958, when doubt as to the labeling of this fabric was specifically raised by an investigator for the Federal Trade Commission. On May 29, 1958, upon complaint and motion by the Federal Trade Commission, a temporary restraining order against the respondents was granted by a Federal District Court, enjoining the practices here alleged. Respondents, therefore, were well advised as to the possible illegality of their practices long before the issuance of the complaint in this proceeding on August 4, 1958. Yet, during this period, sales continued. Documentation in the record shows sales as late as April 17, 1958.

Respondent Crowley with reference to the discontinuance of the activities here involved testified:

Well, on Wednesday or Thursday of that week we had gotten our papers serving us on the citation and it was only a few days after that that we had to appear in court in Boston and it was only a couple of months after we had appeared in Boston that Mr. Kunkel decided that he couldn't afford to stay in the fabric business and he would have to stop making fabric because the bank had tied up all his money on account of the FTC decision and there was a question whether it was Vicuna.

This seems to indicate that it was sometime around the end of

July, 1958, when respondent finally discontinued the manufacture and sale of the questioned fabric. It was on May 29, 1958, that the temporary restraining order was granted.

There is some record evidence that respondents considered discontinuing the production and sale of the fabric in dispute in the early months of 1958, but clearly they did not do so . The substantial evidence is that discontinuance took place only after the Commission began looking into the matter. In such circumstances dismissal is rarely warranted. *Ward Baking Company*, Docket No. 6833 (June 23, 1958). Respondent Crowley, since severing his relationship with corporate respondent, has taken employment where he is engaged in substantially the same kind of business activity. There is no assurance, therefore, that the practices engaged in by respondent Crowley and found to be unlawful have been finally stopped.

We conclude that the examiner erroneously dismissed the complaint as to respondent Crowley. Accordingly, the appeal of counsel in support of the complaint is granted and the initial decision is vacated and set aside. Our findings as to the facts, made on the whole record including the initial decision, and conclusions and order to cease and desist, are issuing in lieu thereof.

IN THE MATTER OF

NICHOLS & ASSOCIATES, INC., ET AL.

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

Docket 7248. Complaint, Sept. 4, 1958—Decision, Oct. 21, 1959

Order requiring Chicago sellers of real estate advertising to cease making deceptive representations to mislead owners of small businesses into paying it substantial advance fees for advertising, including claims that it had prospective buyers interested in specific properties; that the property would be sold shortly as a result of its efforts; that it financed purchases; that it assumed all the selling risk and obligation; and that the advance listing or service fee would be refunded if the property was not sold within a certain time.

As to respondent John G. Green, the matter was disposed of by order of Aug. 11, 1959, p. 155, herein.

Before *Mr. William L. Pack*, hearing examiner.

Mr. John W. Brookfield, Jr., and *Mr. John J. Mathias*, for the Commission.

Williams and Leonard, of Chicago, Ill., for respondents.

INITIAL DECISION AS TO ALL RESPONDENTS EXCEPT JOHN G. GREEN

1. The complaint in this matter charged the respondents with violation of the Federal Trade Commission Act in soliciting the listing for sale and advertising of business properties. Respondents Nichols & Associates, Inc., Paul J. Damon, and Richard W. Scott filed an answer denying most of the allegations in the complaint. Respondent O'Niel J. Nichols filed a motion to dismiss the complaint as to him, which was denied by the hearing examiner. Respondent John G. Green elected to dispose of the proceeding as to him by means of an agreement for a consent order, and on March 9, 1959, an initial decision as to this respondent was issued by the hearing examiner, such decision subsequently becoming the decision of the Commission.

2. As to all of the respondents other than John G. Green, hearings were held in regular course and evidence received in support of the complaint, the respondents electing to offer no evidence except certain documents which were offered in connection with respondents' cross-examination of Government witnesses. Proposed findings and conclusions have been submitted by counsel supporting the complaint, respondents electing not to submit such proposals. Oral argument has not been requested, and the case is now before the hearing examiner for final consideration. Any proposed findings and conclusions not included herein have been rejected.

3. Respondent Nichols & Associates, Inc., is a corporation organized and existing under the laws of the State of Illinois, with its office and principal place of business at 130 North Wells Street, Chicago, Illinois.

4. Respondents Paul J. Damon and Richard W. Scott are officers of the corporation and formulate, direct and control its policies and practices.

5. The record fails to establish that respondent O'Niel J. Nichols has at any time participated in the formulation, direction or control of the corporation's policies and practices, and the complaint must therefore be dismissed as to him. The term respondents, as used hereinafter, will not include respondent Nichols nor respondent Green.

6. Respondents are engaged in the business of soliciting the listing for sale and advertising of business properties. The businesses involved are usually small, including bakeries, grocery stores, restaurants, garages, shoe repair shops, etc. In conducting their business, respondents send many pieces of advertising and promotional literature to prospective purchasers of their services who reside in

the states of the United States other than Illinois, such material usually being sent through the United States mails. Signed contracts and checks covering payments for respondents' services are constantly being received by respondents from such purchasers, or from respondents' representatives who have obtained such written instruments from purchasers. Respondents are thus engaged in extensive commercial intercourse in commerce, as "commerce" is defined in the Federal Trade Commission Act.

7. Upon receipt by respondents from a prospect of the return postal card supplied by respondents, one of their traveling solicitors or salesmen calls upon the prospect and undertakes to sell him respondents' services. If the solicitor is successful he collects from the customer or subscriber a substantial amount of money as a listing fee or service fee. The solicitors are supplied by respondents with identification cards, contract forms, and various pieces of promotional literature. The amount of the listing fee is always substantial, ranging from possibly $100.00 to $1,000.00 or even more, depending largely upon the amount agreed upon by the subscriber and the solicitor as the "asking" price for the property. Along with the payment of the listing fee the subscriber signs a form of printed contract.

8. There is uncontradicted testimony from some nineteen witnesses residing in various places in four states that in obtaining contracts and listing fees from them respondents' solicitors have made one or more of the following representations: (1) that respondents have available prospective buyers who are interested in the purchase of the specific properties sought to be listed with respondents for sale; (2) that the property would be sold within a short period of time as a result of respondents' efforts; (3) that respondents finance or assist in financing the purchase of properties; (4) that respondents assume all risk or obligation in connection with the sale of properties listed with them; (5) that the listing or service fee will be refunded to the property owner if the property is not sold within a designated period of time; (6) that the properties listed with them will be nationally advertised in newspapers and periodicals; (7) that over one thousand real estate brokers are affiliated or associated with respondents; and (8) that respondents' services, in all or most instances, result in the sale of listed properties.

9. These representations were false and misleading. While respondents maintain card indexes and files indicating parties who may be interested in purchasing certain types of businesses, respondents do not have available prospective purchasers for any specific property. Properties listed with respondents usually are not

sold within a short period of time or at all; actually, it is only in rare instances that properties are sold as a result of respondents' efforts. Respondents do not finance or assist in financing the purchase of property; in fact, respondents have no facilities whatever for that purpose. Nor is all risk or obligation in connection with the sale of properties assumed by respondents. On the contrary, as shown above, the property owner is required to pay a substantial amount as a listing or service fee. Only in very rare instances has this fee has been refunded by respondents.

10. Many of the properties listed with respondents are not advertised in trade magazines or in any other periodical. The only newspaper advertising furnished by respondents for many of the properties listed with them consists of a four to ten line insertion in one or two metropolitan newspapers. Such advertising is not national in scope since the newspapers are not read generally outside of the areas in which they are published. The brokers with which respondents claim to be affiliated or associated are not bound by contract or agreement with respondents to perform any services on behalf of respondents' customers. These brokers are connected with respondents only to the extent that they have indicated a desire to receive for their own use information concerning properties listed with respondents. The respondents' principal contact with these brokers is maintained by disseminating to them bulletins describing various types of listed properties. Respondents have no accurate or reliable means of determining what use, if any, is made of this information nor of determining how many of the firms to which the information is sent are still engaged in the brokerage business. These brokers are not affiliated or associated with respondents for the purpose of securing buyer prospects for properties owned by respondents' customers or for any other purpose, nor are they part of respondents' organization.

11. The use by respondents of the representations herein found to be false and misleading has the tendency and capacity to mislead and deceive a substantial portion of the public into entering into contracts with respondents and paying over to them substantial sums of money. Respondents' acts and practices are therefore to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the meaning of the Federal Trade Commission Act. The proceeding is in the public interest.

ORDER

It is ordered, That respondent, Nichols & Associates, Inc., a corporation, and its officers, and respondents, Paul J. Damon and

Richard W. Scott, individually and as officers of said corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the solicitation of the listing for sale and advertising of business properties or other properties, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That respondents have available prospective buyers who are interested in the purchase of specific properties;

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

3. That respondents finance or assist in financing the purchase of property;

4. That all risk or obligation in connection with the advertising and sale of listed properties is assumed by respondents;

5. That the listing fee or any other amount paid by the property owner will be refunded, unless refunds are in fact made by respondents in strict accordance with such representation;

6. That respondents will advertise listed property on a nationwide scale in newspapers and periodicals;

7. That a thousand or any other large number of real estate brokers are affiliated or associated with respondents in the sale of property;

8. That, except in rare instances, respondents' services result in the sale of property listed with them.

It is further ordered, That the complaint be, and it hereby is, dismissed as to respondent O'Niel J. Nichols.

OPINION OF THE COMMISSION

By ANDERSON, *Commissioner:*

The complaint in this matter charges respondents with violation of Section 5 of the Federal Trade Commission Act. Counsel supporting the complaint have appealed from the hearing examiner's rulings dismissing two of the allegations of the complaint and from the findings and conclusions on which these rulings were based.

The first question raised is with respect to the hearing examiner's ruling that the evidence fails to sustain the charge that respondents have falsely represented that property listed with them would be nationally advertised in newspapers and periodicals. Although the hearing examiner was apparently of the opinion that respondents had represented that all property listed with them would be advertised nationally through such media, he concluded that the manner in which properties are usually advertised by respondents can probably be regarded as national advertising.

Respondents have represented in advertising and promotional material and in literature furnished their salesmen that they will advertise a customer's property for sale through "Newspapers in Every State" and that they will secure "nationwide coverage" through "directories, newspapers, trade magazines, direct mail, the Wall Street Journal and our Associated Offices of which we have over a thousand." Purchasers of respondents' services have testified that such claims have also been made orally by respondents' salesmen.

The record discloses that respondents rarely, if ever, advertise the property of any customer on what might be considered a nationwide scale. It appears that while respondents have on occasion advertised in the Wall Street Journal, their use of this publication has been confined to the promotion of only the larger properties which they have contracted to handle. The smaller properties listed with respondents are not advertised in any of the nationally known business or financial journals or in any other periodical. The newspaper advertising of such a property consists merely of a four to ten line insertion in one or perhaps two metropolitan newspapers. As we pointed out in a recent decision involving a similar factual situation, such advertising cannot be considered to be national in scope. In the matter of *Trans-Continental Clearing House, Inc.*, Docket 7146. It is our opinion, therefore, that the hearing examiner erred in dismissing the aforementioned charge.

Counsel supporting the complaint also contend that the hearing examiner erred in dismissing the charge that respondents have misrepresented that they have over a thousand real estate brokers affiliated or associated with them. In this connection, respondents have represented through use of such claims as "Associated Offices over the Country" and "Over 1,000 Associated Offices Cover the Country," that Nichols & Associates, Inc., is a nationwide brokerage organization. Their salesmen have also represented that respondents have a "brokerage chain" and "over eleven hundred different outlets."

It is believed that such representations may well lead a customer or prospective customer to believe that by signing a contract with respondents he would thereby acquire the services of an organization composed of a large number of brokers, each of which would actively endeavor to obtain a buyer for the property. The record discloses, however, that the so-called "Associates" of Nichols & Associates, Inc., are not bound in any manner by the contract between respondents and the property owner, nor are they bound by contract with respondents to perform any services on behalf of the property owner. These brokers have no interest whatsoever in respondents'

contractual obligations to promote the sale of property nor have they united or joined together with respondents for any particular purpose. They are independent brokers who have merely indicated a desire to receive for their own use information concerning properties which respondents have contracted to advertise. It is apparent from the testimony of several witnesses that respondents' contact with these brokers is maintained in such a manner that they have no reliable means of determining whether all of them are currently engaged in the brokerage business. For the foregoing reasons, we are of the opinion that the representations that respondents are affiliated or associated with a large number of brokers have the capacity and tendency to mislead and deceive customers and prospective customers as to the value of the advertising and promotional services offered by respondents.

The hearing examiner has also failed to make a specific finding with respect to the charge that respondents have falsely represented that their services, in all or most instances, result in the sale of properties listed with them. This allegation is fully sustained by the evidence and a ruling to that effect should have been included in the initial decision.

The appeal of counsel supporting the complaint is granted and the initial decision will be modified to conform with this opinion.

FINAL ORDER

This matter having been heard by the Commission upon the appeal of counsel supporting the complaint from the hearing examiner's initial decision; and the Commission having rendered its decision granting the appeal and directing modification of the initial decision:

It is ordered, That paragraph 8 of the initial decision be modified by adding thereto the following:

(6) that the properties listed with them will be nationally advertised in newspapers and periodicals; (7) that over one thousand real estate brokers are affiliated or associated with respondents; and (8) that respondents' services, in all or most instances, result in the sale of listed properties.

It is further ordered, That paragraph 10 of the initial decision be modified to read as follows:

10. Many of the properties listed with respondents are not advertised in trade magazines or in any other periodical. The only newspaper advertising furnished by respondents for many of the properties listed with them consists of a four to ten line insertion in one or two metropolitan newspapers. Such advertising is not national in scope since the newspapers are not read generally outside

of the areas in which they are published. The brokers with which respondents claim to be affiliated or associated are not bound by contract or agreement with respondents to perform any services on behalf of respondents' customers. These brokers are connected with respondents only to the extent that they have indicated a desire to receive for their own use information concerning properties listed with respondents. The respondents' principal contact with these brokers is maintained by disseminating to them bulletins describing various types of listed properties. Respondents have no accurate or reliable means of determining what use, if any, is made of this information nor of determining how many of the firms to which the information is sent are still engaged in the brokerage business. These brokers are not affiliated or associated with respondents for the purpose of securing buyer prospects for properties owned by respondents' customers or for any other purpose, nor are they part of respondents' organization.

It is further ordered, That the following order be, and it hereby is, substituted for the order contained in the initial decision:

It is ordered, That respondent, Nichols & Associates, Inc., a corporation, and its officers, and respondents, Paul J. Damon and Richard W. Scott, individually and as officers of said corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the solicitation of the listing for sale and advertising of business properties or other properties, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That respondents have available prospective buyers who are interested in the purchase of specific properties;

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

3. That respondents finance or assist in financing the purchase of property;

4. That all risk or obligation in connection with the advertising and sale of listed properties is assumed by respondents;

5. That the listing fee or any other amount paid by the property owner will be refunded, unless refunds are in fact made by respondents in strict accordance with such representation;

6. That respondents will advertise listed property on a nationwide scale in newspapers and periodicals;

7. That a thousand or any other large number of real estate brokers are affiliated or associated with respondents in the sale of property;

8. That, except in rare instances, respondents' services result in the sale of property listed with them.

It is further ordered, That the complaint be, and it hereby is, dismissed as to respondent O'Niel J. Nichols.

It is further ordered, That the hearing examiner's initial decision, as modified, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That respondents, Nichols & Associates, Inc., Paul J. Damon and Richard W. Scott, shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist contained herein.

IN THE MATTER OF

BROTHER INTERNATIONAL CORPORATION OF CALIFORNIA ET AL.

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

Docket 7417. Complaint, Feb. 20, 1959—Decision, Oct. 21, 1959

Consent order requiring a Los Angeles, Calif., sewing machine distributor to cease pricing its merchandise fictitiously and supplying retail customers with deceptive contests involving worthless "prizes"; supplying retailers with material for conducting so-called contests to be published in newspapers and periodicals with "checks" or "certificates" given to all entrants regardless of correctness of answer and used solely as leads to prospective purchasers of its sewing machines, with the amount of the "check" added to the regular retail price in advance; and representing fictitious and inflated prices as the usual retail prices of their machines.

Mr. Edward F. Downs supporting the complaint.

