of December, 1959, become the decision of the Commission; and, accordingly:

It is ordered, That respondent D. L. Piazza Co., 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

EGAN, FICKETT & CO., INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2(C) OF THE CLAYTON ACT

Docket 7520. Complaint, June 11, 1959—Decision, Dec. 8, 1959

Consent order requiring a New York City wholesale distributor of fresh fruits and vegetables to cease receiving and accepting commissions, etc., or lower net prices reflecting brokerage, on substantial purchases of food products from various suppliers, including Minute Maid Corporation, for its own account for resale.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly described, has been and is now, violating the provisions of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C., Title 15, Section 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Egan, Fickett & Co., Inc., hereinafter sometimes referred to as Egan or as respondent, 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 266 West Street, New York, New York.

PAR. 2. Respondent is now and for the past several years has been engaged primarily in business as a wholesale distributor of fresh fruits and vegetables and other grocery products, all of which are hereinafter sometimes referred to as food products. Respondent purchases these food products from a large number of canners and packers, hereinafter sometimes referred to as suppliers, located in many states other than the State of New York. In the fresh fruit field, respondent deals primarily in citrus fruits, such as oranges, grapefruit and tangerines. Two of respondent's suppliers of citrus fruits are Minute Maid Corporation and its wholly owned

subsidiary Minute Maid Groves Corporation, with offices, packing plants and warehouses located in the State of Florida and elsewhere.

PAR. 3. In the course and conduct of its business for the past several years, in the purchase, sale and distribution of food prducts, respondent has directly or indirectly caused such food products to be shipped or transported from the places of business of its respective suppliers to its own place of business, or to the places of business of respondent's customers, in various other States of the United States. There has been at all times mentioned herein a continuous course of trade in commerce in said food products across state lines between respondent and its many suppliers. Thus, for the past several years respondent has been and is now engaged in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended.

PAR. 4. In the course and conduct of its business in commerce as aforesaid, respondent has made and is now making substantial purchases of food products for its own account for resale from various suppliers, including Minute Maid Corporation and Minute Maid Groves Corporation, on which purchases respondent has received and accepted, and is now receiving and accepting, directly or indirectly from said suppliers, including Minute Maid Corporation and Minute Maid Groves Corporation, something of value as a commission, brokerage, or other compensation, or an allowance or discount in lieu thereof, or has been given lower net prices which reflect the allowance of a commission or brokerage on said purchases.

PAR. 5. The foregoing acts and practices of respondent as hereinabove alleged and described, violate the provisions of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C., Title 15, Section 13).

Mr. Cecil G. Miles for the Commission.

Mr. Edward I. Kaplan, of New York, N.Y., for respondent.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on June 11, 1959, issued its complaint herein, charging the above-named respondent with having violated the provisions of subsection (c) of §2 of the Clayton Act, as amended (U.S.C., Title 15, §13), and the respondent was duly served with process.

On October 19, 1959, there was submitted to the undersigned hearing examiner of the Commission for his consideration and ap-

proval an "Agreement Containing Consent Order To Cease And Desist," which had been entered into by and between respondent, its counsel, and counsel supporting the complaint, under date of October 13, 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 Egan, Fickett & Co., Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Delaware (erroneously shown in the complaint as being incorporated in the State of New York), with its office and principal place of business located at 266 West Street, New York, New York.

2. 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.

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

4. Respondent waives:

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 it 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 respondent that it has 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 respondent. 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 the respondent herein; that the complaint states a legal cause for complaint under the Clayton Act as amended (U.S.C., Title 15, §13) against the respondent 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 the respondent Egan, Fickett & Co., Inc., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the purchase of citrus fruit or other food products in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly, from any seller, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase of citrus fruit or other food products for its own account, or where respondent is an agent, representative, or other intermediary acting for or on behalf of, or is subject to the direct or indirect control of any buyer.

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 8th day of December, 1959, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Egan, Fickett & Co., 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

KINGSLEY COATS, INC., ET AL.

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

Docket 7548. Complaint, July 23, 1959—Decision, Dec. 8, 1959

Consent order requiring New York City manufacturers to cease such fictitious pricing practices as mailing to retailer purchasers, card advertisements stating that a group of women's coats they were offering were exceptionally priced to sell at $69 and regularly sold at retail for $100 to $119, with a covering letter stating that such coats, priced by them at $38.75, were to retail at $69.

Mr. Ames W. Williams supporting the complaint.
Mr. Daniel Eisenberg, of Brooklyn, N.Y., for respondents.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

On July 23, 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 engaging in unfair and deceptive acts and practices in the manufacture and sale of merchandise, particularly women's coats, in commerce as "commerce" is defined in the Federal Trade Commission Act by misrepresenting the price or prices at which such merchandise is usually and customarily sold at retail. After being served with said complaint, respondents appeared by counsel and entered into an agreement dated September 28, 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 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 at this proceeding. On October

15, 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. The parties have, *inter alia*, by such agreement agreed: (1) 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; (2) the complaint may be used in construing the terms of said order; (3) the record herein shall consist solely of the complaint and said agreement; (4) 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 of September 28, 1959, 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; the agreement of September 28, 1959 is hereby accepted and ordered filed at the same time that this decision becomes the decision of the Federal Trade Commission pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings; and

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. That the Federal Trade Commission has jurisdiction over the parties and the subject matter of this proceeding;

2. Respondent Kingsley Coats, Inc., is a corporation organized and existing under the laws of the State of New York with its office and principal place of business located at 512 Seventh Avenue, New York 18, New York;

3. Respondents Hyman Goldberg, Henry Goldberg, Charles Goldberg, Harry Goldberg and Sidney Goldberg, are officers of the corporate respondent and formulate, direct and control its acts and practices. Their business address is the same as the corporate respondent;

4. Respondents are engaged in commerce as "commerce" is defined in the Federal Trade Commission Act;

5. The complaint herein states a cause of action against said respondents under the Federal Trade Commission Act, and this proceeding is in the public interest.

ORDER

It is ordered, That the respondents Kingsley Coats, Inc., a corporation, and its officers, and Hyman Goldberg, Henry Goldberg, Charles Goldberg, Harry Goldberg and Sidney Goldberg, individually and as officers of the 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 women's coats, or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from directly or indirectly:

1. Representing that certain prices are the customary or usual retail prices of merchandise when said prices are in excess of the prices at which said merchandise is customarily and usually sold at retail.

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 8th day of December, 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

NATIONAL SALES & MFG. CO., INC., ET AL.

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

Docket 7551. Complaint, July 23, 1959—Decision, Dec. 12, 1959

Consent order requiring Dallas, Tex., sellers of vending machines and vending machine supplies to cease making—in advertising and by their salesmen—false employment offers, exaggerated earnings claims, and other deceptions to sell their machines, including claims that money required of applicants was the working capital; that purchasers of machines earned from $200 to $386.40 per month; that they set up the business, secured profitable locations, installed vending machines, and supervised operation of the business; that they would repurchase machines after a year if the purchaser wished to sell; that they manufactured the machines they sold, etc.

Mr. Charles S. Cox supporting the complaint.
Mr. Barnett M. Goodstein, of Dallas, Tex., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

On July 23, 1959, the Federal Trade Commission issued a complaint charging that the National Sales Mfg. Co., Inc., a corporation, Donald W. Williams and Ellery R. Swim, individually and as officers of said corporation, and Thomas J. Overholser, individually, had violated the provisions of the Federal Trade Commission Act as set forth in the complaint.

After issuance and service of the complaint, the above-named respondents, their counsel, and counsel supporting the complaint entered into an agreement for a consent order. By the terms of said agreement, it is stipulated that the individual respondent Ellery R. Swim is a former officer of the corporate respondent and the individual respondent Thomas J. Overholser is a former employee of the corporate respondent.

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; respond-

ents 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 National Sales & Mfg. Co., Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 3508 Greenville Avenue, Dallas, Texas.

2. Respondent Donald W. Williams is an individual and officer of said corporate respondent. Respondent Ellery R. Swim is an individual and former officer of said corporate respondent. The respondent Thomas J. Overholser is an individual and former employee of the corporate respondent. The address of the individual respondents is the same as that of the corporate respondent.

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

ORDER

It is ordered, That respondent National Sales & Mfg. Co., Inc., a corporation, and its officers, and Donald W. Williams individually and as an officer of said corporation, and Ellery R. Swim, individually and as a former officer of said corporation, and Thomas J. Overholser, individually and as a former employee 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 vending machines, vending machine supplies, or similar kinds of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, that:

(a) Employment is offered either generally or to selected persons.

(b) Respondents have established routes with vending machines

on location for which they are offering employment to selected persons to service.

(c) Persons will be selected to operate and service vending machines owned by respondents.

(d) Persons must own automobiles or furnish references in order to purchase respondents' vending machines.

(e) The money invested is to provide working capital for the purchase of an inventory of merchandise to be dispensed in said vending machines.

(f) The money invested is secured by an inventory of merchandise worth the amount invested and there is no risk of losing said investment.

(g) Persons purchasing respondents' said vending machines will not be required to engage in selling or soliciting.

(h) The earnings or profits derived from the operation of respondents' said vending machines will be of any greater sum or amount than that customarily earned by operators of said vending machines.

(i) Respondents will set up a vending machine business for purchasers of their vending machines, or that profitable or satisfactory vending machines locations will be secured, or that said vending machines purchased will be installed in profitable or satisfactory locations, or the vending machine routes of purchasers will be otherwise established; or that the routes will be supervised so as to assure their profitable or satisfactory operation.

(j) The sale of merchandise by respondents' vending machines is permanent or depression proof.

(k) The sale of merchandise by respondents' vending machines is the safest or surest business on earth; or that it is (1) free of risk or loss, (2) free of hazard of bad location, or (3) free from the payment of rent or taxes.

(l) The sale of merchandise by respondents' vending machines will show a substantial profit from the first day of their operation, or at or during any time, unless such is the fact.

(m) The sale of merchandise by respondents' vending machines is, or is equivalent to, economic or any other kind of insurance to the selected person against the hazards of old age, permanent or partial disability.

(n) An established route of respondents' machines is worth 25 to 33⅓% more than the sum invested, or worth any amount that is not in accordance with the facts.

(o) An exclusive territory is given a purchaser of said vending machines.

(p) The vending machines will be delivered to the purchaser within a designated time.

(q) The average sales per day per year per machine is a specified sum and that the machine empties a specified number of times when such is not the fact.

(r) The earnings on an investment of $700 in respondents' vending machines with average locations will be approximately $2,500.00 a year, or will be any amount that is not in accord with the facts.

(s) Respondents will repurchase the vending machines from purchasers desiring to dispose of same.

2. Using the word "manufacturing," or any other word or words of similar import or meaning, as a part of respondents' corporate or trade name; or otherwise representing, directly or by implication, that respondents, or any of them, manufacture the merchandise sold by them.

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 December, 1959, become the decision of the Commission; and, accordingly:

It is ordered, That respondent National Sales & Mfg. Co., Inc., a corporation, and its officers, and Donald W. Williams individually and as an officer of said corporation, and Ellery R. Swim, individually and as a former officer of said corporation, and Thomas J. Overholser, individually and as a former employee 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

ERNEST MARK HIGH

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

Docket 6940. Complaint, Nov. 15, 1957—Decision, Dec. 14, 1959

Order requiring a New York City publisher of "The Spotlight," a newspaper sponsored by a single union in the New York City metropolitan area, to cease representing falsely in advertising that said newspaper was affiliated with, endorsed by, or an official publication of the American Federation of Labor or the AFL–CIO; that it was distributed or circulated nationally; and that money paid for advertisements in it was used for and benefited the labor movement and labor union members; and to cease

placing unauthorized advertisements in "The Spotlight" and then seeking to exact payment from various concerns and employers named therein.

Mr. Edward F. Downs supporting the complaint.
Mr. Alexander Eltman of New York, N.Y., for respondent.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

The complaint in this proceeding alleges that Ernest Mark High, hereinafter called respondent, publisher of a newspaper called "The Spotlight," violated the provisions of the Federal Trade Commission Act by placing unauthorized advertisements in said publication and seeking payment for same. Respondent denied such allegations.

Hearings have been held and proposed fiindings of fact, conclusions of law, and order have been filed by counsel supporting the complaint and for respondent. All proposed findings of facts and conclusions of law not hereinafter found and concluded are denied.

FINDINGS OF FACT

1. The respondent Ernest Mark High, is an individual with his office and principal place of business located at 350 Fifth Avenue, New York, New York, and is the publisher of "The Spotlight," formerly "The AFL Spotlight," a newspaper published by respondent on behalf of the American Federation of State, County and Municipal Employees, an international union chartered by and affiliated with the American Federation of Labor, pursuant to a contract entered into between the respondent and the said American Federation of State, County and Municipal Employees.

2. Under the terms of said contract referred to above, respondent agreed to publish, has published, and now publishes said newspaper once or twice each month as the official organ of the American Federation of State, County and Municipal Employees, and pays all expenses incurred in connection therewith. Under the terms of said contract rspondent has the exclusive privilege to solicit and obtain advertising placed in said newspaper and respondent retains the forty-five (45) percent of the space in each issue of said newspaper for the insertion of advertising obtained and sold by respondent. Respondent collects all monies received in payment for this advertising, deposits same in a special bank account to the credit of respondent. All withdrawals from said bank account are made solely upon the signature of respondent or his duly appointed representative.

3. Respondent solicits advertising by mail, through the use of letters, advertising proofs and tear sheets, but most of respondent's advertising for said newspaper is solicited by long distance telephone

from respondent's office in New York. Respondent employs five (5) salesmen and two (2) sales managers. The five salesmen do the selling. The Salesmen operate in a room approximately 25 x 13 feet in size, which is a part of respondent's office located at 350 Fifth Avenue, New York, New York. Each salesman has a desk and each salesman's space is enclosed by a metal and glass partition, open at the end. Each salesman has a telephone and, the evidence shows respondent's salesmen make long distance telephone calls to various individuals, business concerns, and companies located in various states of the United States, including New Jersey, Connecticut, Massachusetts, New Hampshire and Virginia, solciting advertising for said newspaper. This is the typical "boilerroom" type of high pressure selling. The evidence shows that respondent's telephone bill averages between $1,500.00 and $2,000.00 per month.

4. At hearings held in New York, New York, Boston, Massachusetts and Norfolk, Virginia, counsel supporting the complaint offered the testimony of approximately 21 persons who had been solicited by telephone for advertising in respondent's newspaper. The testimony of each of these witnesses will not be repeated here. However, the testimony of the various witnesses falls into definite patterns. Some of these witnesses testified, in substance, that they were called by long distance telephone and the caller stated that he represented "The Spotlight," an AFL–CIO publication, requesting that the witness subscribe to an advertisement in said newspaper at prices ranging from $25 to $200. In many instances, the person receiving the call refused to agree to place the advertising and stated to respondent's salesman that they would not take the advertising. Invariably, in spite of the refusal of such persons to agree to take such advertising, respondent billed such persons for advertising in respondent's newspaper and, in some instances, turned said unauthorized accounts over to his attorney for collection and said attorney wrote letters to such persons or company demanding payment for said unauthorized advertising. In one instance, upon being called long distance by one of respondent's salesmen solciting advertising for space costing $37.50, the person being solicited stated that he would subscribe for advertising space in one issue of the newspaper in the amount of $12.50. Subsequently, the person solicited was billed for the full amount of the $37.50 originally solicited by respondent's salesman. When this bill was not paid, the witness stated that respondent's salesman called the witness at his residence by long distance telephone demanding payment. The witness finally wrote respondent a letter requesting a corrected billing for $12.50. (Comm. Ex. No. 15.)

5. The evidence further shows that, in some instances, respondent

has demanded payment for alleged advertising space which did not even list the name, business, service, or product of such alleged advertiser. In some instances, respondent mailed a so-called "tear sheet" from "The Spotlight" showing merely a blank space and respondent demanded payment therefor.

6. The evidence further shows that respondent represented that "The Spotlight" (a) was an official publication of the American Federation of Labor or the AFL–CIO, and (b) was distributed nationally. In truth and in fact, said newspaper is not affiliated with or endorsed by, and it is not an official publication of, either the American Federation of Labor or the AFL–CIO, and it is not distributed nationally, the subscribers being members of the American Federation of State, County and Municipal Employees who reside and work in the New York City metropolitan area.

7. Respondent's counsel complains of certain letters written by counsel supporting the complaint which accompanied subpoenas directed to prospective witnesses containing the phrase: "There is no other way for the Commission to put a stop to practices such as you have been subjected to." This statement is simply the opinion and conclusion of counsel supporting the complaint. Certainly, such statement carries no evidentiary weight or probative value in the proceeding. However, after hearing the testimony and observing the witnesses at the hearings, the examiner is of the opinion that the evidence fully justifies the characterization attributed to respondent by counsel supporting the complaint. (Respondent did not appear in person nor testify at either of the hearings.) Certainly, the practices which the record demonstrates that respondent and his salesmen indulged in are reprehensible and should be stopped. The statement of counsel supporting the complaint is not violative of the Administrative Procedure Act, as contended by counsel for respondent.

8. Respondent, in the course of his business of soliciting and publishing advertisements in said newspaper, is in substantial competition in commerce with other individuals and with corporations and firms likewise engaged in the solicitation and publication of advertisements.

9. The aforesaid acts and practices of the respondent has had and now has, the tendency and capacity to mislead and deceive prospective purchasers of advertising space into the erroneous and mistaken belief that the said representations were and are true and into the purchase of advertising space because of such erroneous and mistaken belief. As a result, substantial trade in commerce has been unfairly diverted to respondent from his competitors and substantial injury has been and is being done to competition in commerce. The unfair practice engaged in by respondents of publishing unordered

or unauthorized advertisements has subjected firms and individuals to harassment, intimidation and unlawful demands for payment of non-existent debts.

CONCLUSIONS

The acts and practices of respondent, as herein found, were and are all to the prejudice and injury of the public and of respondent's 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 respondent Ernest Mark High, an individual, his agents, representatives and employees, directly or through any corporate or other device, in connection with the soliciting for, offering for sale or sale of advertising space, in the publication designated "The Spotlight," whether published under that name or any other name, or in any other publication, 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 said publication is affiliated with, endorsed by, sponsored by, an official publication of, or otherwise connected with the American Federation of Labor, Congress of Industrial Organizations or the American Federation of Labor-Congress of Industrial Organizations, or any affiliate thereof other than the American Federation of State, County and Municipal Employees, and then only to the extent of its actual connection therewith.

(b) That said publication is distributed or circulated nationally, or in areas or localities where it is not in fact distributed or circulated.

2. Placing, printing or publishing any advertisement on behalf of any person, firm or corporation in said publication without a prior order or agreement to purchase said advertisement.

3. Sending bills, letters or notices to any person or firm with regard to an advertisement which has been or is to be, printed, inserted or published on behalf of said person or firm, or in any other manner seeking to exact payment for any such advertisement, without a bona fide order or agreement to purchase said advertisement.

OPINION OF THE COMMISSION

By KERN, *Commissioner:*

The complaint charges respondent, Ernest Mark High, publisher of a newspaper called "The Spotlight," with violating the Federal

Trade Commission Act by using false, misleading and deceptive statements and representations in the course of soliciting and securing advertising for his newspaper. After hearings on the merits, the hearing examiner found that the evidence sustained the charges in part and ordered respondent to cease and desist. This appeal presents a number of legal issues for our decision.

Respondent's counsel in both brief and oral argument shied away from the factual aspects of this prosecutor, stressing instead procedural and technical questions involved in the hearing examiner's rulings, for the practices of respondent as shown by this record present a shabby picture. The record discloses numerous overt efforts on the part of respondent's agents to sell advertising in a labor-sponsored periodical with the idea that the advertiser would thereby purchase labor's good will, the clear implication being that otherwise the whiplash of labor's ill will might be incurred. Since prospects were taken from lists of contractors recently awarded construction contracts who obviously did not want labor difficulties to hobble their ability to perform, the character and purpose of such acts and practices is readily apparent. Indeed respondent's counsel's brief states (p. 63):

> It is demonstrable, at the present time, that it is desirable for businessmen to acquire the good will of organized labor. They seek to do this in various ways, among them being the buying of advertisements in labor publications. Such ads are not placed primarily to induce subscribers to these publications to purchase the products of these advertisers. Instead, the primary benefit to the businessman concerned is the gaining of a reputation as a friend of labor, both in the Union concerned and elsewhere.

