

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.

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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

decision by counsel supporting the complaint, briefs submitted by counsel on both sides, their oral argument before the full Commission, and the entire record, and has determined that the appeal should be granted and that the initial decision should be vacated and set aside. The Commission further finds that this proceeding is in the public interest and now makes this its findings as to the facts, conclusions drawn therefrom and order to cease and desist, which, together with the accompanying opinion, shall be in lieu of the findings, conclusions and order contained in the initial decision.

## FINDINGS AS TO THE FACTS

1. Respondent, Bond Stores, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maryland with its office and principal place of business at 380 Fifth Avenue, New York, N.Y.

2. Respondent owns and operates 95 retail clothing stores located throughout the United States and in the District of Columbia. It also owns and operates factories in New York and New Jersey for the manufacture of some of the clothing shipped to and sold in its stores. It also purchases some clothing from other manufacturers for sale in its stores. Purchased merchandise may be shipped by the manufacturer direct to respondent's retail stores or to its warehouse in New York for distribution. In many instances, respondent's retail outlets to which clothing is shipped are located in states other than those where it is manufactured by respondent or by its suppliers.

Respondent's retail stores are engaged in the sale of clothing and the shipment and delivery thereof in commerce, as "commerce" is defined in the Federal Trade Commission Act, to purchasers located in states other than that in which such shipments have their origin.

Respondent maintains and has maintained a course of trade in said clothing among and between the various states of the United States and in the District of Columbia. Its volume of business is and has been substantial, total retail sales in the fiscal year ending July 31, 1957, having amounted to \$87,000,000.

3. The prices of all merchandise, sold in all of respondent's retail stores, are determined in New York, and respondent transfers merchandise from store to store and from state to state. When merchandise is sold in any store a ticket is removed therefrom and sent to New York where a unit control is maintained of every garment in stock, and, from these returned tickets, respondent in New York determines the inventory of each store, then ships such merchandise as it deems necessary to balance out the inventory of each store.

Respondent's goods are transferred from store to store as business conditions dictate, and there is no evidence that title to any such goods ever passes from respondent corporation itself until a sale is made to a retail purchaser in the state where the store he buys from is located.

4. Respondent is now and has been in substantial competition with other corporations, and with partnerships and individuals engaged in the sale of wearing apparel in commerce among and between the various states of the United States and in the District of Columbia.

5. Respondent advertises in newspapers in cities where its stores are located, which advertising is prepared in New York and sent to the various stores for release to the newspapers in their respective trade areas. Some of these newspapers send their bills for said advertising to the local store from where it is forwarded to New York while other newspapers send their bills direct to New York. But all advertising is paid for by respondent in New York. The New York newspapers in which respondent advertises have a circulation outside of the State of New York. Respondent also advertises over radio and television.

6. Respondent has made certain statements and representations in metropolitan newspapers and commercial radio announcements. Among and typical, but not all inclusive, of the statements and representations so made are the following: "Once a year \* \* \* for Bond's Anniversary only great savings on our own famous 'Tru Fit' collection. Bond's Suit Sale 38.90. \$50.00. \$55. \$60. values. During Bond's Big Celebration Sale \* \* \* you can save up to twenty-one dollars on a beautiful TRU FIT SUIT!—They're fifty and sixty dollar values—but *during this sale* only. Bond's has 'em celebration-priced at just THIRTY EIGHT NINETY!"; "MILLION-DOLLAR SAVINGS! That's Bond's Big Anniversary Present to all Bond Customers!—Brand-new, freshly-tailored TWO TROUSER Suits—anniversary priced at a terrific FORTY-NINE NINETY! They're actually sixty and sixty-five dollar values, so YOU save ten to fifteen dollars in cold cash!"; and "BOND'S greatest ANNIVERSARY SALE in 46 years Entire Fall Stock of FINER 'Style Manor' 2-trouser suits at our lowest prices ever! \$60 and \$65 values 49.90."

7. A number of consumer witnesses testified that their understanding of the price representations in respondent's advertising was to the effect that prices had been reduced by the difference between the stated "value" price and the "sale" price; that savings in specific amounts would be realized which could be computed only by comparing the value and sales prices; that Bond had cut its prices

from those represented by stated values; that Bond had previously sold clothing at the advertised value price; and that they regarded both the stated value prices and sales prices as being Bond prices and as not having any reference to the prices of other competitive stores.

8. Upon the basis of the foregoing testimony and its own interpretation of the whole context of respondent's advertisements, the Commission finds that respondent, through the use of the aforesaid statements appearing in advertisements as set out and quoted, and by other advertisements of similar import, has represented, directly or by implication, that during an advertised "sale" it had reduced its prices to the stated "sale" prices, that the higher prices followed by the word "values" in such advertisements were respondent's regular and customary prices for the clothing so advertised and that a purchase at the advertised "sale" price resulted in a saving to the purchaser of the difference between the so-called "sale" price and the higher stated prices, designated in such advertisements as "values."

9. The representations in said advertisements, as hereinabove set forth, were false, misleading and deceptive. In truth and in fact, the higher prices appearing in such advertisements followed by the word "values" were not the regular or customary prices for the clothing so advertised but were in excess of the regular and customary prices charged by respondent for such clothing. It follows that a purchase of such clothing at the so-called "sale" price did not result in a saving to the purchaser amounting to the difference between the so-called "sale" price and the stated higher prices designated in such advertisements as "values."

10. The use by respondent of the foregoing false, misleading and deceptive statements and representations, and others similar thereto, has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were and are true and into the purchase of a substantial quantity of respondent's clothing because of such mistaken belief. As a result thereof, trade has been unfairly diverted to respondent from its competitors and injury has thereby been done to competition in commerce.

#### CONCLUSIONS

The Commission has jurisdiction of the subject matter and of the person of the respondent corporation. The aforesaid acts and practices of respondent, as herein found, were all to the prejudice and

injury of the public and of respondent's competitors and constituted 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, Bond Stores, Inc., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of wearing apparel in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication that any amount is the regular retail price of respondent's merchandise when such amount is in excess of the price at which said merchandise was regularly sold at retail by respondent in the recent normal course of its business.

B. Misrepresenting in any manner the amount of savings available to purchasers of respondent's 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 respondent in the recent normal course of its business.

*It is further ordered.* That respondent, Bond Stores, Inc., 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.

OPINION OF THE COMMISSION

By ANDERSON, *Commissioner*:

Respondent, Bond Stores, Inc., is charged in this proceeding with misrepresenting the regular or customary prices of clothing advertised for sale by it; with misrepresenting the amount it had reduced prices for certain sales; as well as with misrepresenting the amount of savings accruing to customers through purchases at the advertised sale prices. After hearings in due course, the hearing examiner entered an initial decision which would dismiss the complaint. Counsel supporting the complaint has appealed from that action. Briefs in support of and in opposition to the appeal of counsel supporting the complaint have been submitted and oral argument heard by the full Commission. The matter is now before us for final determination upon the merits.

The principal question presented on appeal is whether the exam-

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iner was correct in holding, as he did, that "the evidence in support of the complaint lacks that substantiality upon which the Commission's case of false, misleading and deceptive advertising must be based." Other subsidiary questions are presented and they will be considered seriatim after consideration and disposition of the primary issue.

Typical of the advertisements which are the basis of the complaint, announcing special sales, are those containing such representations as:

Once a year . . . for Bond's Anniversary Only great savings on our own famous "Tru-fit" collection

Bond's Suit Sale

38.90

\$50.00 • \$55 • \$60 values

\* \* \* \*

During Bond's Big Celebration Sale—you can save up to twenty-one dollars on a beautiful TRU FIT SUIT!—They're fifty and sixty dollar values—but *during this sale only*. Bond's has 'em celebration—prices at just THIRTY-EIGHT NINETY!

\* \* \* \*

MILLION-DOLLAR SAVINGS! That's Bond's Big Anniversary Present to all Bond customers!—Brand-new, freshly-tailored TWO TROUSER Suits—anniversary priced at a terrific FORTY-NINE NINETY! They're actually sixty and sixty-five dollar values, so YOU save ten to fifteen dollars in cold cash!

\* \* \* \*

BOND'S greatest ANNIVERSARY SALE in 46 years—Entire Fall Stock of FINER "Style Manor" 2-trouser Suits at our lowest prices ever!

\$60 and \$65 values

49.90

In support of the charge that certain of respondent's advertising has the capacity and tendency to mislead or deceive members of the purchasing public, counsel supporting the complaint adduced the testimony of a number of "consumer" witnesses who, on direct examination, were queried as to their understanding of respondent's representations in the *whole context* of each questioned advertisement (Comm. Ex. 2, 3, 5, 7 and 10). The sole purpose and effect of their testimony, as recognized by the hearing examiner, was to present representative samplings of public understandings and interpretation of the advertisements disseminated by respondent.

All consumer witnesses testified on direct examination that, according to their understanding of the Bond advertisements, clothing was being offered at reduced prices and when asked what the extent of the reductions were they replied that the reductions were from the stated value figures. On cross-examination they were questioned

as to what their understanding was of an Arnold Constable advertisement (Resp. Ex. 1), which read as follows:

Sale! Fine Ties  
Imported Pure Silks!  
Values 3.50 to 5.00 1.95

These witnesses, it is true, evinced some confusion as to the meaning of the word "value," both on direct and cross-examination and, with regard to the Arnold Constable advertisement, their testimony was characterized by the hearing examiner as "ultimately negating" their direct testimony as to the meaning of the Bond advertisements. Counsel supporting the complaint contends that it was error to permit use of the Arnold Constable advertisement in attempting to rebut the testimony as to the Bond advertisements. We do not feel it necessary to determine that question here. We look only to the advertisements received in evidence, each in its whole context.