Mr. David S. Kane, of *Kane, Dalsimer and Kane*, of New York, N.Y., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

On February 20, 1959, the Federal Trade Commission issued its complaint charging that the above named respondents had violated the provisions of the Federal Trade Commission Act. The complaint alleged that respondents, for the purpose of inducing the purchase of their sewing machines, had used false, misleading and deceptive statements, representations and practices.

After issuance and service of the complaint, Brother International Corporation of California, a corporation, and its officers, and Max

Hugel, Bernard J. Etzin and Roy Nakagawa, individually and as officers of said corporation, hereinafter referred to as respondents, their counsel and counsel supporting the complaint, entered into an agreement for a consent order. The agreement has been approved by the Director and Assistant Director of the Bureau of Litigation and disposes of the matters complained about.

The complaint was not served on respondent Max H. Redlich and since this respondent has had no connection in any capacity with respondent Brother International Corporation of California for approximately two years, the complaint is therefore dismissed as to respondent Max H. Redlich.

The pertinent provisions of said agreement are as follows: Respondents admit all jurisdictional facts; the complaint may be used in construing the terms of the order; the order shall have the same force and effect as if entered after a full hearing and the said agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission; the record herein shall consist solely of the complaint and the agreement; respondents waive the requirement that the decision must contain a statement of findings of fact and conclusions of law; respondents waive further procedural steps before the hearing examiner and the Commission, and the order may be altered, modified, or set aside in the manner provided by statute for other orders; respondents waive any right to challenge or contest the validity of the order entered in accordance with the agreement and the signing of said agreement is for setttlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

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

JURISDICTIONAL FINDINGS

Respondent Brother International Corporation of California is a corporation existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 1058 South Flower Street, Los Angeles 15, California.

Respondents Max Hugel, Bernard J. Etzin and Roy Nakagawa are individuals and officers of the corporate respondent, Brother International Corporation of California.

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

ORDER

It is ordered, That the respondents Brother International Corporation of California, a corporation, and its officers, and Max Hugel, Bernard J. Etzin, and Roy Nakagawa, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of sewing machines, or other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing or assisting the retailers of their sewing machines, by supplying materials, or otherwise, to represent any promotional plan for obtaining "leads" to prospective purchasers is a contest unless the winners or recipients of awards or prizes are all selected on the basis of the correctness of their answers.

2. Representing that awards or prizes are of a certain value or worth unless in using such awards or prizes the recipients thereof are benefited by, or save the amount of, the stated value or worth of such prizes or awards.

3. Representing directly or by implication, or placing in the hands of others, the means and instrumentalities whereby they are enabled to represent, directly or by implication that a stated price is the regular and usual retail price of respondents' sewing machines when such sewing machines are regularly and usually sold at retail at lesser prices without a trade-in or without a certificate or other award entitling the purchaser to reduction in price.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to respondent Max H. Redlich.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 21st day of October, 1959, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Brother International Corporation of California, a corporation and its officers, and Max Hugel, Bernard J. Etzin and Roy Nakagawa, individually and as officers of said corporation, shall within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting

forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

ERIE SAND AND GRAVEL COMPANY

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 7 OF THE CLAYTON ACT

Docket 6670. Complaint, Oct. 30, 1956—Order, Oct. 26, 1959

Order requiring absolute divestiture of all assets, etc., acquired in the acquisition by the second largest supplier of the largest supplier of lake sand in the southern shore area of Lake Erie extending from Buffalo, N.Y., to Sandusky, Ohio, thus eliminating the largest supplier and resulting in concentration in a single supplier of 92% of all lake sand sales in the area concerned.

Mr. William R. Tincher and *Mr. Thomas A. Deveny III* for the Commission.

Gifford, Graham, MacDonald & Illig, by *Mr. John S. Britton* and *Mr. A. Grant Walker*, of Erie, Pa., and *Daniel & Smith*, by *Mr. D. C. Daniel* and *Mr. Edward L. Smith*, of Washington, D.C., for respondent.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint in this proceeding was issued on October 30, 1956, charging the respondent corporation with violating §7 of the Clayton Act (15 U.S.C. §18) as amended, by acquiring on or after March 1, 1955, for the sum of one million dollars, the assets and business of the Sandusky Division of the Kelley Island Company, an Ohio corporation engaged in the same line of commerce as that of the respondent. The pertinent part of §7 of the Clayton Act is as follows:

> That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any *line of commerce* in any *section of the country*, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly. [Emphasis supplied.]

Consideration has been given to the entire record herein, including proposed findings as to the facts, proposed conclusions, and briefs

and oral argument in support thereof. Each of those proposals which has been accepted has been, in substance, incorporated into this initial decision. All proposals not so incorporated are hereby rejected.

THE ISSUES

The controlling issues in this proceeding, arising from the pleadings herein and the provisions of §7 of the Clayton Act, are as follows:

1. Is the respondent corporation engaged in "trade or commerce among the several states" within the intent and meaning of the Clayton Act?

2. Was the Sandusky Division of the Kelley Island Company, which Respondent acquired, also so engaged at the time of such acquisition?

3. Does the dredging, sale and distribution of lake sand, as distinguished from the digging, sale and distribution of bank and pit sand, constitute a "line of commerce" within the intent and meaning of §7 of the Clayton Act?

4. Does the area covered by respondent's operations constitute a "section of the country" within the intent and meaning of §7 of the Clayton Act?

5. May the acquisition here involved have the effect of substantially lessening competition, or may it tend to create a monopoly?

The Corporate Respondent, Its Subsidiaries and Business

As admitted in its answer and otherwise, Respondent Erie Sand and Gravel Company is a corporation organized and existing under the laws of the State of Pennsylvania, with its office and principal place of business located at the foot of Sassafras Street, Erie, Pennsylvania. Respondent is primarily engaged in the business of selling sand and gravel, which are dredged in Lake Erie off Erie, Pennsylvania; Fairport, Vermilion and Marblehead, Ohio; and in the Detroit River, under licenses from the States of Pennsylvania and Ohio, respectively. The sand so dredged is transported across state lines and sold to purchasers who take delivery along the shoreline of Lake Erie in Ohio, Pennsylvania and New York.

Respondent carries on its business, in large part, through a group of wholly-owned subsidiaries, namely:

The Erie Sand & Steamship Company, a Delaware corporation;
Hydro-Navigation Company, a Delaware corporation;
Rockwood Navigation Company, a Delaware corporation;

Presque Isles Transportation Company, a Delaware corporation;
Cemico Oil Company, a Pennsylvania corporation; and
Cement Mix Concrete Company, a Pennsylvania corporation.

The addresses and officers of all these subsidiaries are the same as respondent's, and all of their stock is owned by the parent corporation. The four Delaware corporations each hold title to one self-unloading dredging-type vessel, employed in dredging lake sand. Although the respondent sells sand itself, its subsidiary, the Erie Sand & Steamship Company, in addition to holding title to one vessel, acts as sales agent for its parent corporation in the sale of sand and other products. Cement Mix Concrete Company is the producer of Transit-Mix Concrete, which it transports from a plant at the Erie Sand and Gravel Company's dock direct in trucks to various road-building and domestic constructions. Cemico Oil Company operates a heating-oil service, receiving oil by water and land from approximately six refineries. The activities of all these concerns are under the direct control of respondent.

The Acquired Property

Prior to April, 1955, the Kelley Island Limestone and Transportation Company, referred to hereinafter and in the complaint as the Kelley Island Company, was an Ohio corporation with its office and principal place of business in the Leader Building, Cleveland, Ohio. This corporation had a continuing existence from its inception in 1890 until its final liquidation on December 29, 1955. It was engaged in a number of kinds and types of businesses, including, through its division known as the Sandusky Division, the dredging of sand and gravel from the Detroit River and from Lake Huron and Lake Erie, and the delivery of the material so dredged to purchasers thereof at docks at Lake ports from Saginaw, Michigan, to Tonawanda, New York, involving interstate transportation, and also by operating retail docks at Erie, Pennsylvania, and Ashtabula, Grand River, Lorrain and Sandusky, Ohio.

On December 30, 1954, by vote of its stockholders, the Kelley Island Company formally decided to liquidate all its businesses. On January 1, 1955, a news item concerning that resolution appeared in the Cleveland Plain Dealer. This news item came to the attention of the officials of the respondent corporation, who thereafter submitted a bid in the amount of one million dollars for the Sandusky Division. There were three other bidders, including the Standard Slag & Gravel Company, which offered $800,000 for the property in question.

Thereafter, on February 21, 1955, the Kelley Island Company, by memorandum, confirmed an agreement to sell to the respondent the following property:

A. The vessels: Kelley Island ..... 683 gross tons,
Motor Vessel Rockwood ..... 1,290 " " ,
Hydro ..... 1,282 " " ;

B. Dock property in Lorain, Ohio;

C. Interest of seller in docks:
Sandusky, Ohio ..... 3 docks,
Lorain, Ohio ..... 1 dock,
Fairport, Ohio ..... 1 dock,
Ashtabula, Ohio ..... 1 dock,
Erie, Pennsylvania ..... 1 dock;

D. Unfilled orders;

E. Automotive vehicles;

F. Inventories.

On March 1, 1955, the provisions of the above memorandum of sale was consummated, with certain exceptions. The lease which Kelley Island Company had to docks at Ashtabula was not transferred, and the title to the vessels Hydro and Rockwood was conveyed from Kelley Island Company to the Erie Sand & Steamship Company, one of the wholly-owned subsidiaries of the respondent corporation. The price which Kelley Island Company received for the Sandusky Division was $1,074,309.12. All the assets of the Kelley Island Company which were sold in its liquidation process, including those sold to respondent, amounted to $6,374,015.36.

In the year ending December 31, 1954, prior to the acquisition in question, the Sandusky Division sold 900,000 tons of sand and realized a gross profit, before deduction of taxes, of $295,000. The market value of its assets as acquired by the respondent and as shown by the bids for its purchase was between $800,000 and one million dollars.

In 1954, the year prior to the acquisition, respondent's sales of lake sand amounted to 37.3%, and Sandusky Division's sales to 54.5%, of all lake sand sold by domestic producers in the relevant market area. Thus the two concerns combined sold 91.8% of all lake sand sold by domestic producers in the year 1954. During the year 1955, and prior to the acquisition in question, the Sandusky Division sold lake sand from its stockpile during the period of the winter season, when all dredging of sand in Lake Erie is normally suspended due to icing conditions on the Lake. During the dredging season in 1954, preceding the sale of the Sandusky Division to Re-

spondent in 1955, the Sandusky Division dredged sand as usual, filled its customers' orders therefor, and stored the remainder, which stored sand constituted the stockpile from which sales were made by Sandusky during the winter season of 1954–55. Accordingly, it is apparent that the Sandusky Division never actually ceased operation, and was therefore a going concern, engaged in interstate commerce, when its was acquired in 1955 by the respondent.

Lake Sand and Its Distribution

The sand sold by the respondent and its competitors is dredged principally from Lake Erie by authority of licenses issued by the States of Ohio and Pennsylvania. It is generally measured in cubic yards, whereas bank or pit sand, which is dug from sandbanks away from the shores of Lake Erie, is measured in tons. One cubic yard of lake sand equals, on the average, 1.32 tons of bank sand. It is used largely in the making of concrete. It is generally of higher quality and meets Government specifications for sand much more consistently than does bank or pit sand, which does not have the advantage of the automatic washing process natural to lake sand. Because of the difficulties and dangers of dredging lake sand during the winter months, and the higher insurance rates charged for operation during that season, the dredging of sand in Lake Erie is generally limited to the period from April 15th through November. Although sand can be unloaded on the shore without benefit of a dock, by using equipment particularly designed for that purpose, it is usually unloaded either at the dredger's own dock or delivered to the dock of the customer. Accordingly, dock space is deemed a necessary adjunct to the working equipment of a producer of lake sand. Lake sand is generally not advertised by conventional means, but is sold on contract through personal contact between seller and buyer. The producer occasionally bids on and supplies sand for special projects, such as the construction of large buildings or highways.

Section of the Country

Paragraph 3 of the complaint alleges that respondent sells sand along the southern shore of Lake Erie from Buffalo, New York, to Sandusky, Ohio, including docks in the port cities of Buffalo and Dunkirk, New York; Erie, Pennsylvania; and Conneaut, Ashtabula, Plainsville, Cleveland, Lorain and Sandusky, Ohio. The evidence sustains this allegation. Paragraph 3 of the complaint alleges further that the sale of sand along the shores of Lake Erie extends inland approximately 25 miles. This latter allegation was amended to

conform to proof showing that within this 25-mile strip along the shore of Lake Erie, there are few sales of lake sand made to purchasers located more than ten or twelve miles from the docks; that the great majority of sales have been made to purchasers within ten or twelve miles of the docks; and that sales in the larger cities, such as Cleveland, Ohio, have been still further confined to within three to five miles of the lake shore.

Respondent contends that the above-described area does not constitute a "section of the country" within the meaning of §7 of the Clayton Act. The Senate Report on Amended §7 of the Clayton Act, in discussing the meaning of the phrase "section of the country," states as follows:

> What constitutes a section will vary with the nature of the product. Owing to the difference in the size and character of markets, it would be meaningless, from an economic point of view, to apply for all products a uniform definition of section, whether such a definition was based on miles, population, income, or any other unit of measurement. A section which would be economically significant for a heavy durable product, such as large machine tools, might well be meaningless for a light product such as milk (Senate Report 1775, 81st Cong., 2d Sess., pp. 5–6).

The report further states:

> It should be noted that although the section of the country in which there may be a lessening of competition will normally be one in which the acquired company or acquiring company may do business, the bill is broad enough to cope with a substantial lessening of competition in any other section of the country as well.

The House Committee, in spaking of this problem, states that:

> The test of substantial lessening of competition or tending to create a monopoly is not intended to be applicable only where the specified effect may appear on a nation-wide scale. The purpose of the bill is to protect competition in each line of commerce in each section of the country (H.R. Rep. No. 1191, 81st Cong., 1st Sess., A 8 (1949)).

Furthermore, the Commission, in the recently-decided matter of *Crown Zellerbach, Inc.*, Docket 6180, stated that:

> It may be fairly concluded with consideration given to all the evidence that sales of the papers involved in this proceeding in the Eleven Western States from producers outside this area were relatively insignificant. The record shows that Western suppliers of the relevant coarse papers and the products into which they are converted have come primarily from Western mills. Factors such as the preferences of purchasers and particularly the high cost of shipping over long distances have resulted in effectively separating the West as a competitive area from the rest of the country with respect to the relevant product line.

The above authoritative interpretations of the meaning of the phrase "section of the country" clearly indicate the answer to our

problem. The various phases of the business in question, such as the weight of the product involved in relation to its price, the high cost of transportation, the preference of purchasers for lake sand over pit or bank sand, the difference in price between bank sand and lake sand, result "in effectively separating" the sand produced in the lakeshore area from the sand produced inland, and create a natural market for lake sand within a naturally-defined area which obviously can only be termed a "section of the country" within the intent and meaning of §7 of the Clayton Act.

The Line of Commerce

The respondent contends that sand is sand, regardless of whether it is pit, bank or lake sand; that it is all used primarily for the purpose of making concrete; that the two sands are in competition, and that, accordingly, the sale of lake sand is not a line of commerce separate and distinct from the sale of bank sand within the intent and meaning of §7 of the Clayton Act.

The evidence shows that lake sand is generally of finer quality than bank sand, pit sand, or river sand, and more consistently meets Government-project specifications than does any other kind of sand. A natural market for lake sand exists along the southern shore of Lake Erie from Buffalo, New York, to Sandusky, Ohio, extending inland from ten to twelve miles. In Cleveland, Ohio, this area of sale is reduced, in most instances to three to five miles. Bank and pit sand are not competitive with lake sand in this area for several reasons. Bank and pit sand, in its area of production, is cheaper than lake sand, and generally poorer in quality. If shipped into the lake-sand area, however, its cost would become prohibitive, since the expense of hauling would increase its price, in most areas, above that of lake sand, while its quality would remain inferior. Furthermore, there is a demand for lake sand which the pit product cannot satisfy. Some major consumers do, in fact, purchase both types of sand, but their purchases and use of each type of sand are segregated. Each type of sand has its own customers and trading area, and consumers do not, as a rule, use one sand in lieu of the other. Therefore, there is no substantial competition between the sale of lake sand and of bank or pit sand in the area described. The Supreme Court of the United States, in the case of *U.S.* v. *E. I. du Pont de Nemours & Co.*, 353 U.S. 586 (1957) points out that competitive reality defines for us those parts which constitute a "line of commerce," and has rejected the contention that the relevant market should be expanded to include products not produced by either the acquired or the acquirer. The Court states:

Determination of the relevant market is a necessary predicate to a finding of a violation of the Clayton Act because the threatened monopoly must be one which will substantially lessen competition "within the area of effective competition." Substantiality can be determined only in terms of the market affected. The record shows that automobile finishes and fabrics have sufficient peculiar characteristics and uses to constitute them products sufficiently distinct from all other finishes and fabrics to make them a "line of commerce" within the meaning of the Clayton Act. Cf. *Van Camp & Sons Co.* v. *American Can Co.*, 278 U.S. 245. Thus, the bounds of the relevant market for the purposes of this case are not coextensive with the total market for finishes and fabrics, but are coextensive with the automobile industry, the relevant market for automotive finishes and fabrics.