We cannot but wonder at this argument; it seems to indicate, first, that one can buy friendship, and second, that labor's friendship is for sale. We prefer to believe that both of these conclusions are false and that responsible labor elements will reject such arguments even as we do.

In any event, the record clearly reveals that respondent did not even deliver the doubtful advantage promised. "The Spotlight" was not the nationally-distributed publication of a great federation of trade unions, as prospects were given to believe, but rather was sponsored by and distributed to the membership of a single union in the metropolitan area of New York City. Only this relatively small audience saw the ads of businesses located as far from New York as Boston and Norfolk, Virginia. It is obvious that respondent's deceptions about the character of his publication were responsible for securing such advertising.

There was considerable reluctance on the part of many prospects to deal with respondent, but on many occasions the pressures and representations of respondent's agents broke down such reluctance. We believe the public is entitled to more reputable efforts to sell advertising, whether in periodicals sponsored by labor organizations or not, than were used here.

Respondent's appeal urges reversal of the initial decision on a number of different grounds. Respondent appears to rely most heavily upon the contention that the hearing examiner erred in denying his motions for the production of written statements by some of the witnesses in support of the complaint and reports of interviews with other witnesses in support of the complaint. Other points are also raised, including the sufficiency of the evidence and alleged error of the examiner in denying respondent's motion for a bill of particulars, in ordering the hearing to proceed even though respondent was personally absent, and in other respects. We shall discuss the arguments seriatim.

We turn first to the issue of the written statements and interview reports, noting at the outset that the two different categories of documents involve two distinct problems. The record indicates that respondent made several motions or requests for the production of documents. One was a letter to the Commission dated August 21, 1958. It states that respondent intends to request the examiner to direct counsel in support of the complaint to turn over to respondent, for purposes of cross-examination, all statements signed by witnesses called by said counsel or reports of interviews with such witnesses by Commission to staff members. The actual request is that said counsel be authorized and directed to turn such documents over to respondent upon his request. This letter was received by the Commission during the course of the hearings. It was considered by the hearing examiner at the hearing in Norfolk, Virginia, on August 26, 1958. On that occasion, respondent's attorney denied that the letter was a motion and stated that it was a request to lay the groundwork for a request he was going to make during the proceeding. The hearing examiner considered the letter or motion as a general motion and, it seems, denied it as such. In so doing, however, he clearly left the way open for a motion to produce any document at the time of the testimony of each individual witness.

As the hearings proceeded, respondent's attorney queried many of the witnesses supporting the complaint as to the existence of writings or possible interview reports. When the existence of any such docu-

ments was indicated, he moved for their production. Thus, it appears that respondent has covered by its specific, individual motions all the documents which it had proposed to make a request for in its letter of August 21, 1958. Moreover, there is no indication that any other such records exist. Consequently, we will proceed to dispose of this issue by a consideration of the merits of the individual motions.

The specific requests for production were made on eight separate occasions at each time the testimony revealed the existence of signed statements or possible interview reports. Only four of the instances involved a signed statement of some sort. In the other four instances, there was, if anything, no more than reports of interviews with the witnesses.

The respondent is here contending that the production of these documents, both the written statements and the interview reports, is required by the ruling in *Jencks* v. *United States*, 353 U.S. 657 (1957). The respondent asserts, moreover, that the recent legislation on this subject, 18 U.S.C. §3500, is not applicable in an administrative proceeding.

We note that previously we have denied production of interview reports, as such, stressing that a report by an attorney-examiner of a conversation with a witness could not successfully be used to impeach the testimony of that witness. *Pure Oil Company*, Docket No. 6640 (Order Ruling on Interlocutory Appeal, March 20, 1958); *Basic Books, Inc., et al.*, Docket No. 7016 (1959). This is in accord with the ruling in *Communist Party of the United States* v. *Subversive Activities Control Board*, 245 F. 2d 314, 325 (D.C. Cir. 1958).

The Supreme Court has held since its ruling in the Jencks case that the "Jencks Act" (18 U.S.C. §3500) is now the exclusive means of compelling, for cross-examination purposes, the production of statements of a Government witness to an agent of the Government. *Palermo* v. *United States*, 360 U.S. 343 (1959); *Rosenberg* v. *United States*, 360 U.S. 367 (1959). This statute, by its terms, is limited to criminal prosecutions brought by the United States. It seems to us, however, that if the fundamentals of fair play require the production of documents in an administrative proceeding pursuant to the ruling of the *Jencks* case, those same fundamentals also dictate that we should follow the substance of a statute designed to overcome interpretations leading to unfairness in the other extreme.

Considering the statute, we observe that the Supreme Court has interpreted it to encompass more than mere automatic reproductions of oral statements. Nevertheless, the Court has also stated that summaries of oral statements which evidence substantial selection of

material, or which are prepared after the interview without the aid of complete notes, and hence rest on the memory of the agent, or statements which merely contain agents' interpretations or impressions, are not to be produced. *Palermo* v. *United States*, *supra*. Commission interview reports ordinarily are in the category of agents' summarizations. We believe that where there is doubt as to the nature of the report, the examiner should inspect it and make a determination. Cf. *Rosenberg* v. *United States*, *supra*, p. 369. No request for such inspection was made in this proceeding. In addition, there is strong reason to believe from the testimony in these instances that the reports were not written out immediately and that they involve summaries later prepared from notes or memory. Therefore, we hold that the motions for production of such reports in this matter were correctly denied.

The writings prepared by the witnesses themselves obviously come in a different category. Four witnesses testified as to writing letters or preparing some kind of statement concerning the events about which they testified.[1] These statements should have been produced in the circumstances shown. Our examination of the record, however, convinces us that the merits of this proceeding can be considered entirely without reference to the testimony of these witnesses or the documents received through these witnesses. Accordingly, no weight whatsoever will be given to such evidence.

Upon careful consideration of the remaining portion of the record, we conclude, contrary to respondent's contention, that the examiner's findings are fully supported.

Respondent, in questioning the sufficiency of the evidence, made particular point of the examiner's finding that respondent had represented "The Spotlight" as an official publication of the American Federation of Labor or of the AFL–CIO and his finding that the newspaper was not affiliated with or endorsed by either organization, or an official publication of either group. While it is true that the testimony that we have determined not to consider did relate in part to those matters, we find that a total of nine other witnesses also were positive in their testimony that "The Spotlight" was identified by phrases such as "affiliated with the AFL–CIO," "official newspaper

[1] Herman W. Bieler of Norwalk, Conn., A. M. Miller of Newport News, Va., and Donald M. Manzelli of Belmont, Mass., all building contractors, and Edward W. Dial of Norfolk, Virginia, an electronics dealer. Each of them testified to having been solicited by long distance telephone, to the methods and representations used in that solicitation and to having been billed subsequently. Miller, Manzelli and Dial all testified that "The Spotlight" had been represented as an official publication of either the American Federation of Labor or the AFL–CIO and that they were given to understand that it had national distribution.

of the AFL–CIO," and the like.[2] On cross-examination the testimony of the witnesses supporting the complaint was consistent with their direct testimony and, upon being questioned, none recalled mention of the American Federation of State, County and Municipal Employees.

Respondent seeks to discredit this testimony on the ground that an untutored listener might, after the lapse of considerable time, remember the reference to American Federation of Labor, a name with which he was familiar, and forget the reference to American Federation of State, County, and Municipal Employees. If this is so, it appears that respondent may be defending itself in part at least on the ground that its choice of representations were such that they might mislead or confuse a listener. This strikes us as having very little merit. In fact respondent's counsel appears to be excusing the fox after it has eaten the grapes. One answer to such an argument is that the witness might have remembered AFL–CIO from the con-

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[2] Typical of such witnesses are Donald F. Kemadek, who operates a steel fabricating business in Worcester, Mass., and David Kestenberg, who runs an industrial window and floor cleaning service in Boston. Kemadek testified:

Q. Now, can you tell us first, as nearly as you can recall the substance of the conversation with Mr. Singer?

A. Well, the first time was this: He understood we had added on a new building, and had increased our capacities, and had extended some of our work into a highway program, manufacturing guard railing now, which is used by a lot of the New England states, through Maine on down about midway; and he pointed out that perhaps a lot of this work which would be put up by construction crews, which would be union help, might possibly be refused on delivery because of not being a union-operated place ourselves.

So he said, in turn, perhaps as a good-will gesture, an ad in the AFL–CIO nationally distributed magazine or publication would be an asset. It would show that at least we had good will with the union-operated concerns.

Q. And did you take an ad?

A. We did.

Kestenberg testified:

Q. How were you contacted?

A. First I believe I was sent a bill telling me that they were going to put an ad into the paper. This is the first thing I heard of them. And then they called me up by telephone and explained to me that they are the official newspaper of the AFL-CIO union, and that they found out somehow that we were going to do a job at the Watertown Arsenal, which is a government arsenal at Watertown, Matssachusetts, and they claimed that the place was union, and I knew it could not be because it was a federal outfit.

However, they said they had an association and they knew the head man intimately and they are good friends, and I would have a problem there. And I just started the job in town at the arsenal, and he said he is as far away from me as the telephone in case I have any doubts, if I want anything straightened out, just to call him.

I didn't think nothing of it. Then we got a bill and the paper. I think I gave the paper to one of the men, and there was a picture above and a lot of names, and underlined was my name in red pencil, that I was putting in an ad, and he billed me another bill; and, consequently, sometime later we paid it, in September. The bookkeeper found it and figured it was an ordinary bill and made out a check, and I signed it; but I realized when I signed it what it was, but I figured it was signed, and I figured they were the official newspaper of the A.F. of L., and he said if I don't do it I can have consequences thereafter. So I figured I would pay $25 and that would relieve me of it all.

versation and not any qualification for the reason that this was their understanding of the expressions used when they first heard them.[3] Here the witnesses testified that the newspaper was represented to them as having AFL or AFL–CIO affiliations. No question has been raised as to their credibility otherwise. In all the circumstances, the evidence adduced in this connection is probative and it is substantial. We therefore sustain the examiner's finding on the point.

We have also considered the objection to the examiner's finding that "The Spotlight" is not distributed nationally and hold that it, too, is supported by probative and substantial evidence. While the principal support for this finding is the testimony of one witness, Jerome Wurf, we note that Wurf was the official who represented the American Federation of State, County and Municipal Employees in arranging for the publication and distribution of "The Spotlight." As such, he was obviously in a position to know the extent of the newspaper's distribution. The examiner, who observed his testimony, believed it. We find no error in this.

Respondent's motion or demand for a bill of particulars was denied by the examiner in an order filed January 15, 1958, and a renewal of this motion during the course of the hearings was denied by a ruling on the record. Respondent asks us to hold that this was error. We note, however, that respondent does not assert any prejudice as a result of the denials. He places emphasis on the fact that he was not supplied with the names of witnesses to be called by counsel in support of the complaint, which names he had sought for purposes of cross-examination. Nevertheless, respondent does not show or even claim that he was unprepared to cross-examine in any particular instance because of a lack of knowledge of the identity of the witness. Nor did respondent's counsel request the examiner to recall any witness at a later time on the ground of surprise. Since respondent has not shown that he failed to obtain a fair hearing as a result of the denials of his motion for a bill of particulars, we see no reason to rule that examiner erred in the matter.

Respondent, in a further argument, contends that the hearing examiner erred in ordering the hearing to proceed although respondent's health allegedly prevented him from being present. The initial hearing was scheduled for January 28, 1958, but was not held until June 24, 1958, due to several postponements requested by respondent's counsel on the ground that respondent suffered from sundry physical ailments. Upon granting the last continuance to June 24, 1958, the

[3] The understanding of the consumer is the controlling test as to whether the representation is deceptive. Representations are false and misleading if they have a tendency or capacity to deceive. *Progress Tailoring Co.* v. *Federal Trade Commission*, 153 F. 2d 103, 105 (7th Cir. 1946).

examiner stated that "in the event respondent should seek a further postponement of the initial hearing on the ground of illness or condition of health, it will be necessary for respondent to make a showing by and through medical authorities satisfactory to the Federal Trade Commission as to the physical condition of respondent and his inability to attend such hearing." In the light of this explicit instruction, it seems inexcusable that respondent's counsel, if further delay was to be requested by reason of health, should fail to submit a doctor's statement addressed to the Commission or the examiner advising that illness would prevent Mr. High from appearing. The personal letter to Mr. High from his doctor commenting on Mr. High's general health is far from being satisfactory in the circumstances. In any event, respondent has not shown that his presence at the trial was at all essential or necessary. He had counsel and letters in this record contain the representation that said counsel was "General Counsel" for "The Spotlight," so it cannot be justly argued that he was unfamiliar with the business. We are satisfied that the examiner did not abuse his discretion in ordering that the hearing proceed even though Mr. High was not present. Furthermore, it is significant that respondent's counsel rested his case after respondent's witnesses had been heard without requesting an adjournment to permit the respondent himself to testify subsequently and did not oppose the closing of the record by the hearing examiner. At a time when there is much criticism of delays in the administrative process,[4] we do not think the Commission would be justified in indefinitely suspending its proceeding.

The order contained in the initial decision is contested on the ground that it is not supported by the facts. Particular reference is made to the part under subparagraph (c) of paragraph 1 which prohibits, with certain exceptions, representations that employers or concerns solicited will benefit from advertisements published in respondent's publication. Respondent was charged by the complaint, in this connection, with representing "[t]hat advertisements inserted in said publication [The Spotlight] will be of benefit to the employers solicited" and the allegation was that this was false because many such employers would not be benefited for the several reasons or in the several ways listed. We are not convinced, however, that counsel in support of the complaint has shown that such advertisements will be totally unproductive merely by showing that the advertiser will

[4] See, for example, an article by respondent's counsel, which states: "Over a half a century's experience with the administrative process in operation has proven the claim of its proponents that it would realize the basic goal of every legal system—that of dispensing speedy and inexpensive justice—to be more or less a will-o'-the-wisp." B. Schwartz, Administrative Justice and its Place in the Legal Order, 30 N.Y.U.L. Rev. 1390, 1401 (1955).

not benefit in the respects mentioned in the complaint. We conclude that the pertinent charge in the complaint is not supported by the record. This aspect of respondent's appeal is granted and the initial decision should be modified accordingly.

Respondent's several other contentions or exceptions have been considered and they are all rejected. The appeal of the respondent is granted to the extent indicated in this opinion and otherwise denied. It is directed that an appropriate order be entered modifying the initial decision in conformity with the views herein expressed and adopting it, as so modified, as the decision of the Commission.

FINAL ORDER

This matter having been heard upon the appeal of respondent from the hearing examiner's initial decision, and upon the briefs and oral argument in support thereof and in opposition thereto; and

The Commission, for the reasons stated in its accompanying opinion, having granted in part and denied in part the appeal, and having directed that the initial decision be modified in accordance with the views expressed in the opinion and that it be adopted, as so modified, as the decision of the Commission:

It is ordered, That paragraph 6 contained in the substitute page 3 of the initial decision be, and it hereby is, modified to read as follows:

6. The evidence further shows that respondent represented that "The Spotlight" (a) was an official publication of the American Federation of Labor or the AFL–CIO, and (b) was distributed nationally. In truth and in fact, said newspaper is not affiliated with or endorsed by, and it is not an official publication of, either the American Federation of Labor or the AFL–CIO, and it is not distributed nationally, the subscribers being members of the American Federation of State, County and Municipal Employees who reside and work in the New York City metropolitan area.

It is further ordered, That the order contained in the initial decision be, and it hereby is, modified by deleting subparagraph (c) of paragraph 1 beginning with the words "That employers" and ending with the words "address thereof," inclusive.

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

It is further ordered, That the respondent 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, as modified.

IN THE MATTER OF

ASSOCIATED DRY GOODS CORPORATION, ET AL.

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

Docket 7184. Complaint, July 11, 1958—Decision, Dec. 14, 1959

Order requiring a nation-wide merchandiser with main office in New York City to cease violating the Fur Products Labeling Act by falsely identifying animals producing certain furs and by failing in other respects to conform to labeling and invoicing requirements; and by advertising in newspapers which failed to disclose the names of animals producing certain furs or the fact that fur products contained artificially colored fur, and represented prices as reduced from higher prices without giving the time of such compared prices.

Mr. John J. McNally for the Commission.

Sheppard, Mullin, Richter, Balthis & Hampton, by *Mr. Gordon F. Hampton*, of Los Angeles, Calif., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The respondents are charged with having violated the Federal Trade Commission Act and the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, in connection with the sale and distribution of furs and fur products through the operations of the J. W. Robinson Company store in Los Angeles, California. By answer these charges of the complaint are denied. Hearings were held, at which evidence in support of and in opposition to the allegations of the complaint was received, duly recorded and filed with the Federal Trade Commission. Proposed findings and conclusions have been filed. Upon the basis of the entire record the following findings of fact have been made and conclusions reached:

1. Respondent Associated Dry Goods Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its office and principal place of business located at 261 Madison Avenue, New York, New York. It conducts business in the State of California under the name of J. W. Robinson Company. Respondent Rene P. Sommer is Divisional Merchandise Manager and Fur Products Buyer of the corporate respondent, and in such capacity controls, directs and formulates the acts, practices and policies of the fur department of the corporate respondent doing business as J. W. Robinson Com-

pany. His office and principal place of business is 600 West Seventh Street, Los Angeles, California.

2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents have been and are now engaged in the introduction into commerce and in the sale, advertising and offering for sale, in commerce, and in the transportation and distribution, in commerce, of fur products, and have sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act. The specific charges of the complaint and the facts related thereto are as follows:

Misbranding:

3. Paragraphs 3, 4 and 5 of the complaint relate to misbranding. Paragraph 3 charges that certain fur products were misbranded in that they were falsely and deceptively labeled with respect to the name or names of the animals that produced the fur from which said products were manufactured, in violation of §4(1) of the Fur Act; paragraph 4 charges that certain fur products were misbranded in that they were not labeled as required by the provisions of §4(2) of the Fur Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder; paragraph 5 charges that certain fur products were misbranded in violation of the Fur Act, in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Information required under §4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was mingled with nonrequired information, in violation of Rule 29(a) of the aforesaid Rules and Regulations;

(b) All the information required under §4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not set out on one side of such labels, in violation of Rule 29(a) of the aforesaid Rules and Regulations;

(c) Information required under §4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in handwriting on labels, in violation of Rule 29(b) of the aforesaid Rules and Regulations; and

(d) Information required under §4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not set forth in proper sequence on labels, in violation of Rule 30 of said Rules and Regulations.

4. The sections of the Fur Act and the Rules which are alleged to have been violated are as follows:

Sec. 4. For the purposes of the Act, a fur product shall be considered to be misbranded—

(1) if it is falsely or deceptively labeled or otherwise falsely or deceptively identified, or if the label contains any form of misrepresentation or deception, directly or by implication, with respect to such fur product;

(2) if there is not affixed to the fur product a label showing in words and figures plainly legible—

(A) the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to section 7(c) of this Act;

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

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

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

(E) the name, or other identification issued and registered by the Commission, of one or more of the persons who manufacture such fur product for introduction into commerce, introduce it into commerce, sell it in commerce, advertise or offer it for sale in commerce, or transport or distribute it in commerce;

(F) the name of the country of origin of any imported furs used in the fur product;

RULE 20—*Fur Products Composed of Pieces.*

(a) Where fur products, or fur mats and plates, are composed in whole or in substantial part of paws, tails, bellies, sides, flanks, gills, ears, throats, heads, scrap pieces or waste fur, such fact shall be disclosed as a part of the required information in labeling, invoicing and advertising. Where a fur product is made of the backs of skins such fact may be set out in labels, invoices and advertising.

RULE 29—*Requirements in Respect to Disclosure on Label.*

(a) The required information shall be set out on the label in a legible manner and in not smaller than pica or twelve (12) point type, and all parts of the required information shall be set out in letters of equal size and conspicuousness. All of the required information with respect to the fur product shall be set out on one side of the label and no other information shall appear on such side except the lot or style number and size. The other side of the label may be used to set out any non-required information which is true and non-deceptive and which is not prohibited by the Act and Regulations, but in all cases the animal name used shall be that set out in the Name Guide.