Thus viewing each of the Bond advertisements, the Commission is of the opinion that the references contained therein to reduced sale prices and to savings in specific amounts such as, for example, "\* \* \* You save ten to fifteen dollars in cold cash"—particularly when the only reference back is to the stated "values"—did, in fact, have the tendency to mislead and deceive attributed to them. It seems obvious to us that the heralded reductions and savings at Bond's sales were related directly to Bond's customary and usual retail prices, artfully characterized as "values," and that the advertised merchandise purportedly had been reduced from those prices to the stated sales prices for the advertised event. Such advertisements are contradictory and ambiguous and at best disclose only partial truths as to "reductions and savings." Those advertisements in the whole context of each, give rise to the reasonable inference that the public would and did assume that the reductions were from the only other prices appearing therein—the stated value prices—and that these latter were the respondent's customary and usual prices.

That such reductions had not been made is not questioned. Respondent in its answer admitted that the "value" prices set forth in its advertisements were in excess of its customary and usual prices for the articles so advertised, and this admission is supported by the testimony of Sylvan N. King, vice president of respondent Bond Stores, Inc., as well as by respondent's Exhibit 2.

Respondent contends, however, and without contradiction, that prices for these sales events actually had been reduced, though not from the stated "value" prices. We note in passing that the testimony of Mr. King and the aforementioned respondent's Exhibit 2 clearly establish that certain of the items of merchandise actually

were reduced ten cents, \$1.05 and \$2.60, respectively, from respondent's customary and usual retail prices.

As previously indicated, we deem it unnecessary to rule upon the contention of counsel supporting the complaint that it was erroneous to permit use of the Arnold Constable advertisement to rebut testimony as to the meaning of respondent's advertisements. Assuming that the Constable advertisement (Resp. Ex. 1) correctly was received in evidence, it is abundantly clear that the use of the term "value" therein does not give rise to the connotations implicit in the use of the same term in the Bond advertisements in their whole context, especially when, as noted above, the latter are replete with references to specific reductions and specific savings from stated "value" prices.

Considerable stress is laid in the initial decision upon the testimony of the "consumer" witnesses. The hearing examiner, upon the basis of his evaluation of their testimony, appears to have discarded in a large measure their affirmative testimony as to their understanding of respondent's advertisements.

We have examined this phase of the case carefully in the light of the whole record. It is our considered judgment that due weight was not accorded this "consumer" evidence. Taking it in its proper perspective in the light of everything else material and relevant of record, and advertising to the whole context of the advertisements, our conclusion as to the misleading character of respondent's representations is the one indicated above.

We turn next to the hearing examiner's finding that there is a lack of public interest in this proceeding. It is not clear from the initial decision whether this finding is based upon a conclusion that the evidence fails to sustain the alleged false, misleading and deceptive character of respondent's advertising or upon the asserted discontinuance of its use. Since we already have determined that respondent's advertisements were misleading and deceptive, it follows that the proceeding in that respect most surely is in the public interest and that an appropriate order should issue to inhibit the questioned practices.

As to the question of effective discontinuance or abandonment of the pricing practices which are the subject of this proceeding, it is noted that the complaint herein issued May 3, 1957. The evidence is that respondent actually did not discontinue publication of the questioned advertisements until some months thereafter. There is not here any showing of the "unusual circumstances which in the interest of justice require" dismissal of the present complaint upon the ground of abandonment. As a matter of fact, respondent still

contends in its argument on the appeal now before us that its practices were not, and are not, in violation of the law. Controlling here are the principles enunciated by the Commission in *Sheffield Merchandise, Inc.*, Docket No. 7727, decided July 7, 1957, and cases therein cited. No case has been made warranting dismissal of the complaint on the ground of discontinuance.

Also presented for determination in this appeal is the question whether the proceeding is barred by law as found by the hearing examiner. To put this issue in its proper perspective we need but refer briefly to the fact that in an earlier case, in 1949, the Commission issued its complaint against Bond Stores, Inc., in Docket 5697. That complaint was dismissed without prejudice upon the execution of a "Stipulation and Agreement," in Section 2(b) of which Bond Stores, Inc., agreed:

(b) Not to state, directly or by implication, that an indicated price is a saving or reduction from a regular price, unless respondent previously sold the merchandise at such regular price, or to refer to a price as a regular price, directly or by implication, unless respondent previously sold the merchandise at such regular price.

The agreement carried the following explanatory statement:

Nothing herein contained shall prevent respondent from advertising or otherwise representing that its merchandise is worth or is of a value in excess of its stated price, provided such worth or value is based upon the price of comparable merchandise sold by other retailers in the same trade territory, nor shall respondent be prevented from referring to the price of a special purchase as a sale price, nor from indicating a saving resulting from such special purchase.

Thereafter, on May 1, 1957, the Commission, having reason to believe that Bond Stores, Inc., was violating the aforesaid Section 2(b), formally notified Bond that said section of the "Stipulation and Agreement" was rescinded. As previously noted, complaint in the instant proceeding followed on May 3, 1957.

The hearing examiner regards the stipulation as an entity and as not being subject to partial rescission. He concludes that through its "unilateral" action abrogating a portion only of the stipulation and agreement in Docket 5697, the Commission acted *ultra vires* and that the present proceeding is barred by law. The examiner recognizes that the Commission may always revoke an informal stipulation and agreement, but is of the opinion that such revocation must be complete and not partial.

The authorities and cases relied upon by the hearing examiner are not germane here. They involved stipulations which became parts of the records in litigated cases, while the stipulation and agreement here was accepted by the Commission in its discretion as an admin-

istrative matter. Even if such agreements are strictly adhered to, they cannot be permitted to tie the hand of the Commission in the exercise of its duty to act in proper cases in the public interest to inhibit unfair and deceptive acts and practices and unfair methods of competition. What we have here is not a stipulation to be enforced by adjudicative action, but a mere informal agreement by respondent not to engage in certain practices in consideration of which the Commission dismissed its complaint without prejudice. Obviously, there was no agreement by the Commission never again to issue a complaint against Bond Stores, Inc., and where, as here, a respondent violates the spirit, if not the letter, of the stipulation, all moral obligation of the Commission to refrain from further action is at an end. The Commission, in such a case, has no alternative but to issue a complaint charging a violation of law, and the question whether or not the stipulation is formally rescinded, either in whole or in part, is of no importance. The examiner's holding that this proceeding is barred by the stipulation or by reason of the Commission's failure to revoke it in toto is disapproved.

The hearing examiner's final ground for dismissal of the complaint is that the present proceeding is unjust and unfair to the respondent. He cites as a precedent the case of *Arnold Constable*, Docket 7106. In that case, letters were written to the respondent by members of the Commission's staff commenting on certain specific advertisements which had been submitted by the respondent. The clear implication of the letters was that the only questions with respect to such advertisements were whether the higher prices mentioned therein were "current market prices" and whether the respondent had adequate records to disclose the facts upon which such prices were based. Subsequently, however, a complaint was issued attacking the same advertisements on the basis that they falsely represented the respondent's own former selling prices. In that situation, the Commission held that while the foregoing did not constitute a defense to any charge of unlawful activity, principles of equity and fair play did militate against further prosecution of that phase of the case. That is not the situation in this case, and the examiner's reliance on *Arnold Constable* was completely misplaced. The complaint herein does not attack representations as to "value" as permitted under the stipulation quoted above. It charges, rather, that respondent has engaged in a practice which it agreed not to engage in, namely, representing directly or by implication that a sales price is a saving or reduction from a regular price when the merchandise has not been previously sold at such "regular" price.

In view of the foregoing considerations, we deem it unnecessary to

rule specifically on the exceptions of counsel supporting the complaint to certain evidentiary rulings of the hearing examiner. The appeal of counsel supporting the complaint is granted. The initial decision is hereby vacated and set aside. We are entering our own findings as to the facts, conclusions and order to cease and desist in conformity with this opinion.

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IN THE MATTER OF

RAYNOR WHITMAN ET AL. TRADING AS  
AMERICAN GARMENT COMPANY

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

*Docket 7620. Complaint, Oct. 22, 1959—Decision, Jan. 9, 1960*

Consent order requiring Baltimore manufacturers to cease violating the Wool Products Labeling Act by tagging as "85% wool, 15% nylon," ladies' skirts which contained substantially less than 85% wool, and by failing to comply in other respects with labeling provisions of the Act.

*Mr. Frederick McManus* for the Commission.

Respondents for themselves.

INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER

The complaint in this matter charges the respondents with violation of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder, and the Federal Trade Commission Act, in connection with the sale of ladies' skirts and other wool products. An agreement has now been entered into by respondents and counsel supporting the complaint which provides, among other things, that respondents admit all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission;

that the complaint may be used in construing the terms of the order; and that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

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

1. Respondents Raynor Whitman and Florence Whitman are individuals trading as co-partners under the firm name of American Garment Company, with their main office and principal place of business located at 318 West Baltimore Street, Baltimore, Maryland.