The facts of record in this proceeding, as illumined by the Supreme Court's explanation above quoted, reveal that lake sand has so many characteristics not shared by pit or bank sand that the sale thereof in the area herein defined clearly constitutes a discrete "line of commerce" within the intent and meaning of §7 of the Clayton Act.

The Relevant Market Prior to Respondent's Acquisition

In 1954, the year prior to the acquisition in question, respondent was the second-largest producer of lake sand in the market area extending from Buffalo, New York, to Sandusky, Ohio, inclusive, and the Sandusky Division of the Kelley Island Company was, by a considerable margin, the largest producer. Sales on the open market by lake-sand suppliers in the relevant market in 1953 totaled 832,655 cubic yards, and in 1954, 943,034 cubic yards. Of these totals Respondent produced in 1954 34.7% and the Sandusky Division of Kelley Island Company 49.7%, a combined total of 83.7%, of the lake sand produced in the domestic market during that year. The remaining 16.3% of the lake sand so produced was sold by three producers with 8.9%, 4.4% and 3.7% respectively. Respondent's sales, when added to those of the Sandusky Division, amounted to 86.8% of all lake sand sold, including that sold by Canadian producers, in 1953, and 83.7% of such lake-sand sales in 1954. In 1954, Respondent sold 37.3% and the Sandusky Division sold 54.5% of all lake sand sold by domestic lake-sand producers. Thus the respondent and the Sandusky Division, combined, sold 91.8% of all domestic lake sand sold in 1954. The remaining 8.2% of lake-sand sales by domestic suppliers in 1954 was shared between two suppliers, who effected 4.97% and 3.03% thereof, respectively.

Prior to the acquisition there were at least two Lake Erie suppliers of lake sand selling in each of the port cities on Lake Erie from Buffalo, New York, to Sandusky, Ohio, with the exception that in Sandusky only the Kelley Island Company sold sand. It is also

significant to observe that prior to the acquisition the Sandusky Division was not always able to meet the demands of its customers for lake sand.

Relevant Market Subsequent to Respondent's Acquisition

Subsequent to the acquisition, respondent has been the leading supplier of lake sand in the relevant market area, and has had a greater rate of growth than both the entire market area and any of the other lake-sand suppliers in that area. Statistical data in the record establish this fact.

Benefits to the Respondent Resulting from the Acquisition

In addition to the physical assets acquired by the Respondent by the purchase of the Sandusky Division of the Kelley Island Company, respondent also acquired by assignment, lease or ownership, dock properties in Plainsville, Ashtabula, Grand River, and Lorain; two in Sandusky, Ohio; and two in Erie, Pennsylvania. It also acquired unfulfilled orders for materials purchased by Sandusky's customers but not yet delivered, and contracts, likewise unfulfilled, for supply materials which had been ordered by Sandusky and were to be delivered to respondent. By virtue of the acquisition, respondent became the only producer of lake sand selling in all the ports in the entire area from Buffalo, New York, to Sandusky, Ohio. By its acquisition Respondent increased its dredging equipment from one vessel to four. Respondent sold one of the three dredging vessels which it had obtained as part of the Sandusky acquisition, and thereafter purchased, in the place thereof, a larger dredging vessel. Also, incident to the terms of the acquisition, respondent eliminated as an independent competitor the largest supplier of lake sand other than itself, by prohibiting Kelley Island Company re-entry into the relevant market for at least ten years. Respondent also acquired the customers of the Sandusky Division. By eliminating the Sandusky Division as a competitive factor in the port cities of Dunkirk, New York; Sandusky, Ohio; and Erie, Pennsylvania, respondent became the only distributor of lake sand in those ports. Respondent's 1956 sales in cubic yards were over three times as large as its 1953 sales, and its 1957 sales showed an increase over its 1956 sales.

Comparative Capacity for Competition of Respondent and Other Dredgers

None of the lake-sand suppliers, other than the Respondent, have more than one small vessel each with which to dredge lake sand,

and, accordingly, their ability to compete with the Respondent is very limited. Moreover, they are limited in their business by a shortage of dock space, whereas Respondent, by virtue of the acquisition, owns or leases docks in every major port in the relevant market area. It appears, therefore, that the development of real competition to Respondent is unlikely.

Respondent's Sales Practices Since the Acquisition

It is significant that since the acquisition Respondent has refused to sell lake sand to certain persons for the ostensible reasons that their credit was poor, or that Respondent's prior commitments precluded accepting their orders. Also, Respondent has increased its price for lake sand to all its customers, over and above the price at which it transfers sand from its subsidiary, the Erie Sand & Steamship Company, to itself. The evidence shows that the price at which such transfers were made covered the cost of production and, in addition, gave a return to the Respondent of 17.6% gross profit in 1956. Despite this fact, Respondent increased the price of its sand to its cutomers generally in 1956. It appears, therefore, that such price increase, in part at least, resulted from Respondent's newly-acquired dominance in the relevant market, rather than from a business or economic necessity.

CONCLUSIONS

Having considered the reliable, probative and substantial evidence of record in the light of the authoritative interpretations, hereinabove cited, of §7 of the Clayton Act as amended, we must conclude that:

1. The respondent, by and through its subsidiary corporations, which it owns, dominates and controls, is engaged in "trade or commerce among the several states" within the intent and meaning of the Clayton Act.

2. The Sandusky Division of the Kelley Island Company, at the time of its acquisition by respondent, was also engaged in "trade or commerce among the several states," within the intent and meaning of the Clayton Act.

3. Respondent and its acquisition, the Sandusky Division of the Kelley Island Company, were, at the time of the acquisition, both engaged in the dredging, transportation and sale of lake sand, which is a line of commerce distinct and different from the production, sale or distribution of other sands produced in other sections of the country.

4. The area along the southern shore of Lake Erie from Buffalo, New York, to Sandusky, Ohio, and extending up to twelve miles inland, with the greatest concentration of sales being effected within the first five miles from the shore, is a "section of the country" within the intent and meaning of §7 of the Clayton Act.

5. Respondent's acquisition of the Sandusky Division of the Kelley Island Company has had and now has the reasonable and probable effect of substantially lessening competition and tending to create a monopoly in Respondent in the sale and distribution of lake sand in that section of the country extending along the southern shore of Lake Erie from Buffalo, New York, to Sandusky, Ohio, and up to twelve miles inland.

THE ORDER

The above conclusions compel the issuance of an order of divestiture. Counsel supporting the complaint contends that such order should require the respondent to divest itself completely of all the assets, or their equivalent, which it acquired from the Kelley Island Company, and to re-establish those assets as a competitive entity. Counsel contends further that unless the acquired property is sold as a single unit, and not disposed of piecemeal or for operation outside the competitive area, the respondent will retain many of the benefits of its original purchase and continue to dominate the relevant market. This view appears to be substantially correct. Accordingly, the acquired property must be disposed of by respondent in such a manner as to re-establish it as a competitive entity.

Counsel supporting the complaint points out that among the assets acquired by the respondent was a small vessel called the Kelley Island, which respondent subsequently sold, in January, 1956, for operation outside the relevant area. In place of the "Kelley Island" vessel, respondent then acquired from another source a substantially larger ship named the Lakewood. Counsel contends that respondent should be required to divest itself of the equivalent of the "Kelley Island" vessel, and that the method of such divestiture be devised and submitted by respondent to the Commission for its approval before execution. We believe that a just implementation of such a divestiture would tax the wisdom of Solomon.

In *Crown Zellerbach*, *supra*, the Commission stated:

> It is noted that Crown has added new machinery and improvements to the St. Helens property valued at $14,300,817, as found by the Hearing Examiner; but, clearly, the broad purpose of the statute cannot be thwarted merely because respondent has commingled its own assets with those of the acquired firm.

We recognize that the above language is correct as applied to the Respondent therein. The present case, however, differs basically from the *Crown Zellerbach* case, in that Crown Zellerbach, a large corporation, acquired the assets of a smaller company, while, in the present instance, we are confronted with the anomaly of a small corporation which acquired assets much greater than its own. In fact, the respondent herein originally owned only one vessel, and acquired three vessels from the Kelley Island Company, together with other property, such as docks and equipment pertaining thereto. If, therefore, Respondent be required to divest itself of all three vessels, with the property pertaining thereto, it at once becomes apparent that the purchaser thereof will have acquired the potential monopoly which we are ordering respondent to relinquish. Such a transfer of potential, instead of eliminating the tendency toward monopoly, might merely shift it from the respondent to the purchaser.

We believe, therefore, that justice will best be served if the respondent herein is required to divest itself of all the assets acquired from the Kelley Island Company, except the equivalent of the vessel "Kelley Island," of which, in effect, Respondent has already divested itself. Such a divestiture would leave the respondent with two vessels, the one originally owned and the one acquired from another source, and require it to dispose of two vessels, together with other property and assets acquired from the Kelley Island Company. We believe that this separation of property would result in the distribution of economic potential best calculated to promote fair competition in the relevant market area. Accordingly,

It is ordered, That the respondent, Erie Sand & Gravel Company, through its subsidiaries, officers, director, agents, representatives and employees, shall divest itself absolutely, in good faith, of all assets, properties, rights, leases and privileges acquired in the acquisition by the Erie Sand & Gravel Company of the assets of the Sandusky Division of the Kelley Island Company, as may be necessary to establish, as a competitive entity in the lake sand market of Lake Erie, a unit comparable to the former Sandusky Division of the Kelley Island Company, in substantially the same basic operating form and with substantially the same productive capacity as possessed by the said former Sandusky Division of the Kelley Island Company at or about the time of the said acquisition; except that respondent, Erie Sand & Gravel Company, shall not be required to divest itself of the equivalent of the vessel "Kelley Island."

It is further ordered, That in such divestiture none of the property rights, leases and privileges involved shall be sold or transferred, directly or indirectly, to anyone who, at the time of such divestiture, shall be a stockholder, officer, director, employee, or agent of respondent or any of respondent's subsidiaries or affiliated companies, or otherwise directly or indirectly connected with or under the control or influence thereof.

It is further ordered, That respondent Erie Sand & Gravel Company shall, within sixty (60) days from the date of service upon it of this order, submit in writing, for the consideration of the Federal Trade Commission, its plan for compliance with this order, including the date within which compliance can be effected; such compliance to be completed on or before a date to be thereafter fixed by order of the Commission.

OPINION OF THE COMMISSION

By SECREST, *Commissioner:*

The respondent, Erie Sand and Gravel Company, is charged with violating the provisions of Section 7 of the Clayton Act, as amended (15 U.S.C. §18) by acquiring the assets of the Sandusky Division of the Kelley Island Company (sometimes referred to hereafter as the Sandusky Division). The hearing examiner held in his initial decision filed December 2, 1958, that Section 7 had been violated and ordered divestiture.

The matter is now before us on the appeal of the respondent from the aforesaid initial decision. Respondent has raised issues principally as to interstate commerce, relevant market, competitive injury, "public interest," and the appropriateness of the order.

The Acquiring Company

As admitted in its answer and as found by the hearing examiner, the respondent, Erie Sand and Gravel Company, is a Pennsylvania corporation with its office and principal place of business located at the foot of Sassafras Street, Erie, Pennsylvania. Respondent's primary business is the sale of sand and gravel dredged from Lake Erie and adjoining waters. The sand, which is called lake sand, is dredged by respondent's wholly owned subsidiary, the Erie Sand Steamship Company. Respondent sells lake sand along the shoreline of Lake Erie in Ohio, Pennsylavnia and New York. Some of respondent's business is transacted through wholly owned subsidiaries which operate entirely under its direction and control.

The Acquired Property

The Kelley Island Limestone and Transport Company (Kelley Island Company) was, prior to April, 1955, an Ohio corporation with its office and principal place of business in the Leader Building, Cleveland, Ohio. This corporation, organized in 1890, was fully liquidated by December 29, 1955. Among the activities pursued by this company was the dredging of sand and gravel, through its Sandusky Division, from the Detroit River, Lake Huron and Lake Erie. The material so dredged was sold and delivered to purchasers at docks at lake ports from Saginaw, Michigan, to Tonawanda, New York. Sandusky Division also operated retail docks at Erie, Pennsylvania, and at Ashtabula, Grand River, Lorrain and Sandusky, Ohio.

The Acquisition

The Kelley Island Company formally decided to liquidate all its businesses by vote of its stockholders on December 30, 1954. Respondent was the successful bidder for the Sandusky Division property. The assets acquired included the vessels, Kelley Island, Rockwood and Hydro, dock property in Lorain, Ohio, and the interest of Kelley Island Company in docks located in Sandusky and Fairport, Ohio, and in Erie, Pennsylvania. The transfer of these assets took place on March 1, 1955. By agreement the titles to the vessels, Hydro and Rockwood, were transferred to the Erie Sand Steamship Company, a wholly owned subsidiary of the respondent. The price received from the respondent by Kelley Island Company was $1,074,309.12.

Interstate Commerce

The respondent first takes issue with the finding of the hearing examiner that "the Sandusky Division never actually ceased operation, and was therefore a going concern, engaged in interstate commerce, when it was acquired in 1955 by the Respondent." Respondent maintains that there is no record support for this finding by the examiner since no sand is dredged in the winter season. Moreover, respondent argues that if lake sand is sold from docks and in an area limited to the distances mentioned in the amended complaint, there cannot be any sales during the winter season which would constitute interstate commerce.

The record shows that during the dredging season in 1954, preceding the sale of the Sandusky Division to respondent in 1955, the Sandusky Division dredged sand as usual and filled its customers'

orders. It stored the remainder of the sand which constituted the stockpile for sales made by it during the winter season 1954–1955. Although the sand was stockpiled, there was never a break in the interstate movement. The stream of commerce flowed continuously from the lake and river beds in the several states concerned to respondent's customers at various points along Lake Erie. The facts of the case in this connection are closely analogous to those in *Standard Oil Co.* v. *Federal Trade Commission*, 173 F. 2d 210 (1949), reversed on other grounds 340 U.S. 231 (1951).

It is also noted that the season for dredging sand ends in November or December and does not begin again at the earliest until April 1 following, because of ice or hazardous lake conditions. No insurance coverage is available during this period except at very high rates. Thus, the discontinuance of dredging by the Sandusky Division in the late Fall of 1954 was a normal procedure. At the conclusion of the 1954 dredging season, Kelley Island Company made necessary, costly repairs on its vessels in preparation for the 1955 season. Customers and orders were secured for the 1955 season. In other words, operations which normally were engaged in during the off season were continued by the Sandusky Division. A company which has been engaged in interstate commerce does not cease to be interstate commerce simply because seasonal considerations temporarily halt or curtail activities.

Relevant Market

Respondent argues chiefly, regarding the relevant market, that the section of the country alleged in the amended complaint is too small a geographical area to meet the statutory requirement of a "section of the country." The term as used in the Clayton Act, according to the appeal, means an extensive area, not a mere "community."

The Senate Report in amending Section 7 (S.P. 1775, 81st Cong., 2nd Sess. 1950) stated at page 4 with reference to omission of the word "community":

> The use of the word "community" raised a storm of controversy, centering around the possibility that the act, so worded, might go so far as to prevent *any local enterprise in a small town from buying up another local enterprise in the same town.* As a consequence the word "community" was dropped from the subsequent versions of the bill. [Emphasis supplied.]

Obviously the examiner's "section of the country" here is considerably more than a "community." It is a contiguous geographical area embracing the south shore area of Lake Erie in the States of

New York, Pennsylvania and Ohio. The examiner's specific finding in this respect held:

The area along the southern shore of Lake Erie from Buffalo, New York, to Sandusky, Ohio, and extending up to twelve miles inland, with the greatest concentration of sales being effected within the first five miles from the shore, is a "section of the country" within the intent and meaning of Section 7 of the Clayton Act.