(b) The required information may be set out in hand printing provided it conforms to the requirements of (a), and is set out in indelible ink in a clear, distinct, legible and conspicuous manner. Handwriting shall not be used in setting out any of the required information on the label. (16 CFR §301.29)

RULE 30—*Arrangement of Required Information on Label.*

(a) The applicable parts of the information required with respect to the fur to appear on labels affixed to fur products shall be set out in the following sequence.

(1) That the fur product contains or is composed of pointed, bleached, dyed, or tip-dyed fur when such is the fact;

(2) The name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur;

(3) That the fur product is composed in whole or in substantial part of paws, tails, bellies, sides, flanks, gills, ears, throats, heads, scrap pieces, or waste fur, when such is the fact;

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

(5) Any other information required or permitted by the Act and Regulations with respect to the fur.

(b) That part of the required information with respect to the name or registered identification number of the manufacturer or dealer may precede or follow the required information set out in (a). (16 CFR §301.30.)

5. Four labels were presented which related to sable garments and showed (the word "label," as used herein, refers to copy as well as original)—

	On the front		
	Fur	*Fur origin*	*On the back*
(1)	Dyed Sable	U.S.A.	Dyed American Sable
(2)	Dyed Sable	Canada	Dyed Sable
(3)	Sable	Canada	Dyed Amer. Sable
(4)	Dyed Sable	Russia	Dyed Russian Broadtail—Sable

The Fur Products Name Guide, issued by the Federal Trade Commission on February 8, 1952, as an appendix to the Rules And Regulations Under The Fur Products Labeling Act, sets forth the names by which various animals must be identified in labeling, advertising and invoicing fur products. "Sable" is recognized as the name of an animal which generally originates in Russia. "American Sable" is the name prescribed for use when the animal originates in North America, and should have appeared on the front of the first three labels, Rule 29 providing that all the required information with respect to a fur product shall be set out on one side of the label. Although the first three labels referred to above appear not to be deceptive or misleading, yet they do not comply with the requirements of the Rules, and are in violation of the Fur Act in that respect. Label (4) was on a garment made of "Dyed Broadtail Lamb" with a "Natural Sable Collar," all of which should have been shown on the front of the label. Label (4) was defective.

6. Four labels related to mink garments, and showed:

	On the front		
	Fur	*Fur origin*	*On the back*
(1)	Mink	Japan	Japanese Mink
(2)	Dyed Mink	Japan	Dyed Mink
(3)	Mink	U.S.A.	Bleached Jasmine Mink
(4)	Mink	U.S.A.	Silver Blue Mink

Faults:

The proper animal name in the first two instances was "Japanese Mink," and, since all Japanese mink used commercially is dyed, the proper animal designation for use on the front of each of the first two labels was "Dyed Japanese Mink." The fact that the third and fourth garments were bleached or dyed should have been shown on the face of the labels. Also, the information on the label on the fourth garment was handwritten, not printed. All four labels are faulty.

7. Three labels related to fox garments, and showed:

	On the front		
	Fur	*Fur origin*	*On the back*
(1)	Fox	U.S.A.	Platina Fox
(2)	Fox	Canada	Natural White Fox
(3)	Fox	Alaska	Black Dyed Red Fox

Faults:

The Guide lists nine separate kinds of fox. There is no separate, unqualified "Fox" designation. Undoubtedly, label (1), on its face, should have shown "Platinum Fox"; (2), "White Fox"; and (3), "Dyed Red Fox." All three are faulty.

8. Three labels referred to muskrat garments, and showed:

	On the front		
	Fur	*Fur origin*	*On the back*
(1)	Dyed Muskrat	U.S.A.	Dyed N. Flank Muskrat
(2)	Dyed Flank Muskrat	U.S.A.	Dyed Flank Muskrat
(3)	Dyed Muskrat	U.S.A.	Dyed Flank Muskrat

Faults:

All three labels should have shown, on the front, "Dyed Muskrat Flank"; and under Rule 30, the words should appear in that order. As used on the backs of the three labels, and on the front of label (2), the words are not in proper sequence. Although there is no charge in the complaint specifically relative thereto, the fact that the furs consisted of flanks is required information under Rule 20, and should have been shown on the face of all three labels.

9. Of the five remaining labels introduced in evidence, two were on forms obviously not designed for use on fur garments, and were faulty in many respects. However, the inference is that the regular fur labels which had been on these garments had become detached, and some careless or uninformed clerk had attachel labels customarily used by respondents on garments not made of fur. No conclusions as to violations will be based on these two labels. The other three labels showed:

	On the front		
	Fur	*Fur origin*	*On the back*
(1)	Dyed Broadtail Processed Lamb	South America	Dyed Broadtail Processed Lamb
(2)	Persian Lamb	Southwest Africa	Blk. Persian Lamb
(3)	Beaver	Canada	Dyed Beaver Rose Beige

Faults:

In (1) the name of the country of origin should be specific as to country rather than merely the name of a continent; in (2), the lamb having been dyed, the garment should have been shown on the face of the label as "Dyed Persian Lamb"—the "Persian Lamb" designation is permissible under Rule 8(a); and in (3), the fact that the garment was dyed is not shown on the front of the label.

10. Of the nineteen labels presented, seven were procured by the Commission's investigator February 16, 1956; one was procured April 2, 1956, and eleven November 14, 1956. Between February 16, 1956, and November 14, 1956, the investigator had examined approximately 700 of respondents' fur garments, and during the six years that the Fur Act had been in effect, had visited respondents' Los Angeles fur department twelve or fifteen times. Besides the labels copied and brought in, he stated there were others which he believed to be deficient but did not copy. During the fiscal year which ended February 2, 1957, the Robinson store had 2,966 transactions which involved fur products; in the succeeding fiscal year there were 2,879 such transactions; and from February 2, 1958 to September 4, 1958 there were 1,750. The respondents urge that under these circumstances the evidence presented falls far short of establishing sufficient facts to warrant the issuance of a cease-and-desist order, in that the number of claimed deficiencies is highly insubstantial, and respondents' efforts at compliance have been diligent and as effective as can be expected in a retail establishment, no matter how carefully supervised.

11. Respondents showed that their sales personnel are given frequent instruction as to the requirements of the Fur Act; the manager in charge makes a spot check approximately once each week, during which he examines labels and price tickets of the fur garments in stock; and every reasonable precaution is taken to comply with the Fur Act and the Rules. The errors in labeling disclosed by the record, respondents contend, are such as will inevitably occur so long as the human element is so intricately involved. A cease-and-desist order, they maintain, will not prevent such errors.

12. The Commission's policy in this respect is not firmly estab-

lished. In *Eugene Dietzgen Co.* v. *Federal Trade Commission*, 142 F. 2d 321, the Seventh Circuit Court said:

> The propriety of the order to cease and desist, and the inclusion of a respondent therein, must depend on all the facts which include the attitude of respondent toward the proceedings, the sincerity of its practices and professions of desire to respect the law in the future and all other facts.

In the matter of *Stanrich Mills Corporation and Maurice Marcus*, 50 FTC 1120 at 1129, referring to the question as to whether there was sufficient evidence to require the issuance of a cease-and-desist order in the public interest, the Hearing Examiner, in an initial decision which was adopted as the decision and opinion of the Commission, said "the insubstantiality of the evidence of actual violation is a factor to be considered," and upon the facts of record the conclusion was reached that the public interest did not require any corrective action in that proceeding, which was accordingly dismissed.

13. It then "appearing to the Commission that a proceeding by it * * * would be in the public interest," the complaint herein was issued July 11, 1958. Presumably all the facts which have been presented in support of the allegations of the complaint were before the Commission at that time. New, of course, are the facts as to the extent and character of respondents' fur operations in the California area, which bring into comparable perspective the data relating to respondents' violations of the Fur Act and the Rules thereunder. The discretion as to how such facts may affect the public interest is the Commission's discretion, and may be raised upon appeal. A violation of the Fur Act and the Rules having been established, a cease-and-desist order with respect thereto will be issued herein.

False Invoicing:

14. Paragraphs 6 and 7 of the complaint contain the allegations that certain of respondents' fur products were falsely and deceptively invoiced in violation of the Fur Act and the Rules and Regulations promulgated thereunder. Counsel in support of the complaint offered certain evidence including sales slips in support of these allegations, but such was rejected, among other reasons, because of the holding in *Mandel Brothers, Inc.* v. *Federal Trade Commission*, 254 F. 2d 18 (1958). Due to the failure of receiving this evidence, the record lacks support for these allegations. The *Mandel* holding, however, has been overruled by the Supreme Court of the United States in *Federal Trade Commission* v. *Mandel Brothers, Inc.*, 359 U.S. 385 (1959). It is now clear that a retail sales

slip is an "invoice" within the meaning of the Fur Act, and that the evidence offered on this question should not have been refused for the reasons given. On the other hand, the corporate respondent is prohibited by the Commission's order in *Associated Dry Goods Corporation*, Docket No. 7260 (March 20, 1959), from engaging in practices such as those alleged to be unlawful in paragraphs 6 and 7 of the complaint, so that further proceedings on this question are not considered necessary.

False Advertising:

15. Paragraphs 8, 9 and 10 of the complaint relate to false advertising, and charge:

(1) that the advertisements failed to disclose animal names as required by §5(a)(1) of the Fur Act;

(2) that the advertisements failed to disclose that certain fur products contained bleached, dyed or otherwise artificially colored fur, as required by §5(a)(3) of the Fur Act; and

(3) that in the advertisements respondents represented that the prices of certain fur products were "reduced from previous, higher prices, without giving the time of such compared prices, in violation of Rule 44(b)."

The pertinent parts of §5(a)(1) and §5(a)(3) of the Fur Act are as follows:

> Sec. 5. (a) For the purposes of this Act, a fur product or fur shall be considered to be falsely or deceptively advertised if 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 such fur product or fur—
>
> (1) does not show the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to section 7(c) of this Act;
>
> * * * * * * *
>
> (3) does not show that the fur product or fur is bleached, dyed, or otherwise artificially colored fur when such is the fact; * * *.

16. As to improper description of the fur articles advertised, (1) and (2) above, the facts disclosed by respondents' advertisements are as follows:

(1) Animal Name Not Shown

(a) In the Los Angeles Times of March 30, 1956, a garment was described as a "Black dyed Russian Broadtail cape with sable collar." The word "lamb" was omitted between "broadtail" and "cape."

(b) In the Los Angeles Times of April 2, 1956, the word "lamb" was again omitted in the description, "Black dyed Russian broad-

tail capelet with sable collar." This appears to be the same garment as that shown in (a) above.

(c) In the Los Angeles Times of January 6, 1958, three garments are described, respectively, as "Argenta" coat; "Tourmaline" deep cape stole; and "Black dyed Russian Broadtail" coat. The last two items appear in the same form in the Los Angeles Herald Express of January 8, 1958. The animal name is omitted in these listings.

(d) In the Los Angeles Times of February 27, 1957, is mentioned a "Russian scarf," no animal name given.

(e) In the Los Angeles Examiner of March 29, 1957, "mouton jackets" are listed without animal name.

(2) Fact that garments were dyed or otherwise artificially colored not shown

(a) The Los Angeles Times of February 27, 1957, contained an advertisement in which respondents described one of their products as "Mouton processed lamb jacket." The record discloses that "Mouton processed lamb" is lambskin which has been processed to simulate beaver, and that the process necessarily includes dyeing or other artificial coloring. This is established by the uncontradicted testimony of Rene Paul Sommer, a witness who testified for the Commission. The fact that the fur was dyed was not set forth in the above-referred to advertisement. As shown in the illustration in Rule 9(a), this clearly should have been done. This rule states:

> The term "Mouton-processed Lamb" may be used to describe the skin of a lamb which has been sheared, the hair straightened, chemically treated, and thermally set to produce a moisture repellent finish; as for example: "*Dyed Mouton-processed Lamb.*" [Emphasis supplied.]

There is no showing that the particular garment advertised was dyed, except as that may have been involved in and implied by the Mouton processing. Under the quoted rule, the description used would appear to be ample. Moreover, this is the only instance cited by counsel supporting the complaint relating to this charge of the complaint. Under the *de minimis* rule and upon the evidence adduced, the charge in this respect cannot be found to have been established by substantial, probative evidence, and it should be dismissed.

17. During the period of time over which the advertisements referred to in the preceding paragraph extended—from March, 1956 to January, 1958—respondents ran more than 140 advertisements in metropolitan Los Angeles newspapers, advertising a total of more

than 2,200 fur garments. Evidence was introduced as to deficient descriptions of only these few garments. Respondents aver that, as in the case of faulty labeling, the evidence here "falls far short of estabishing anything requiring the issuance of a cease-and-desist order"; that the number of deficiencies shown is "highly insubstantial," which in itself demonstrates that respondents are operating upon a basis of compliance with the Fur Act, and that it would be a miscarriage of justice for a cease-and-desist order to be issued as to these charges of the complaint. The testimony of three responsible officials of the J. W. Robinson Company is that they are diligently and conscientiously endeavoring to comply with the Fur Act and the Rules. Respondents' contentions again present the issue of public interest, as to which the comments contained in paragraph 13, above, are applicable, and upon the basis of the conclusion there stated, some violations of the Fur Act and the Rules having been established, a cease-and-desist order as to the charges here being discussed will hereinafter be included.

Pricing Practices

18. The pricing charge is specific in paragraph 10 of the complaint—that "respondents represented prices of fur products as having been reduced from previous, higher prices, without giving the time of such compared prices, in violation of Rule 44(b)." There is no charge in the complaint that Rule 44(a) was violated, and no violation thereof is shown by the evidence. Rule 44 is titled "Misrepresentation of Prices." In order to understand the specific detail in which the Rule deals with various advertising practices, it is essential that it be examined as a whole. There are seven paragraphs, as follows:

(a) No person shall, with respect to a fur or fur product, advertise such fur or fur product at alleged wholesale prices or at alleged manufacturers cost or less, unless such representations are true in fact; nor shall any person advertise a fur or fur product at prices purported to be reduced from what are in fact fictitious prices, nor at a purported reduction in price when such purported reduction is in fact fictitious.

(b) No person shall, with respect to a fur or fur product, advertise such fur or fur product with comparative prices and percentage savings claims except on the basis of current market values or unless the time of such compared price is given.

(c) No person shall, with respect to a fur or fur product, advertise such fur or fur product as being "made to sell for," being "worth" or "valued at" a certain price, or by similar statements, unless such claim or representation is true in fact.

(d) No person shall, with respect to a fur or fur product, advertise such

fur or fur product as being of a certain value or quality unless such claims or representations are true in fact.

(e) Persons making pricing claims or representations of the types described in subsections (a), (b), (c) and (d) shall maintain full and adequate records disclosing the facts upon which such claims or representations are based.

(f) No person shall, with respect to a fur or fur product, advertise such fur or fur product by the use of an illustration which shows such fur or fur product to be a higher priced product than the one so advertised.

(g) No person shall, with respect to a fur or fur product, advertise such fur or fur product as being "bankrupt stock," "samples," "show room models," "Hollywood Models," "Paris Models," "French Models," "Parisian Creations," "Furs Worn by Society Women," "Clearance Stock," "Auction Stock," "Stock of a business in a state of liquidation," or similar statements, unless such representations or claims are true in fact.

19. Respondents have, in numerous advertisements, offered fur garments at reduced prices. Of the more than 140 advertisements hereinbefore mentioned as having been used by respondents during the period involved, some fifty-seven contained pricing statements and representations relating to more than 823 garments. These pricing statements as to specific garments followed a general pattern of which there were variations, illustrated by the following typical extracts which followed garment descriptions:

formerly $650.00, now $495.00;
regularly $795.00, now $595.00;
was $225.00, now $175.00; and
$225.00 . . . . . $125.00.

20. Through these statements respondents represented prices of fur products as having been reduced from previous higher prices. The lower prices in the advertisements indicated the prices at which the garments were being offered to the public currently; the higher prices indicated the prices at which the garments had previously been offered for sale by the J. W. Robinson Company. The time during which the higher prices had been or were in effect is not disclosed in the advertising.

21–23. The fur advertisements of respondents presented in evidence contain comparative price representations in which the lower figures indicated are the prices at which the garments were being currently offered and the higher figures the prices at which the garments previously had been offered for sale by the respondents. That the higher prices were the previous prices of the respondents rather than purported current market values is clear from the representations themselves, as well as from the testimony of Alton B. Garrett, Assistant Treasurer of the J. W. Robinson Company. In addition to price comparisons above mentioned, the following are illustrative:

regularly $89.00, to clear at $39.00
regularly $595.00, reduced to $350.00
regularly $795.00, now just $595.00
was $1395.00, now priced at $995.00
originally $150.00, now $99.50
was $225.00, now $175.00

Such price comparisons do not mention the time at which the higher prices were in effect as required by Rule 44(b) in these circumstances.

24. Respondents assert that the business and activities of Associated in the State of California under the name of the J. W. Robinson Co. are those of a separate and independently managed division of Associated Dry Goods Corporation; that said business is locally managed insofar as the purchase, pricing, labeling, advertising, sale, and distribution of furs and fur products are concerned; that the scope of the charges set forth in the complaint are confined and limited to that division of said corporation known as the J. W. Robinson Co. and are not to be taken to affect or concern operations outside of California; and that if any order other than dismissal is issued herein affecting corporate operations, such order should be confined to the J. W. Robinson Co. division and the California operation. In other words, respondents would like to enjoy the advantages of their nation-wide organization operating as Associated Dry Goods Corporation without having to assume equally wide responsibility for its conduct. The J. W. Robinson Co. is not an independent organization; plans which it had before absorption into the larger company, to open a new store in Pasadena, had to be approved after such absorption by Associated before the project could be carried out. The operating head of the Robinson store has full responsibility for its operation, subject to such suggestions as may come from the president of Associated. It is the policy of Associated to suggest rather than to order. The president of J. W. Robinson Co. testified that since January 1955, when Robinson became a division of Associated, he "had not received yet an order from the President of Associated to do something. He only suggests that this may be desirable and so on." There is no indication that any "suggestion" coming from Associated's president is ever disregarded, and, for all practical purposes, such a suggestion is tantamount to an order. Associated has filed a certificate with the proper California authorities that it is operating under the J. W. Robinson name in Los Angeles. All of these facts point to the conclusion that ultimate responsibility for the acts and practices of the J. W. Robinson Company rests with Associated Dry Goods

Corporation, and it is so found. The individual respondent, Rene P. Sommer, who controls, directs and formulates the acts, practices and policies of the J. W. Robinson Co. fur department, also will be included in the order issued herein.

CONCLUSIONS

1. The provisions of the Fur Act and the Rules and Regulations thereunder have been violated by respondents in the following respects. On certain of their fur products the labels were faulty, in that

(a) the correct names of the animals which produced the furs used in the garments were not shown;

(b) the fact that certain garments contained furs which had been bleached, dyed or otherwise artificially colored was not shown;

(c) all the required information was not set forth on one side of the label;

(d) required information was in handwriting, not printed;

(e) required information was not in proper sequence;

(f) the country of origin of imported furs used in the fur products was not properly shown; and

(g) the fact that certain garments were composed of flank was not properly shown.

2. In respondents' advertising, certain of their fur products have been improperly described, in that (a) in some instances, the names of the animals that produced the furs used in the garments advertised have not been disclosed, (b) the term "Mouton-processed Lamb" was used without indicating that the product referred to was made of fur which was dyed, and (c) price comparison representations have omitted reference to the time at which the former higher prices were in effect.

3. The allegations contained in Paragraphs 6 and 7 of the complaint should be dismissed.

4. Responsibility for the acts and practices found herein to be in violation of the Fur Act and the Rules and Regulations thereunder rests upon respondents Associated Dry Goods Corporation and Rene P. Sommer.

5. The acts and practices of respondents herein found to be in violation of the Fur Act and the Rules and Regulations thereunder constituted, and now constitute, unfair and deceptive acts and practices in commerce within the meaning of the Federal Trade Commission Act.