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

ORDER

*It is ordered.* That the respondents, Raynor Whitman and Florence Whitman, individually and as co-partners trading as American Garment Company or under any other name or names, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or in 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 ladies' skirts or other "wool products," as such products are defined in and subject to said Wool Products Labeling Act, do forthwith cease and desist from misbranding such products by:

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

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 9th day of January, 1960, 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.

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IN THE MATTER OF  
THE WURZBURG COMPANY, ET AL.

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

*Docket 7303. Complaint, Nov. 14, 1958—Decision, Jan. 12, 1960*

Consent order requiring furriers in Grand Rapids, Mich., to cease violating the Fur Products Labeling Act by failing to comply with labeling and invoicing requirements: by advertising in newspapers which represented prices of fur products as reduced from regular prices which were in fact fictitious, and represented falsely, by such statements as "Save 50%," that regular prices were reduced by the stated percentages: and by failing to maintain adequate records as a basis for such pricing claims.

*Mr. Thomas A. Ziebarth* supporting the complaint.  
*Amberg, Law and Fallon* by *Mr. Francis X. Fallon*, of Grand Rapids, Mich., for respondents.

INITIAL DECISION BY JOHN B. POINDENTER, HEARING EXAMINER

On November 14, 1958, the Federal Trade Commission issued its complaint charging the respondents named in the caption hereof with having violated the provisions of the Federal Trade Commission Act, the Fur Products Labeling Act and the rules and regulations promulgated thereunder.

After issuance and service of the complaint, respondents, their counsel and counsel supporting the complaint, entered into an agreement for a consent order.

The agreement has been approved by the Director and the Assistant Director of the Bureau of Litigation and disposes of the matters complained about. The pertinent provisions of said agreement are as follows:

Respondents admit sufficient facts as alleged in the complaint so as to give the Commission jurisdiction; 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

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Commission; the record herein shall consist solely of the complaint and the agreement; respondents waive the requirement that the decision must contain a statement of findings of fact and conclusions of law; respondents waive further procedural steps before the hearing examiner and the Commission, and the order may be altered, modified, or set aside in the manner provided by statute for other orders; respondents waive any right to challenge or contest the validity of the order entered in accordance with the agreement and the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

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

## JURISDICTIONAL FINDINGS

1. The respondent The Wurzburg Company is a corporation organized and doing business under the laws of the state of Michigan with its office and principal place of business located at 101 Monroe Avenue, Grand Rapids, Michigan. The respondent Edward Bloom is an individual with the same address as the corporate respondent.

2. The Wurzburg Company, a corporation, and the individual respondent, Edward Bloom, are co-partners doing business under the name of Michigan Fur Company, except that in advertising, offering for sale, and selling fur products at retail, the said partnership acts as the fur department of The Wurzburg Company, a corporation.

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 respondents, The Wurzburg Company, a corporation, and its officers, and Edward Bloom, individually, and The Wurzburg Company and Edward Bloom, copartners doing business as Michigan Fur Company, or under any other trade name, 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, 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 have been made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misbranding fur products by:

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

B. Setting forth on labels affixed to fur products:

(1) Non-required information mingled with required information:

(2) Required information in handwriting.

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

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

A. Represents, directly or by implication, that the regular or usual price of any fur product 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, through percentage savings claims, that the regular or usual retail prices charged by respondents for fur products in the recent regular course of business were reduced in direct proportion to the amount of savings stated, when contrary to fact.

4. Making price claims and representations of the types referred to in paragraph 3 above unless respondents maintain full and adequate records disclosing the facts upon which such claims or 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 12th day of January, 1960, become the decision of the Commission; and, accordingly:

*It is ordered*, That respondents The Wurzburg Company, a corporation, and its officers, and Edward Bloom, individually, and

The Wurzburg Company and Edward Bloom, copartners doing business as Michigan Fur Company shall within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

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IN THE MATTER OF  
ALLIED LUGGAGE CORPORATION ET AL.

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

*Docket 7593. Complaint, Sept. 23, 1959—Decision, Jan. 12, 1960*

Consent order requiring manufacturers in Jersey City, N.J., to cease pricing their luggage fictitiously by such practices as attaching thereto tickets printed with prices far in excess of the usual retail price.

*Mr. Anthony J. Kennedy, Jr.* for the Commission.

*Mr. Theodore F. Tonkonogy* of *Phillips, Nizer, Benjamin, Krim & Ballou*, of New York, N.Y., for respondents.

INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER

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

violated the law as alleged in the complaint; and that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

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

1. Respondent Allied Luggage 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 150 Bay Street in the City of Jersey City, State of New Jersey.

Respondents Abraham S. Wichtel and Max Kaminetsky are officers of the corporate body. They formulate, direct, and control the acts and practices of the corporate respondent. Their address is the same as that of the corporate respondent.

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

#### ORDER

*It is ordered.* That respondents, Allied Luggage Corporation, a corporation, its officers, and Abraham S. Wichtel and Max Kaminetsky, individually and as officers of said corporate respondent, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the manufacture, offering for sale, sale and distribution of luggage or any other product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, by means of preticketing or otherwise, that any amount is the regular and usual retail price of a product when such amount is in excess of the price at which such product is usually and customarily sold at retail in the trade area or areas where the representations are made.

2. Putting any plan into operation through the use of which retailers or others may misrepresent the customary and usual retail prices of such 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 12th day

of January, 1960, 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.

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IN THE MATTER OF  
EUGENE I. WOODLE, INC., ET AL.

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

*Docket 7605. Complaint, Oct. 2, 1959—Decision, Jan. 12, 1960*

Consent order requiring manufacturers in Chelsea, Mass., to cease violating the Wool Products Labeling Act by invoicing as "95% All Wool Label—5% Other Fibers," picked wool stock which consisted substantially of reprocessed wool; by failing to label wool products as required; and by furnishing customers with false guaranties as to the fiber content of picked wool stocks.

*Mr. A. D. Edelson* for the Commission.

*Mr. Daniel T. Coughlin* of Boston, Mass., for respondents.

INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on October 8, 1959 charging them with having violated the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, as well as the Federal Trade Commission Act, through the misbranding and false guarantees of certain wool products.

An agreement has now been entered into by respondents and counsel supporting the complaint which provides, among other things, that respondents admit all the jurisdictional facts alleged in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the making of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in this proceeding without further notice to the respondents and when entered shall have the same force and

Order

56 F.T.C.

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

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

1. Respondent Eugene I. Woodle, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts with its office and principal place of business located at 126 Auburn Street, Chelsea, Massachusetts.

The individual respondent, Eugene I. Woodle, is president of the corporate respondent and formulates, directs and controls the acts and practices of the corporate respondent. He maintains a business address at the same address as 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 respondents Eugene I. Woodle, Inc., a corporation, and its officers, and Eugene I. Woodle, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction into commerce, or the offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939 of "wool products," as such products are defined in and subject to the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

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

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

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

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

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

*It is further ordered.* That respondents Eugene I. Woodle, Inc., a corporation, and its officers, and Eugene I. Woodle, 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 picked wool stock or any other wool products in commerce, as "commerce" is defined in the Wool Products Labeling Act, do forthwith cease and desist from:

Furnishing to customers, or others handling their wool products any guarantees containing false information as to the fiber content of any product made in whole or in part of wool, or purporting to be made in whole or in part of wool, as the term "wool" is defined in the Wool Products Labeling Act of 1939.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 12th day of January, 1960, become the decision of the Commission; and, accordingly:

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

Decision

56 F.T.C.

IN THE MATTER OF  
COLLINS MICROFLAT COMPANY, INC., ET AL.

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

*Docket 7560. Complaint, Aug. 5, 1959—Decision, Jan. 14, 1960*

Consent order requiring a company in Hawthorne, Calif., to cease representing falsely in brochures, technical manuals, etc., that the granite used in the granite surface plates it sold was taken from the same quarry as the sample the U.S. Bureau of Standards tested, that the Bureau had tested it and ascertained its desirable qualities, and that it was preferred over all others by the United States Government.

*Mr. William A. Somers* for the Commission.

*Flam, Valensi & Rose*, of Los Angeles, Calif., by *Mr. Stephen G. Valensi*, for respondents.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding issued August 5, 1959, charges that respondents have violated the provisions of the Federal Trade Commission Act in the sale and distribution of granite surface plates.

Respondent Collins Microflat Company, Inc., is a corporation, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 3249 West El Sigundo Boulevard, Hawthorne, California.

The individual respondents, Lee Collins, Gilda Collins, and Helen N. Cates, are officers of said corporate respondent, and their business address is the same as that of the corporate respondent.

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

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

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

## Order

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

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

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

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

## ORDER

*It is ordered,* That respondents Collins Microflat Company, Inc., a corporation, its officers, and Lee Collins, Gilda Collins and Helen N. Cates, individually and as officers of corporate respondent, 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 granite products 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. The granite used by respondents is from the same quarry as the sample tested by the U.S. Bureau of Standards as Serial No. 115 in the Research Paper RP1320.

2. The U.S. Bureau of Standards has made tests of the granite used by the respondents or has ascertained by tests the compressible strength, absorption by weight, true density, porosity, cubic weight or any other properties of the granite used by the respondents.

3. The granite used by the respondents is preferable over all

other granites by virtue of Federal Specification GGG-P-463; or any other specification issued or published by a department, division, bureau or branch of the United States Government, unless such is a fact.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 14th day of January, 1960, become the decision of the Commission; and, accordingly:

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

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IN THE MATTER OF

STEACIE GARNETTING COMPANY, ET AL.