What constitutes a "section of the country" is not capable of rigid definition and its application will vary according to the particular facts of each case. *United States* v. *Bethlehem Steel Corporation, et al.*, 168 F. Supp. 576, 595 (1958). Owing to the differences in the size and character of markets, it would be meaningless, from an economic point of view, to attempt to apply for all products a uniform definition of section, whether such a definition were based upon miles, population, income or any other unit of measurement (*Ibid*). Also since it is the preservation of competition which is at stake, the significant proportion of coverage is that within the area of effective competition *Standard Oil Co.* v. *U.S.*, 337 U.S. 293.

In our decision in *Crown Zellerbach Corporation*, Docket No. 6180 (decided December 26, 1957), we found that the 11 state western area and the three Pacific Coast states constituted an appropriate "section of the country" for the purposes of that case. A ten state area was designated as the area of effective competition and therefore an appropriate "section" in *American Crystal Sugar Company* v. *The Cuban-American Sugar Company*, 259 F. 2d 524, 528–29, 1958. Consideration of freight costs there, as here, were relevant in determining what constituted the area of effective competition. In *United States* v. *Bethlehem Steel Corporation*, *supra*, a single state was held as constituting an appropriate area within which to measure the economic consequences of a merger.[1] Similarly in *United States* v. *Maryland and Virginia Milk Producers Association, Inc.*, 167 F. Supp. 799, the court found the "Washington Metropolitan Area" an appropriate "section" for measuring the effects proscribed by the statute. We believe it is clear, therefore, that there is no precept for determining what constitutes an appropriate "section of the country." Inquiry must be made into the facts of each case and we believe here that the hearing examiner correctly defined the "section of the country" for the purposes of this proceeding.

In its appeal respondent has also asserted that there are large quantities of bank and pit sand sold in competition with lake sand.

[1] See also *United States* v. *The Lucky Lager Brewing Company of San Francisco* (1958 Trade Cases, Para. 69160) and *United States* v. *Anheuser-Busch, Inc., et al.* (1949 CCH Case 1421, Para. 45058) wherein the challenged acquisitions included companies operating wholly within the single States of Utah and Florida.

The evidence reveals, however, that most bank and pit sand, mentioned in respondent's analysis, is sold outside of the relevant market area. The quantities sold within the market are so small that their consideration would not affect the final determination in this matter. In any event it appears that lake sand is a sufficiently distinct product to be considered a "line of commerce" within the meaning of Section 7. Accordingly, we believe that the sale of lake sand in the above-defined market area along the shore of Lake Erie from Buffalo, New York, to Sandusky, Ohio, constitutes a relevant market for the purpose of determining the competitive consequences of this merger.

Competitive Effect

Respondent disputes the examiner's holding that the acquisition has had and now has the probable effect of substantially lessening competition and tending to create a monopoly in the relevant market. The facts, however, are clear. As found by the examiner and not here challenged, sales on the open market by lake sand suppliers in the market area here found to be relevant totaled about 832,655 cubic yards in 1953, and 943,034 cubic yards in 1954. Respondent's sales, when added to those of the Sandusky Division, amounted to 86.8% of all lake sand sold in the relevant market in 1953 and 83.7% of such sales in 1954. Respondent and the Sandusky Division, combined sold 91.8% of all domestic lake sand sold in the relevant market in 1954. Two other domestic suppliers shared the remainder between them in 1954, with sales of approximately 4.9% and 3.3%, respectively. Thus, respondent through the merger achieved dominance in the relevant market.

There are, in addition, other significant factors. The merger eliminated a major competitor. Where formerly there had been several suppliers in port cities, such as Dunkirk, New York, Sandusky, Ohio, and Erie, Pennsylvania, now there is one. Respondent also has acquired possession or leases to most of the available docks in the market area. It is now the only producer which supplies sand at all ports from Buffalo, New York, to Sandusky, Ohio.

The facts of record further reveal that there is little likelihood of greater competition in the future. Kelley Island Company, incident to the terms of the acquisition, is prohibited from re-entry into the relevant market for ten years. Other competitors of respondent are small operators with limited means. They do not have docks or other facilities which might enable them to effectively challenge the respondent's now dominant position. It is evident that the effect of the acquisition by respondent of the assets of Sandusky

Division may be substantially to lessen competition or to tend to create a monopoly in the market as above defined.

"Public Interest"

Respondent asserts that "public interest" is a relevant test under amended Section 7 and for this proposition cites cases decided before the 1950 amendment to Section 7. The cases mentioned are grounded in the language of *International Shoe Company* v. *Federal Trade Commission*, 280 U.S. 291 (1930), in which it was held that a showing of public injury is required in a Section 7, Clayton Act case as well as in a Sherman Act case. Congress, however, clearly did not intend the Sherman Act tests to apply in amended Section 7 cases. *Pillsbury Mills, Inc.*, 50 F.T.C. 555, 566 (1953); *United States* v. *Bethlehem Steel Corporation*, 168 F. Supp. 576, 583 (1958); *American Crystal Sugar Company* v. *The Cuban-American Sugar Company*, 259 F. 2d 524, 527 (1958). In amending Section 7, Congress determined, in effect, that the public interest requires corrective action where the effect of the acquisition may be substantially to lessen competition or tend to create a monopoly "in any line of commerce in any section of the country." The court cases litigated under amended Section 7 have applied this statutory test. *United States* v. *E. I. duPont de Nemours & Company*, 353 U.S. 586; *United States* v. *Bethlehem Steel Corporation*, *supra; American Crystal Sugar Company* v. *The Cuban-American Sugar Company*, *supra*. Thus, the pre-amendment cases are not controlling in determining whether the acquisition under consideration is in violation of Section 7 as amended, and respondent's contentions in this regard are clearly without merit.

The Propriety of the Order

The objection to the order appears to be on two principal grounds: (1) that the Commission's power to order divestiture does not include the power to require the establishment of a competitive entity comparable to the merged firm and (2) that the order applies to vessels and properties owned not by respondent but by subsidiaries and that the complaint contains no allegation that these subsidiaries are under the direction, domination and control of respondent.

The order contained in the initial decision reads in pertinent part as follows:

"*It is ordered*, That the respondent, Erie Sand & Gravel Company, through its subsidiaries, officers, directors, agents, representatives and employees, shall divest itself absolutely, in good faith, of all

assets, properties, rights, leases and privileges acquired in the acquisition by the Erie Sand & Gravel Company of the assets of the Sandusky Division of the Kelley Island Company, as may be necessary to establish, as a competitive entity in the lake sand market of Lake Erie, a unit comparable to the former Sandusky Division of the Kelley Island Company, in substantially the same basic operating form and with substantially the same productive capacity as possessed by the said former Sandusky Division of the Kelley Island Company at or about the time of the said acquisition; except that Respondent, Erie Sand & Gravel Company, shall not be required to divest itself of the equivalent of the vessel 'Kelley Island'."

The Commission has the power to issue an order which requires the divestiture of an acquired property, where there is a violation of Section 7, "in the manner and within the time fixed by said order" (15 U.S.C. 21). This is adequate authority to require divestiture of the acquired property as a going, competing concern, rather than on a piecemeal basis. In this case, the removal of an important competitor severely restricts the sources of supply for lake sand purchasers. To permit piecemeal sale of the property would not correct the harm that has been rendered to competition. *Crown Zellerbach Corporation, supra.* See also *Federal Trade Commission* v. *Western Meat Company, et al.*, 272 U.S. 554, 559 (1926). There, in upholding the Commission's order, the Court stated that the words of the statute must be read in the light of its general purpose and applied with a view to effectuate such purpose and that the "[p]reservation of established competition was the great end which the legislature sought to secure."

We conclude, therefore, that the order contained in the initial decision is fully justified. We have considered other contentions by respondent made in pursuance of this appeal and find that they are without merit.

Respondent's appeal accordingly is denied and it is directed that an appropriate order be entered.

FINAL ORDER

This matter having come on to be heard upon the appeal of the respondent from the hearing examiner's initial decision and upon the briefs and oral argument of counsel in support thereof and in opposition thereto; and

The Commission having rendered its decision denying the appeal and directing that an appropriate order be entered:

It is ordered, That the findings, conclusions, and order contained in the initial decision be, and they hereby are, adopted as those of the Commission.

It is further ordered, That respondent Erie Sand and Gravel Company, shall, within sixty (60) days from the date of service upon it of this order, submit in writing, for the consideration and approval of the Federal Trade Commission, its plan for compliance with this order, including the date within which compliance can be effected, the time for compliance to be hereafter fixed by order of the Commission, jurisdiction being retained for these purposes.

IN THE MATTER OF

SHELL OIL COMPANY

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

Docket 7044. Complaint, Jan. 16, 1958—Order, Oct. 26, 1959

Order adopting, as modified, the initial decision dismissing complaint which charged a leading producer of petroleum products with inducing customers, including automobile dealers, to prefer its lubrication oil and grease and to refuse to handle competitors' products by furnishing said customers expensive lubrication equipment and other facilities on lease, loan, or sale with easy terms of repayment; or by granting substantial benefits including gifts of cash, equipment, services, etc., loans of cash and equipment on varying terms, and sale of equipment on credit with varying repayment terms, etc.; or by furnishing other benefits including construction, painting, paving of lots, installation and maintenance of lubrication equipment, without charge—all upon the understanding, expressed or implied, that the customer would thereafter handle, preferentially or exclusively, its petroleum products, including lubrication oil and grease.

Mr. Lynn C. Paulson and *Mr. James H. Kelley* for the Commission.

Howrey & Simon, of Washington, D.C., by *Mr. William Simon*, and *Mr. George S. Wolbert, Jr.*, of New York, N.Y., for respondent.

INITIAL DECISION DISMISSING COMPLAINT BY EARL J. KOLB, HEARING EXAMINER

This proceeding is based upon a complaint charging the respondent Shell Oil Company, a corporation, with unfair methods of competition in commerce in violation of Section 5 of the Federal Trade Commission Act. At the close of the taking of testimony in support

of the allegations of the complaint, the respondent closed its case in opposition thereto without offering an affirmative defense.

This proceeding is now bfore the undersigned hearing examiner for final consideration on the complaint, answer thereto, testimony and other evidence, brief of counsel supporting the complaint, proposed findings of fact and conclusions of law filed by the respondent and brief in support thereof, and brief filed by counsel supporting the complaint in reply thereto. The hearing examiner has given consideration to the proposed findings filed by the respondent and all findings of fact and conclusions of law not hereinafter specifically found or concluded are herewith rejected, and the hearing examiner having considered the record herein, and being now duly advised in the premises, makes the following findings as to the facts, conclusions drawn therefrom, and order:

1. Respondent Shell Oil Company is a Delaware corporation with its principal office and place of business located at 50 West 50th Street, New York, New York. For several years last past respondent has been engaged in the sale and distribution of various petroleum products, including lubrication oil and grease, in interstate commerce to various wholesale and retail buyers, including car dealers in competition with other concerns who are also engaged in the sale and distribution of similar products in interstate commerce. The gross annual sales of this respondent are in excess of 1 billion dollars.

2. The grade of motor oil involved in this proceeding is heavy duty oil, conforming to military specifications (Mil-L-2104), which is generally recommended by car manufacturers for use in new cars. Respondent's oils for new cars meeting these qualifications are its X-100 and X-100 Premium.

3. The evidence in this proceeding is limited to the sale of heavy duty motor oil and greases to new car dealers located in the New York market, consisting of the five boroughs, Westchester County and Long Island; and the New England Market, consisting of the States of Maine, Massachusetts, Rhode Island and Connecticut. In the relevant market the total sales of lubricant oils and greases to car dealers comprise approximately 1/5th of the total lubricants sold. Prior to World War II this market was principally supplied by the independent compounders and blenders of motor oil.

4. There are basically three groups of suppliers selling motor oil to car dealers in the relevant market:

(a) Specialized suppliers of nationally advertised, so-called "Premium" or "Penn Grade" motor oils, with a high degree of consumer acceptance which are generally distributed through local distributors

and sold above the prices of the major oil company brands and local blenders. This group includes Quaker State, Pennzoil, Wolf's Head, Alemite, Amalie, McMillen and Kendall.

(b) The motor oils of so-called major brand companies, including Esso, Mobiloil, Gulf, Texaco, Atlantic, Sun, Amoco and Permalube, Calso, Tidewater, Union Oil, Cities Service, and respondent Shell.

(c) Independent compounders and blenders of motor oil who buy base oil stocks from refiners, blend these base stocks with appropriate additives to a suitable grade of motor oil, and market such motor oils under their own brand names. These include White & Bagley, U.S. Oil, Colt-Worthington, Paragon and Jenney. These compounders sell a motor oil comparable to Shell's X–100 at prices substantially under the prices of the nationally advertised specialty "Premium" motor oils.

5. Motor oil purchases by car dealers bear a direct relationship to new car sales. The warranty service furnished by the car manufacturer induces the motorist to bring his car back to the dealer for the first few oil changes. As the car gets older the motorist will go to a service station for his oil change with the result that the motor oil potential of new car dealers decreases with the age of the car. The year 1955 was the best year for the sales of new cars, but new car sales have declined in 1956 and further in 1957 and 1958. A substantial number of car dealers have gone out of the market in the last two years.

6. It has been the practice of oil suppliers for many years to supply lubrication equipment to car dealers in connection with the sale of motor oil. Originally, this usually consisted of dispensing equipment, such as hi-boys and storage tanks, which were loaned without charge and removed at the termination of the contract. The combined value of this equipment at present costs amounts to about $200.00. After World War II, when the supply of new cars became more plentiful, dealers found their resale competition more intense with a resultant drop in profits and began to exert more pressure upon the oil suppliers to furnish more expensive lubrication equipment, such as car lifts and overhead reels. Such equipment deals may involve expenditures from $2,000.00 to $18,000.00, depending upon the equipment furnished.

7. Respondent undertook the furnishing of major equipment to car dealers in 1946. When such equipment was furnished, an agreement was entered into between the respondent and the car dealer known as the "Equipment Loan Agreement." Originally this agreement was a straight loan of the equipment with title remaining in the respondent, and rental charge was paid by crediting 5¢ to 15¢

per gallon of oil purchased. As early as December 23, 1952, the division manager was authorized at his discretion to provide for sale instead of rental in the "Equipment Loan Agreement" on the cents-per-gallon formula, credited against the amount of oil and grease purchased with title retained by respondent until the agreed price was paid either by cash or on the amortization plan. In entering into the contracts with car dealers, the value of the equipment to be sold or leased and the period of time allowed for amortization were both predicated upon the estimated quantity of motor oils and greases which the car dealer could consume over the period of the contract. Consequently, the term of these contracts ranged from four to ten years with permission to dealers in some instances to extend the contract period if value was not fully amortized.

8. In addition to the "Equipment Loan Agreement" the car dealer also executed a "Lubricant Sales Contract" covering the same period of time as required for amortization under the "Equipment Loan Agreement" which provided for the purchase each contract year of the specified gallonage of lubricants and greases based upon an estimated amount for the entire contract period required for amortization. This contract provided that the car dealer shall purchase during any contract year not less than 90 percent of the estimated quantity per contract year as specified in the contract.

9. In addition to the equipment arrangements hereinbefore described, respondent in some instances sold certain equipment, including non-recoverable facilities such as painting or installation of back drops in a lubricating room or blacktopping a lubricating area on a so-called conditional sales contract, providing for payment by a surcharge on the oil gallonage.

10. It was not the general policy of the respondent in the New York and Boston areas to make cash loans to car dealer customers, and the practice has been specifically prohibited by the respondent in its policy statements since 1954. Prior to 1954, there was one instance of a loan in the New York division which was paid in full. It was emphasized by the New York division manager, who was called as a witness, that this loan was an isolated case and not a general practice.

11. The testimony of representatives of six competitors was introduced in evidence. These competitors were either vendors of motor oils or distributors of "Premium" oils. Briefly, the competitive situation as developed by this testimony was as follows:

(a) Charles A. Goyert & Co., Inc. This company was a distributor of Sonnebron Oil, a "Premium" oil sold under the trade name of "Amalie." To the extent that working capital permitted, this

respondent furnished lubricating equipment in the maximum of $3,200.00 to car dealers on two or three year contracts on the basis of 3¢ to 10¢ per gallon surcharge on motor oil purchased. This distributor has not lost any accounts to the respondent, although it has lost a number of accounts to other oil companies. This distributor bid upon one account, offering as high as $6,000.00 in equipment, but lost the bid to respondent. This distributor's sales gallonage of motor oils has dropped from 55,000 to 43,000 gallons during the last two or three years. While admitting that the decline in new car sales has a bearing on the decline of motor oil sales, this drop in business was attributed to loss of accounts and not to slacking off of purchases of existing accounts.