6. This proceeding is in the public interest, and the issuance of

an appropriate order as to the practice found to be in violation of the Fur Act and the Rules and Regulations is proper. Accordingly,

It is ordered, That respondent Associated Dry Goods Corporation, a corporation, and its officers, and respondent Rene P. Sommer, as an individual and as an employee of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, offering for sale, transportation, or distribution in commerce of any fur product, or in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product which is made in whole or in part of fur which has been shipped or received in commerce, as "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

1. 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 products were manufactured.

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

3. Setting forth on labels attached to fur products:

(a) Non-required information mingled with required information.

(b) Required information in handwriting;

(c) Required information in improper sequence.

4. Failing to set forth all of the required information on one side of the labels attached to such products.

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. Fails to disclose:

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

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

2. Compares the prices of fur products with other prices without giving the time at which such other prices were in effect.

It is further ordered, That paragraphs 6 and 7 of the complaint be, and they hereby are, dismissed.

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OPINION OF THE COMMISSION

By KERN, *Commissioner:*

The complaint herein charges the respondents with violating the Federal Trade Commission Act and the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder. The hearing examiner in his initial decision held that the charges were sustained in part and included therein an order directing respondents to cease and desist the practices found to be unlawful.

The initial decision of the hearing examiner apparently satisfies nobody. It satisfied neither respondents nor counsel in support of the complaint, both of whom have filed cross appeals; moreover for reasons later stated, we find ourselves less than satisfied by his decision.

Respondent Associated Dry Goods Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its office and principal place of business located at 261 Madison Avenue, New York, New York. The practices of the respondents alleged to be unlawful relate to the sale and distribution of fur products through the J. W. Robinson Company, Los Angeles, California, an operating division of the corporate respondent. Respondent Rene P. Sommer is Divisional Merchandise Manager and Fur Products Buyer of the corporate respondent's J. W. Robinson division. In such capacity, he controls, directs and formulates the acts, practices and policies of the fur department of corporate respondent doing business as the J. W. Robinson Company.

APPEAL OF COUNSEL IN SUPPORT OF THE COMPLAINT

The appeal of counsel in support of the complaint raises issues involving the scope of the order, the matter of the rejection by the examiner of certain evidence and the examiner's dismissal of several paragraphs of the complaint.

The first issue we will consider is whether the hearing examiner erred in rejecting the offer in evidence of respondents' sales slips or invoices, and in dismissing Paragraphs Six and Seven of the complaint dealing with false and deceptive invoicing. The examiner made his ruling on the authority of *Mandel Brothers, Inc.* v. *Federal Trade Commission*, 254 F. 2d 18 (1958), wherein the Court of Appeals for the Seventh Circuit held that sales slips are not invoices within the meaning of the Fur Act, and also on the basis that such was his own opinion of the matter. This was directly

contrary to the Commission's view expressed in its opinion in the *Mandel Brothers* case, Docket No. 6434, July 5, 1957, and reaffirmed in *Federated Department Stores, Inc.*, Docket No. 6836, January 8, 1959, pending final judicial determination in *Mandel Brothers*. We regret the hearing examiner's failure to follow the Commission's views on this matter nor is our disquietude lessened by the fact that subsequently the Supreme Court has overruled the Seventh Circuit on this question. *Federal Trade Commission* v. *Mandel Brothers, Inc.*, 359 U.S. 385 (1959). In the circumstances the examiner was manifestly in error in refusing to receive the sales slip records.

The erroneous ruling of the hearing examiner leaves us in this position. The documents here in question have been accepted only as offers of proof, and the respondents have not had the opportunity to be heard on any objections they might have to receiving them into the record. As it now stands, there is no evidence supporting the allegations of the complaint as to false invoicing. On this subject, the corporate respondent herein is prohibited by the Commission's order in *Associated Dry Goods Corporation*, Docket No. 7260 (March 20, 1959), from failing to disclose on invoices furnished to purchasers of fur products certain information, including each of the items set forth in Section 5(b) of the Fur Act. These are the practices covered by Paragraphs Six and Seven of the complaint. Very little good would be accomplished in further pursuing the same issue in this proceeding. It is our opinion, therefore, that these allegations of the complaint should be dismissed.

Counsel in support of the complaint further contend that the examiner erred in dismissing Paragraph Nine (b) of the complaint which charges a violation of Section 5(a)(3) of the Fur Act. The specific allegation was that by means of certain advertisements respondents falsely and deceptively advertised their fur products in that said advertisements, among other things, failed to disclose that the fur products contained bleached, dyed, or otherwise artificially colored fur, when such was the fact.

The evidence supporting this allegation consists of an advertisement from the Los Angeles Times for February 27, 1957, stating, in pertinent part, "Mouton processed lamb jacket." The position of counsel in support of the complaint is that "Mouton processed Lamb" is dyed in the processing and, therefore, should be described with the use of the word "dyed." The examiner ruled that there was no showing that the particular garment advertised was dyed, except as such may have been involved in and implied by the Mouton processing and that the description used is ample under

Rule 9(a).[1] He further held that since this is the only instance cited, the allegation should be dismissed under the *de minimis* rule.

Rule 19 of the Rules and Regulations under the Fur Act clearly requires that a fur or fur product which is dyed be so described in labeling, invoicing and advertising. The evidence in this record, contrary to the examiner's finding, supports the conclusion that "Mouton-processed Lamb" is dyed. This is shown from the uncontradicted testimony of respondent Rene Paul Sommers. Thus, respondents' representation should have included the term "dyed." Rule 9(a) does not constitute any exception to the requirement for dyed furs or fur products, as the illustration therein clearly indicates. Furthermore, as a result of the hearing examiner's reliance here on the *de minimis* rule, we wish to emphasize that we consider this rule as having limited applicability in connection with such a statute as the Fur Act. Congress has explicitly spelled out what constitutes a violation of law, and it is our duty strictly to enforce the statute. In this area as in others the Commission wishes to discourage a plethora of testimony considered requisite to support a showing of a violation of the statute. We consider simplification of trial procedures and shortening of evidence demonstrable of statutory violations desirable. Nor is this a harsh position, for minor infractions with no past history of similar or comparable violations rarely furnish a basis for the invocation of the Commission's formal processes; usually such matters are disposed of informally with an assurance of discontinuance. In this connection it should be pointed out that the representation here involved does not stand alone, but is only one of a number of violations of the Fur Act, which are substantial in the aggregate. The examiner's application of the *de minimis* rule in these circumstances was clearly inappropriate. We hold that the examiner erred in the dismissal of this charge in the complaint.

An additional question raised by the appeal of counsel in support of the complaint is whether the examiner erred in dismissing paragraph 10 of the complaint which charged a violation of Rule 44(b) of the regulations under the Fur Act.[2] Said paragraph 10 reads: "In advertising fur products for sale, as aforesaid, respondents represented prices of fur products as having been reduced

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[1] Rule 9(a) states: "The term 'Mouton-processed Lamb' may be used to describe the skin of a lamb which has been sheared, the hair straightened, chemically treated, and thermally set to produce a moisture repellent finish; as for example: 'Dyed Mouton-processed lamb.'"

[2] Rule 44(b) states:

"No person shall, with respect to a fur or fur product, advertise such fur or fur product with comparative prices and percentage savings claims except on the basis of current market values or unless the time of such compared price is given."

from previous, higher prices, without giving the time of such compared prices, in violation of Rule 44(b) of the said Rules and Regulations."

In the opinion of the Commission a violation of Rule 44(b) has been shown. Rule 44(b) bans comparative price advertising except under two conditions: (1) where the compared figure is a statement of current market value, or (2) where the compared figure is another price and the time of such compared price is given.

The record shows numerous price comparison statements in respondents' advertising. The following are illustrative:

regularly $89.00, to clear at $39.00
regularly $595.00, reduced to $350.00
regularly $795.00, now just $595.00
was $1395.00, now priced at $995.00
formerly $650.00, now $495.00
originally $150.00, now $99.50
was $225.00, now $175.00

It is sufficiently clear from the testimony of Alton B. Garrett, Assistant Treasurer of J. W. Robinson Company, that in price comparison representations such as those referred to above, the lower figures indicated the prices at which the garments were then being offered to the public; the higher figures indicated the prices at which the garments previously had been offered for sale by the respondents. This is also evident from the wording of the representations. Since respondents' former prices are shown in these price comparisons, rather than current market values, the time at which the former prices were in effect should have been stated so as to comply with Rule 44(b). We conclude that violations have been shown in this respect, as alleged, and that the examiner erred in dismissing the pertinent charge in the complaint.

Lastly, counsel in support of the complaint contend that the order entered by the hearing examiner is deficient in that it does not direct the respondent to comply fully with the requirements of Section 4(2) of the Fur Act, citing as authority *Federal Trade Commission* v. *Mandel Brothers, Inc.*, 359 U.S. 385 (1959). Under Section 4(2), a fur product is misbranded if it does not have affixed to it a label showing each of the six different items of information therein set forth. The examiner found that certain of the respondents' labels were defective, relating to four of the required six categories of information. As to the remaining two, no omissions were noted. The order in the initial decision prohibits the misbranding of fur products through a failure to affix labels containing the four categories of information found to have been omitted, but not including the other two.

As the Commission explained in its opinion in the *Mandel* matter, *supra*: "* * * in any case in which it is found that the labeling or invoicing requirements of Sections 4(2) or 5(b)(1) of the statute have not been fully complied with, the appropriate conclusion is that the fur products in connection with which the deficiencies have occurred have been misbranded or falsely invoiced, and that the appropriate order to be issued in correction of the offense is one requiring cessation of the practice, namely, the misbranding or false invoicing by failure to attach proper labels or to issue proper invoices."

In this instance the violations found embrace various acts and practices which the statute makes unlawful. They include infractions of Section 4(1), in that certain fur products were falsely and deceptively labeled as to the names of the animals producing the furs from which the products were manufactured, Section 4(2), in that there was a failure to disclose required information on the labels of fur products in connection with four of the six subsections thereunder, and Section 5(a), in that certain fur products were falsely and deceptively advertised, as well as violations of the Rules and Regulations promulgated under the Fur Act. The faults shown as to labeling include the failure to name the country of origin, the failure to show that furs had been dyed, the failure to indicate on the front of the label that the furs consisted of flanks, the failure to state the proper name of the animal that produced the fur, and others. The defects in the labels and the other violations shown in this record are numerous and substantial. In our opinion, there are no such differences between the facts in this matter and the *Mandel Brothers* case, *supra*, as would require the full interdiction in the one but not in the other. The order to cease and desist in this matter, therefore, will be modified to conform to the ruling in the *Mandel Brothers* case.

RESPONDENTS' APPEAL

Respondents' entire appeal is based on an asserted lack of public interest in issuing an order to cease and desist in this proceeding. They do not deny the showing that violations have occurred, nor do they argue that such infractions are merely technical. The gist of their contention is that the sum of the infractions indicated does not reasonably constitute such a showing as to warrant corrective action in the public interest. They cite *Stanrich Mills Corp.* and *Maurice Marcus*, 50 F.T.C. 1120 (1954), as supporting their argument for dismissal. That case, however, is entirely distinguishable on the facts. Among other things, there was only one or possibly two instances of misbranding shown. In this case, a number of misbranding viola-

tions are disclosed, as well as false and deceptive advertising in violation of the Fur Act. Also, the former case involved other factors not present here. The violations shown by this record are substantial, and it is clearly in the public interest to enter an order preventing respondents from engaging in such practices. Their argument is rejected.

The respondents' appeal is denied and the appeal of counsel in support of the complaint is granted in part and denied in part. It is directed that an appropriate order be entered.

FINAL ORDER

Respondents and counsel supporting the complaint having filed cross-appeals from the hearing examiner's initial decision, and the matter having come on to be heard by the Commission upon the whole record, including briefs and oral argument in support of and in opposition to the appeals, and the Commission having rendered its decision denying respondents' appeal, granting in part and denying in part the appeal of counsel in support of the complaint and directing that an appropriate order be entered:

It is ordered, That paragraph numbered 14 of the findings contained in the initial decision be, and it hereby is, modified to read as follows:

14. Paragraphs 6 and 7 of the complaint contain the allegations that certain of respondents' fur products were falsely and deceptively invoiced in violation of the Fur Act and the Rules and Regulations promulgated thereunder. Counsel in support of the complaint offered certain evidence including sales slips in support of these allegations, but such was rejected, among other reasons, because of the holding in *Mandel Brothers, Inc.* v. *Federal Trade Commission*, 254 F. 2d 18 (1958). Due to the failure of receiving this evidence, the record lacks support for these allegations. The *Mandel* holding, however, has been overruled by the Supreme Court of the United States in *Federal Trade Commission* v. *Mandel Brothers, Inc.*, 359 U.S. 385 (1959). It is now clear that a retail sales slip is an "invoice" within the meaning of the Fur Act, and that the evidence offered on this question should not have been refused for the reasons given. On the other hand, the corporate respondent is prohibited by the Commission's order in *Associated Dry Goods Corporation*, Docket No. 7260 (March 20, 1959), from engaging in practices such as those alleged to be unlawful in paragraphs 6 and 7 of the complaint, so that further proceedings on this question are not considered necessary.

It is further ordered, That the subparagraph numbered (2) in the

paragraph numbered 16 contained in the initial decision be deleted and the following substituted therefor:

(2) Fact that garments were dyed or otherwise artificially colored not shown

(a) The Los Angeles Times of February 27, 1957, contained an advertisement in which respondents described one of their products as "Mouton processed lamb jacket." The record discloses that "Mouton processed lamb" is lambskin which has been processed to simulate beaver, and that the process necessarily includes dyeing or other artificial coloring. This is established by the uncontradicted testimony of Rene Paul Sommer, a witness who testified for the Commission. The fact that the fur was dyed was not set forth in the above-referred to advertisement. As shown in the illustration in Rule 9(a), this clearly should have been done. This rule states:

"The term 'Mouton-processed Lamb' may be used to describe the skin of a lamb which has been sheared, the hair straightened, chemically treated, and thermally set to produce a moisture repellent finish; as for example: '*Dyed Mouton-processed Lamb.*'" [Emphasis supplied.]

It is further ordered, That paragraphs numbered 21, 22 and 23 contained in the initial decision be deleted and that the following be substituted therefor:

21–23. The fur advertisements of respondents presented in evidence contain comparative price representations in which the lower figures indicated are the prices at which the garments were being currently offered and the higher figures the prices at which the garments previously had been offered for sale by the respondents. That the higher prices were the previous prices of the respondents rather than purported current market values is clear from the representations themselves, as well as from the testimony of Alton B. Garrett, Assistant Treasurer of the J. W. Robinson Company. In addition to price comparisons above mentioned, the following are illustrative:

regularly $89.00, to clear at $39.00
regularly $595.00, reduced to $350.00
regularly $795.00, now just $595.00
was $1395.00, now priced at $995.00
originally $150.00, now $99.50
was $225.00, now $175.00

Such price comparisons do not mention the time at which the higher prices were in effect as required by Rule 44(b) in these circumstances.

It is further ordered, That paragraphs numbered 2 and 3 of the

conclusions contained in the initial decision be deleted and that the following be substituted therefor:

2. In respondents' advertising, certain of their fur products have been improperly described, in that (a) in some instances, the names of the animals that produced the furs used in the garments advertised have not been disclosed, (b) the term "Mouton-processed Lamb" was used without indicating that the product referred to was made of fur which was dyed, and (c) price comparison representations have omitted reference to the time at which the former higher prices were in effect.

3. The allegations contained in paragraph 6 and 7 of the complaint should be dismissed.

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 Associated Dry Goods Corporation, a corporation, and its officers and respondent Rene P. Sommer, as an individual and as an employee of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, offering for sale, transportation, or distribution in commerce of any fur product, or in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product which is made in whole or in part of fur which has been shipped or received in commerce, as "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

1. 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 products were manufactured.

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

3. Setting forth on labels attached to fur products:

(a) Non-required information mingled with required information.

(b) Required information in handwriting:

(c) Required information in improper sequence.

4. Failing to set forth all of the required information on one side of the labels attached to such products.

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. Fails to disclose:

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

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

2. Compares the prices of fur products with other prices without giving the time at which such other prices were in effect.

It is further ordered, That Paragraphs Six and Seven of the complaint be, and they hereby are, dismissed.

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

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

IN THE MATTER OF

RADIO CORPORATION OF AMERICA

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

Docket 7676. Complaint, Dec. 3, 1959—Decision, Dec. 15, 1959

Consent order requiring one of the nation's major record manufacturers to cease giving concealed "payola"—sums of money or other valuable consideration—to television and radio disc jockeys or anyone else to induce them to play its recordings.

Mr. John T. Walker and *Mr. James H. Kelley* supporting the complaint.

Cahill, Gordon, Reindel and Ohl by *Mr. Jerrold G. Van Cise* of New York, N.Y., for respondent.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

The Federal Trade Commission issued its complaint against respondent Radio Corporation of America, a corporation, on December 3, 1959 charging it with having violated the provisions of the Federal Trade Commission Act by unfairly paying money or other valuable consideration to induce the playing of phonograph records over radio and television stations in order to enhance the popularity of such records.

On December 14, 1959 there was submitted to the undersigned hearing examiner an agreement between the above-named respondent, its counsel, and counsel supporting the complaint providing for the entry of a consent order.

Under the foregoing agreement, the respondent admits 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 respondent 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 respondent that it has 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 Radio Corporation of America 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 30 Rockefeller Plaza 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 respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent Radio Corporation of America, a corporation, and its officers, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with phonograph records which have been distributed, in commerce, or which are used by radio or television stations in broadcasting programs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Giving or offering to give, without requiring public disclosure, any sum of money or other material consideration, to any person,

directly or indirectly, to induce that person to select, or participate in the selection of, and broadcasting of, any such records in which respondent has a financial interest of any nature.

(2) Giving or offering to give, without requiring public disclosure, any sum of money, or other material consideration, to any person, directly or indirectly, as an inducement to influence any employee of a radio or television broadcasting station, or any other person, in any manner, to select, or participate in the selection of, and the broadcasting of, any such records in which respondent has a financial interest of any nature.

There shall be "public disclosure" within the meaning of this order, by any employee of a radio or television broadcasting station, or any other person, who selects or participates in the selection and broadcasting of a record when he shall disclose, or cause to have disclosed, to the listening public at the time the record is played, that his selection and broadcasting of such record are in consideration for compensation of some nature, directly or indirectly, received by him or his employer.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission having considered the hearing examiner's initial decision herein, filed December 14, 1959, accepting an agreement containing a consent order theretofore executed by the respondent and counsel in support of the complaint; and

It appearing that through inadvertence the word "the" erroneously appears in the fifth line of the paragraph numbered (1) of the order contained in the initial decision; and

The Commission being of the opinion that this departure from the agreement of the parties should be corrected:

It is ordered, That the initial decision of the hearing examiner be, and it hereby is, modified, by striking from the fifth line of paragraph (1) of the order contained in said initial decision the word "the" as it appears immediately preceding the word "broadcasting."

It is further ordered, That the initial decision, as so modified, shall, on the 15th day of December, 1959, become the decision of the Commission.

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

Decision

IN THE MATTER OF

PHILIP REIFFE ET AL. TRADING AS MAIL ORDER MART, ETC.

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

Docket 6605. Complaint, July 31, 1956—Decision, Dec. 16, 1959

Order dismissing complaint charging Brooklyn, N.Y., mail order distributors of women's and children's apparel with selling used and secondhand dresses as new, and shipping to customers soiled and unwearable merchandise, in wrong sizes, and fewer than the number ordered for the same price or a greater price. After issuance of the complaint, respondents were indicted for criminally fraudulent practices similar to those alleged in the complaint, pleaded guilty, and were awaiting sentence.

Mr. Michael J. Vitale for the Commission.

Walter L. and *Robert M. Post*, of New York, N.Y., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint in this proceeding, charging respondents with violating §5 of the Federal Trade Commission Act in connection with their business of selling and distributing women's and children's apparel by mail order, was issued July 30, 1956.

By motion, counsel supporting the complaint now asks that said complaint be dismissed, stating that since the issuance of the complaint the individual respondents, who were doing business as Mail Order Mart, The Bargain Mart and Reiffe Bros., were indicted under Title 18, §1341 U.S.C., for criminally fraudulent practices similar to those alleged in the complaint. Thereafter they pleaded guilty to ten counts of the indictment, and are to be sentenced on November 12, 1959.