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

*Docket 7618. Complaint, Oct. 22, 1959—Decision, Jan. 14, 1960*

Consent order requiring manufacturers in Framingham, Mass., to cease violating the Wool Products Labeling Act by tagging as "100% wool," garments of stock containing a substantial portion of reprocessed wool, and by failing to comply with labeling requirements of the Act.

*Mr. A. D. Edelson* for the Commission.

*Mr. James W. Noonan* of *Herrick, Smith, Donald, Farley & Ketchum*, of Boston, Mass., for respondents.

INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above named respondents on October 22, 1959, charging them with having violated the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, as well as the Federal Trade Commission Act, through the misbranding of certain wool products.

An agreement has now been entered into by respondents and counsel supporting the complaint which provides, among other things, that respondents admit all the jurisdictional facts alleged

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

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

1. Respondent Steacie Garnetting Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its office and principal place of business located at 885 Waverly Street, Framingham, Massachusetts.

The individual respondents Curtis Steacie and John B. Steacie are officers of the corporate respondent and cooperate in formulating, directing and controlling the acts, policies and practices of the corporate respondent. Said individual respondents have their office and principal place of business at the same address at 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 respondents Steacie Garnetting Company, a corporation, and its officers, and Curtis Steacie and John B. Steacie, individually and as officers of said corporation, and respondents'

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

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

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

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

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

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

#### DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 14th day of January, 1960, become the decision of the Commission; and, accordingly:

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

## Decision

## IN THE MATTER OF

## DAVID ROSEN, INC., ET AL.

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

*Docket 7670. Complaint, Dec. 2, 1959—Decision, Jan. 19, 1960*

Consent order requiring an independent Philadelphia distributor of phonograph records to retail outlets and juke box operators in the eastern Pennsylvania and southern New Jersey area, to cease giving concealed "payola" (money or other valuable consideration) to disc jockeys or others as an inducement to broadcast records in which it had a financial interest, and requiring such disc jockeys or others to disclose when they were paid for the selection and broadcasting of records.

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

*Mr. Matthew S. Biron* of Philadelphia, Pa., for respondents.

## INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on December 2, 1959, charging them 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 31, 1959 there was submitted to the undersigned hearing examiner an agreement between the above-named respondents, their counsel, and counsel supporting the complaint providing for the entry of a consent order.

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

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

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

1. Respondent David Rosen, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 835 North Broad Street, in the City of Philadelphia, State of Pennsylvania.

2. Respondents David Rosen and Joseph J. Wasserman are president and vice-president, respectively, of the corporate respondent. The address of the individual respondents is the same as that of said 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 respondents David Rosen, Inc., a corporation, and its officers, and David Rosen and Joseph J. Wasserman, individually and as officers of said corporation, and respondents' 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 respondents, or any of them, have 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 respondents, or any of them, have 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

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

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

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IN THE MATTER OF  
REYNOLDS METALS COMPANY

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

*Docket 7009. Complaint, Dec. 27, 1957—Decision, Jan. 21, 1960*

Order requiring one of the nation's major producers of aluminum and aluminum products to divest itself absolutely within six months of all the stock, assets, and all other properties, rights, and privileges it acquired as a result of its acquisition of the capital stock of a former customer, producer of decorative aluminum foil for the florist trade, together with the \$500,000 new plant subsequently built for the latter, and as much of the assets and properties put into the business as necessary to restore the pre-acquisition competitive standing of the florist foil producer; and requiring further that none of the property concerned be sold to anyone connected with Reynolds or its affiliates.

*Mr. J. T. Walker* and *Mr. J. H. Kelley* for the Commission.  
*Ellis, Houghton & Ellis*, of Washington, D.C., and *Mr. Gustav B. Margraf*, of Richmond, Va., for respondent.

## INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

## PRELIMINARY STATEMENT

Complaint herein, issued December 27, 1957, charged violation of Section 7 of the Clayton Act, as amended, (U.S.C. Title 15, Section 18) by reason of the acquisition, as of August 31, 1956, of all of the stock and assets of Arrow Brands, Inc., a company then engaged in converting aluminum foil and selling it throughout the United States to the florist trade, by the respondent and further charged that such acquisition may have the proscribed statutory effect of substantially lessening competition or tending to create a monopoly in the production and sale of decorative aluminum foil to the florist trade. Answer by the respondent admitted substantially all of the jurisdictional and basic allegations of the complaint, alleging, however, that the aluminum foil market generally was keenly competitive, aluminum foil had substitute products wholly competitive with it, and the aluminum foil market structure at all levels is saturated with competition, that any possible effect of the acquisition was *de minimis*. The answer further set forth that respondent had submitted to the Commission full information regarding the acquisition and thereafter the Commission had advised respondent, prior to the issuance of the complaint, that no further action was contemplated and the file was closed with the reservation, however, to take action in the future if other evidence or subsequent developments warranted taking of such action. Answer further alleged there had been no subsequent developments or evidence.

Thereafter, hearings were held June 2 through June 12, 1958, at which time all evidence in support of the complaint was adduced, whereupon respondent moved for dismissal for failure of such evidence to constitute a *prima facie* case, which motion was orally argued and denied on the record. Thereafter, respondent took an interlocutory appeal to the Commission, same being briefed and counter-briefed, and appeal being denied August 21, 1958. Respondent's case was presented and hearings held beginning October 21 and continuing through October 30, 1958, and thereafter proposed findings with reasons, conclusions of law, and proposed orders were submitted to the undersigned hearing examiner February 10, 1959. The record consists of 1,655 pages of transcript plus 196 Commission exhibits and 91 respondent exhibits. The undersigned hearing examiner has carefully considered the proposed findings and conclusions submitted by both parties, and all those not specifically hereinafter found are refused. Upon consideration of these and the entire record the undersigned hearing examiner makes the following findings of fact and conclusions of law.

## FINDINGS OF FACT

## Background

1. Respondent Reynolds Metals Company (hereinafter referred to as respondent or Reynolds) is a corporation organized and existing under the laws of the State of Delaware, with its office and principal place of business in the Reynolds Metals Building, Richmond 18, Virginia. It was incorporated July 18, 1928 as a successor to the United States Foil Company, a Delaware corporation, incorporated December 13, 1919, engaged in the processing and sale of foil, including aluminum foil.

2. From 1928 to 1939, respondent enhanced its rolling, converting and printing of tin, lead composition and aluminum foils by the aggressive development of broader acceptance and usage of aluminum foil for packaging in the tobacco, food, electrical and confectionery industries. During this period respondent began the production of aluminum sheet and extrusions, from pig and coil forms which it purchased from producers.

3. From 1940-1954, respondent, through its subsidiaries, acquired bauxite mines in the United States, Jamaica, Haiti, and British Guiana, shipping the mined ore to plants which it erected at Hurricane Creek, Arkansas, and Corpus Christi, Texas, where the bauxite is converted to alumina. The latter was then sold or transported to respondent's reduction plants at Jones Mills and Arkadelphia, Arkansas; Listerhill, Alabama; Troutdale, Oregon; Longview, Washington; and Corpus Christi, Texas; where it is reduced to primary aluminum. The primary aluminum is then either sold or fabricated into finished or unfinished end products for sale. Since 1954 respondent has thus been a fully integrated operation in aluminum, from mine to final end uses.

4. The net sales of the respondent from 1951 through 1955 were as follows:

	Primary aluminum (in 000's of pounds and dollars)		Aluminum fabricated products	Other sales	Total net sales
	Pounds	Dollars			
1951.....	100,940	\$18,510	\$189,708	\$7,487	\$215,705
1952.....	133,474	25,186	203,521	6,032	234,739
1953.....	205,576	40,802	237,048	10,043	287,893
1954.....	387,248	76,615	222,155	8,009	306,779
1955.....	332,172	72,757	301,727	10,404	384,888

5. For the year 1955 the principal fabricated products of respondent, in the order of contribution to net sales were:

- a. Sheet and plate

- b. Foil and foil products including foil and other packaging materials
- c. Extrusions
- d. Industrial parts
- e. Building products
- f. Wire, rod and bar
- g. Cable
- h. Powder and paste

Of respondent's net sales in 1955, approximately 78 percent was derived from the sale of aluminum semi-fabricated products, 19 percent from the sale of primary aluminum, and 3 percent from miscellaneous sales including the sale of alumina.

6. A significant part of the growth of the Reynolds Metals Company, or its predecessor, has been the result of mergers with competitors in fabricating lines.

7. By virtue of internal growth and the acquisition of Government plants and the businesses of various competitors, the respondent has increased its total assets from \$114,518,000 in 1948, to \$733,255,000 in 1957; its net sales from \$149,207,149 in 1948, to \$446,578,768 in 1957; and its earned surplus from \$30,983,000 in 1948, to \$166,416,000 in 1957.

8. The respondent, together with its wholly owned subsidiaries, controls sufficient proven bauxite reserves to provide for at least 75 years capacity operation; operates aluminum plants with a total projected capacity of 1,460,000 short tons per year, or over 28 percent of the total estimated domestic alumina capacity; operates primary aluminum plants with a capacity of 563,500 tons of primary aluminum, or 29 percent of the total domestic primary aluminum capacity and 28 percent of proposed domestic primary aluminum capacity. Its actual production of primary aluminum in 1957 was 466,089 tons, or 28 percent of the primary aluminum produced in the United States during the year. Reynolds operates facilities which have a fabricating capacity, excluding foil, of 853,500,000 pounds, and a foil capacity of 117,000,000 pounds, which establishes Reynolds as the leading domestic producer of aluminum foil.