(b) Frank R. Zimina. He is a distributor for McMillen Petroleum Corporation. This distributor started four years ago with sales of approximately 6,000 gallons per year, which has increased to present gallonage of 35,000 gallons a year, and is still growing steadily. He sells to automotive garages, service stations, car dealers, agricultural accounts and marine accounts. He has competed with respondent on three car-dealer accounts all of which were customers of respondent, but lost out on equipment deals he could not meet, but did succeed in getting part of the business through the 30,000-mile warranty of lubricating parts of the car if his oil is used exclusively. This distributor makes a limited amount of equipment available at cost plus interest.

(c) Colt-Worthington Oil Works, Westbury, Long Island, New York. This company compounds and blends stock oils fortified with chemicals, which are sold under the trade name "Argolene." Since 1946 this company has increased its sales from approximately $25,000 to $500,000 a year, and has increased its net worth from a deficit of $8,000 in 1946 to $150,000 as of the present time. This company has made equipment deals with car dealers since 1946, offering $3,000 to $4,000, but has gone as high as $11,000. This company is limited on the amount it can borrow to make these deals. When equipment is furnished, it charges the car dealer a surcharge of 10¢ per gallon of oil purchased. It has in the past paid out approximately $5,000 in cash gifts charged against the cost of the contract. This company lost two car-dealer customers to respondent, and lost bids on three to respondent—all on equipment deals, and in turn was successful in taking at least three accounts from respondent, and in one case buying out equipment originally supplied by respondent.

(d) U.S. Oil Company, Providence, Rhode Island. This company has been an independent blender of lubricants since 1925. It has furnished equipment to car dealers on a surcharge of 10¢ to 15¢ per

gallon of oil sold. All equipment deals provide for a 33⅓ percent reimbursement at the end of each 12-month period. The company lost three accounts to respondent, lost bids to respondent on three accounts, and took three accounts from respondent in recent years. Gallonage sales of motor oil in the five New England states were as follows:

1952	280,376
1954	317,855
1957	226,359

showing a drop of approximately 93,000 gallons from 1954 to 1957. In the same territory it had 110 car dealer accounts in 1954, and 73 in 1957.

(e) Irving Schultz. He is a distributor for Kendall Refining Company, a "Premium" oil. He has approximately 300 car dealer accounts in Massachusetts, exclusive of Boston and the Bay area. He has only two equipment accounts involving one lift or chassis lubricant or shaft gun and cannot afford to compete on equipment deals.

(f) White & Bagley Company, Worcester, Massachusetts. This company compounds and blends motor oil sold under the trade name "Oilzum" and has a sales volume of 500,000 gallons to car dealers. Sales have increased every year up to 1956. This company does not sell or loan equipment. It lost one account to respondent, and 50 percent of another, and also lost bid to respondent on one account.

CONCLUSIONS

1. It is the theory of this proceeding that the practice of the respondent of leasing or selling major lubricating equipment to car dealers on an amortization basis with the cents-per-gallon formula, induces a substantial number of car dealers to refuse to handle, or to discontinue handling, competitive petroleum products and to deal preferentially and exclusively in respondent's petroleum products contrary to the public policy established by the Clayton Act; and, consequently, constitutes unfair methods of competition within the intent and meaning of the Federal Trade Commission Act.

2. The equipment and lubricant contracts used by the respondent were designed to assist in the sale of oil to car dealers, but did not in fact exclude competitors from selling the car dealer customer. In fact, car dealers were required by customer preference and demand to maintain a substantial stock of "Premium" oils which were usually carried in package form. Even so, the agreements, many of which are 90% requirement contracts, on their face indicate the

possibility of a restriction of the market. There is, however, no direct evidence in this record to establish the probability of the required competitive injury. In fact, at least two representatives of respondent's competitors testified in this proceeding that they were able to sell certain car dealers with whom respondent had contracts or had split the business of certain dealers with respondent. Furthermore, it was a common practice in the industry for dealers to change suppliers during the term of the contract, the new supplier buying the equipment from the old supplier. The record shows that competitors did, in fact, take over some of respondent's contracts with oil dealers by paying respondent the balance due on the cost of equipment.

3. There is no competent evidence in this proceeding proving or permitting any inferences to be drawn, that competitors suffered a loss of business as a result of the practices of the respondent. Of the six competitors of the respondent, concerning whom evidence was introduced, only two showed loss of business—Charles A. Goyert & Co., Inc., and U.S. Oil Company:

(a) The gallonage sales of Charles A. Goyert & Co., Inc., of motor oil dropped from 55,000 to 43,000 gallons in the past three years. During that time there was a decline in new car sales and a decline in new car dealers. This decline cannot be disregarded, and inferences cannot be drawn that the drop in its business was due to respondent's practices when it appears that Goyert did not lose any accounts to respondent and lost out to respondent on one bid where he had gone as high as $6,000 on equipment.

(b) The U.S. Oil Company, during recent years, lost three accounts to respondent and was successful in taking three accounts from respondent, so that on this the score was about even. In bidding on accounts, U.S. lost three bids to respondent. This is not sufficient to support a reasonable inference that a drop of 93,000 gallons from 1954 to 1957 in the New England area was due to the practices of the respondent. Also the period subsequent to 1955 showed a decline in new car sales and a decline in the number of car dealers.

(c) The remaining competitors other than Goyert and U.S. Oil showed an increase in business in recent years and no losses that could be attributed to the practices of the respondent. One competitor, White & Bagley Company, testified to an increase in business every year up to 1956. Although he claimed it was extremely difficult to add new accounts, he did state that industry sales in general, of oil, were down in 1958 in comparison with 1957, and that there are fewer car dealers than there were four years ago.

5. One of the elements advanced in support of the charges of the complaint was the size of respondent corporation. The suggested inference to be drawn from this was that since respondent's gross sales throughout the country were over 1 billion dollars, it was in a position to use its large financial resources to restrain competition. The hearing examiner cannot accept such a theory in the absence of proof that the practices engaged in are in themselves illegal, regardless of the size of the respondent. Although the respondent has been furnishing major lubricating equipment since 1946, its share of the relevant market is very small and on the basis of this record there is no indication of a tendency to establish a monopoly or even to unlawfully restrain competition in the relevant market.

6. Since the practices of the respondent have not been found or concluded to be contrary to the public policy established by the Clayton Act, or otherwise in violation of the Federal Trade Commission Act, the charges of the complaint have not been sustained.

ORDER

It is ordered, That the complaint in this proceeding be, and the same is hereby, dismissed.

ORDER DENYING APPEAL FROM INITIAL DECISION DISMISSING COMPLAINT

This matter having been heard upon the appeal of counsel supporting the complaint from the hearing examiner's initial decision dismissing the complaint in this proceeding; and

The Commission having considered the entire record, including the briefs and oral argument of counsel, and having determined that, except as hereinafter indicated, the hearing examiner's findings and conclusions are fully substantiated on the record and that the order of dismissal contained in the initial decision is an appropriate disposition of this matter:

It is ordered, That the third sentence of Paragraph 2 of the conclusions in the initial decision be deleted and the following sentences substituted therefor: "Even so, the agreements, many of which are 90% requirement contracts, on their face indicate the possibility of a restriction of the market. There is, however, no direct evidence in this record to establish the probability of the required competitive injury."

It is further ordered, That paragraph 11(d) of the findings contained in the initial decision be modified by changing the figure for 1952 in the annual gallonage schedule therein from 28,376 to 280,376 and that paragraph 4(b) of the conclusions contained in the initial

decision be modified by deleting from the end of the third sentence thereof the words "particularly when it appears that from 1952 to 1954 U.S. Oil increased its sales by 290,500 gallons," such modification being intended to reflect the Commission's order of May 20, 1959, directing that the official transcript in this proceeding be corrected by changing the figure 28,376 at page 584, line four thereof, to the figure 280,376.

It is further ordered, That the hearing examiner's initial decision, filed January 27, 1959, as modified herein, be, and it hereby is, adopted as the decision of the Commission.

Chairman Kintner not participating.

IN THE MATTER OF

CHARLES FORD AND ASSOCIATES OF THE WEST, INC., ET AL.

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

Docket 7448. Complaint, Mar. 17, 1959—Decision, Oct. 28, 1959

Order dismissing—for the reason that corporate respondents had ceased activities prior to issuance of the complaint, and orders issued against individual respondents in another proceeding would adequately protect the public interest—complaint charging two Los Angeles sellers of real estate advertising with obtaining advance fees from would-be property sellers through deception.

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

Mr. Maxwell E. Greenberg, of Los Angeles, Calif., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on March 17, 1959, charging Respondents with violation of the Federal Trade Commission Act by the use in newspapers and other advertising media of false, misleading and deceptive statements and representations in connection with their business of soliciting the listing for sale and advertising of real estate and other properties in commerce, and other services and facilities connected therewith.

Thereafter, on August 24, 1959, counsel supporting the complaint submitted a Motion To Dismiss Complaint, requesting that the com-

plaint herein be dismissed without prejudice, and stating his reasons therefor as follows:

"(1) Respondents have filed an affidavit, signed by all three individual respondents, showing that respondent corporation Charles Ford and Associates of the West, Inc., owned by the three individual respondents, was transferred to a Delaware corporation Charles Ford and Associates, Inc., also owned by said individual respondents, which transfer was effected April 1, 1956 * * *, and that thereafter no business was transacted by said corporation Charles Ford and Associates of the West, Inc. Said corporation's charter was voided, for nonpayment of taxes for two years, by the State of Delaware on April 1, 1959 * * *.

"(2) The corporation Charles Ford and Associates, Inc., a Delaware corporation, on March 14, 1957, by amendment to its Articles of Incorporation, changed its name to Business Mart of America, Inc. On January 27, 1958, Business Mart of America, Inc., entered into an agreement with the Real Estate Commissioner of the State of California to cease doing business in California and eight other western states, and ceased its activities entirely by July 1958. Business Mart of America, Inc. filed its Certificate of Dissolution with the Office of the Secretary of the State of Delaware on September 22, 1958 * * *."

Counsel supporting the complaint states that all of the above-described events occurred prior to the issuance of the complaint herein on March 17, 1959. He further states that the order issued against the three individual Respondents named herein In the Matter of Lenders Service Corporation, et al., Docket No. 7449, in which they are also named Respondents, will protect the public interest to the extent that no further proceedings in the instant matter are necessary.

The hearing examiner agrees with counsel supporting the complaint that there is no public interest in the further prosecution of the complaint herein. Accordingly,

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

DECISION OF THE COMMISSION

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 28th day of October, 1959, become the decision of the Commission.

IN THE MATTER OF

CHARLES CAPPELL ET AL. TRADING AS CAPPELL TRADING COMPANY

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

Docket 7541. Complaint, July 14, 1959—Decision, Oct. 28, 1959

Consent order requiring New York City distributors of hosiery to cease selling without clear disclosure that it was not first quality, imperfect hosiery which they purchased and repaired, if required, and dyed and sold to retailers with no marking to indicate its imperfect quality.

Mr. Brockman Horne for the Commission.
Mr. Irving Markowitz, of New York, N.Y., for respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated July 14, 1959, the respondents are charged with violating the provisions of the Federal Trade Commission Act.

On August 26, 1959, the respondents entered into an agreement with counsel in support of the complaint for a consent order.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing and the document includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint.

The hearing examiner finds that the content of the agreement meets all of the requirements of Section 3.25(b) of the Rules of the Commission.

The hearing examiner being of the opinion that the agreement and the proposed order provide an appropriate basis for disposition of this proceeding as to all of the parties, the agreement is hereby accepted and it is ordered that the agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission. The following jurisdictional findings are made and the following order issued.

1. Respondents Charles Cappell, Israel Cappell and Jacob Cappell are individuals and co-partners trading as Cappell Trading Com-

pany, with their office and principal place of business located at 620 Broadway, in the City of New York, State of New York.

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

ORDER

It is ordered, That respondents Charles Cappell, Israel Cappell and Jacob Cappell, individually and as co-partners trading as Cappell Trading Company, or under any other name, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of imperfect hosiery, or other imperfect products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing any such product without clearly and conspicuously marking it with the words "imperfect," "second quality" or "irregular," or some other word or words of similar import, in such manner that such markings cannot be readily obliterated.

2. Representing in any manner, directly or by implication, that any such product is of first quality.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 28th day of October, 1959, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

ROYAL SEWING MACHINE CORPORATION ET AL.

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

Docket 7407. Complaint, Feb. 13, 1959—Decision, Oct. 29, 1959

Consent order requiring Brooklyn, N.Y., distributors to cease representing falsely in advertising and instruction booklets that their vacuum cleaner

and sewing machines regularly sold at fictitiously high retail prices; that their sewing machines were advertised in "Life," "McCall's Needlework & Crafts," and other national magazines, and had been "Tested and Approved by Laboratories of Federal Testing Co., Inc., New York"; and that their products were guaranteed in every respect and covered by a bond or service insurance policy, by use of such words and expressions as "Lifetime Service Guarantee," "25 Year Guarantee Bond," etc.

Mr. Michael J. Vitale supporting the complaint.

Cowan, Liebowitz and *Emanuel* of New York, N.Y., for respondents.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on February 13, 1959, issued and subsequently served its complaint in this proceeding against the above-named respondents.

On September 3, 1959, there was submitted to the undersigned hearing examiner an agreement between respondents and counsel supporting the complaint providing for the entry of a consent order.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing and the document includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint.

The hearing examiner finds that the content of the agreement meets all of the requirements of section 3.25(b) of the Rules of the Commission.

The hearing examiner having considered the agreement and proposed order, and being of the opinion that they provide an appropriate basis for settlement and disposition of this proceeding, the agreement is hereby accepted, and it is ordered that said agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission. The following jurisdictional findings are made and the following order issued.

1. Respondent Royal Sewing Machine Corporation and Jack Schneider, Norman Epstein and Jacob Epstein, officers of the Corporation who also trade and do business as Edison Sewing Machine Company are all located at 350 Junior Street, Brooklyn, New York.

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

ORDER

It is ordered, That respondent Royal Sewing Machine Corporation, a corporation, and its officers, and respondents Jack Schneider, Norman Epstein and Jacob Epstein, individually and as officers of said corporation, and trading and doing business as Edison Sewing Machine Company, or trading and doing business under any other name or names, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of vacuum cleaners, sewing machines or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication:

(a) That any price is the usual and regular retail price of merchandise when it is in excess of the price at which said merchandise is usually and regularly sold at retail in the normal course of business;

(b) That any merchandise sold or offered for sale is guaranteed, unless the nature and extent of the guarantee and manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed;

(c) That any merchandise sold or offered for sale is covered by a bond or any kind of service insurance policy;

(d) That any product has been tested or approved by Federal Testing Co. Inc.; or has been tested or approved by any other organization, when such is not the fact;

(e) That any product has been advertised in Life, McCall's Needlework & Crafts, or has been advertised in any other publication, when such is not the fact.

2. Placing in the hands of others, means or instrumentalities which may be used to misrepresent the regular and usual retail prices of merchandise.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall on the 29th day of October, 1959, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

LOWENTHAL'S, INC., ET AL.

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

Docket 7504. Complaint, June 2, 1959—Decision, Oct. 29, 1959

Consent order requiring a Cincinnati furrier to cease violating the Fur Products Labeling Act by failing to set forth such terms as "Persian Lamb" and "Dyed Mouton-processed Lamb" on labels, invoices, and in advertising; by advertising which failed to disclose the names of animals producing certain furs or that fur products contained artificially colored or cheap or waste fur, or contained names of animals other than those producing the fur in fur products; and by failing in other respects to comply with requirements of the Act.

Mr. John T. Walker for the Commission.
Mr. Grauman Marks, of Cincinnati, Ohio, for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on June 2, 1959, issued its complaint herein, charging respondents with having violated the provisions of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, by falsely and deceptively advertising, labeling, and invoicing fur products, which acts and practices of respondents constitute unfair and deceptive acts and practices in commerce, in violation of the provisions of the Federal Trade Commission Act. Respondents were duly served with process.