Under these circumstances counsel supporting the complaint states that he believes the continuation of the Federal Trade Commission proceeding is not necessary, and that the public interest would best be served by dismissing this complaint. With that conclusion there can be no disagreement, and the motion of counsel supporting the complaint will be granted. Therefore,

It is ordered. That the complaint herein be, and the same hereby is, dismissed.

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 16th day of December, 1959, become the decision of the Commission.

IN THE MATTER OF

LEO COFF DOING BUSINESS AS TOWNE & COUNTRY COLOR PHOTOGRAPHERS OF TEXAS

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

Docket 7547. Complaint, July 23, 1959—Decision, Dec. 17, 1959

Consent order requiring a Dallas, Tex., photographer, selling color photographs through door-to-door solicitors, to cease misrepresenting the quality of his finished photographs and the time for sittings and showing of proofs, and claiming falsely that he would promptly deliver photographs purchased.

Mr. Charles W. O'Connell for the Commission.
Mr. William C. Odeneal, Jr., of Dallas, Tex., for respondent.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

On July 23, 1959, the Federal Trade Commission issued its complaint charging that Leo Coff, an individual doing business as Towne & Country Color Photographers of Texas, had violated the provisions of the Federal Trade Commission Act. The complaint alleged that respondent in the course and conduct of his business had made false, misleading and deceptive statements and representations for the purpose of securing orders for color photographs.

After issuance and service of the complaint, the above-named respondent, his attorney, and counsel supporting the complaint entered into an agreement for a consent order. The agreement has been approved by the Director and the Assistant Director of the Bureau of Litigation. The agreement disposes of the matters complained about.

The pertinent provisions of said agreement are as follows: Respondent admits 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; respondent waives the requirement that the decision must contain a statement of findings of fact and conclusions of law; respondent waives 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; respondent waives 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 respondent that he has violated the law as alleged in the complaint.

The undersigned hearing examiner having considered the agreement and proposed order hereby accepts such agreement, makes the following jurisdictional findings, and issues the following order:

JURISDICTIONAL FINDINGS

1. Respondent Leo Coff is an individual doing business as Towne & Country Color Photographers of Texas with his principal office and place of business located at 2632 Swiss Avenue, Dallas, Texas.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent hereinabove named and the proceeding is in the public interest.

ORDER

It is ordered, That respondent Leo Coff, an individual doing business as Towne & Country Color Photographers of Texas, or under any other name or names, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of photographs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

(a) That the respondent will take photographs at a designated time or on a specified date, or that proofs of photographs will be shown to the customer by a specified date or within a short time after the sitting; or within any other period of time, that is not in accordance with the fact;

(b) That respondent will promptly deliver photographs purchased;

(c) That respondent will furnish photographs of the same quality as sample photographs or color transparencies viewed by purchasers.

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 December, 1959, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

JACOB B. TENZER ET AL. TRADING AS J. B. TENZER HOSIERY COMPANY

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

Docket 7564. Complaint, Aug. 6, 1959—Decision, Dec. 17, 1959

Consent order requiring New York City distributors to cease violating the Wool Products Labeling Act by labeling as "100% wool sole cushioning," men's hosiery, the soles of which contained a substantial quantity of other than wool fibers, and by failing in other respects to comply with labeling requirements.

Mr. Frederick McManus supporting the complaint.
Rspondent, *pro se*.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

On August 6, 1959, pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling 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 Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder by misbranding wool products, including hosiery, which were sold in commerce, by misrepresenting the percentage of wool fibers in said products, failing to stamp, tag, or label such products as required under the provisions of the Wool Products Labeling Act, and failing to disclose by sections, which are recognizably distinct, the fiber content or fiber composition of each section. After being served with said complaint, respondents entered into an agreement dated October 16, 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, and by counsel supporting the complaint; and has been approved by the 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 October 21, 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. The parties have, *inter alia*, by such agreement agreed: (1) 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; (2) the complaint may be used in construing the terms of said order; (3) the record herein shall consist solely of the complaint and said agreement; (4) 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 of October 16, 1959, 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; the agreement of October 16, 1959, is hereby accepted and ordered filed at the same time that this decision becomes the decision of the Federal Trade Commission pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings; and

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. That the Federal Trade Commission has jurisdiction over the parties and the subject matter of this proceeding;

2. Respondents Jacob B. Tenzer and Jesse A. Tenzer are individuals trading as co-partners under the firm name of J. B. Tenzer Hosiery Company with their main office and principal place of business located at 320 Fifth Avenue in the City of New York, State of New York.

3. Respondents are engaged in commerce as "commerce" is defined in the Federal Trade Commission Act;

4. The complaint herein states a cause of action against said respondents under the Wool Products Labeling Act of 1939, and this proceeding is in the public interest.

ORDER

It is ordered, That the respondents Jacob B. Tenzer and Jesse A. Tenzer, individually and as co-partners trading as J. B. Tenzer Hosiery Company, or under any other name or names, 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 men's hosiery or other wool products, do forthwith cease and desist from:

1. Misbranding such products by falsely and deceptively stamping, tagging or labeling or otherwise falsely identifying such products as to the character or amount of the constituent fibers contained therein.

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

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

(b) The maximum 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.

3. Misbranding wool products by failing to set forth on stamps, tags, labels or other means of identification attached to such products the information required under Section 4(a)(2)(A) of the Wool Products Labeling Act with respect to each specifically designated section of a wool product composed of two or more sections where such sections are of a different fiber composition and are recognizably distinct.

4. Falsely or deceptively designating the character or amount of the fibers contained in any section of a wool product composed of two or more sections which are recognizably distinct in violation of Rule 23 of the Rules and Regulations promulgated pursuant to 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 17th day of December, 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

YARMUTH BROTHERS, INC., ET AL.

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

Docket 7587. Complaint, Sept. 17, 1959—Decision, Dec. 17, 1959

Consent order requiring New York City furriers to cease violating the advertising and invoicing provisions of the Fur Products Labeling Act by setting out fictitious prices on consignment invoices for fur products; by representing advertised prices as reduced without giving the time of compared higher prices; and by failing to maintain adequate records as a basis for such pricing claims.

Mr. Frederick McManus supporting the complaint.

Respondents, *pro se*.

INITIAL DECISION OF EDGAR A. BUTTLE, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on September 17, 1959, charging them with

having violated the Fur Products Labeling Act and the Rules and Regulations issued thereunder, and the Federal Trade Commission Act, through the misbranding of certain fur products and the false and deceptive invoicing and advertising thereof. After being served with said complaint, respondents appeared and entered into an agreement, dated October 16, 1959, containing a consent order to cease and desist purporting to dispose of all of this proceeding as to all parties. Said agreement, which has been signed by respondents and by counsel supporting the complaint, and approved by the Director and Assistant Director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Respondents, pursuant to the aforesaid agreement, have admitted all the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that respondents waive 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 the allegations of the complaint and provides for an appropriate disposition of this proceeding as to all parties, said agreement is hereby accepted and is ordered filed upon this decision's becoming the decision of the Commission pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and the hearing examiner, accordingly, makes the following jurisdictional findings and order:

1. Respondent Yarmuth Brothers, 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 345 Seventh Avenue, New York, New York.

Individual respondents Murray Yarmuth and Monty Yarmuth are officers of said corporation and formulate, direct and control the acts, practices and policies of said corporation. Their office is located at the same address 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 Fur Products Labeling Act and the Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

It is ordered, That Yarmuth Brothers, Inc., a corporation, and its officers, and Murray Yarmuth and Monty Yarmuth, 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 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. Falsely or deceptively invoicing fur products by: Representing, directly or by implication, on invoices that the former or regular price of any fur product is any amount which is in excess of the price at which respondents have formerly, usually or customarily sold such product in the recent regular course of their business.

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

B. Represents directly or by implication that prices of fur products are reduced from previous higher prices without giving the time of such compared higher prices.

C. Misrepresents in any manner the savings available to purchasers of respondents' fur products.

3. Making claims and representations respecting prices and values of fur products unless there are maintained by respondents full and

adequate records showing 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 17th day of December, 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

THE ENGLISHTOWN CORPORATION ET AL.

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

Docket 7279. Complaint, Oct. 15, 1958—Decision, Dec. 19, 1959

Consent order requiring New York City distributors to cease selling cutlery assembled from carving fork heads imported from Japan with domestic handles without clearly disclosing the foreign origin of the imported parts, and to cease representing as "24 Karat Gold Plated," parts of the merchandise having a gold alloy applied by electrolytic process.

Mr. Ames W. Williams supporting the complaint.
Respondents, *pro se*.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on October 15, 1958, issued and subsequently served its complaint in this proceeding charging that the above-named respondents had violated the Federal Trade Commission Act by using various misleading and deceptive practices in connection with the sale of cutlery.

On December 30, 1958, there was submitted to the hearing examiner formerly assigned to this case an agreement between respondents and counsel supporting the complaint providing for the entry of a consent order. That hearing examiner accepted the agreement and issued his initial decision which included the order which was a part of the agreement. Upon review by the Commission, that initial deci-

sion was vacated and set aside and the case was remanded for further proceedings. Following this remand the undersigned hearing examiner was assigned this case on account of the unavailability of the former hearing examiner.

On October 21, 1959, there was submitted to the undersigned hearing examiner another 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 the requirements of Section 3.25(b) of the Rules of the Commission.

The hearing examiner having considered the agreement, including the affidavits which are attached thereto and made a part thereof, and the 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 The Englishtown Corporation 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 230 Fifth Avenue, New York, New York. Individual respondent Norman Mercer is general manager of the corporate respondent and individual respondents Margaret Mercer and Anne Loew are officers of the corporate respondent and 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, and the proceeding is in the public interest.

ORDER

It is ordered, That the respondent The Englishtown Corporation, a corporation, and its officers, and Norman Mercer, individually, 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, or any other product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly:

1. Offering for sale or selling cutlery or any other product containing parts made in Japan, or in any other foreign country, without clearly disclosing the country of origin of such parts;

2. Offering for sale or selling any product, made in Japan or in any foreign country, without clearly disclosing the foreign origin of such product;

3. Representing that merchandise which has a surface coating of gold or gold alloy applied by an electrolytic process is gold plated provided, however, that a product or a part thereof, upon all significant surfaces of which there has been affixed by an electrolytic process a coating of gold, or of gold alloy of not less than 10 karat fineness, the minimum thickness of which is equivalent to seven one-millionths of an inch of fine gold may be marked or described as gold electroplate or gold electroplated.

It is further ordered, That the complaint be, and it hereby is, dismissed as to respondents Margaret Mercer and Anne Loew.

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 19th day of December, 1959, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

J. & H. STOLOW, INC., ET AL.

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

Docket 7569. Complaint, Aug. 25, 1959—Decision, Dec. 19, 1959

Consent order requiring New York City distributors of postage stamps to dealers for resale to collectors, to cease such misrepresentations as listing

in their catalogs and circulars—bearing the statement "All stamps are guaranteed to be genuine"—various groups of postage stamps and adhesive labels resembling stamps purporting to be foreign postage stamps, which either were not postage stamps officially issued by the nations depicted or were not issued by a then existing government.

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

Goldwater & Flynn, by *Mr. Jonathan B. Bingham*, of New York, N.Y., for respondents.

INITIAL DECISION OF EDGAR A. BUTTLE, HEARING EXAMINER

On August 25, 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 sale of postage stamps and labels. The allegations of the complaint aver that the respondents have published catalogues and circulars offering stamps for sale and guaranteeing them to be genuine, although, in truth and in fact, the labels and stamps were not officially issued or approved by the postal administration of the nations depicted on said stamps. On October 15, 1959, the respondents and counsel supporting the complaint entered into an agreement containing a consent order to cease and desist in accordance with Section 3.25(a) of the Rules of Practice and Procedure of the Commission.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint and 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, 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. Respondent J. & H. Stolow, Inc., is a corporation 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 50 West 46th Street, New York, New York.

Individual respondent Julius Stolow is president of the said corporation and formulates, directs and controls the acts, practices and policies of said corporation. His office is located at the same address 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. & H. Stolow, Inc., a corporation, and its officers, and Julius Stolow, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the sale of postage or other stamps or of adhesive labels having the appearance of postage stamps, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that stamps and adhesive labels having the appearance of postage stamps are valid stamps, unless such stamps and labels are, or were, valid for the payment of some type of internal or external mail service, or were produced under the authority of authorized officials of a recognized or existing government.

2. Failing to clearly and conspicuously reveal in advertising that no representation is made that the stamps offered are presently valid for postal use or were originally issued primarily for postal use, or that they are stamps of a government recognized by the United States.

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 19th day of December, 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

CURTIS BROTHERS, INC., ET AL.

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

Docket 7411. Complaint, Feb. 16, 1959—Decision, Dec. 28, 1959

Order requiring Washington, D.C., furniture dealers to cease representing falsely in advertising that excessive fictitious prices were their usual retail prices, and to cease misrepresenting the amount of savings available to purchasers at purportedly reduced prices.

Mr. Frederick McManus for the Commission.

Mr. Harry E. Taylor, Jr., of *Taylor and Waldron*, of Washington, D.C., for respondents.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

PRELIMINARY STATEMENT

The Commission issued its formal complaint in this case on February 16, 1959, against the respondent Curtis Brothers, Inc., a retail furniture dealer, and its officers, charging them with a violation of Section 5 of the Federal Trade Commission Act by use of certain false, misleading and deceptive statements and representations in advertisements concerning the prices at which their furniture is offered for sale and the savings which would result in the purchase of the furniture described in said advertisements.

The respondent corporation in its answer denied that it intended to convey to the public that its use of the word "regular" meant "usual"; that it intended to show the price the furniture could be sold for if the regular markup was applied to the article advertised; that the savings represented in the advertisement were the difference between the sale price and the price that the purchaser would have paid if the regular markup had been applied to the item. Not only did the respondent corporation in its answer deny the allegations of the complaint, if also attacked the Federal Trade Commission's activities in the issuance of "Guides Against Deceptive Pricing," adopted October 2, 1958, alleging that the Commission

arbitrarily and capriciously defined said terms and regulated said practices in a manner which is confounding and confusing to both business and the public and clear only to certain specialized personnel within the Federal Trade Commission. Both business and the public have over the years taken into consideration the fact that advertising claims are advertising claims and not scripture and purchasers investigate and shop subsequent to exposure to such claims and when an individual buys he knows what he buys and what he pays and the purchasing public is not the dumb animal characterized by the policy of the Federal Trade Commission in its complaints, regulations and "Guides Against Deceptive Pricing." The fact that such members of the public as the Federal Trade Commission seeks to protect can read the advertising of respondent and others demonstrates that they are not so ignorant of the facts of life that without the assistance of the Federal Trade Commission they will be unable to make the usual purchases of furniture and other equipment without suffering injury or prejudice. The overprotective, overregulatory, arbitrary and capricious approach made by the Federal Trade Commission in the field of advertising by highly competitive retail businesses will ultimately result in producing a race of idiot consumers or purchaser who will be at the mercy of merchants in every country except America and it is unfair to the tourist American to provide a purchaser's utopia in this country that will leave him unprepared to purchase commodities or do business any where else in the world. It would be much better to educate the consumer than to destroy the established practices that have developed through the years in the various trades and businesses especially since the public, business men and everyone concerned knows the practices and accepts the same as part of the American way of life.

It is further contended by respondent corporation in its answer:

As advertising is now conducted by all of respondent's competitors to prevent advertising such as described in Paragraph Four of the Complaint would create rather than eliminate unfair competition by forcing respondent to compete with others who are able to continue to advertise in the manner forbidden to respondent. This is analogous to tying a boxer's hands behind his back and pushing him into a ring where an opponent has both hands free and instructing the hand tied fighter to "get in there and fight!" The Congressional intent of the Act cannot be under these circumstances to create an unfair competitive situation that may well destroy the respondent, an employer of many people and a substantial taxpayer.

It is finally contended by respondent corporation that it has been unfairly injured and placed at a serious disadvantage in competition by virtue of the publicity given the filing of the Complaint herein and the respondent has been prejudiced and injured as a result of the charges contained in the Complaint, and the Federal Trade Commission has by its conduct in publicizing its charges created unfair competition, a result not contemplated by Congress in the passage of the Federal Trade Act and the amendments thereto.

Testimony was taken before the hearing examiner in support of the allegations of the complaint and in opposition thereto. Pro-

posed findings of fact and conclusions have been submitted by both counsel in support of the complaint and counsel for the respondents. This proceeding is now before the hearing examiner for final disposition upon the complaint, answer, testimony, both oral and written, and proposed findings of fact and conclusions, to which the hearing examiner has given consideration. All findings of fact and conclusions of law proposed by the parties respectively, not hereinafter specifically found or concluded, are herewith rejected. The hearing examiner, having considered the record herein and now being duly advised in the premises, makes the following findings as to the facts, conclusions drawn therefrom and order:

FINDINGS AS TO THE FACTS

1. Respondent Curtis Brothers, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal place of business located at 2041 Nichols Avenue, S.E., Washington, D.C. Respondents George T. Curtis, Harry H. Curtis, Arthur B. Curtis and Charles W. Curtis are officers of said corporate respondent and, as such, formulate, direct and control the acts, practices and policies of the corporate respondent, with the exception that respondent Charles W. Curtis, secretary and general manager, is in sole charge and formulates, directs and controls the respondent corporation's policies, acts and practices relating to all forms of advertising.

2. Respondents are now, and since 1938 have been, engaged in the retail furniture business and in the regular and usual course and conduct of this business have caused the furniture offered for sale to be advertised in local newspapers published in Washington, D.C., and in nearby Maryland, and has caused said furniture, when sold, to be delivered from respondents' place of business to the purchasers thereof within the Washington metropolitan area in the District of Columbia and the States of Virginia and Maryland, and at all times herein mentioned have maintained a substantial course of trade in furniture in commerce, as "commerce" is defined in the Federal Trade Commission Act, in competition with other retail furniture dealers located in the City of Washington, D.C.

3. In the course and conduct of their said business and for the purpose of inducing the sale of their said furniture, respondents made the following statements in advertisements in Washington, D.C., newspapers in January, April and June 1958 concerning the prices at which their dining room and bedroom furniture, respectively, were offered for sale to the purchasing public:

(a) As to dining room furniture:

The "Valencia" Group
You Save $80
Table
and
Four chairs $129
Buffet $79.95 China $99.95
(April 1958)

Correlated Dining Room Group
You Save $100.00

Junior Extension Table	$65.00
Senior Extension Table	79.95
Round Table	89.95
Dropleaf Table	119.95
Junior Buffet	79.95
Senior Buffet	99.95
Junior China	99.95
Breakfront China	139.95
Arm Chair	19.95
Side Chair	16.50

(June 1958)

(b) As to bedroom furniture:

You save $80!
Beautiful Starfire
Mahogany Suite
Double Dresser
Tilting Mirror
& Bookcase Bed $129
Chest $44.95 Night Table $27.95
(January 1958)

Bassett's "Starfire" Suite
Double Dresser
Tilting Mirror & You
Bookcase Bed $119 Save
Chest $44.95 Night Table $27.95 $80
(June 1958)

4. All the furniture described in the foregoing paragraph was purchased by respondents from the Bassett Furniture Company, Bassett, Virginia. A part of the Valencia Group, consisting of a table and four chairs, when sold in combination, was usually sold at the sale price of $129. It consisted of a junior extension table, Catalog No. 446, which cost $36.75 and regularly sold for $69.95; four side chairs, Catalog No. 445, which cost $8.40 each and regularly sold for $16.95 each or a total combined regular price of $137.75. The buffet and china cabinet mentioned in the advertisement as a part of this group at a sale price of $79.95 for the buffet and $99.95 for the china cabinet were Catalog No. 446. The buffet

cost $43 and regularly sold for $89.95 and the china cabinet cost $49 and regularly sold for $99.95. Comparing the regular selling prices of all items in the group with the sale prices, there is a total saving of $18.75—$8.75 on the table and four chairs and $10 on the buffet, there being no difference between the sale price and regular price on the china cabinet. The "regular" prices mentioned herein are taken from invoices of the furniture actually sold during the period January through June of 1958. It was contended by respondent Charles W. Curtis, who testified in this case, that the regular price for the five-piece group, table and four chairs, was $169.95 but his testimony was not supported by the invoices in the record. Likewise, his testimony that the regular price for the buffet was $119.95 was not supported by the invoices in the record. No sales of these items were made at these prices during the first six months of 1958.