9. Aluminum Company of America (Alcoa), together with its subsidiaries and affiliates, has been and is now the largest aluminum producer in the United States. It is wholly integrated from the mining of ore to the production of finished products, controlling large bauxite ore reserves, extensive transportation facilities, and a large part of its power needs. In addition to primary aluminum, its principal products include sheet, plate, foil (including decorative foil), extrusions, drawn tube, wire and rod (including bar), casts

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## Findings

and forgings, and powders and pastes, as well as other fabricated articles, including cooking utensils. Its primary aluminum production for the years 1951 through 1956 was as follows:

Year	Tons
1951	425,500
1952	467,500
1953	611,450
1954	665,000
1955	702,000
1956	756,000

For the year 1956, sales of aluminum fabricated products provided 75 percent of 1956 revenues, primary aluminum (204,149 tons sold), 13 percent, other sales, 7 percent, shipping and other operating revenues, 5 percent.

10. Alcoa's net sales and operating revenues from 1953 through 1957, in thousands of dollars were as follows:

Year	Primary aluminum (pig and ingot)		Fabricated products	Other sales and miscellaneous revenues (1)	Operating revenues (2)	Total net sales and operating revenues (3)
	Tons	Amounts				
1953	124,186	\$52,198	\$578,906	\$38,598	\$37,836	\$707,538
1954	317,766	132,726	493,619	43,375	38,624	708,344
1955	238,448	112,694	647,327	39,571	45,356	845,028
1956	204,149	107,732	667,822	43,421	45,441	864,416
1957	246,885	132,975	639,385	46,722	50,296	869,378

(1) Includes bauxite, alumina in various forms, and other products.

(2) Includes revenues from shipping and other operations.

(3) The figures in this column include the following approximate percentages of total net sales to, and operating revenues from, the U.S. Government: 1953—5 percent; 1954—16 percent; 1955—6 percent; 1956—1 percent; 1957—7 percent.

11. Over-all revenues from shipments of aluminum during 1957 were approximately equal to those of 1956. Alcoa, which includes its subsidiaries and affiliates, has bauxite mines in Suriname (Dutch Guiana), South America, and bauxite mines in Arkansas, Oregon, and Washington, with concessions from the Dominican Republic. It is exploring for bauxite in Costa Rica and the Republic of Panama. Bauxite is refined into alumina at plants in Mobile, Alabama; East St. Louis, Illinois, and Bauxite, Arkansas. Primary aluminum is produced at smelting plants in Alcoa, Tennessee; Vancouver and Wenatchee, Washington; Massena, New York; Point Comfort and Rockdale, Texas, and a subsidiary owns another at Badin, North Carolina. Primary aluminum is fabricated, cast, or otherwise processed at 17 plants of the company located in 12 states and generally located near the various market areas for the products produced by the company. The company produces and markets "Alcoa Wrap" household foil and "Wear-Ever" cooking utensils. Some of the

facilities at the various plants, including smelting facilities, are under expansion.

12. Kaiser Aluminum & Chemical Corporation is and has been during all material times an integrated producer of aluminum from bauxite down through the foil converter level. It is a major producer of primary aluminum and fabricated aluminum products. In 1956 it produced 25 percent of the primary aluminum output in the United States. Its aluminum operations include the mining and processing of bauxite, the production of alumina from bauxite, the reduction of alumina to aluminum, and the fabrication of aluminum and aluminum alloys into a variety of products.

13. Together with its subsidiaries, Kaiser owns and operates bauxite mines in Jamaica, British West Indies, from which bauxite is shipped to Baton Rouge, Louisiana, where it is processed into alumina. The alumina is shipped to reduction plants at Chalmette, Louisiana; to Mead and Tacoma, Washington; and to Ravenswood, West Virginia, and from those plants the primary aluminum is shipped to the corporation's fabricating plants at Ravenswood, West Virginia; Trentwood, Washington; Permanente, California; Newark, Ohio; Bristol, Rhode Island; Halethorpe, Maryland; Dalton, Illinois; Erie, Pennsylvania; Los Angeles, California; Wanatah, Indiana; and Belpre, Ohio. In addition, there is a new alumina plant under construction in Gramercy, Louisiana, and an expansion of the bauxite mining and shipping facilities have recently been completed in Jamaica. Its net sales for the years 1953 through 1956 were as follows:

<i>Year</i>	<i>Net Sales</i>
1953 -----	\$182,652,000
1954 -----	226,641,000
1955 -----	268,133,000
1956 -----	343,627,000
1957 -----	391,627,000

14. These three companies, respondent, Alcoa and Kaiser are the only fully integrated producers of aluminum and all of these reached their present size and economic power in some part, at least, through absorption and merger of smaller concerns.

15. In addition to these there are three partially integrated producers of primary aluminum and aluminum foil in the United States as follows:

(a) Anaconda Company produces aluminum pig and through its ownership of Cochran Foil Company (acquisition consummated May 1958), produces aluminum foil. Its foil production includes both plain and mounted on paper, employed for wrapping purposes by tobacco, food, chewing gum and other consumer goods industries,

and for housing insulation and in electric condensers and air conditioning equipment. It also makes colored and household foil. The foil plants are in Louisville, Kentucky, and Fair Lawn, New Jersey. Its annual foil production capacity is approximately 21,000,000 pounds. Net sales for the years 1954, 1955, and 1956 were, respectively, \$19,361,081; \$24,714,066 and \$22,201,053.

(b) Revere Copper & Brass Company, through its ownership of Standard Rolling Mills, Inc., and through its ownership along with Olin-Mathieson Chemical Corporation, of Ormet Corporation, is a producer of aluminum foil. Ormet Corporation produces aluminum pig. Ormet Corporation is scheduled to complete, in 1958, an alumina plant in Burnside, Louisiana, on the Mississippi, with an annual production capacity of 345,000 tons, and an aluminum reduction plant at Omal, Ohio, on the Ohio River, with an annual production capacity of 180,000 tons of primary aluminum. Power facilities will be provided through a subsidiary. Revere, through Standard Rolling Mills, has been and is a foil roller for all kinds of uses and colors, embosses, prints, and laminates foil, with a rated capacity of between 12-15,000,000 pounds per year. Its aluminum foil, plain and colored, in gauges of .00017 and heavier, is advertised for food wrap, candy wrap, displays, and for other uses.

(c) Aluminum Foils, Inc., having a foil rolling plant in Jackson, Tennessee, is a subsidiary of Aluminum Industrie A. G. (Switzerland), commonly referred to as the Swiss Aluminum Company. Aluminum Foils, Inc. is a large producer, having a foil rolling capacity of approximately 24 million pounds a year. The Swiss Aluminum Company is an integrated producer through aluminum foil production, and through its subsidiaries mines bauxite, produces alumina, reduces alumina to aluminum, and fabricates aluminum into various end products, and through Aluminum Foils, Inc., produces aluminum foil. It has an aluminum reduction plant at Lend, Salzburg, Austria.

16. The production of primary aluminum in the United States for 1955 was approximately 3,131,000,000 pounds, of which Reynolds' percentage was approximately 27½. The fabricating capacity of United States companies, excluding foil, was as follows:

<i>Reynolds</i> (as of 3-12-57)	
Sheet and Plate .....	620,000,000
Extrusions .....	105,500,000
Wire, Rod and Bar .....	60,000,000
Cable .....	50,000,000
Powder and Paste .....	18,000,000
	853,500,000
<i>Kaiser</i> (as of 6-26-57) .....	889,000,000
<i>Alcoa</i> (as of 9-30-55) .....	1,386,658,000

Low gauge aluminum sheet is the raw material for foil. Aluminum foil is processed from aluminum sheets or coils at .026 gauge (26/1000 of an inch).

17. The following companies, among others, are engaged in the rolling of aluminum foil, purchasing their raw material requirements, i.e., low gauge aluminum sheet, from Alcoa, Kaiser, Ormet, respondent, and others, and selling throughout the United States their products, which include aluminum foil suitable for use by florists, and through channels of commerce acquired by and used by florists and by other trades:

(a) Johnston Foil Manufacturing Company, St. Louis, Missouri, having an annual capacity of approximately 12,000,000 pounds. It processes colored and embossed foil which is suitable for use and used through channels of commerce by the florist trade. It processes for sale and advertises for sale aluminum foil "for every purpose in any desired gauge in 24 beautiful colors, plain or embossed." It is the oldest foil roller in the United States having started in business in 1889. It has recently been acquired by Standard Packaging Corporation.

(b) Republic Foil & Metal Mills, Inc., Danbury, Connecticut, having an annual capacity of six (6) million pounds.

(c) Stranahan Foil Co., Inc., South Hackensack, New Jersey, having an annual capacity of approximately six (6) million pounds.

(d) R. J. Reynolds Tobacco Company through its subsidiary, Archer Aluminum Company, Winston-Salem, North Carolina, having an annual capacity of approximately twenty-four (24) million pounds.

(e) Aluminum Foils, Inc., a subsidiary of Swiss Aluminum Company, Jackson, Tennessee, having an annual capacity of approximately twenty-four (24) million pounds.