On September 9, 1959, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an "Agreement Containing Consent Order To Cease And Desist," which had been entered into by and between respondents and the attorneys for both parties, under date of August 21, 1959, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

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

1. Respondent Lowenthal's, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 117 W. 4th Street, in the City of Cincinnati, State of Ohio.

Individual respondents William Lowenthal, Jack Jacobs, and Herschel Lowenthal are officers of said corporation and have the same address as that of the corporate respondent.

The complaint issued herein also names as respondent William Lowenthal, individually and as officer of said corporation. It is recommended that the complaint be dismissed as to William Lowenthal, individually, but not as officer of said corporate respondent. In support of said recommendation, there is attached to the agreement, and by reference made a part thereof, an affidavit of William Lowenthal. There is no available evidence contrary to said affidavit.

2. Respondents admit all the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

3. This agreement disposes of all of this proceeding as to all parties if the recommendation as to the dismissal of the complaint as to respondent William Lowenthal, individually, is approved and ordered.

4. Respondents waive:

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

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

(c) All of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

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

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

7. This agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

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

Upon due consideration of the complaint filed herein and the said "Agreement Containing Consent Order To Cease And Desist," the latter is hereby approved, accepted and ordered filed, the same not to become a part of the record herein, however, unless and until it becomes a part of the decision of the Commission. The hearing examiner finds from the complaint and the said "Agreement Containing Consent Order To Cease And Desist" that the Commission has jurisdiction of the subject matter of this proceeding and of each of the respondents herein; that the complaint states a legal cause for complaint under the Federal Trade Commission Act and the Fur Products Labeling Act and the Rules and Regulations promulgated by the Commission under the latter Act, against each of the respondents both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; that the following order as proposed in said agreement is appropriate for the just disposition of all of the issues in this proceeding as to all of the parties hereto; and that said order therefore should be, and hereby is, entered as follows:

ORDER

It is ordered, That Lowenthal's, Inc., a corporation, and its officers, and Jack Jacobs and Herschel Lowenthal, individually and as officers of said corporation, and William Lowenthal, as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale, in commerce, or the transportation or distribution in commerce of fur products, or in connection with the sale, advertising, offering for sale, transportation, or distribution of fur products which are made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misbranding fur products by:

A. Failing to affix labels to fur products showing:

(1) In words and figures plainly legible all of the information required to be disclosed by each of the sub-sections of Section 4(2) of the Fur Products Labeling Act;

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

B. Setting forth on labels affixed to fur products:

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

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

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

C. Failing to set forth the term "Persian Lamb" in the manner required.

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

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

F. 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.

2. Falsely or deceptively invoicing fur products by:

A. Failing to furnish to purchasers of fur products an invoice showing:

(1) All of the information required to be disclosed by each of the sub-sections of Section 5(b)(1) of the Fur Products Labeling Act;

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

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

C. Failing to set forth the term "Persian Lamb" in the manner required.

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

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

3. Falsely or deceptively advertising fur products through the use

of any advertisement, representation, public announcement, or notice which is intended to aid, promote, or assist, directly or indirectly, in the sale, or offering for sale of fur products, and which:

A. Fails to disclose:

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

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

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

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

C. Fails to set forth the term "Persian Lamb" in the manner required.

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

E. Sets forth the term "blended" as part of the information required under Section 5(a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder to describe the pointing, bleaching, dyeing or tip-dyeing of furs.

F. Fails 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.

It is further ordered, That the complaint be, and it hereby is, dismissed as to William Lowenthal, individually, but not as officer of said corporate respondent.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 29th day of October, 1959, become the decision of the Commission; and, accordingly:

It is ordered, That the above-named respondents except respondent William Lowenthal, individually, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Decision

IN THE MATTER OF

A. & J. ENGEL, INC.

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

Docket 7524. Complaint, June 17, 1959—Decision, Nov. 4, 1959

Consent order requiring a New York City furrier to cease violating the Fur Products Labeling Act by labeling products deceptively with respect to animals producing furs; by failing to include required information on labels and invoices; by advertising in newspapers which failed to disclose the names of animals producing certain furs or that fur products contained artificially colored or cheap or waste fur, contained names of animals in addition to those producing the fur in fur products, and represented prices as reduced from previous higher prices without giving time of such compared prices, and as reduced from regular prices which were in fact fictitious; and by failing to maintain adequate records as a basis for such pricing claims.

Mr. Charles W. O'Connell for the Commission.
Respondent, for itself.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondent with misbranding and falsely and deceptively invoicing and advertising certain of its fur products, and with failing to maintain full and adequate records disclosing the facts upon which were based certain pricing and saving claims and representations made by respondent in advertisements of said fur products, in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, and of the Federal Trade Commission Act.

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

The agreement states that respondent A. & J. Engel, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 18 East 50th Street, in the City of New York, State of New York.

The agreement provides, among other things, that respondent admits all the jurisdictional facts alleged in the complaint, and agrees

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

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

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

It is ordered, That respondent A. & J. Engel, Inc., a corporation, and its officers and respondent's representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce, of fur products, or in connection with the sale, advertising, offering for sale, transportation, or distribution of fur products which are made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur," and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misbranding fur products by:

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

B. Failing to affix labels to fur products showing the item number or mark assigned to a fur product;

C. Falsely or deceptively labeling or otherwise identifying any such product as to the name or names of the animal or animals that produced the fur from which such product was manufactured;

D. Setting forth on labels affixed to fur products information required under §4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder mingled with non-required information;

E. Failing to set forth all the information required under §4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder on one side of said labels;

2. Falseley or deceptively invoicing fur products by:

A. Failing to furnish to purchasers of fur products invoices showing all of the information required to be disclosed by each of the subsections of §5(b)(1) of the Fur Products Labeling Act;

B. Failing to furnish purchasers of fur products invoices showing the item number or mark assigned to a fur product;

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

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

A. Fails to disclose:

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

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

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

B. Sets forth the name or names of any animal or animals in addition to the name or names specified in §5(a)(1) of the Fur Products Labeling Act;

C. Represents, directly or by implication, that the former or regular price of any fur product is any amount which is in excess of the price at which respondent has formerly, usually, or customarily sold such products in the recent regular course of its business;

D. Represents, directly or by implication, that prices of fur prod-

ucts are reduced from previous higher prices without giving the time of such compared prices;

4. Making pricing claims or representations of the types referred to in paragraphs 3 C and D above, unless there are maintained by respondent full and adequate records disclosing the facts upon which such claims or representations are based;

5. Misrepresenting in any manner the amount of savings available to purchasers of respondent's merchandise or the amount by which said merchandise is reduced from the price at which it is usually and customarily sold by respondent in the regular course of its business.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 4th day of November, 1959, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

LESTER B. PATTERSON ET AL. DOING BUSINESS AS SKIL-WEAVE CO. ET AL.

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

Docket 7318. Complaint, Nov. 26, 1958—Decision, Nov. 7, 1959

Order dismissing for lack of proof as to a Chicago advertising agency and an official thereof, complaint charging false advertising of a reweaving correspondence course. Respondent Skil-Weave Co. and its partners accepted a consent order effective May 20, 1959, 55 F.T.C. 1824.

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

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

INITIAL DECISION AS TO RESPONDENTS GRANT, SCHWENK & BAKER, INC., AND PAUL GRANT BY WALTER R. JOHNSON, HEARING EXAMINER

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

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

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

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

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

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

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

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

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

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

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

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

DECISION OF THE COMMISSION

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 7th day of November, 1959, become the decision of the Commission.

IN THE MATTER OF

ALLCHEM MANUFACTURING CO., INC., ET AL.

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

Docket 7502. Complaint, June 2, 1959—Decision, Nov. 7, 1959

Order requiring New York City sellers of their "Kill Flame" fire extinguisher to door-to-door salesmen and others for resale, to cease representing falsely on containers and in advertising that said product was safe and non-toxic when used to extinguish a fire, and that it was effective in extinguishing all types of fires.

Mr. Thomas F. Howder supporting the complaint.
Respondents, *Pro Se.*

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

The complaint in this matter was issued on June 2, 1959 and served on each respondent on June 10, 1959. The initial hearing was held on August 12, 1959 pursuant to notice served on August 5, 1959. Each of the respondents failed to serve answer to the complaint and each respondent failed to appear at the hearing held. At the hearing counsel supporting the complaint moved that respondents be held in default and that the hearing examiner find the facts to be as alleged in the complaint. This motion was granted and the respondents being in default both in filing answers and the entering of an appearance at the hearing the examiner finds the facts to be as alleged in the complaint, such facts being as follows:

FINDINGS AS TO THE FACTS

1. Respondent Allchem Manufacturing Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 15 West 39th Street, in the City of New York, State of New York.

2. Respondent Mark Schrier is president of the corporate respondent, and respondent Charles Goldberg is the principal stockholder thereof. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

3. Respondents are now, and for some time last past have been, engaged in the offering for sale, sale and distribution of a fire extinguisher, known as "Kill Flame," to door-to-door salesmen and others for resale to the public.

4. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said product, when sold, to be shipped from their place of business in the State of New York to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

5. In the course and conduct of their business, and for the purpose of inducing the sale of their said fire extinguisher, respondents have made certain statements with respect to said product on the containers thereof and in the advertising of said product. The following are typical:

SAFE
NON-TOXIC
SAFE
positively does not contain carbon-tetrachloride, chloro-bromomethane (CB) or any other hazardous, toxic or possibly injurious ingredient.

6. Through the use of said statements, respondents represented and now represent that their said product is safe and non-toxic when used to extinguish a fire.

7. Said statements and representations were and are false, misleading and deceptive. In truth and in fact, said product is not safe and non-toxic when used to exinguish a fire. The chemical components of "Kill-Flame" are Freon 11 and Freon 12. These chemicals tend to and do decompose in a flame and on hot surfaces yielding highly toxic substances such as chlorine, phosgene, carbon

monoxide, hydrochloric acid and hydrofloric acid. In a closed room or when no ventilation is provided, these decomposition products may form harmful or lethal mixtures.

8. Respondents have likewise made certain statements with respect to said product on the cans containing said product and in the advertising thereof such as:

Protects against ALL types of fires—electrical, grease, oil, gasoline, etc. Makes all other fire extinguishers obsolete, old-fashioned. Stops every kind of fire—electrical, grease, gasoline, etc. at the source!

9. Through the use of the aforesaid statements, respondents represented and now represent that their said product is effective in extinguishing all types of fires.

10. Said statements and representations were and are false, misleading and deceptive. In truth and in fact, said product is not effective in extinguishing sub-surface or deeply seated fires in ordinary combustible materials such as wood, cloth and paper.

11. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of fire extinguishers of the same general kind and nature as that sold by respondents.

12. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true and into the purchase of substantial quanities of respondents' product by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

CONCLUSION

The acts and practices of respondents, as set out above, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondents Allchem Manufacturing Co., Inc., a corporation, and its officers, and Mark Schrier, individually and as officer of said corporation, and Charles Goldberg, individually, and

respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of the fire extinguisher "Kill-Flame," or any other product of substantially similar composition, whether sold under the same name or under any other name, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that said product is safe, non-toxic, or otherwise non-injurious to health, when used to extinguish a fire.

2. Representing that said product is effective in extinguishing all types of fires, or otherwise misrepresenting the fire extinguishing capabilities of said product.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The hearing examiner, on August 18, 1959, having filed his initial decision in this proceeding, service of which was completed as to all of the respondents on October 7, 1959; and

The Commission, on October 22, 1959, having entered its order denying a request of respondent Charles Goldberg that the matter be reopened, and having determined that the initial decision is appropriate in all respects to dispose of the proceeding:

It is ordered, That the aforesaid initial initial decision shall, on the 7th day of November, 1959, become the decision of the Commission.

It is further ordered, That the respondent, Allchem Manufacturing Co., Inc., a corporation, Mark Schrier, individually and as an officer of said corporation, and Charles Goldberg, individually, shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist contained in said initial decision.

IN THE MATTER OF

BOOTH-KELLY LUMBER COMPANY ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 8 OF THE CLAYTON ACT

Docket 7333. Complaint, Dec. 15, 1958—Order, Nov. 10, 1959

Order dismissing—following sale by the officer concerned of all stock held by him and his family in one of respondent lumber companies and his resig-

nation as a director of the company—complaint charging an individual with serving as a director of two competing West Coast lumber companies, in violation of Sec. 8 of the Clayton Act.

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

Mr. Lynn C. Paulson for the Commission.

Harrington, Waer, Cary & Martin, of Grand Rapids, Mich., for respondents.

Hart, Rockwood, Davies, Biggs & Strayer, of Portland, Ore., also represented Booth-Kelly Lumber Co.

OPINION OF THE COMMISSION

By the Commission:

Complaint in this proceeding issued charging respondents with violation of Section 8 of the Clayton Act (15 U.S.C.A. 19), and the hearing examiner, after hearings in due course, on May 29, 1959, entered an initial decision containing a provisional order directing individual respondent John W. Blodgett, Jr., to cease and desist from serving as director of both corporate respondents at one and the same time and directing both corporate respondents to cease and desist from electing or permitting said individual respondent to be elected or allowed to serve in such dual capacity. Respondents thereafter perfected an appeal from the initial decision. While this appeal was pending before the Commission, counsel for respondents filed a request in the nature of a motion to dismiss the proceeding on the ground that, on July 22, 1959, as the result of the sale of all stock held by him and members of his family in Booth-Kelly Lumber Company, individual respondent John W. Blodgett, Jr., resigned as a director of the company. Counsel supporting the complaint filed answer to respondents' motion in which he states that he does not oppose dismissal, which answer was accompanied by the affidavit of the Secretary of corporate respondent Booth-Kelly Lumber Company evidencing the submittal to, and acceptance by, the Board of Directors of that company of the resignation of John W. Blodgett, Jr., as a director of Booth-Kelly.

The Commission is of the opinion, in the circumstances, that no further proceedings in this matter are warranted. It has concluded, therefore, that the motion of respondents' counsel to dismiss should be sustained and the complaint dismissed without prejudice to the right of the Commission to reopen the proceeding should future circumstances so warrant. An appropriate order will be issued.

FINAL ORDER

This matter having come on to be heard upon respondents' request in the nature of a motion to dismiss the complaint herein and the answer thereto filed by counsel supporting the complaint; and

The Commission, for the reasons stated in the accompanying opinion, having concluded that the complaint should be dismissed:

It is ordered, That the complaint in this proceeding be, and it hereby is, dismissed without prejudice to the right of the Commission to reopen the proceeding should future circumstances so warrant.

IN THE MATTER OF

WORTH CLOTHES, INC., ET AL.

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

Docket 7484. Complaint, May 6, 1959—Decision, Nov. 10, 1959

Consent order requiring New York City distributors of wearing apparel through two subsidiaries which operated retail stores in Peoria, Ill., and Akron, Ohio, respectively, to cease such false advertising in newspapers as that "$90,000 Stock of New Apparel" was "Sacrificed"; and misrepresenting the customary retail price of suits through use of the abbreviation "Reg." in connection with amounts set out.

Mr. John J. Mathias for the Commission.

Hays, Sklar & Herzberg, by *Mr. Stephen B. Sobel*, of New York, N. Y., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents with the use, in their advertising, of false, misleading and deceptive statements and representations as to the usual and customary retail prices of their wearing apparel, in violation of the Federal Trade Commission Act.

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

The agreement states that respondent Worth Clothes, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office

and place of business located at 275 Seventh Avenue, in the City of New York, State of New York; that respondents Leon Lewis, Morris Lewis and David Lewis are officers of the corporate respondent; that respondent Abraham H. Lewis is an individual who acts in an executive capacity for the corporate respondent, and formulates, directs and controls the acts and practices thereof; and that the address of the individual responents is the same as that of the corporate respondent.

It is recommended in the agreement that the complaint, insofar as it relates to respondents Leon Lewis, Morris Lewis, and David Lewis, individually, be dismissed, since the evidence discloses no circumstances, other than the normal control exercised by officers of a corporation, which would warrant charging these respondents as individuals.

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

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

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

It is ordered, That respondents Worth Clothes, Inc., a corporation, and its officers, and Leon Lewis, Morris Lewis and David Lewis, as

officers of said corporation, and Abraham H. Lewis, an individual, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of wearing apparel or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly:

1. That the usual and customary retail price of a stock of merchandise is any amount which is in excess of the price at which such stock of merchandise is usually and customarily sold at retail;

2. That any amount is respondents' usual and customary retail price of merchandise when it is in excess of the price at which said merchandise has been customarily and usually sold by respondents in the recent, regular course of their business.