In this connection it appears from the testimony of Mr. Curtis that his definition of the word "regular," when used in pricing dining room furniture, referred to a fictitious price resulting from a computation of invoice cost, plus 10 percent allowance for freight, plus 100 percent margin and a 5 percent pad or service charge, which price however was never actually charged for the respective items in the Bassett line of dining room furniture in ordinary sales. Practically all the sales of the Bassett lines of dining room furniture, as well as the bedroom furniture, were at the advertised sale prices.

5. With respect to the advertisement of the Correlated Dining Room Group in June 1958, the following table sets forth the comparison of the regular prices and the sale prices of the various items making up the group.

	Sale price	Regular price	Saving
Junior extension table	$65.00	$69.95	$4.95
Senior extension table	79.95	[1] 79.95	
Round table	89.95	95.00	5.05
Dropleaf table	119.95	119.95	
Junior buffet	79.95	89.95	10.00
Senior buffet	99.95	99.95	
Junior china	99.95	99.95	
Breakfront china	139.95	179.95	40.00
Arm chair	19.95	19.95	
Side chair	16.50	16.95	.45
Total saving			$60.45

[1] One sale at $97.95 made on May 15, 1958.

A comparison of the regular and sale prices of the Correlated Dining Room Group indicates that a purchaser of the entire group could not save more than $60 and that with respect to many of the items, there would be no saving whatever.

6. The Starfire Bedroom Suite advertised by respondents con-

tained a bookcase bed, Bassett Catalog No. 814½, which cost $25 and sold at a regular price of $49.50, although there was one sale at $50. Most of the sales, however, during the six-month period were at $44.50, the sale price. The dresser in the advertisement was Bassett Catalog No. 811. It cost $42.70 and sold at the regular price of $79.50, although many sales were at $74.50. The combined regular price of the bookcase bed and the dresser in the January advertisement was $129 and in the June advertisement was $119. The chest in both advertisements is Bassett Catalog No. 810. It cost $22.75 and regularly sold for $44.95, although there was one sale in March 1958 at $49.95. The night table displayed in both advertisements, Bassett Catalog No. 810, cost $14.75 and sold regularly at $27.95, although there was one sale in February 1958 at $29.95. The representation that a purchaser saves $80 on a purchase of the Starfire Bedroom Suite is not supported by a comparison of the regular and sale prices of the items in the group as most of the sales of this group were at the sale price. In the June advertisement there would be a saving of $10. The testimony of Mr. Curtis that the bookcase bed regularly sold for $69.95 and the chest for $54.95 is not supported by the invoices as there were no sales of those articles at those prices during the six-month period.

RULINGS ON PROPOSED FINDINGS OF RESPONDENTS

With respect to the proposed findings of the respondents that the advertising of respondents represented the savings to be the difference between respondents' price and the price charged by some of respondents' competitors or the price at which the furniture could be sold by respondents if the regular markup used by respondents was applied to the furniture described in the advertisements in the record, it is found that this contention is not supported by competent evidence and, furthermore, does not constitute a good defense in this proceeding. One competing retail dealer testified that the sale prices at which respondents sold Bassett furniture were the minimum prices suggested by Bassett. He further testified that he would not say that his regular price on the group was $80 more than his sale price. Another competing retail dealer testified that the Bassett suggested minimum retail price was about 80 percent above cost. This dealer did testify that he had seen the Bassett line sold at higher prices than by Curtis but he did not testify as to where such sales had been made and no further testimony was offered to support his statement. The charge in the complaint which must be met by respondents is that the savings that the purchaser will realize in the purchase of the furniture advertised refers to the regular or usual

prices at which respondents sell the furniture described in the advertisement. There is no charge in the complaint with respect to prices on such furniture by competitors.

Other proposed findings of the respondents which are rejected as being irrelevant and immaterial are as follows:

(a) that there is no evidence that any member of the public ever made a purchase as a result of the advertising which is the subject of the complaint;

(b) that there is no evidence that members of the public purchasing furniture were motivated by comparative prices;

(c) that respondents discontinued the use of comparative prices as soon as they became aware of the Commission's policy concerning the use of the word "regular"; and

(d) that respondents' reputation has been damagd by the publicity attending the issuance of the Commission's complaint.

With respect to the discontinuance by respondents of the use of comparative prices, it appears from the testimony of Mr. Curtis that a change was made in the advertisements of the respondents following the call of the Commission's investigator, but it is quite apparent, not only from the testimony of Mr. Curtis, but also from the contentions of respondents in their proposed findings with respect to the interpretation of the word "regular" as used by the respondents, that the Commission would not be justified in dismissing the case because the practice had been discontinued. Although the respondent is a well-known and entirely reliable furniture dealer, some of its competitors, equally reliable, have entered into consent agreements with the Commission and are now operating under orders requiring them to cease and desist from the practices covered in this complaint. It would not be fair to such competitors for the Commission to dismiss the complaint in this proceeding.

CONCLUSION

The use by respondents of the foregoing false, misleading and deceptive statements in their advertisements, with respect to the savings the purchasers of the furniture will receive, has the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements were and are true, and into the purchase of substantial quantities of respondents' furniture by reason of such erroneous and mistaken belief. As a result 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.

The aforesaid acts and practices of the respondents, as herein found, are all to the prejudice and injury of the public and of respondents' 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. This case is controlled by a recent decision of the Commission in Kay Jewelry Stores, Inc., Docket No. 6445, in which the Commission entered an order requiring the respondents therein to cease and desist from advertising or representing that any savings are afforded to purchasers of respondents' merchandise in excess of those actually afforded. The following decisions of the Commission: Rudin & Roth, Docket No. 6419; The Orloff Company, Inc., Docket No. 6184; and the American Broadloom Carpet Company, Docket No. 6271, are also authorities for the proposition that fictitious pricing by either a manufacturer or a retail dealer constitute an unfair and deceptive practice and an unfair method of competition.

In view of the testimony in this case that respondent Charles W. Curtis is General Manager and in charge of all advertising and that the other individual officers named in the complaint have nothing to do with advertising, it is believed that the complaint in this matter should be dismissed as to the other officers as individuals. An order against the respondent corporation and its officers and against Charles W. Curtis, individually and as an officer of the corporation, is sufficient to prevent a recurrence of the practices covered by the complaint.

ORDER

It is ordered, That respondents Curtis Brothers, Inc., a corporation, and its officers, and Charles W. Curtis, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of furniture in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication:

1. That any amount is the regular retail price of respondents' merchandise when such amount is in excess of the price at which said merchandise was regularly sold at retail by respondents in the recent normal course of their business.

2. That any savings are afforded in the purchase of respondents' merchandise unless the prices at which it is offered constitute a reduction from the prices at which said merchandise was regularly and customarily sold by respondents in the recent normal course of their business.

B. Misrepresenting in any manner the amount of savings available to purchasers of respondents' merchandise, or the amount by which the price of said merchandise is reduced from the price at which said merchandise was regularly and customarily sold by respondents in the recent normal course of their business.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to George T. Curtis, Harry H. Curtis and Arthur B. Curtis in their individual capacities but not in their capacities as officers of respondent Curtis Brothers, Inc., a corporation.

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 23rd day of December, 1959, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

FILDERMAN CORPORATION ET AL.

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

Docket 7572. Complaint, Aug. 27, 1959—Decision, Dec. 30, 1959

Consent order requiring three affiliated corporations—engaged under the name of "Todd's" in the retail sale in the Washington, D.C., area of major appliances, minor appliances, and automobile accessories, respectively—to cease representing falsely in newspaper advertising that stated higher prices, some of them designated "Reg." or "Orig.," were the usual retail prices of merchandise and that purchasers realized savings in buying at the lower prices, and that certain prices for electrical appliances, including upright freezers, were current manufacturers' list prices; and requiring them also to cease overstating the cubic capacity of the freezers.

Mr. Edward F. Downs for the Commission.

Mr. Joseph B. Gildenhorn of *Miller, Brown & Gildenhorn*, of Washington, D.C., for En-Kay Automotive, Inc., Samuel L. Katz and Albert I. Nathanson.

Filderman Corporation, F F & G Corporation, Wolfe Filderman and Dorrel Goldman, for themselves.

INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on August 27, 1959 charging them with having violated the Federal Trade Commission Act in the sale of various types of merchandise.

Thereafter, on October 22, 1959 respondents En-Kay Automotive, Inc., Samuel L. Katz and Albert I. Nathanson and counsel supporting the complaint herein entered into an agreement containing a consent order to cease and desist. On the same date respondents Filderman Corporation, F F & G Corporation, Wolfe Filderman and Dorrel Goldman and counsel supporting the complaint herein entered into a similar separate agreement. These agreements provide, 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 agreements; 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 agreements are for settlement purposes only and do not constitute an admission by respondents that they have violated the law as alleged in the complaint; and that the agreements shall not become a part of the official record unless and until they become a part of the decision of the Commission.

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

1. Respondent Filderman Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland with its principal office and place of business at

1102 F Street, N.W., formerly located at 3045 V Street, N.E., Washington, D.C.

Respondent F F & G Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia with its principal office and place of business at 1102 F Street, N.W., formerly located at 3045 V Street, N.E., Washington, D.C.

Respondents Wolfe Filderman and Dorrel Goldman are individuals and officers of corporate respondents Filderman Corporation and F F & G Corporation. They formulate, direct and control the acts and practices of said corporation. Their address is the same as that of the corporate respondents.

Respondent En-Kay Automotive, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland with its principal office and place of business at 2109 Drexel Street, Hyattsville, Maryland, instead of 8801 Bellwood Road, Bethesda, Maryland, as alleged in the complaint.

Respondent Samuel L. Katz is an officer of En-Kay Automotive, Inc., and he participates in the formulation, direction and control of the acts and practices of said corporation. His address is the same as that of En-Kay Automotive, Inc.

Respondent Albert I. Nathanson was, at the time of the issuance of the complaint herein, an officer of En-Kay Automotive, Inc., and he participated in the formulation, direction and control of the acts and practices of said corporation. His address was the same as En-Kay Automotive, Inc.

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

ORDER

It is ordered, That respondents En-Kay Automotive, Inc., a corporation, its officers and Samuel L. Katz and Albert I. Nathanson, individually and as officers of said corporation and respondents Filderman Corporation, a corporation, F F & G Corporation, a corporation, and their officers and Wolfe Filderman and Dorrel Goldman, 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 or sale of any 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 a certain price is respondents' usual and customary price for merchandise when it is in excess of the price at which said mer-

chandise is usually and customarily sold by respondents in the normal course of business in the area or areas where the representations are made.

(b) That any saving is afforded in the purchase of merchandise unless the selling price constitutes a reduction from the price at which said merchandise is usually and customarily sold by respondents in the normal course of their business in the area or areas where the representations are made.

(c) That a stated price is the "Manufacturer's List Price" for any merchandise unless it is the current list price of the manufacturer for the identical merchandise to which such price is supplied.

2. Misrepresenting in any manner the amount of savings available to purchasers of respondents' merchandise, or the amounts by which the prices of said merchandise are reduced from the prices at which such merchandise is usually and customarily sold by respondents in the normal course of their business in the area or areas where any such representations are made.

3. Misrepresenting in any manner the size or capacity of any 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 30th day of December, 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

GULF OIL CORPORATION

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

Docket 6689. Complaint, Dec. 13, 1956—Decision, Jan. 5, 1960

Consent order requiring one of the major integrated enterprises in the oil industry—the second largest in the United States in terms of sale and the fourth largest on the basis of total assets—to divest itself, as in the order below set forth, of numerous properties owned by Warren Petro-

leum Corp., a wholly owned subsidiary which Gulf acquired and merged into itself on March 2, 1956, and which had been before the merger the principal source of supply for independent refiners, dealers, and distributors and the largest independent producer of natural gasoline and of LP-Gas in the United States.

COMPLAINT

The Federal Trade Commission, having reason to believe that Gulf Oil Corporation has violated, and is now violating, the provisions of Section 7 of the Clayton Act (U.S.C. Title 15, Section 18) as amended and approved December 29, 1950, hereby issues its complaint pursuant to Section 11 of the aforesaid Act (U.S.C. Title 15, Section 21), charging as follows:

PARAGRAPH 1. Respondent Gulf Oil Corporation, hereinafter referred to as "respondent Gulf," is a corporation organized and existing under the laws of the State of Pennsylvania, with its principal office and place of business located in the Gulf Building, Pittsburgh 30, Pennsylvania.

PAR. 2. Warren Petroleum Corporation, hereinafter referred to as "Warren," is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located in the National Bank of Tulsa Building, Tulsa, Oklahoma.

PAR. 3. Natural gas is any gas of natural origin as produced from or existing in oil or gas wells and consisting primarily of hydrocarbons.

Natural-gas liquids are those liquid hydrocarbon mixtures which are gaseous in the reservoir but are recoverable by condensation or absorption. Natural gasoline, condensate and liquefied petroleum gases fall in this category.

Natural gasoline is composed of liquid hydrocarbon mixtures containing substantial quantities of pentane and heavier hydrocarbons, which have been extracted from natural gas.

Liquefied petroleum gas or LP-Gas is any hydrocarbon mixture in either the liquid or gaseous state, the chief components of which consist of propane, butane, propylene, iso-butane, butylene or mixtures thereof in any ratio or with air.

LP-Gas is produced (1) at natural gasoline plants located in or near oil fields and/or gas fields where liquid hydrocarbons are removed from crude oil and/or natural gas, (2) at natural gas cycling plants located in or near natural gas fields where liquid hydrocarbons are removed from natural gas, and (3) at oil refineries where LP-Gas is removed from crude oil during the crude oil refining process. Natural gasoline is produced only at natural gasoline plants and

natural gas cycling plants. Natural gasoline and LP-Gas are components of what is termed in the petroleum industry as "natural-gas liquids."

Natural gasoline is used by refiners of crude oil as a blending agent in the production of finished motor and aviation fuels to provide the degree of volatility required for quick starting, to raise the octane rating of the finished product, and to augment the supply of such finished products. It is also used as a feedstock in the manufacture of various petrochemicals.

The principal purchasers and/or users of natural gasoline are refiners of crude oil engaged in the production of motor and aviation fuels and manufacturers engaged in the production of various petrochemicals.

LP-Gas is used by manufacturers of motor and aviation fuels, chemicals, synthetic rubber and plastics, for special heat and heat treating operations and for refrigeration in industrial and commercial plants and processes; for domestic household and farm uses; and for fuel in internal-combustion engines providing power for tractors, trucks, buses, road-building equipment, pumps and electrical generating sets. It also is used by utilities as a standby fuel and for gas enrichment to raise or maintain the BTU content of natural and manufactured gas.

The production and use of natural gasoline and LP-Gas have increased substantially during the last ten years. Natural-gas liquids production increased from 4,861,033,000 gallons in 1946 to 12,918,-818,000 gallons in 1955. Natural gasoline production increased from 2,691,001,000 gallons in 1946 to 4,184,444,000 gallons in 1955. LP-Gas production increased from 1,409,345,000 gallons in 1946 to 7,368,-911,000 gallons in 1955. The amount of natural gasoline blended into motor fuel increased from 2,640,162,000 gallons in 1946 to 5,308,044,000 gallons in 1955. The percentage of natural gasoline blended in motor fuel produced, increased from 8.4 percent in 1946 to 9.5 percent in 1955.

The sales of LP-Gases for domestic and commercial use increased from 758,466,000 gallons in 1946 to 2,801,379,000 gallons in 1955; sales for use by chemical plants increased from 311,499,000 gallons to 1,366,942,000 gallons; sales for use in the production of synthetic rubber increased from 293,892,000 gallons to 406,210,000 gallons, and sales for use in internal combustion engines increased from 94,-592,000 gallons to 651,821,000 gallons during the ten-year period 1946 to 1955.

PAR. 4. Respondent Gulf and its subsidiaries constitute one of the major integrated enterprises in the oil industry. It is engaged in

producing, purchasing, transporting, refining and selling crude petroleum, hereinafter referred to as "crude," and products derived therefrom. Its total net sales and other revenues for the year 1955 were $1,895,669,830; in terms of sales it was the second largest company in the petroleum industry in the United States. Its total assets as of that date were $2,160,821,020 making it on that basis, the fourth largest company in the petroleum industry.

Respondent Gulf, in addition to being a refiner and marketer of crude oil and the products derived therefrom, also is a producer, purchaser, processer and seller of natural gas and the liquid hydrocarbons derived therefrom, including butane, propane, iso-butane and natural gasoline.

Respondent Gulf, in the operation of its business as aforesaid, as of October 31, 1955, owned and operated in the United States approximately 11,000 net producing oil wells, 400 net producing gas wells and had 960,000 net acres of proven domestic oil and gas producing properties with estimated domestic reserves of approximately 1,120,000,000 barrels of crude oil and condensate.

Likewise, as of that date respondent Gulf ranked second in the United States in natural-gas liquid reserves, with 230,000,000 barrels. During 1955 it produced 3,834,924 barrels of natural-gas liquids, thereby ranking fourteenth.

During the year 1954 respondent Gulf produced approximately 75,000,000 gallons of natural gasoline, purchased 9,337,000 gallons, including 5,526,000 purchased from Warren, and likewise sold substantial quantities of this product.

Also during the year 1954 respondent Gulf produced approximately 95,000,000 gallons of LP-Gas, purchased approximately 13,500,000 gallons, and sold substantial quantities thereof to other producers as well as to consumers, distributors and dealers.

Respondent Gulf sells LP-Gas to distributors and dealers thereof located in the several States of the United States. During the year 1954 it registered the trade name "Gulftane" for use in connection with advertising and marketing its LP-Gas.

As of Ocober 31, 1955, respondent Gulf owned and operated nine natural gas processing plants, had an interest in twelve others and had a daily average production of 281,000 gallons of natural gasoline and 260,000 gallons of LP-Gas.

Respondent Gulf distributes its refined gasoline and other petroleum products at wholesale and retail in all States of the United States east of the Mississippi River as well as in the States of Texas, Louisiana, Arkansas, Missouri, New Mexico, Arizona, Oklahoma, Colorado, Utah, Wyoming, Idaho, Kansas and Nebraska. Its

wholesale distribution in these areas is effected through 1,548 bulk distributing stations. Its retail distribution is through 7,000 retail service stations and 29,000 other resale outlets.

Respondent Gulf is engaged in the manufacture of petrochemicals. Through a jointly owned subsidiary, Goodrich-Gulf Chemicals, Inc., it was the largest producer and seller in the United States of butadiene during the year 1955; during 1956 Goodrich-Gulf Chemicals, Inc., became one of the largest producers in the United States of synthetic rubber. Furthermore, respondent Gulf is one of the largest producers in the United States of ethylene, which is used in the manufacture of plastics, anti-freeze, and tetraethyl lead.

PAR. 5. Warren, at the time of the acquisition hereinafter described, was engaged in manufacturing, transporting and marketing at wholesale natural gasoline; in manufacturing, transporting and marketing at wholesale and retail LP-Gas; and in producing and selling crude oil and natural gas. It was also engaged in manufacturing and marketing petrochemicals, and in selling residue gas.

For the fiscal year ending June 30, 1955, Warren's net sales were in excess of $100,000,000 and it had assets in excess of $163,000,000. In addition to producing and marketing liquefied petroleum gas, natural gasoline, natural gas, crude oil and petroleum chemicals, it also purchased liquefied petroleum gas and natural gasoline, as well as natural gas from which it processed and extracted natural-gas liquid products, reselling the natural gas as residue gas.

Warren was the largest independent producer of natural gasoline in the United States. In 1954 it produced 127,061,382 gallons of natural gasoline. While during that year there were possibly seven or eight other companies which were larger producers of natural gasoline, all were major integrated oil companies.

Warren operated nine wholly owned and four partially-owned plants for the processing of natural gas; had a 50% interest in four plants, varying interests in five additional plants and a 50% stock interest in still another plant, all operated by others. It marketed all products from these plants except for one partially owned plant and the five plants in which Warren had a small interest, as to all of which it marketed only a portion of the products.