18. The consumption of domestic converted aluminum foil was 192 million pounds in 1956 and 216 million pounds in 1957. 0.250 of an inch in thickness and greater is considered as plate. Flat products under 0.250 of an inch to 0.06 of an inch are considered sheet. Flat products under 0.006 of an inch are considered foil.

19. Aluminum foil is a flat-rolled sheet thinner than .006 inch in gauge, 99.45 percent pure aluminum, dead soft 0 temper, oil free and dry. It is most commonly used in continuous roll form for most converting and packaging operations but can also be furnished in sheets. Soft foil can be molded, crimped and formed easily and may with relative ease be colored, lacquered, embossed, printed, and laminated.

20. There are thousands of uses for aluminum foil. Fully three-

quarters of it is used in some form of packaging or wrapping. Some principal end uses are: semi-rigid containers for bakery products, specialty foods and frozen cooked foods. Unsupported foils are also made into milk closures, florist wraps, hermetically sealed packets and metal-parts wraps, as well as tags, name plates and sealing tapes. Other uses include wraps for yeast, hard candy, chocolate and cheese and overwraps for frozen food trays, liquor and wine bottle wraps, window display purposes, and household wrap.

21. For other applications, foil in combination with packaging materials, such as paper, plastic or cellulose film, and heat-seal coatings is used as direct wraps for chewing gum, candy bars, chocolate, tobacco, butter, cheese, photographic film and others; as carton overwraps for dried fruit, frozen foods of all descriptions, prunes, dates, figs, cookies, etc.; as case liners for lettuce, citrus fruits, celery and cauliflower; as bags or sealed pouches for breakfast cereals, leavening agents, potato chips, nuts, coffee, cocoa, tea, dry soups, drugs and cosmetics.

22. Foil is combined with paperboard for brown-and-serve trays, cake boxes, fibre drums, box liners, tube and canister liners and ice cream containers. Materials packed in such containers include oils, greases, refrigerated biscuits, self-rising flour and cake mixes, chemicals and metal parts. Foil body, neck and throat labels are employed extensively on glass bottles for packaging beer, wine, spirits, olives, condiments, etc. Specialty decorative uses of foil include tags, seals, name plates, gift wraps, labels, shredded foil, gift boxes and embossed rigid containers. The field of military packaging is another area in which aluminum foil plays a major role.

23. Consumption of 216 million pounds of aluminum foil was reported for 1957 by converters of aluminum foil according to "Facts for Industry, Aluminum Foil Converted," issued by Bureau of Census, United States Department of Commerce, 1957, representing a 10 percent increase over 1956. The most significant end uses for aluminum foil were stated in such report as follows: locker plant, freezer, restaurant and household packaging foil, 61 million pounds; metal containers for foods and bakery goods, 28 million pounds; tobacco, 18 million pounds; and insulation foil, 10 million pounds. Decorative foil according to that report accounted for 8,269,000 pounds of foil converted in 1957, and 9,761,000 pounds for 1956.

24. The respondent is the leading producer of aluminum foil in the United States. Its products are sold through 67 sales offices throughout the United States, and it also sells through various distributors, in addition maintaining an export division offering its products for sale in foreign countries.

## The Acquisition

25. Arrow Brands, Inc., a California corporation, was incorporated in 1945 by one Harry Roth who since that time and until August 31, 1956, has been, for all practical purposes, its sole owner and its active and aggressive manager. Prior to his starting his own business Roth had been a traveling salesman for a New York City florist supply house and conceived a vast potential for foil as a decorative wrapping for flower pots and cut flowers.

26. Starting with relatively little capital he made an arrangement with a San Francisco concern, the John T. Raisin Corporation, to spool, color and emboss (converting) plain aluminum foil to designs of his own origination. The latter were highly successful. After disagreement with Raisin, ending in litigation, Roth for a time purchased his foil, colored and embossed, from respondent in jumbo rolls, spooling and rewinding it for the wholesale florist supply trade. Still later he had his converting done, again to his own individual designs, by Western Foil Converters in Berkeley, California. His success in newness and design enabled him in 1953 to rent a plant and through a newly formed subsidiary to acquire the necessary machinery and thereafter do his own converting. Success against competition, due to vigorous salesmanship, but mainly to originality of coloring and design and being one step ahead of that competition, built his business with wholesale florist supply houses up to the point of assets of nearly a half of a million dollars and sales of nearly \$600,000 in 1956. when his company Arrow Brands, Inc. was a leader in the field of decorative florist foil, not only by his own admission but by the rather grudging admission of two of his competitors, and where he was purchasing 90 percent of his unmounted aluminum foil from respondent (236,000 pounds—\$105,000 first eight months of 1956), although he had only the one plant with four part-time salesmen, nine hourly employees plus extra hourly employees during rush seasons, and seven administrative employees.

27. As a heavy purchaser from it, respondent of course knew much about Arrow Brands, Inc. Roth had mentioned to respondent's Los Angeles office that he was willing to sell. Shortly thereafter, in August 1956, respondent's sales manager of the foil division called Roth on long distance and introduced him over the phone to respondent's vice president, who within 48 hours was in Long Beach inspecting Arrow's plant with Roth, discussing price, terms, etc., and within 36 hours had, on behalf of respondent, purchased Arrow Brands, Inc., for close to a half a million dollars.

28. Respondent's interoffice files clearly show its motives in this

forward integration. "We believe that a company with elasticity and speed of action demonstrated by 'Arrow' holds the greatest promise for the development of these specialty fields." "The quick translation of ideas into finished product form and its distribution to specialty businesses, however, is difficult to develop in a large corporate operation. The time factor between the creation of an idea and its successful development through the various departments had proved a substantial stumbling block."

29. The above are the basic and largely uncontested facts of the acquisition complained of. Is it likely, as charged, to tend toward monopoly or substantially lessen competition in any line of commerce in any section of the United States?

#### Line of Commerce

30. The line of commerce, or relevant market, must first be determined—the burden being on counsel in support of the complaint.<sup>1</sup> Here, as usual in a Section 7 case, the battle is intense and the claims pole-distant. Counsel supporting the complaint contend for that vertical segment of the entire foil market which is distributed to the florist trade. Counsel for respondent give the subject cavalier treatment—"any discussion of the line of commerce is largely academic"—"no point in discussing line of commerce or relevant market—in the state of this record, it is purely academic." But by implication, at least, respondent contends for the entire foil market, regardless of end use or intermediate processing, at the narrowest orbit, or for the entire aluminum industry at its widest. Discussion of the latter in all the varied uses, alloys and mixtures of aluminum per se, for peculiar uses and characteristics vis-a-vis florist foil is obviously useless.

31. The Supreme Court<sup>2</sup> and the Commission<sup>3</sup> have laid down as a test for determination of the relevant market or line of commerce whether the products opposingly claimed to be in or out, have sufficient peculiar characteristics and uses to constitute them products sufficiently distinct from [all others] to make them a line of commerce within the meaning of the Clayton Act.

32. One argument of respondent first needs to be disposed of—that since the complaint charges the proscribed effect on the production and sale of decorative aluminum foil to the florist trade, and since the florist trade by common knowledge and the applicable reported decisions is only the retail florist, and since Arrow Brands

<sup>1</sup> *U.S. v. E. I. du Pont de Nemours & Co.*, 353 U.S. 586.

<sup>2</sup> *U.S. v. E. I. du Pont de Nemours & Co.*, 353 U.S. 586.

<sup>3</sup> *F.T.C. v. Brillo Mfg. Co.*, D. 6557.

did not and does not sell the retail florist but only to the wholesale florist supply houses—therefore the complaint fails. In the first place, “the applicable reported decisions” are state tax cases in North Carolina, Tennessee, and Arkansas, having no element of interstate commerce or resemblance to the factual picture here. In the second place, respondent’s counsel are here doing exactly what they criticized this hearing examiner for in denying their motion to dismiss it—“fragmentizing and atomizing” a line of commerce, albeit horizontally rather than vertically.<sup>4</sup> Finally, Duco and Dulux were sold in substantial quantities for other purposes and to other uses besides automobile finishes, as were automobile fabrics.<sup>5</sup> Certainly the wholesaler is a necessary and integral part in the line of distribution (commerce) in many industries, even though his customer, the retailer, is the final seller. For the purposes of this case “florist trade” means decorative aluminum foil styled, processed (converted), and sold for use by florists in wrapping pots of plants and cut flowers.

33. In 1957, some 216,000,000 pounds of aluminum foil was consumed for a variety of end uses, including some 61,000,000 pounds for locker plants, freezers, restaurant and household packaging foil; 28,000,000 pounds for metal containers for food and bakery goods; 18,000,000 pounds for the tobacco industry; and some 10,000,000 pounds for insulation foil. In 1957, some 8,269,000 pounds of aluminum foil was used for all decorative purposes, including fancy paper, gift wrap and florist foil.

34. Historically, domestic decorative aluminum florist foil has been produced and sold by approximately eight small converters specializing in producing and selling an aluminum foil product to the florist market, which now consists of some 600 to 700 wholesale florists or jobbers, serving approximately 25,000 retail florists. Total sales of decorative aluminum florist foil to this market amount to approximately a million and a half to two million dollars annually.

35. Florist foil as a decorative wrap for potted plants was first introduced into the markets of the United States by the M. H. Levine Corporation, of New York, New York, around 1934, when Morris H. Levine, on a trip to Italy, first picked up the idea of using aluminum foil for this purpose.