It is further ordered, That the complaint herein, insofar as it relates to respondents Leon Lewis, Morris Lewis and David Lewis, individually be, and the same hereby is, dismissed without prejudice to the right of the Commission to take such action in the future as the facts may then warrant.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 10th day of November, 1959, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Worth Clothes, Inc., a corporation, and Leon Lewis, Morris Lewis, and David Lewis, as officers of said corporation, and Abraham H. Lewis, an individual, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

BART SCHWARTZ INTERNATIONAL TEXTILES, LTD., ET AL.

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

Docket 7370. Complaint, Jan. 23, 1959—Decision, Nov. 11, 1959

Consent order requiring New York City distributors to cease violating the Wool Products Labeling Act by falsely labeling and invoicing fabrics as

containing variously 100%, 95%, 90%, 80%, and 70% wool fibers, and by failing in other respects to conform to requirements of the Act.

Mr. Frederick McManus for the Commission.

Reiman and Reiman, by *Mr. R. M. Reiman*, of New York, N.Y., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents with misbranding certain of their wool products, and with the use of false, misleading and deceptive statements and representations on sales invoices, orders and other shipping memoranda as to the percentages of wool fibers contained in said products, in violation of §4(a)(1) and §4(a)(2) of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and of the Federal Trade Commission Act.

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

The agreement states that respondent Bart Schwartz International Textiles, Ltd., is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 1407 Broadway, New York, New York, and that respondents Bart Schwartz and Louis Rudolph are officers of the corporate respondent and formulate, direct, and control the acts and practices of the respondents, their address being the same as that of the corporate respondent.

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

ment and hereinafter included in this decision shall have the same force and effect as if entered after a full hearing.

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

The order agreed upon fully disposes of all the issues raised in the complaint, and adequately prohibits the acts and practices charged therein as being in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and of the Federal Trade Commission Act. Accordingly, the hearing examiner finds this proceeding to be in the public interest, and accepts the agreement containing consent order to cease and desist as part of the record upon which this decision is based. Therefore,

It is ordered, That the respondents, Bart Schwartz International Textiles, Ltd., a corporation, and its officers, and Bart Schwartz and Louis Rudolph, individually and as officers of said corporation, and said respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of fabrics or other wool products, as such products are defined in and subject to the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

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

2. Failing to securely affix 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 products exclusive of ornamentation not exceeding 5 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 5 percentum or more, and (5) the aggregate of all other fibers;

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

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

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

3. Failing to stamp, tag or label samples, swatches or specimens of wool products, which are used to promote or effect sales of such wool products in commerce with the information required under Paragraph 2 hereof, as provided by Rule 22 of the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939.

It is further ordered, That the respondent Bart Schwartz International Textiles, Ltd., a corporation, and Bart Schwartz and Louis Rudolph, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any other corporate device, in connection with the offering for sale, sale or distribution of fabrics or other merchandise in commerce, do forthwith cease and desist from misrepresenting the constituent fibers of which their products are composed or the percentages thereof in invoices, shipping memoranda or in any other manner.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 11th day of November, 1959, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Bart Schwartz International Textiles, Ltd., a corporation, and Bart Schwartz and Louis Rudolph, individually and as officers of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

MODERN RUG COMPANY, INC., ET AL.

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

Docket 7373. Complaint, Jan. 23, 1959—Decision, Nov. 11, 1959

Order requiring manufacturers in New Bedford, Mass., to cease violating the Wool Products Labeling Act by failing to label woolen interlining materials with fiber content information.

Mr. Thomas A. Ziebarth and *Mr. John T. Walker* for the Commission.

Mr. Morris Lefkowitz for himself and respondent corporation.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

This proceeding is one brought under the Wool Products Labeling Act of 1939 (for brevity hereinafter referred to as the Wool Act) and the rules and regulations promulgated thereunder and charges respondents with certain violations of said Act pertaining to their failure to affix, to wool products manufactured by them, stamps, tags, labels, or other means of identification showing certain items of information required by said regulations and hereinafter more fully referred to. It is alleged that such matters constitute unfair and deceptive acts and practices and unfair methods of competition in commerce in violation of the Federal Trade Commission Act.

In this initial decision the charges of the complaint are found to be sustained by the evidence as to both respondents.

Complaint was issued January 23, 1959, and was thereafter duly served upon respondents. Respondents submitted a letter generally denying the allegations of the complaint and requesting a hearing and dismissal of the proceeding. This letter was placed on file and treated as an answer. On August 6, 1959, a hearing was held in New York City, whereat the evidence of counsel supporting the complaint and that of respondents was duly presented and the parties given to and including September 15, 1959, in which to file their respective proposed findings of fact, conclusions of law, and order. Respondents have filed none but counsel supporting the complaint has submitted proposals, all of which have been adopted in *haec verbae* or in substance and effect.

Upon the whole record herein including all exhibits received in evidence and the testimony of the witnesses whose conduct and demeanor was under observation during said hearing, the examiner makes the following:

FINDINGS OF FACT

Respondent Modern Rug Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Individual respondent Morris Lefkowitz is president of the corporate respondent and formulates, directs and controls the acts, policies and practices of the corporate respondent, including the acts and practices hereinafter re-

ferred to. The respondents have their office and principal place of business at 95 Rodney French Boulevard, New Bedford, Massachusetts.

It appears from the record that there are two stockholders in the corporation, said respondent Lefkowitz and one Martin Berdy (whose name is erroneously spelled Burdy in the transcript), the latter being treasurer of the corporate respondent. Each stockholder owns fifty percent of the stock. Respondent Lefkowitz is the general manager of the business while Berdy is in charge of selling. At the request of counsel supporting the complaint official notice is taken by the examiner that said Martin Berdy was respondent in a prior proceeding, Docket No. 6950, in the Matter of Martin Berdy, an individual, and a cease and desist order, issued as a part of the initial decision of the undersigned examiner on February 27, 1958, was duly affirmed by the Commission on May 29, 1958. Of all those matters, Martin Berdy had full notice. He was not made a party to the instant proceeding. Normally in an action of this type against such a corporation, the complaint would name all officers who participated in the acts and practices alleged in the complaint or who held and owned a controlling majority of the stock, as is the case here. Since the cease and desist order in Docket 6950 included all the prohibitions against said Martin Berdy which are sought in this proceeding against respondents herein, the issuance of a further order against him would not seem necessary and would merely be duplicitous. For that reason the examiner has not required the complaint to be amended to include the said Berdy as a respondent both individually and in his corporate official capacity.

It is to be especially noticed, of course, that it was found in the former proceeding that Berdy knowingly and wilfully violated the Wool Act, in substance because he needed the money. It was further found therein that Berdy traded under several names including that of the corporate respondent herein at the same address as in the instant proceeding.

Subsequent to the Wool Act, and more especially since January 1, 1957, respondents have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment and offered for sale in commerce, as "commerce" is defined in said Act, wool products, as "wool products" are defined therein.

Certain of said wool products were misbranded by respondents in that they were not stamped, tagged, or labeled as required under the provisions of §4(a)(2) of the Wool Act and in the man-

ner and form prescribed by the rules and regulations promulgated under said Act.

The respondents, in the course and conduct of their business as aforesaid, were and are in substantial competition in commerce with other corporations, firms and individuals likewise engaged in the manufacture and sale of wool products, including interlining materials.

The acts and practices of the respondents as set forth above were and are in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder and constituted and now constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

From the record it is clear that respondents herein engaged in the spinning, weaving and finishing of woven woolen interlining materials, among other things, on a commission basis for Yorktown Textile & Trimming Corporation of New York. This latter concern bought its raw materials from Derry Fiber Mills, Inc., of Derry, New Hampshire, and caused such raw materials to be shipped directly to respondent corporation, which under its contract with Yorktown manufactured such raw wool stocks and after the same had been finished, shipped them from its plant in New Bedford, Massachusetts, to Yorktown in New York City. The record discloses without challenge that in a number of instances such woolen interlining materials manufactured and shipped by respondents did not contain any fiber identification in any form whatsoever.

Respondents urge as a basis for dismissal that one who manufactures wool products on a commission basis and never takes title to the products used in the manufacture of such wool products is not bound by the Wool Act to label them for shipment as required by said Act and the regulations thereunder. However, §3 of the Wool Act provides:

§3. *The introduction or manufacture for introduction into commerce,* or the sale, *transportation or distribution in commerce of any wool product which is misbranded within the meaning of this Act or the Rules and Regulations hereunder, is unlawful,* and shall be an unfair method of competition, and an unfair method of competition, and an unfair and deceptive act and practice, in commerce, within the intent and meaning of the Federal Trade Commission Act; and *any person who shall manufacture or deliver for shipment or ship* or sell or offer for sale *in commerce, any such wool product which is misbranded* within the meaning of this Act and the Rules and Regulations hereunder is guilty of an unfair method of competition and an unfair and de-

ceptive act and practice within the intent and meaning of the Federal Trade Commission Act. [Emphasis supplied.]

The only exceptions set forth in this section of the Wool Act are common carriers and persons manufacturing, etc., for export. §4 of said Act sets forth the manner and form in which the labeling of wool products shall be accomplished and forbids various forms of misrepresentations.

In the instant proceeding, respondents are charged under §4(a)(2) and the Commission's Rules and Regulations thereunder which require that the percentage by weight of wool contained in a wool product and the classification of the wool contained therein be set forth affirmatively on each stamp, tag, label, or other means of identification.

It is respondents' position that insofar as title to the material in question never passed to them that they are not liable under the Wool Act. An examination of the Act and the Rules and Regulations thereunder reveals, however, that such a defense is without merit. Under §3 of the Act, respondents indubitably have introduced into commerce, manufactured for introduction into commerce and distributed in commerce, wool products which were misbranded within the meaning of the Act. The only thing that they did not do was to sell misbranded wool products. The materials were only manufactured on a commission basis and were not sold by respondents to their customers. It is wholly immaterial that they did not take title to or sell the goods. Respondents manufactured and delivered for shipment in commerce misbranded wool products. The Act makes no distinction as to whether the misbranded wool products are the property of the person who misbrands at the time of the misbranding or whether such misbranding is accomplished on someone else's material under commission.

The Wool Act must be read in its entirety and its expressed legislative purpose in the title is:

To protect producers, manufacturers, distributors, and consumers from the unrevealed presence of substitutes and mixtures in spun, woven, knitted, felted, or otherwise manufactured wool products, and for other purposes.

The terms of the Act literally require that wool products be labeled as to their fiber content, etc., from the time the wool is shorn from the back of sheep until it is sold and delivered to the ultimate consumer in the form of a garment. The orderly intended and effective administration provided by Congress in the Wool Act for the purpose of regulating the wool industry requires that the chain of labelling and fiber identification remain unbroken through-

out the entire manufacturing and marketing cycle. Respondents, by their failure to affirmatively label as required by the Act, have broken this chain. All manufacturers of wool products must obey the law, whether they take title to the unmanufactured product or not.

Respondents' defense that they merely label as they are instructed to label by their customers is without merit, as no one can legally require a person to violate the law. Moreover, there is nothing in the record to indicate that Yorktown Textile and Trimming Corp., respondents' customer, instructed respondents not to set forth the fiber content. The testimony of Yorktown's president, Samuel Levy (R. 36–44) is that he did not so direct respondents. His instructions to them were only as to the grade, quality, quantity, dates of delivery, color and so forth.

The literal interpretation of §3 of the Wool Act clearly requires all persons engaged in shipping of wool products in commerce to set forth the fiber contents by means of a stamp, tag, label or other means of identification thereon. Respondents have failed to do this. They are, therefore, guilty of misbranding within the intent and meaning of §3 as more specifically defined in §4(a)(2) of said Wool Act. Accordingly, an order to cease and desist from failing to affirmatively label wool products as required by the Act is in the public interest.

CONCLUSIONS OF LAW

Out of the foregoing findings of fact, the following conclusions of law are drawn by the hearing examiner:

1. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the person of each of the respondents;

2. This proceeding is to the interest of the public and such interest is specific and substantial;

3. The acts and practices of the respondents, as hereinabove found, were and are all to the prejudice and injury of the public and of the respondents' competitors and constituted and now constitute violations of the Wool Products Labeling Act of 1939 and unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondents Modern Rug Company, Inc., a corporation, and its officers, and Morris Lefkowitz, individually,

and as officer of said corporation, and respondents' representatives, agents or employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of interlining materials or other wool products, as such products are defined in and subject to the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

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

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

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

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 11th day of November, 1959, become the decision of the Commission; and, accordingly:

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

Decision

IN THE MATTER OF

J. A. DEKNATEL & SON, INC., ET AL.

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

Docket 7529. Complaint, June 26, 1959—Decision, Nov. 11, 1959

Consent order requiring a distributor in Queens Village, N.Y., to cease advertising falsely as made in the U.S.A., beads used for making identification bracelets and necklaces for newborn babies in hospitals, and to cease selling the beads without revealing that the pink and blue beads, comprising a substantial portion of the finished products, were made in Japan.

Mr. Charles W. O'Connell supporting the complaint.
Larson & Taylor, of Washington, D.C., for respondent.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

On June 26, 1959, pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission caused to be issued its complaint in this proceeding to which the above-named parties were respondents. A true copy of said complaint was served upon respondents as required by law. The complaint charges respondents with violating the provisions of the Federal Trade Commission Act by the use of false, misleading and deceptive representations that products sold by them are manufactured entirely in the United States when in fact they are not, and failure to disclose that all or substantial portions of said products are in fact made or manufactured outside the United States, in Japan. After being served with said complaint, respondents appeared by counsel and entered into an agreement dated September 9, 1959, which purports to dispose of all of this proceeding as to all parties without the necessity of conducting a hearing. The agreement has been signed by all of the respondents, their counsel, and by counsel supporting the complaint; and has been approved by the Acting Director and the Assistant Director of the Bureau of Litigation of this Commission. Said agreement contains the form of a consent cease and desist order which the parties have agreed is dispositive of the issues involved in this proceeding. On September 16, 1959, the said agreement was submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Respondents, pursuant to the aforesaid agreement, have admitted all the jurisdictional facts alleged in the complaint and agreed that

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

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

1. J. A. Deknatel & Son, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 96–20 22nd Street, in the City of Queens Village, State of New York.

Respondents Florence K. Choffel, David E. Golieb and Leonard D. Kurtz are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent. Their address is the same as that of the corporate respondent.

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

ORDER

It is ordered, That respondents J. A. Deknatel & Son, Inc., a corporation, and its officers, and Florence K. Choffel, David E. Golieb and Leonard D. Kurtz, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly

or through any corporate or other device, in connection with the offering for sale, sale, or distribution of beads or any other product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale or selling any product, the whole or substantial part of which is of foreign origin, without affirmatively and clearly disclosing thereon, or if such method of disclosure is not possible, to affirmatively and clearly disclose in immediate connection therewith, the country of origin of said product or part thereof.

2. Representing, directly or indirectly, in any manner that any product, the whole or any substantial part of which is of foreign origin, is of domestic origin.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 11th day of November, 1959, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

H. JAMES VAN BUSKIRK ET AL. DOING BUSINESS AS ASSOCIATED LOAN COUNSELLORS

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

Docket 7545. Complaint, July 15, 1959—Decision, Nov. 12, 1959

Consent order requiring two individuals in Chicago to cease misrepresenting the services they offered in helping businessmen to obtain loans, by such false claims as that they would obtain a loan within a short period of time and at, or at less than, a specified rate of interest; that they were agents of financing institutions and were authorized to approve loans on the latter's behalf; that upon payment of a fee they would quickly get customers even larger loans than applied for; and that they would refund the fee if no loan was obtained.

Mr. John W. Brookfield, Jr. and *Mr. John J. Mathias* supporting the complaint.

Mr. Richard L. Ritman of Chicago, Ill., for respondents.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 15, 1959, issued and subsequently served its complaint in this proceeding against the above-named respondents.

On September 28, 1959, there was submitted to the undersigned hearing examiner an agreement between respondents and counsel supporting the complaint providing for the entry of a consent order.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing and the document includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint.

The hearing examiner finds that the content of the agreement meets all of the requirements of section 3.25(b) of the Rules of the Commission.