Gas supplies for processing in the various plants were obtained from oil and gas leases in or near the fields where the plants were located. These leases were either owned by Warren or covered by gas purchase contracts, generally on terms customary in the industry, and usually at a price based on the value of liquids extracted by processing and the value of the salable residue gas.

Warren processed gas from approximately 2,000 oil and gas leases,

including a proportionate percentage of leases connected to partially owned plants. It had been the general experience of Warren that after a plant was once installed in a field, it continued to receive its supply of gas from leases even though the primary terms of the contracts had expired.

As of October 31, 1955, Warren's reserves of natural-gas liquids were 86,937,639 barrels; its net reserves of natural gas were approximately 447,326,000,000 cubic feet and of residue gas available for sale after extraction of liquids of 772,409,000 cubic feet.

Warren owned and operated a petrochemical plant manufacturing each month in excess of 475,000 pounds of petrochemicals and 25,000 gallons of methanol and solvents.

Warren was also the largest independent producer of LP-Gas in the industry. Based on 1954 data, it was the fifth largest producer of LP-Gas in the United States but the four larger producers again were all major integrated oil companies. In 1954 Warren produced 179,730,564 gallons of LP-Gas.

In addition to the sale of the products of its wholly-owned or partially owned plants, Warren purchased for resale under both long and short-term contracts natural gasoline and LP-Gas from other manufacturers who had no regular market outlets for their products or did not have the necessary type of special storage or transportation facilities.

Warren was the largest independent purchaser of natural gasoline in the United States. In 1954 Warren purchased 514,988,000 gallons.

As of October 31, 1955, Warren had purchase contracts for all or part of the natural gasoline production from seventy-one operating plants of other manufacturers located in Arkansas, Illinois, Kansas, Kentucky, Louisiana, New Mexico, Oklahoma and Texas. It also purchased on a spot or short-term basis quantities of natural gasoline from manufacturers who, from time to time, had production in excess of their marketing requirements or storage capacity.

Warren was not only the largest independent purchaser of natural gasoline in the United States but also was the largest purchaser of LP-Gas. In 1954 it purchased 585,349,000 gallons of LP-Gas. As of October 31, 1955, it had purchase contracts for LP-Gas from 42 plants of other manufacturers located in Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Oklahoma and Texas, averaging purchases of 1,500,000 gallons daily.

Warren was the largest supplier, independent or otherwise, in the United States, of LP-Gas to dealers and distributors, having sold them 514,546,194 gallons in 1954. All the other large sellers of

LP-Gas to dealers and distributors were the major integrated companies, and they sold their LP-Gas under their respective brand names. However, Warren sold LP-Gas to independent dealers and distributors who were free to resell under their own independent brand names.

Furthermore, Warren in 1954 was the fourth largest seller of LP-Gas to other producers, having sold them 147,448,967 gallons.

Warren, in addition, was by far the largest seller, independent or otherwise, of natural gasoline. In 1954 it sold 661,318,000 gallons of natural gasoline.

As of October 31, 1955, Warren had 76 customers with whom it had contracts to sell some or all of their requirements of natural gasoline.

Warren's consolidated sales of natural gasoline and LP-Gas for the fiscal year ending June 30, 1955, totaled approximately $79,100,000.

Warren owned and operated gathering, residue and other gas lines aggregating approximately 1,537 miles located in the general vicinity of and serving its plants, and approximately 159 miles of main transmission pipelines in Texas. It owned a 50% interest (with the other 50% being owned by the Warren Employee Pension Trust) in the Okan Pipeline Company which owned and operated a common carrier pipeline system consisting of approximately 346 miles for the transportation of natural gasoline and LP-Gas.

Warren also, as of October 31, 1955, operated a fleet of 4,144 railroad tank cars, consisting of 159 natural gasoline cars owned and 1,092 leased under equipment trust arrangements; 1,393 LP-Gas cars owned and 1,451 leased under equipment trust arrangements; 49 LP-Gas cars leased from a tank car company. Warren also had on order for 1957 delivery 400 LP-Gas cars costing over $4,000,000. It also owned the only ocean-going propane-butane tank ship, with a pressure tank capacity of 34,000 barrels of butane and 32,600 of propane. It likewise owned three propane barges and leased under equipment trust arrangements one butane barge and two propane barges having a combined capacity of 59,000 barrels. It also had under construction another propane barge with a capacity of 10,000 barrels.

It owned natural gasoline terminal storage facilities having a total capacity of 1,686,000 barrels, had leased natural gasoline terminal facilities aggregating 545,000 barrels and had natural gasoline storage at each of its plants. It owned tidewater facilities for cargo assembling and storing LP-Gas at various locations throughout the United States with a combined capacity of approximately 1,900,0000 barrels.

All of these facilities for transportation and storage gave to Warren a dominant position in the natural gasoline and LP-Gas markets.

Warren on October 31, 1955, had 1,086 net producing oil wells and 162 net producing gas wells; and had 132,701 net acres in producing oil and gas properties having proved net reserves of 51,080,337 barrels of crude oil and condensate.

PAR. 6. On December 22, 1955, respondent Gulf entered into an agreement with the major stockholders of Warren to acquire the stock of the latter on an exchange of stock basis, provided 90% of the outstanding Warren stock was deposited for exchange on or before March 2, 1956; it was agreed that there would be exchanged for the outstanding common stock of Warren, Gulf common stock, which as of February 1, 1956, had an approximate market value of $138,000,000. The provisions of the agreement having been met, the merger of Warren into respondent Gulf was completed on March 2, 1956, on which date respondent Gulf acquired complete or virtually complete ownership of Warren.

PAR. 7. Both respondent Gulf and Warren, in the regular course of their respective businesses, in acquiring, purchasing, offering for sale, selling and distributing their various petroleum, gas and natural-gas liquid products, have been, and are now, engaged in commerce, as "commerce" is defined in the Clayton Act.

PAR. 8. In 1955 Warren's sales of LP-Gas were greatest in the States of Alabama, Arizona, Arkansas, Florida, Georgia, Mississippi and Tennessee, in all of which, except Arizona, respondent Gulf marketed LP-Gas in competition with Warren or the independent distributors and dealers to whom Warren sold LP-Gas.

The effect of the acquisition of Warren by respondent Gulf may be, in the marketing of LP-Gas in those sections of the country, to substantially lessen competition between respondent Gulf or its dealers and distributors and Warren or the independent dealers and distributors to whom Warren sold LP-Gas; the acquisition removes Warren as an independent source of supply for those dealers competing with Gulf or its dealers and distributors.

PAR. 9. The merger of Warren with Gulf raises Gulf from approximately the twelfth position as a producer of natural gasoline in the United States to fourth.

With the acquisition of Warren, respondent Gulf now possesses natural-gas liquids reserves in the amount of 316,937,639 barrels, or an increase of approximately 38%. It is the second largest possessor of such reserves in the United States, the total being approximately 50% greater than the reserves held by its next largest competitor in the natural-gas liquids industry.

The acquisition of Warren by respondent Gulf raised Gulf from the seventh to the largest seller of LP-Gas to other producers.

Because the integrated petroleum companies use or require in their own operations large quantities of the natural gasoline and LP-Gas which they produce or purchase, these products become "captive," leaving as a free or "non-captive" supply, limited amounts for other users of these products. Warren was the largest independent source of non-captive natural gasoline and LP-Gas.

PAR. 10. The effect of the aforementioned acquisition of Warren by respondent Gulf may be substantially to lessen competition or to tend to create a monopoly in the lines of commerce in which Gulf or Warren has been engaged, in violation of Section 7 of the Clayton Act, in the following ways, among others:

(1) Actual or potential competition between respondent Gulf and Warren in the production, purchase or sale of crude oil, natural gas, natural gasoline, LP-Gas or derivatives of any of them has been eliminated;

(2) Warren has been eliminated as an indpendent competitive factor in the production, purchase, sale or distribution of natural gas, natural gasoline, LP-Gas or derivatives of any of them;

(3) Actual or potential competition generally in the production, purchase or sale of natural gas, natural gasoline, LP-Gas or derivatives of any of them may be substantially lessened;

(4) Warren has been eliminated as the principal supplier of "non-captive" natural gasoline and LP-Gas;

(5) The elimination of Warren as an independent source of supply for many refiners of petroleum products, petrochemical manufacturers, and distributors and dealers in LP-Gas may cause such enterprises to become largely dependent on respondent Gulf, which is or may be one of their principal competitors, or on other integrated oil companies with which they also may compete;

(6) Respondent Gulf, as a user or potential user of natural gasoline and LP-Gas in both its refinery and petrochemical operations, and as a marketer of such products and derivatives thereof and of other products of which they are or may be a part, may divert to its own uses or otherwise channel or manipulate for its own purposes, the supplies of natural-gas liquids which formerly were available from Warren to respondent Gulf's competitors;

(7) Refiners of petroleum products, petrochemical manufacturers and dealers in LP-Gas may be denied access to natural-gas liquids formerly produced or sold by Warren;

(8) Actual or potential competition may be substantially lessened in the production, purchase, sale or distribution of refined petroleum

products (including aviation and motor gasoline), petrochemicals, and other products of which natural-gas liquids are or may be a part;

(9) There may be elimination from the market, or a substantial lessening of the number, of private brands of LP-Gas, which have been or might be sold or offered for sale by independent producers, distributors or dealers thereof, in competition with LP-Gas sold or offered for sale under the trade names of petroleum refiners, including respondent Gulf;

(10) Producers or other sellers of natural gasoline and LP-Gas may be foreclosed from a substantial segment of the market for these products through the elimination of respondent Gulf and Warren as actual or potential purchasers;

(11) Respondent Gulf's competitive advantage over other producers and marketers of refined petroleum products, petrochemicals and other products of which natural-gas liquids are or may be a part may be enhanced to the detriment of actual or potential competition;

(12) The result may be to substantially lessen or tend to eliminate opportunities which refiners of petroleum products, petrochemical manufacturers, and distributors and dealers in LP-Gas have or may have to influence the supply or price of natural-gas liquids and related products or to engage in independent market behavior contrary to the interests of respondent Gulf;

(13) The combination of the second largest domestic petroleum company (in terms of sales) with the largest independent producer, purchaser and marketer of natural-gas liquids may give the resulting combination a decisive competitive advantage over its non-integrated or less diversified competitors and may result in a substantial lessening of competition or a tendency to monopoly, or both, in the production, purchase, sale or distribution of refined petroleum products, natural gas, natural-gas liquids, petrochemicals or other products of which they are or may be a part;

(14) There may be foreclosure of the entry of new producers, developers, marketers or sellers of petroleum products, natural gas, natural gasoline, or LP-Gas or other products of which they are or may be a part;

(15) The acquisition from Warren by respondent Gulf of control over the largest fleet of pressurized railroad tank cars and other equipment for moving and storing natural gasoline and LP-Gas, has increased respondent Gulf's power over the transportation and storage of natural-gas liquids, with the result, actual or potential, of substantially lessening competition in the production, purchase, sale

or distribution of such products, the derivatives thereof, or other products of which they are or may be a part;

(16) Further concentration in a single integrated enterprise of control over crude oil, natural gas and natural-gas liquids may substantially lessen competition in the production or sale of these products, the derivatives thereof, or of other products of which they are or may be a part;

(17) There has been or may be an increase in the concentration in, or control by, the integrated petroleum companies in the United States of the production, manufacture, marketing, distribution or sale of various petroleum products, natural gas and natural-gas liquids, together with the derivatives thereof and of other products of which petroleum or natural-gas liquids are or may be a part.

PAR. 11. The foregoing acquisition, acts and practices of respondent, as hereinbefore alleged and set out, constitute a violation of Section 7 of the Clayton Act (U.S.C. Title 15, Sec. 18), as amended and approved December 29, 1950.

Mr. Fletcher G. Cohn, *Mr. Donald R. Moore* and *Mr. Charles J. Steele* for the Commission.

Howrey & Simon, by *Mr. Edward F. Howrey*, *Mr. Harold F. Baker* and *Mr. Richard L. Perry*, of Washington, D.C., and *Mr. W. B. Edwards*, of Pittsburgh, Pa.; and *Mr. David T. Searls*, General Counsel, Gulf Oil Corporation, Pittsburgh, Pa., for respondent.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondent with violation of §7 of the Clayton Act (U.S.C. Title 15, §18) as amended and approved December 29, 1950, by acquiring, on December 22, 1955, 90% of the outstanding stock of Warren Petroleum Corporation, and by the merger, on March 2, 1956, of that corporation into respondent.

After the issuance of the complaint, respondent, its counsel, and counsel supporting the complaint entered into an agreement containing consent order, 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 respondent Gulf Oil Corporation, hereinafter sometimes referred to as Gulf, is a corporation existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located in the Gulf Building, Pittsburgh 30, Pennsylvania, and that Warren Petroleum Corporation, a wholly-owned subsidiary of Gulf and hereinafter referred to as Warren, is a corporation organized and

existing under the laws of the State of Delaware, with its principal office and place of business located in the Warren Building, Tulsa, Oklahoma.

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 entered in accordance with the agreement.

The hearing examiner, having considered the complaint, the agreement and the proposed order, is of the opinion that said agreement and order provide an appropriate basis for settlement and disposition of this proceeding. Accordingly, the hearing examiner finds this proceeding to be in the public interest, and accepts the agreement containing consent order as part of the record upon which this decision is based; and therefore issues the following order, which has been agreed upon by the parties:

ORDER

Respondent, Gulf Oil Corporation, its officers and directors, are hereby ordered and directed as follows:

A. Respondent shall, within three years, cause Warren to divest itself absolutely and in good faith of ownership in the following properties:

1. All ownership which Warren has as of the date of this order in the following companies:

(a) Butane Gas, Inc.,
Little Rock, Arkansas;

(b) Butane Wholesale Gas Company,
Little Rock, Arkansas;
and
(c) Harris Distributors, Inc.,
Little Rock, Arkansas;

and although Gulf and Warren shall have the right to sell LP-Gas and natural gasoline to such companies or the purchaser or purchasers thereof, the seller in the contract or contracts of sale of Warren's interest in such companies shall not require as a condition of the sale or sales that such companies or the purchasers thereof shall obtain any of their supply of LP-Gas and/or natural gasoline products from either Gulf or Warren or the subsidiaries or affiliates of either.

Divestiture of ownership in the foregoing companies shall be effectuated in such manner as to completely and absolutely divest Warren of any ownership in any other companies resulting from any ownership in any of the foregoing companies.

2. All properties of the Dri-Gas Division of Warren Petroleum Corporation as shown by the books of the Dri-Gas Division as of the date of this order, together with its list of customers and irrevocably any right of Warren to use the brand name "Dri-Gas"; and although Gulf and Warren shall have the right to sell LP-Gas and natural gasoline to the purchaser or purchasers of such properties, the seller in the contract or contracts of sale of the properties shall not require as a condition of such sale or sales that the purchaser or purchasers shall obtain any of their supply of LP-Gas and/or natural gasoline products from either Gulf or Warren or the subsidiaries or affiliates of either.

3. All railroad tank cars used or suitable for use in the transportation of either LP-Gas or natural gasoline in the United States which, as of March 2, 1956, were owned by Warren, or which Warren had the right of use under any equipment trust arrangement as of March 2, 1956; and although Gulf and Warren shall have the right to lease any of such tank cars from the purchaser or purchasers thereof, the seller in the contract or contracts of sale shall not require as a condition of such sale or sales that the purchaser or purchasers shall lease any of such tank cars to either Gulf or Warren or the subsidiaries or affiliates of either.

4. The petrochemical manufacturing plant known as the Conroe Plant, located near the town of Conroe, Montgomery County, Texas, owned and operated by Warren as of March 2, 1956, including all subsequent additions and improvements thereto, as well as all interests of Warren in the tract of land on which such plant is located.

5. All of the natural gasoline storage facilities, loading and unloading equipment, pumps, tanks, pipe and other plant facilities used in connection therewith, owned and operated by Warren as of March 2, 1956, located at San Pedro, near Los Angeles, California, including all subsequent additions and improvements thereto, as well as all interests of Warren in the tract of land on which such facilities are located.

6. All ownership of Warren as of March 2, 1956, in the following plants, including all ownership of Warren in all subsequent improvements and additions thereto, as well as all interests of Warren in the tracts of land on which such plants are located:

Madill Plant, Madill, Oklahoma
Ringwood Plant, Ringwood, Oklahoma
Midland Gasoline Plant, Conroe, Texas

and although Gulf and Warren shall have the right to purchase products from such plants or the purchaser or purchasers thereof, the seller in the contract or contracts of sale of Warren's interest in the plants shall not require as a condition of such sale or sales that the plants or the purchaser or purchasers thereof shall sell any of their production to either Gulf or Warren or the subsidiaries or affiliates of either.

Pending divestiture, Gulf shall not permit Warren to make any changes in any of said plants which shall impair the present rated capacity of said plants for the production of natural gas liquids unless said capacity is restored prior to divestiture.

Respondent shall not cause or permit Warren to sell or dispose of any of the aforesaid properties listed in subparagraphs 1, 2, 3 and 6 of this paragraph A to any of the following named companies, any subsidiaries or affiliates thereof, any combinations thereof, or knowingly sell to any of the officers, directors, or employees of said companies:

Atlantic Refining Company
Cities Service Oil Company
Continental Oil Company
El Paso Natural Gas Company
Ohio Oil Company
Phillips Petroleum Company
Pure Oil Company
Richfield Oil Corporation
Shell Oil Company
Signal Oil & Gas Company
Sinclair Oil Corporation
Skelly Oil Company

Socony Mobil Oil Company, Inc.
Standard Oil Company of California
Standard Oil Company (Indiana)
Standard Oil Company (New Jersey)
Standard Oil Company (Ohio)
Sun Oil Company
Sunray Mid-Continent Oil Company
Superior Oil Company
Texaco, Inc.
Tidewater Oil Company
Union Oil Company of California

The specific naming of the above companies shall not be construed or interpreted that the Commission in any manner approves or disapproves of the sale of any of such properties to any purchaser not so named.

If any of the properties described in subparagraphs 1 through 6 of this paragraph A are not sold or disposed of entirely for cash, nothing in this order shall be deemed to prohibit Warren from retaining, accepting and enforcing any security interests in any of the aforesaid properties for the purpose of securing to Warren full payment of the prices, with interest, at which any of said properties are sold or disposed of; but, if in disposing of any of the aforesaid properties, in accordance with the provisions of this order, Warren retains any interest in any of such properties for the purpose of securing to Warren full payment of the prices with interest at which any of such properties are sold or disposed of, then, if Warren by enforcement or settlement or any other means of enforcing such security, regains ownership or control of any property, said property regained shall be disposed of in the same manner and under the same provisions as are applicable in the original disposition of such property.

In the event Warren, after three years from the entry of this order, has been unable to find a qualified purchaser for all or any of the properties described in subparagraphs 1 through 6 of this paragraph A at a price or other consideration deemed by Warren to be a fair market value, then, and in that event:

(a) Warren and a designated representative of the Commission shall agree upon and appoint a qualified appraiser who shall, at no expense to the Commission, inspect and appraise all or any of such properties and set a fair market value therefor;

(b) If, after the expiration of one year from the date of said appraisal, Warren has been unable to find a qualified purchaser for a consideration equal to that set by said appraiser, then, and in

that event, a trustee for the purpose of sale shall be appointed in the same manner as provided for the apponitment of the appraiser, which trustee shall proceed to sell, at no expense to the Commission, such remaining property upon the best terms, conditions, and price then available not inconsistent with the terms of this order, subject, however, to respondent's right to be heard by the Commission as to the propriety, reasonableness and acceptability of any offer the trustee proposes to accept. If, upon conclusion of such hearing, the Commission determines the questioned offer to be proper, reasonable and acceptable for the particular property involved, it shall have the right to authorize the trustee to proceed with such sale. If the Commission does not so authorize the sale, then the trustee shall refuse such offer and solicit others.

(c) Until such time as there has been complete divestiture under this order, or until the procedure contemplated in subparagraph (a) above has been invoked, Gulf shall cause Warren to file with the Secretary of the Commission, once each six months following the date of this order, a written report listing the properties which have been sold, the identity of the purchaser or purchasers, and containing a statement of the progress being made toward the disposition of the remaining properties. These reports are solely for the information of the Commission in determining the status and progress of compliance and shall not be made a part of the record in this matter nor disclosed to any unauthorized personnel.