36. Shortly thereafter, the Metal Goods Corporation, of St. Louis, undertook the sale of florist foil in the Midwest. Around 1940, H. D. Catty Corporation, of Huntley, Illinois, and Highland Supply Corp., of Highland, Illinois, entered the market with a complete line of decorative aluminum foil for the florist trade.

<sup>4</sup> Appeal Brief, page 15.

<sup>5</sup> *U.S. v. E. I. du Pont de Nemours & Co.*, 253 U.S. 586.

37. After the Second World War, Arrow Brands, Inc., of Los Angeles, California, H. Jacobson & Company, of Worcester, Massachusetts, John T. Raisin Corporation, of San Francisco, California, Western Foil Converters, of Berkeley, California, and Lion Ribbon Company, of New York, New York, all undertook, at various times, to produce and sell decorative aluminum florist foil to the florist trade.

In 1953, A. B. Howard & Co. and Winter Wolff, and in 1956, the Lion Ribbon Company, as agents for foreign suppliers, started to import plain, colored and embossed foil for sale to the florists.

38. This group of small converters and importing agents has uniformly offered to the florist trade an unmounted decorative aluminum foil, wound on an individual core, in 50-foot lengths, 20 inches wide, wrapped in cellophane, and boxed in an attractive package. Aluminum foil, as marketed by the aluminum producers and foil rollers, is sold in jumbo mill rolls, neither packaged nor boxed, nor otherwise physically prepared to satisfy the specialized requirements of the florist trade. Although the aluminum producers, the foil rollers, and the hundreds of foil converters are capable of converting their plants to produce a product to meet the demands of the florist trade, in actual practice there has been no such conversion. In fact, the major aluminum companies, Reynolds Metals, Alcoa, and Kaiser, and the foil rollers, Johnson Foil Company, Republic Foil and Metals, Stranahan, R. J. Reynolds, and all of the independent converters of aluminum foil, with the exception of M. H. Levine, Arrow Brands, Metal Goods Corporation, H. D. Catty, Highland Supply, John T. Raisin Corporation, Western Foil Converters, and Lion Ribbon Company, do not produce or sell an aluminum foil product suitable for use as a decorative material by the florist retailers.

#### Physical Characteristics

39. Coming now to the similar or identical and the different physical characteristics of aluminum foil generally from decorative aluminum foil for florists specifically, the source, low gauge aluminum sheet is the same. Both are rolled out on the same machinery. The gauge or thickness is slightly different being .00065, whereas household foil, which accounts for the great majority of foil usage is .0007 or heavier. Heavier foil can be used in the florist trade but the record shows that efforts to sell it by Arrow and others have failed. The florists won't buy it. Obviously the character of a product is always determined by the demand, not the supply. Much is made of the fact that all foil is made with a 10 percent tolerance in gauge and that, therefore, at one extreme the two gauges overlap. But this is the exception, not the rule. Respondent's officials testified that

very little .00065 foil went to household wrap. There are other uses for .00065 foil, but there is no reliable evidence of their substantiality or effective competition. There is no chemical, metallurgical or alloy difference. There is, of course, marked differences between foil per se and where it is laminated with paper, cardboard, or other materials. The chief difference is in the coloring and embossing. True, these operations can be done simultaneously on the same machinery, and it is not a relatively expensive operation, nor time-consuming, nor any lack of facilities for doing it. But this is the purely mechanical view. Arrow Brands, Inc. built its business from scratch to nearly \$600,000 in sales, its assets from a few thousands of dollars to nearly a half a million in eleven years solely on the creativeness, the newness, the originality of its coloring and embossing. As its president testified, "Without this there isn't much left," and that this is an element not involved in selling to the packaging field. Further he testified that this factor, among others, distinguished his products from those of his competitors in the florist foil field. Arrow's leadership in the decorative florist foil field rests firmly on this physical characteristic, which makes it not only different from aluminum foil generally, but makes it peculiar and distinctive.

#### Uses

40. Coming to end uses, decorative florist foil has only two uses—one, as described, in the florist trade, the second, to a much more minor degree, for gift wrapping or makeshift decoration. Aluminum foil, generally, has dozens of uses, most of them, by far, in the packaging field. Respondent is the leading producer of household wrap. But obviously, subduing the pervasion of Limburger cheese in a refrigerator or preserving Junior's unconsumed spinach for yet another try is a far cry from fitting a potted poinsettia in with a fixed color scheme or to the individual and subjective taste of a housewife. Preservation and protection as against decoration. Utility versus aesthetic appeal. Product sale versus accessory sale. Prior to acquisition respondent did not sell to the florist trade as defined.

41. The record shows that lace and colored cellophane, chipmats, grass mats, painted pots, colored ceramic pots, burlap, crepe paper, styrofoam, polystyrene and plastic pots can be used in place of florist foil, but the record also shows such substitutes to be actually used to a negligible degree—5 percent or less. There is no effective competition between these substitutes and decorative florist foil. Furthermore, the prices of the latter are substantially lower than the former.

## Marketing Characteristics

42. In addition to differences or distinctions in physical characteristics and uses, the Commission in its *Brillo* opinion (*supra*) observed that the manner of marketing and price behavior and "possibly other things bearing on the question of whether or not they may be undistinguished competitively from other wares" could be taken into account.

43. Sales of decorative aluminum florist foil by Arrow Brands, Inc., the other independent converters, and the importers of florist foil are made almost entirely to florist wholesale houses and jobbers. Sales are generally solicited by direct mail advertising to both wholesale and retail florists, and by mailing sample books and price lists to prospective purchasers, followed up by personal contact of each prospect by salesmen qualified through experience to reach the florist market.

44. None of the hundreds of producers or processors of aluminum foil, other than the specialized converters or importers of florist foil, mail sample catalogs or price lists, or employ salesmen to reach the florist market. When the respondent expanded the sales force of its subsidiary, Arrow Brands, Inc., it employed independent commission agents experienced in selling ribbons and other supplies to the florist market. It did not employ an aluminum foil salesman. Nor did the respondent utilize any one of its 700 salesmen trained and experienced in the sale of aluminum foil generally. Reynolds thus recognized the specialized marketing characteristics of the florist foil market, as opposed to the marketing characteristics of the markets of aluminum foil generally.

45. The promotional advertising and sales efforts of the processors of florist foil are all directed to the delineation and identification of this market. Price lists, advertising material, and sample catalogs designate the product as "Florist Foil," or some similar term calculated to isolate florist foil from aluminum foil in general. "Florist Foil" is a universal, meaningful, and commonly accepted designation of the decorative aluminum foil product sold to the florist trade. Arrow Brands in all of its price lists, advertising stuffers and other documents, consistently refers to "florist foil" without exception. The same is true of both the testimony of six of Arrow's competitors and their price lists and correspondence. Respondent's publicity release announcing the acquisition, also definitely recognized this.

46. Since 1950, the respondent has maintained a general sales division in charge of sales of the various products of the respondent

company, including aluminum foil. Reynolds' marketing organization has been departmentalized to meet the individual and specific requirements of the varied markets within the aluminum industry. Special divisions have been established to concentrate on, and coordinate production with, sales in each market.

47. Although Reynolds Metals Company maintained a highly specialized sales organization to sell its products, the respondent, after its absorption of Arrow Brands, Inc., set up and operated Arrow Brands' sales program independent of the sales organization of the parent company. This intracorporate separation of marketing responsibility for decorative aluminum florist foil from the general sales division of the respondent underscores the existence of an inherently specialized market for decorative aluminum florist foil.

48. Decorative aluminum florist foil has been generally marketed by the converter through florist wholesalers and jobbers to the retail trade. Over 90 percent of the florist retailers or jobbers purchase their requirements in small lots of less than 2,500 rolls. The domestic converters of decorative aluminum florist foil have traditionally sold this product without minimum order requirements or quantity price differentials, whereas the major producers and foil rollers have generally attempted to sell only to the large users of aluminum foil and have established specific minimum order requirements and quantity price differentials. Respondent was not in the pattern area prior to acquisition—most of its sales were plain aluminum foil. The domestic converters of decorative aluminum florist foil have adjusted their terms and conditions of sale to provide an opportunity for the small wholesale florist to purchase aluminum florist foil on an equal basis with the larger wholesalers who can and do purchase decorative aluminum florist foil in lots of over 2,500 rolls. The smaller wholesalers, or those who are able to purchase only in small lots, represent over 90 percent of all the florist wholesalers or jobbers in the United States and, numerically, are a substantial factor in the marketing of decorative aluminum florist foil and other floral products to the florist trade.

#### Price Behavior

49. The price of decorative aluminum florist foil 1955-6-7-8 as charged by converters selling to the florist trade, fluctuated independently and substantially lower than the price of aluminum foil generally as charged by foil rollers, when computed to a common comparable unit.

## Additional Factors

50. In addition to the above, respondent itself has recognized the styling and processing of plain aluminum foil into sizes, quantities, and design suitable for, and sold to, the florist trade as a separate market and a distinct line of commerce.

51. In a formal report August 9, 1956, of negotiations to buy Arrow Brands, Inc., respondent's vice president stated:

"This is a specialty business. It is highly competitive and its success is dependent upon the creation of attractively designed, colored, and embossed foil in various packaging effects and its sale (through a close knowledge of requirements) to the floral trade who use the product in the wrapping and packaging of cut and potted flowers, plants and floral designs of all kinds. The nature of the business requires that the manufacturer be closely attuned to the changing style in floral packaging, have the type of operation that can promptly create new styles, get them quickly in manufacture, and promote and sell these styles to the florist trade."