The hearing examiner having considered the agreement and proposed order, and being of the opinion that they provide an appropriate basis for settlement and disposition of this proceeding, the agreement is hereby accepted, and it is ordered that said agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission. The following jurisdictional findings are made and the following order issued.

1. Respondents H. James van Buskirk and Sonia Lee van Buskirk are individuals and copartners trading and doing business as Associated Loan Counsellors, with their principal office and place of business located at 64 East Lake Street, in the City of Chicago, State of Illinois.

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

ORDER

It is ordered, That respondents H. James van Buskirk and Sonia Lee van Buskirk, copartners trading and doing business as Associated Loan Counsellors, or under any other name or names, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the adver-

tising of or offering for sale or sale of their services in obtaining loans or financial assistance for businessmen or others, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

1. Respondents will obtain a loan within a specified or short period of time; or in any period of time that is not in accordance with the fact;

2. A loan will be obtained at or at less than a specific rate of interest;

3. Respondents can or will obtain larger loans than the loans sought by applicant;

4. Respondents are the agents of financing institutions, or are authorized by such institutions to approve loans;

5. If respondents accept the contract, the applicant is assured of receiving the loan;

6. Respondents will refund all or part of the fee paid in the event that a loan is not obtained.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall on the 12th day of November, 1959, become the decision of the Commission; and accordingly:

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

IN THE MATTER OF

COOPCHIK-FORREST, INC., ET AL.

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

Docket 7511. Complaint, June 10, 1959—Decision, Nov. 14, 1959

Consent order requiring a New York City furrier to cease violating the Fur Products Labeling Act by setting out fictitious prices of fur products on invoices and on consignment bills, by representing certain prices on the latter as "old prices" without giving the time of such alleged "old prices," and by failing to maintain adequate records as a basis for such pricing claims.

Mr. Garland S. Ferguson for the Commission.

Hays, St. John, Abramson & Heilbron, by *Mr. William Abramson*, of New York, N.Y., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents with falsely and deceptively invoicing and advertising certain of their fur products, and with failing to maintain full and adequate records disclosing the facts upon which were based certain claims and representations with respect to the prices of said products, in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, and of the Federal Trade Commission Act.

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

The agreement states that corporate respondent Coopchik-Forrest, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 333 Seventh Avenue, New York, New York, and that individual respondents Robert Coopchik, Alex Coopchik and Milton R. Forrest are officers of said corporation and formulate, direct and control the practices thereof, their address being the same as that of the corporate respondent.

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

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

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

It is ordered, That respondents, Coopchik-Forrest, Inc., a corporation, and its officers, and Robert Coopchik, Alex Coopchik and Milton R. Forrest, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the sale, advertising, offering for sale, transportation or distribution, in commerce, of fur products, or in connection with the sale, manufacture for sale, advertising, offering for sale, transportation or distribution of fur products which have been made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur" and "fur products" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Falsely or deceptively invoicing fur products by:

1. Representing, directly or by implication, that the respondents' regular or usual price of any fur product is any amount in excess of the price at which the respondents have usually and customarily sold such product in the recent regular course of business;

2. Representing, directly or by implication, that the regular or usual price of any fur product sold by anyone other than the respondents is any amount in excess of the price at which such other person has usually and customarily sold such product in the recent regular course of business;

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

1. Represents, directly or by implication, that the respondents' regular or usual price of any fur product is any amount in excess of the price at which the respondents have usually and customarily sold such product in the recent regular course of business;

2. Represents, directly or by implication, that the regular or usual price of any fur product sold by anyone other than the respondents is any amount in excess of the price at which such other person has usually and customarily sold such product in the recent regular course of business;

3. Sets forth "old prices" or "former prices" without designating the time of such "old prices" or "former prices";

C. Misrepresenting, in any manner, the savings available to purchasers of respondents' fur products;

D. Making claims or representations in advertisements respecting prices or values of fur products unless respondents maintain full and adequate records disclosing the facts upon which such claims and representations are based.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 14th day of November, 1959, become the decision of the Commission; and accordingly:

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

IN THE MATTER OF

WEINSTEIN COMPANY, INC., ET AL.

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

Docket 7523. Complaint, June 17, 1959—Decision, Nov. 14, 1959

Consent order requiring a San Francisco furrier to cease violating the Fur Products Labeling Act by failing to comply with labeling and invoicing requirements, and by advertising which failed to disclose the names of animals producing certain furs or the country of origin or that fur products contained artificially colored fur, and represented fur products falsely as being from the stock of a liquidated business.

Mr. Alvin D. Edelson supporting the complaint.

Mr. William K. Coblentz of San Francisco, Calif., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

On June 17, 1959, the Federal Trade Commission issued a complaint charging Weinstein Company, Inc., a corporation, Philip Damner and Martin Liebes, individuals trading as Damner Brothers, hereinafter referred to as respondents, with misbranding and falsely and deceptively invoicing and advertising certain of their fur products in violation of the Federal Trade Commission Act and the Fur Products Labeling Act.

After issuance and service of the complaint, the respondents, their counsel, and counsel supporting the complaint entered into an agreement for a consent order. The agreement has been approved by the Director and the Acting Director of the Bureau of Litigation. The agreement disposes of the matters complained about.

The pertinent provisions of said agreement are as follows: Respondents admit all jurisdictional facts; the complaint may be used in construing the terms of the order; the order shall have the same force and effect as if entered after a full hearing and the said agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission; the record herein shall consist solely of the complaint and the agreement; respondents waive the requirement that the decision must contain a statement of findings of fact and conclusions of law; respondents waive further procedural steps before the hearing examiner and the Commission, and the order may be altered, modified, or set aside in the manner provided by statute for other orders; respondents waive any right to challenge or contest the validity of the order entered in accordance with the agreement and the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

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

JURISDICTIONAL FINDINGS

1. Respondent Weinstein Company, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 1041 Market Street, San Francisco, California.

2. Individual respondents Philip Damner and Martin Liebes are

individuals trading as Damner Brothers with their office and principal place of business located at Room 532, 133 Geary Street, San Francisco, California.

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

ORDER

It is ordered, That Weinstein Company, Inc., a corporation, and Philip Damner and Martin Liebes, individuals trading as Damner Brothers, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale, in commerce, or the transportation or distribution in commerce of fur products, or in connection with the sale, advertising, offering for sale, transportation, or distribution of fur products which are made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misbranding fur products by:

A. Failing to affix labels to fur products showing 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.

B. Setting forth on labels affixed to fur products:

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

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

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

C. Failing to set forth the information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder on one side of labels.

2. Falsely or deceptively invoicing fur products by:

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

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

C. Failing to set forth the required item numbers on invoices.

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

A. Fails to disclose:

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

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

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

B. Represents directly or by implication that any such products are the stock of a business in a state of liquidation, contrary to fact.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 14th day of November, 1959, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

DONALD E. ALDERMAN ET AL. TRADING AS NATIONAL MENU COMPANY

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

Docket 7412. Complaint, Feb. 16, 1959—Decision, Nov. 17, 1959

Order dismissing without prejudice, complaint charging three Illinois individuals—whose present whereabouts was unknown—with collecting advance

fees for restaurant menu advertising and then failing to deliver the menus at all or making delivery much later than promised.

Mr. Berryman Davis for the Commission.
Respondents not represented by counsel.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

On May 1, 1959, the Federal Trade Commission issued its complaint against the above-named respondents charging them with violating the provisions of the Federal Trade Commission Act in connection with the offering for sale, to restaurants, restaurant supply houses and others, of menus containing advertisements of supply houses which respondents agree to have printed and thereafter furnish to owners and operators of restaurants and other types of eating places. On June 25, 1959, the hearing examiner issued an Initial Decision in which he accepted an agreement containing a consent order to cease and desist entered into by the respondents and counsel supporting the complaint, and ordered respondents to cease and desist from various acts and practices. By an order issued July 24, 1959, the Commission vacated and set aside this Initial Decision and ordered a remand of the case to the hearing examiner for further proceedings.

On September 22, 1959 counsel supporting the complaint filed a motion to dismiss the complaint without prejudice stating that on July 28, 1959, he was notified by the Assistant Secretary for Legal and Public Records that the Initial Decision could not be served by registered mail, and on August 14, 1959, he was notified that the aforesaid order of the Commission similarly could not be served. In view of the foregoing it is believed that the public interest does not warrant the expenditure of further time, effort and public funds in attempting to locate the respondents. Accordingly,

It is ordered, That the complaint herein be, and the same hereby is, dismissed without prejudice to the right of the Commission to take such further action in the matter in the future as may be warranted by the then existing circumstances.

DECISION OF THE COMMISSION

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner did on the 17th day of November, 1959, become the decision of the Commission.

Decision

IN THE MATTER OF

UTICA CUTLERY COMPANY ET AL.

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

Docket 7427. Complaint, Feb. 27, 1959—Decision, Nov. 17, 1959

Consent order requiring Utica, N.Y., manufacturers of kitchen utensils, cutlery, stainless steel tableware, etc., to cease attaching to their merchandise, and furnishing to their customers for attachment, tickets printed with greatly exaggerated prices represented thus as the regular retail prices.

Charges of failing to disclose the foreign origin of tableware imported from Japan remain to be disposed of in separate proceedings.

Before *Mr. Everett F. Haycraft*, hearing examiner.
Mr. Ames W. Williams for the Commission.
Kernan and Kernan, of Utica, N.Y., for respondents.

INITIAL DECISION AS TO CERTAIN ALLEGATIONS OF THE COMPLAINT

On February 27, 1959, the Federal Trade Commission issued its complaint against the above-named respondents charging them with violating the provisions of the Federal Trade Commission Act in connection with the manufacture and sale of kitchen utensils, cutlery, stainless steel tableware, advertising specialties and other merchandise. On August 26, 1959, respondents Utica Cutlery Company, a corporation, Albert Edward Allen, individually and as an officer of said corporation, and Walter Joseph Matt, H. Robert Agne, and W. H. Van Vliet, as officers of said corporation, and their counsel and counsel supporting the complaint entered into an agreement containing a consent order to cease and desist, which disposes of certain allegations of the complaint, in accordance with Section 3.25(a) of the Rules of Practice and Procedure of the Commission.

This agreement disposes of all of this proceeding as to all parties except with respect to the allegations set forth in paragraphs 4, 5, 6 and 7 of the complaint and paragraphs 11 and 12 insofar as they pertain to paragraphs 4, 5, 6 and 7, which will be otherwise disposed of in another Initial Decision.

It is set out in the agreement that individual respondents Walter Joseph Matt, H. Robert Agne and W. H. Van Vliet, while officers and directors of the corporate respondent, are not concerned with the

pricing or packaging practices challenged in the complaint. These facts are set out in an affidavit executed by Albert Edward Allen, President, Utica Cutlery Company, which is attached to and made a part of the agreement. It was agreed that the complaint should be dismissed as to such respondents in their individual capacity.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and shall have the same force and effect as if entered after a full hearing. The agreement includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith; and recites that the said agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, and that it is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint. The hearing examiner finds that the content of the said agreement meets all the requirements of Section 3.25(b) of the Rules of Practice.

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

1. Corporate respondent Utica Cutlery Company is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 820 Noyes Street in the City of Utica, State of New York.

Respondent Albert Edward Alllen is an officer of respondent Utica Cutlery Company. He formulates, directs, and controls the acts and practices of said corporate respondent, including those set out in the complaint. Respondent Walter Joseph Matt, H. Robert Agne, and W. H. Van Vliet are officers of said corporation. The business address of all of the individual respondents is the same as that of the corporate respondent.

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

ORDER

It is ordered, That respondents, Utica Cutlery Company, a corporation, and its officers, and Albert Edward Allen, individually and as an officer of said corporation, and Walter Joseph Matt, H. Robert Agne, and W. H. Van Vliet, as officers of said corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of cutlery, stainless steel tableware, or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing by preticketing, or in any other manner, that a certain amount is the customary or usual retail price of merchandise when said amount is in excess of the price at which said merchandise is customarily and usually sold.

2. Furnishing any means or instrumentality to others by and through which they may mislead the public as to the customary or usual retail prices of respondents' merchandise.

It is further ordered, That the complaint be and the same hereby is dismissed, as to respondents Walter Joseph Matt, H. Robert Agne, and W. H. Van Vliet, individually.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 17th day of November, 1959, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Utica Cutlery Company, a corporation, and Albert Edward Allen, individually and as an officer of said corporation, and Walter Joseph Matt, H. Robert Agne, and W. H. Van Vliet, as officers of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

JOSEPH SHUSTER ET AL. DOING BUSINESS AS NATIONAL LEATHER & NOVELTY COMPANY

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

Docket 7563. Complaint, Aug. 6, 1959—Decision, Nov. 17, 1959

Consent order requiring Chicago distributors to cease representing falsely by the words "Leather," "Content Leather," and "Genuine Leather" stamped thereon, that wallets made of a plastic containing only 40% pulverized leather and with lining and dividers of simulated leather, were made of leather; and to cease attaching, or having attached, to said wallets, tickets imprinted with excessive prices represented thereby as the usual retail prices.

Mr. William A. Somers for the Commission.
Mr. Nathan Wolman, of Chicago, Ill., for respondents.

INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER

The complaint in this matter charges the respondents with violation of the Federal Trade Commission Act in connection with the marking and ticketing of wallets sold. An agreement has now been entered into by respondents and counsel supporting the complaint which provides, among other things, that respondents admit all the jurisdictional facts alleged in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the making of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in this proceeding without further notice to the respondents and when entered shall have the same force and effect as if entered after a full hearing, respondents specifically waiving all the rights they may have to challenge or contest the validity of the order; that the order may be altered, modified, or set aside in the manner provided for other orders; that the complaint may be used in construing the terms of the order; that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint; and that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

The hearing examiner having considered the agreement and proposed order and being of the opinion that they provide an adequate basis for appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued:

1. Respondents Joseph Shuster (erroneously named in the complaint as J. Joseph Shuster) and Nathan Wolman are individuals and partners trading and doing business as National Leather & Novelty Company, with office and principal place of business located at 1036 West Van Buren Street, Chicago, Illinois.

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

ORDER

It is ordered, That the respondents Joseph Shuster and Nathan Wolman, individually and as partners, trading and doing business as National Leather & Novelty Company, or trading and doing business under any other name or names, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the sale, offering for sale or distribution of wallets or any other product in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication:

(a) That their product is made or composed of a specific material, or grade or quality of material, when such product contains or is composed, partly or wholly, of materials other than the specific material, or grade or quality of material represented.

(b) That any price is the usual and regular retail price of their product when it is in excess of the price at which their product is usually and regularly sold at retail in the normal course of business.

2. Placing in the hands of others, means or instrumentalities which may be used to misrepresent the quality and regular and usual retail price of their product.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 17th day of November, 1959, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission

a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

THEODORE KAGEN CORP. ET AL.

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

Docket 6893. Complaint, Sept. 24, 1957—Decision, Nov. 19, 1959

Order requiring New York City importers, engaged in assembling watches and wholesaling them to watchmakers, to cease selling watch cases incorporating bezels composed of aluminum treated to simulate gold or gold alloy without clearly disclosing that the bezels were composed of base metal.

Charges of falsely marking watch cases on the back as "water-resistant" and "water-protected," and with deceptive use of the word "manufacturers" on invoices and letterheads in connection with watch cases that they purchased from others, were dismissed.

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

Noble, Neuman & Moyle, of Washington, D.C., by *Mr. Ben Paul Noble;* and *Hoffman, Buchwald, Nadel, Cohen & Hoffman*, of New York, N.Y., by *Mr. Irving Margolis*, for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

1. The complaint in this matter charges that the respondents have engaged in certain misleading practices in connection with the advertising and sale of their watch cases, in violation of the Federal Trade Commission Act. After the filing of respondents' answer to the complaint, hearings were held at which evidence both in support of and in opposition to the complaint was received. Proposed findings and conclusions have been submitted and the case has been argued orally before the hearing examiner. Any proposed findings and conclusions not included herein have been rejected.

2. Respondent Theodore Kagen Corp., is a corporation organized and doing business under the laws of the State of New York, with its principal place of business at 48 West 48th Street, New York, New York. Respondent Theodore Kagen is president of the corporation and formulates, directs and controls its policies and practices. Respondent Theodore Kagen also does business under the name T. K. Co. Respondents are engaged in the sale of watch cases, the cases being sold to watch makers and to wholesalers of watch makers' supplies.