7. None of the properties described in subparagraphs 1 through 6 of this paragraph A shall be sold or transferred, either directly or indirectly, to Gulf or any officer, director or employee of (a) Gulf, (b) Warren, or (c) any of the subsidiaries or affiliates of either.

B. *It is further ordered* That:

1. For a period of ten years following the date of this order, Gulf and Warren shall in each calendar year sell or make available and affirmatively offer to independent wholesalers, distributors and jobbers, and retailers of LP-Gas in the United States, to be treated collectively as one class, 48.64% of their total available supply of LP-Gas for each such year, which percentage is not less than the percentage sold by Gulf and Warren to all customers in such class during the calendar year 1955; but those sales made during this ten year period by Gulf and Warren to any purchaser of any of the properties described in subparagraphs 1 and 2 of paragraph A of this order, for distribution through such properties, shall not be considered as having been sold under the provisions of this paragraph.

Provided, however, That if the total "domestic and commercial,"

"internal combustion" and "all other" consumption of LP-Gas as reported by the Bureau of Mines Annual Mineral Market Report "Sales of Liquefied Petroleum Gases" decreases or increases in any one year as a percentage of total United States LP-Gas consumption, then for the next calendar year the percentage which Gulf and Warren are obligated hereunder to sell, or make available and affirmatively offer to the aforesaid class of customer shall be proportionately reduced or increased. Example: If the United States Bureau of Mines report shows "domestic and commercial," "internal combustion" and "all other" consumption dropped from 40% of total consumption in 1959 to 36% in 1960, or a 10% change, then Respondent may reduce its obligation to the aforesaid class by 10% of 48.64%.

Provided, further, If by July 1 of each calendar year, independent wholesalers, distributors and jobbers, and retailers of LP-Gas have not as one class collectively contracted to buy from Gulf and Warren for that calendar year a number of gallons equal to the percentage as herein provided in this subparagraph 1, then Gulf and Warren may dispose of such uncommitted balance to any class of customer.

2. For a period of ten years following the date of this order, Gulf and Warren shall in each calendar year sell or make available and affirmatively offer to independent non-major refiners in the United States 2.58 percent of their total available supply of LP-Gas for each such year, which percentage is not less than the percentage of LP-Gas sold by Gulf and Warren to such independent non-major refiners during the calendar year 1955.

Provided, however, If by September 1 of each calendar year, independent non-major refiners have not contracted to buy from Gulf and Warren for that calendar year the number of gallons of LP-Gas equal to the percentage herein provided in this subparagraph 2, then Gulf and Warren may dispose of such balance to any class of customer.

3. For a period of ten years following the date of this order, Gulf and Warren shall in each calendar year sell or make available and affirmatively offer to independent non-major refiners in the United States 44.8 percent of their total available supply of natural gasoline for each such year, which percentage is not less than the percentage of natural gasoline sold by them to such independent non-major refiners during the calendar year 1955.

Provided, however, If by September 1 of each calendar year, independent non-major refiners have not contracted to buy from Gulf and Warren for that calendar year a number of gallons equal to the percentage herein provided in this subparagraph 3, then

Gulf and Warren may dispose of such balance to any class of customer.

In the event any independent non-major refiner customer of Gulf and Warren is acquired by any company so that such customer is lost by Gulf and Warren, the percentage of Gulf and Warren's total available supply of natural gasoline which is required by this order to be sold or made available and affirmatively offered each year to independent non-major refiners shall be reduced by the same percentage such customer's purchases bore to Gulf and Warren's total sales of natural gasoline in the calendar year preceding such acquisition. Warren will inform the Commission of such acquisition within 30 days of the loss of the customer and will show the effect of this loss upon the percentage to be offered as set out in this subparagraph.

4. For a period of ten years following the date of this order, Gulf and Warren shall in each calendar year sell or make available and affirmatively offer to independent non-integrated petrochemical manufacturers in the United States 3.52 percent of their total available supply of LP-Gas for each such year, which percentage is not less than the percentage of LP-Gas sold by them to such independent non-integrated petrochemical manufacturers during the calendar year 1955.

Provided, however, If by April 1 of each calendar year, independent non-integrated petrochemical manufacturers have not contracted to buy from Gulf and Warren for that calendar year a number of gallons equal to the percentage herein provided in this subparagraph 4, then Gulf and Warren may dispose of such balance to any class of customer.

5. All LP-Gas and natural gasoline sold or made available and affirmatively offered pursuant to subparagraphs 1 through 4 of paragraph B of this order shall be in good faith and in accordance with the seller's (Gulf or Warren) standard credit requirements, terms and conditions, and when so sold or made available and affirmatively offered, such products shall be deemed to have been sold or made available and affirmatively offered on behalf of both Gulf and Warren.

6. For the purpose of enabling the Commission to determine compliance with paragraph B of this order, Gulf and Warren shall file during such ten (10) year period with the Secretary of the Commission, within 90 days after the close of each calendar year, commencing with the first full calendar year's operation following the entry of this order, an "Annual Compliance Report," which shall state:

(a) "Gulf and Warren's total available supply of LP-Gas" for the preceding year;

(b) The total amount of such supply actually sold and also, set forth separately, the total amount made available and affirmatively offered to each separate class of customer described in subparagraphs 1, 2 and 4 of this paragraph B;

(c) The percentages of such total available supply so sold and the percentages made available and affirmatively offered;

(d) "Gulf and Warren's total available supply of natural gasoline" for the preceding year;

(e) The total amount of such supply actually sold and also, set forth separately, the total amount made available and affirmatively offered to the class of customer described in subparagraph 3 of this paragraph B; and

(f) The percentage of such total available supply so sold and the percentage made available and affirmatively offered.

Should the Commission question the adequacy or sufficiency of any such report or any part thereof, Gulf and Warren shall be required to substantiate the report or part so questioned. Such reports shall be under oath if requested by the Commission. These reports are solely for the information of the Commission in determining compliance with the provisions of this paragraph B of this order and shall not be made a part of the record in this matter nor disclosed to any unauthorized personnel; and such reports together with the reports required under paragraph A of this order, shall constitute the reports required under the present Federal Trade Commission Rules for Adjudicative Proceedings, in the absence of any demand by the Commission for other reports.

C. *It is further ordered* That:

1. For a period of ten (10) years following the date of this order, Gulf and Warren shall not acquire, directly or indirectly, through subsidiaries or otherwise, all of the stock or such part thereof as would give control or all of the fixed assets (land and depreciable investments) or such part thereof as would amount to more than 20% of the then book value of the fixed assets used in the natural gas liquids business of any person, partnership, firm or corporation in the United States, defined herein as a "marketer" of LP-Gas and/or natural gasoline, whose current annual sales of LP-Gas and natural gasoline, combined, in the United States are in excess of 125,000,000 gallons. The fixing of the specific 20% and the 125,000,000 gallons is not to be construed or interpreted as meaning that the Commission approves any acquisition.

2. For a period of ten (10) years following the date of this

order, neither Gulf nor Warren, nor the subsidiaries or controlled affiliates of either, shall require, as a condition of sale, independent wholesalers, distributors and jobbers and retailers in the United States to use the brand name "Gulftane" or "Warrengas," or any other brand or trade name in connection with the sale of natural gas liquids.

D. This order, anything to the contrary notwithstanding, shall be construed in accordance with the following definitions:

1. The term "independent wholesalers, distributors and jobbers of LP-Gas" means persons, firms, partnerships and corporations primarily engaged in the purchase of LP-Gas from marketers and/or in some instances from LP-Gas producers and the resale of said LP-Gas at retail to consumers, as well as to other wholesalers, distributors, jobbers and retailers.

2. The term "marketer" of LP-Gas and/or natural gasoline means any person, firm, partnership or corporation which produces and/or purchases LP-Gas and/or natural gasoline, whose principal natural gas liquids business is the sale or resale of LP-Gas to independent wholesalers, distributors and jobbers and to refiners and other marketers but not to consumers at retail, and/or sale or resale of natural gasoline to refiners.

3. "Retailers of LP-Gas" means persons, firms, partnerships and corporations engaged in the purchase of LP-Gas from wholesalers, distributors and jobbers, and the resale thereof to consumers only.

4. "Independent non-major refiners" means all refiners of finished motor fuels other than the companies named in subparagraph 6 or paragraph A hereof, their subsidiaries and affiliates.

5. "Independent non-integrated petrochemical manufacturers" means:

(a) Petrochemical companies which are not directly or indirectly affiliated with one or more of the companies referred to in subparagraph 6 of paragraph A hereof, and

(b) Petrochemical companies which do not have any interest in the production of liquefied petroleum gas or natural gasoline, and

(c) Petrochemical companies which do not operate a petroleum refinery.

6. "Gulf and Warren's total available supply of LP-Gas" and "Gulf and Warren's total available supply of natural gasoline" for each year mean, for such year, their combined production in the United States determined on the same basis as reported to the Bureau of Mines and Gulf and Warren's combined purchases in the United States for resale plus or minus inventory variations and losses. The terms include all of Gulf and Warren's produc-

tion which they have the right to take from natural gasoline plants in the United States which are wholly or partially owned by them. The terms also include production in the United States which Gulf and Warren have the right to take from natural gasoline plants owned by others.

7. Whenever the words "year" and "annual" are used herein, the reference is to the calendar year.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to the provisions of §3.21 of the Commission's Rules of Practice, the hearing examiner's initial decision, filed November 20, 1959, shall, on the 5th day of January, 1960, become the decision of the Commission; and accordingly:

It is ordered, That on or before the 5th day of July, 1960, and on or before the expiration of each six-month period thereafter until there has been complete divestiture under the terms of the order contained in the initial decision, or until the procedure contemplated by subparagraph (a) of paragraph A of said order has been invoked, the respondent, Gulf Oil Corporation, shall file with the Commission a report, in writing, setting forth the information prescribed in subparagraph (c) of paragraph A of the order contained in said initial decision.

It is further ordered, That on or before the 1st day of April of each year beginning in 1961 and ending in 1970, the respondent shall file with the Commission an additional report, in writing, setting forth the information prescribed in subparagraph 6 of paragraph B of the aforesaid order.

IN THE MATTER OF

MIDLAND AFFILIATED BUSINESS SALES AND SERVICES, INC., ET AL.

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

Docket 7543. Complaint, July 15, 1959—Decision, Jan. 6, 1960

Consent order requiring a Chicago company to cease using deception to obtain advance fees for advertising real estate or for its services in obtaining loans or financial assistance for businessmen, and representing falsely that fees would be refunded when it failed to sell the property or procure the loan.

The complaint was dismissed on Mar. 19, 1960, p. 1069 herein, as to a former official of corporate respondent.

Before: *Mr. Edward Creel*, hearing examiner.

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

Mr. Ralph R. Mickelson of Chicago, Ill., for respondents which are affected.

INITIAL DECISION AS TO ALL RESPONDENTS EXCEPT BERNARD HEWITT

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 charging them with the use of false, misleading and deceptive statements for the purpose of obtaining listings of business and other property and in soliciting fees for services to be rendered in connection with obtaining loans or financial assistance for businessmen or others.

On November 2, 1959 there was submitted to the undersigned hearing examiner an agreement between certain respondents, their counsel, and counsel supporting the complaint providing for the entry of a consent order.

Under the foregoing agreement, Midland Affiliated Business Sales and Services, Inc., a corporation, and Saul Wallace, individually and as an officer of said corporation, 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 acordance 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 agreements meets all of the requirements of Section 3.25 (b) of the Rules of the Commission.

The hearing examiner having considered the agreement, including the affidavit which is attached thereto and made a part thereof, 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 Midland Affiliated Business Sales and Services, Inc., is a corporation organized, existing and formerly doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 176 Adams Street, Chicago, Illinois.

2. Respondent Saul Wallace is an officer of the corporate respondent. He formulates, directs, and controls its acts and practices. His address is the same as that of the corporate respondent.

3. The agreement does not dispose of this proceeding as to Bernard Hewitt who is subject to further proceedings.

4. 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 Midland Affiliated Business Sales and Services, Inc., a corporation, and its officers (except Adrienne E. Wallace), and Saul Wallace, individually and as an officer of said corporate respondent, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, or sale of advertising in newspapers or other advertising media, or of other services or facilities in connection with the offering or listing for sale, selling, buying, or exchanging of business or any other kind of property 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 have available prospective buyers who are interested in the purchase of, and are financially able to purchase, the properties listed or advertised by them;

2. Respondents are able to and will finance the sale of said properties;

3. The property is underpriced by the owner or that the asking price should be increased or that respondents can or will sell the property at the increased price;

4. Respondents are associated with large numbers of real estate brokers who assist in the sale of the listed property; or that they are associated with any number of brokers that is not in accordance with the fact;

5. The property will be listed in advertisements in newspapers of the customer's choice;

6. The listing or advance fee is intended only as an advance on the selling commission; or that said fee is to assure that the owner will sell the property;

7. The listing or advance fee will be refunded if the property is not sold;

8. Respondents have sold the property of others within a short period of time; or within any period of time not in accordance with the fact;

9. Respondents will sell the property sought to be listed within a short period of time; or within any period of time not in accordance with the fact and that respondents' services will result in the sale of the properties which they accept for listing or advertising;

10. Respondents' services consist of anything other than advertising properties for sale.

It is further ordered, That respondents Midland Affiliated Business Sales and Services, Inc., a corporation, and its officers (except Adrienne E. Wallace), and Saul Wallace, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the advertising, 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 loans within a specified or short period of time; or within any other period of time not in accordance with the fact;

2. Respondents will refund the fee paid, in the event of failure to obtain or procure a loan;

3. A loan will be provided at, or at less than, a specific rate of interest;

4. Respondents make loans to clients from their own funds.

It is further ordered, That the complaint herein, insofar as it relates to respondent Adrienne E. Wallace, 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 6th day of January, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Midland Affiliated Business Sales and Services, Inc., a corporation, and its officers, and Saul Wallace, individually and as an officer of said corporate respondent 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

BOYD R. MILLER TRADING AS NATIONAL REAL ESTATE APPRAISAL TRAINING SERVICE

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

Docket 7588. Complaint, Sept. 17, 1959—Decision, Jan. 6, 1960

Consent order requiring an individual in Lakewood, Colo., to cease using false employment offers and earnings claims and other deception to sell his correspondence course in real estate appraisal, including false claims that there was a demand for those completing the course and that he obtained jobs for them at wages of $350 to $450 a month, that special qualifications were required for enrollment, and that only a certain number of students was accepted.

Mr. Ames W. Williams supporting the complaint.
Mr. Harry H. Ruston of Denver, Colo., for respondent.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

On September 17, 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 party was respondent. A true copy of said complaint was served upon respondent as required by law. The complaint charges respondent with violating the Federal Trade Commission Act by engaging in unfair and deceptive acts and practices in obtaining enrollees for his correspondence courses in real estate appraisal, and in conducting such courses. Respondent uses the United States mails in operating these courses, and is engaged in commerce as "commerce" is defined in the Federal Trade Commission Act. After being served with the complaint, respondent appeared by counsel and entered into an agreement dated November 12, 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 the respondent, his counsel, and by counsel supporting the complaint; and has been approved by the 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 November 18, 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.

Respondent, pursuant to the aforesaid agreement, has 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 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 he may have to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. The parties have, *inter alia*, by such agreement agreed: (1) 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; (2) the complaint may be used in construing the terms of said order; (3) the record herein shall consist solely of the complaint and said agreement; (4) and that said agreement is for settlement purposes only and does not constitute an admission by respondent that he has violated the law as alleged in the complaint.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement of November 12, 1959, 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; the agreement of November 12, 1959 is hereby accepted and ordered filed at the same time that this decision becomes the decision of the Federal Trade Commission pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings; and

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, makes the following jurisdictional findings, and issues the following order:

JURISDICTIONAL FINDINGS

1. That the Federal Trade Commission has jurisdiction over the parties and the subject matter of this proceeding;

2. Boyd R. Miller, respondent, is an individual trading and doing business as National Real Estate Appraisal Training Service with

his office and principal place of business located at 491 South Lamar Court, Lakewood, Colorado. Respondent presently is engaged, and for several years last past has been engaged in the sale and distribution of a course of study which purports to train the enrollees for employment as real estate appraisers. The course of study is given and pursued through the medium of the United States mails.

3. Respondent is engaged in commerce as "commerce" is defined in the Federal Trade Commission Act;

4. The complaint herein states a cause of action against said respondent under the Federal Trade Commission Act, and this proceeding is in the public interest.

ORDER

It is ordered, That respondent Boyd R. Miller, an individual trading and doing business as National Real Estate Appraisal Training Service, or under any other trade name, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of courses of study, including a course of study in real estate appraising, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly:

1. That employment is being offered when, in fact, the purpose is to obtain purchasers of such course of courses of study.

2. That persons who complete respondent's course of instruction may expect to earn $350.00 to $450.00 a month, or misrepresenting in any manner the amount of earnings of such persons.

3. That any special qualifications are required as to persons who may purchase respondent's course of study.

4. That any limit is imposed on the number of persons who may purchase respondent's course of study.

5. That there is a demand for the services of individuals who have completed respondent's course of study, as real estate appraisers.

6. That respondent obtains employment for those who complete his course of study.

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 6th day of January, 1960, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

C. H. STUART & CO., INC., ET AL.

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

Docket 6634. Modified order, Jan. 7, 1960

Order further modifying desist order of June 7, 1957 (53 F.T.C. 1127 at 1131) by adding "unless such is the fact" to subparagraph (1)(i).

Mr. Jerome Garfinkel and *Mr. J. J. McNally* for the Commission.

Wright & Livingston, of Newark, N.Y.; *Harter, Calhoun, Lishman & Williams*, of Washington, D.C.; and *Mr. Clarence A. McGillen, Jr.*, of Washington, D.C., for respondents.

ORDER GRANTING RESPONDENTS' MOTION TO MODIFY ORDER TO CEASE AND DESIST

This matter having been heard upon the respondents' amended motion to further modify the outstanding order to cease and desist herein; and

It appearing from the motion and from the evidence adduced at a hearing conducted pursuant to the Commission's order of May 19, 1959, reopening the proceeding and referring the case to a hearing examiner, that conditions of fact have so changed as to require the modification requested:

It is ordered, That the amended motion of respondents be, and it hereby is, granted.

It is further ordered, That the order to cease and desist be, and it hereby is, further modified by adding to subparagraph (1)(i) thereof the words "unless such is the fact;" said subparagraph to read as follows:

"(i) The nursery stock received by the customer which fails to grow or bloom will be replaced without expense to the customer, unless such is the fact;"

It is further ordered, That the 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 as so modified.

IN THE MATTER OF

BOND STORES, INC.

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

Docket 6789. Complaint, May 3, 1957—Decision, Jan. 7, 1960

Order requiring the corporate owner and operator of 95 retail clothing stores throughout the United States to cease representing falsely in advertising in newspapers and by radio and television—by such statements as "Bond's Suit Sale $38.90, $50, $55, $60 values. During Bond's Big Celebration Sale—you can save up to twenty-one dollars on a beautiful TRU FIT SUIT!"—that during the advertised sale it had reduced its prices to the stated "sale" prices, that the higher prices followed by the word "values" were its regular prices, and that purchase at the "sale" price resulted in a saving of the difference between the two.

Before *Mr. Loren H. Laughlin*, hearing examiner.

Mr. Edward F. Downs for the Commission.

Kaye, Scholer, Fierman, Hays & Handler and *Mr. Bernard Grossman*, of New York City, for respondent.

FINDINGS AS TO THE FACTS, CONCLUSIONS AND ORDER

The Federal Trade Commission on May 3, 1957, issued its complaint charging respondent, Bond Stores, Inc., with violation of the Federal Trade Commission Act through dissemination of false, misleading and deceptive representations as to prices of clothing advertised for sale. After the filing of answer by respondent, hearings were held in due course 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 April 14, 1959, the hearing examiner held that there is no public interest in the proceeding; that respondent's practices did not constitute unfair and deceptive acts and practices within the intent and meaning of the Federal Trade Commission Act; and that the proceeding is barred by law as well as being unjust and unfair to respondent. Accordingly, he ordered that the complaint be dismissed.

The Commission has considered the appeal filed from the initial