Further, in response to Commission pre-complaint inquiry, November 8, 1956, respondent stated "Arrow Brands is engaged almost entirely in the styling, manufacture and sale of decorative foil for the florist trade" and "By the use of color and design, aluminum foil is ideally suited for use with floral products and there is a substantial potential market for foil for such purpose," and "The organization thus acquired could continue to operate the business with a high degree of autonomy in order to meet the special needs of the particular trade." Since acquisition respondent has continued to so regard the market (see paragraphs 45 and 46, *supra*). It has retained Roth as president of its Arrow Brands, Inc. subsidiary at a far from stingy salary and for a substantial term of years for this market in spite of its already existent large and specialized sales, advertising, and promotional personnel.

52. The finding, therefore, is that the styling, processing, and sale of decorative aluminum foil to the florist trade as above defined is a line of commerce within the meaning of Section 7 of the Clayton Act.<sup>6</sup>

53. The relevant market or line of commerce must be substantial "in terms of the market affected." Respondent officially estimated a potential of \$2,000,000 market with 10 or 12 suppliers. One of the latter, long in the business, a competitor of Arrow Brands, Inc.,

<sup>6</sup> This segmentizing is certainly no more narrow than is separating championship boxing matches from boxing matches generally. *U.S. v. International Boxing Club of New York*, 79 U.S. Sup. Ct. Rep. 245.

estimated both domestic and imported sales to the florist trade in 1957 at 1½ million pounds. According to the Census, foil converters, generally, reported 216 million pounds consumed in 1957, divided as follows: locker plant, freezer, restaurant and household packaging foil—61 million pounds; metal containers for foods and bakery goods—28 million pounds; tobacco—18 million pounds; insulation foil—10 million pounds plus.

54. Respondent contends, of course, that vis-a-vis, the aluminum industry, as a whole, or as respects the national economy, this is de minimis; and so it is. Neither will collapse if the florist trade disappears. It also contends that as regards the foil market per se, it is de minimis—8 million out of 216 million. This assumes as a predicate that Section 7 of the Clayton Act was directed only at the major industries and the corporate giants thereof. The 1950 amendment thereof makes the opposite clear.<sup>7</sup>

55. Certainly this segment of the entire market is not so regarded by those in it; including respondent itself. Its corporate documents in this record, both pre-acquisition and post-acquisition, make it abundantly clear that respondent not only regarded this as a separate market but as a substantial one having great potential. The supply of 600-700 wholesale florist supply houses and through them, of 25,000 retail florists, the dramatic history of Arrow Brands, Inc., the acquisition itself, all lead to the conclusion that the market as above defined is substantial.

#### Effect

56. This leads to the final element—is this a case where “the effect of such acquisition may be to substantially lessen competition or tend to a monopoly” in the line of commerce as above found? Actual effect need not be shown, only a reasonable probability of the occurrence of either of the two proscribed effects.

57. For nearly 20 years prior to the acquisition, the relevant market, as above found, has been developed, serviced and invigorated by less than a dozen small business concerns. Originally, or until Arrow Brands, Inc. entry, this was done by M. H. Levine Corporation, Highland Supply Corporation and H. D. Catty Corporation. Entry therein has been easy, with low capital outlay, standardized and plentiful machinery, no dearth of supplies. Postwar, five small domestic foil converters entered this market—H. Jacobson & Company, John T. Raisin Corporation, Western Foil Converters, Lion Ribbon Company, Arrow Brands, Inc., plus several domestic agents

<sup>7</sup> U.S. v. *Bethlehem Corporation, et al.*, Civil No. 115-228 S.D.N.Y. 11-20-58.

for foreign foil suppliers. The competition in new designs, colors and patterns, as well as price, has been intense among these relatively small commercial units.

58. The intensity of the price competition has resulted in a gradual, though fluctuating, decline in the price of florist foil. Entirely conversely to the price of aluminum foil generally, the price of which, with the exception of 1958, has had regular semi-annual and annual increases. And, of course, all of these florist foil converters were forced to purchase their basic foil from the major domestic aluminum foil producers and the foil rollers. The latter, although selling both colored and embossed foils, did not offer the wide range of colors and designs developed by these small foil converters, nor in sizes or quantities obtainable by the customers of the latter.

59. The uniformity and regularity as well as the chronology of prices and price increases imposed by the major foil producers and foil rollers contrasted with the large unused productive capacity, and with either stable or slackening demand, is strongly suggestive, although by no means conclusive, of administered prices in the foil industry as a whole.

60. Decorative aluminum florist foil was distributed to the florist trade through some six to seven hundred florist wholesalers, of which approximately 90 percent are small businessmen, unable to purchase decorative aluminum florist foil in large lots. The sales policy of the seven or eight domestic producers of decorative aluminum florist foil has had the effect of increasing competition in the distribution of floral products generally by affording this large group of small florist wholesalers the equal opportunity to compete in the florist market with the larger wholesalers in the sale of decorative aluminum florist foil. This effect was accomplished by the adoption of a program of selling for immediate delivery, in any quantity, at the same price, to all purchasers alike.

61. In contrast to this, the importing agents of foreign produced decorative aluminum florist foil, sold only in minimum quantities of 2,500 rolls or more, three months' delivery after order, payable in full on arrival. Similarly, respondent and its foil producing and rolling competitors likewise gave quantity discounts, required minimum orders of 2,500 rolls. Only 10 percent of the florist wholesale supply houses can buy on such terms. The remaining 90 percent of the six or seven hundred florist wholesalers are small businessmen unable to meet these terms. The sales policy of the seven or eight domestic producers of florist foil named above in paragraph 57 has the effect of increasing competition in the distribution

of florist foil by affording this large group of small florist wholesalers the equal opportunity to compete for the retail florists' trade with the larger florist wholesalers, because they sold in any quantity on immediate delivery.

62. The pre-acquisition picture, in this line of commerce, therefore, was one of intense competition, price-wise, quality-wise, service-wise, and creative-wise, among a small group of more or less comparably equal competitive units. The acquisition has materially altered this picture. One of this group of small businesses now has behind it over 600 million in resources, with nearly 40 million set aside for general expansion, with a \$500,000 new plant having production facilities beyond those of any other, built with funds supplied by respondent. The financial statements of Arrow Brands, Inc. at the time of acquisition negate any possibility of such an undertaking. In addition, respondent has materially increased Arrow Brands, Inc.'s advertising budget providing at least two spot commercials on its nation-wide television programs. From their financial statements in the record, none of Arrow's competitors can afford any such promotional efforts. In brochures and advertisements sent to florists, respondent has represented to them that the acquisition means to them:

"Expanding printing and embossing departments in the new Arrow plant will permit production of popular styles and designs on a larger scale, with quicker delivery to you."

"Nationally known Reynolds' designers and stylists will bring added beauty to a line already recognized as the style leader in florist foil."

"On-the-spot stacks of Arrow originals the country over will permit quicker shipments from stock."

"Reynolds' nation-wide consumer advertising will be utilized to bring new sales and merchandising opportunities to florists who use Arrow foils."

63. In addition to this, and regardless of who caused or initiated the price cuts of August and October 1957, the latter price reduction by respondent was below cost and continued to be so until mid 1958. Arrow Brands, Inc. for the first time in its history showed continuing losses after the acquisition. The extent thereof is not too clearly reflected, but its financial statements at the time of acquisition indicate clearly that it could not have continued to sell at a loss, the length of time it did, in view of the losses which its post-acquisition financial statements show that it sustained.

64. From the financial and sales statements in the record, received in camera, of five of Arrow's competitors, it is plain that none of

these could so broaden their productive facilities, advertise, or sell at a loss over such a length of time and continue in business. And the low cost, ease of entry, plentiful supply of basic material and machinery while still there, are, in effect, unusable.

65. It is also plain that each of these competitors has steadily declined in sales of florist foil since the acquisition, whereas Arrow's sales have materially increased, albeit not at a profit.

66. The future of this post-acquisition picture was described by M. H. Levine who pioneered florist foil in the relevant market, as found, in 1934 and who has been in it ever since, as one where respondent can do things no small concern can do and it has taken prices down where there is nothing in it any more for the little man. The opinion testimony of three others—Jacobson, Highland and Western Foils was generally the same—"have to get out of foil fabrication," "profit eliminated" and "in time put us out of business," and "can't compete."

67. The record is confusing as to which florist foil actually started the price war of 1957. Arrow reduced its price below cost—65 cents per roll plain colored foil—across the board to all on November 1, 1957, and then made it retroactive to October 1, 1957, but Highland Supply had cut to 75 cents on August 20, 1957, effective September 1, 1957. But there is credible testimony in the record that this price cut of Highland's was brought about by Roth admitting to Highland on the telephone that Roth had sold one large customer at 65 cents although his price generally was 75 cents. In any event, Roth's price cut across the board to 70 cents undercut Highland's price and those of other florist foil converters to a point where sales declined and profits disappeared. Confidentially received sales figures show that Highland's sales of florist foil in 1957 were down 14.8 percent from 1955, Raisin's down 40.4 percent, Catty's down 32 percent, and Western Foils down 26.5 percent for the same comparable years, whereas Jacobson gained 6.5 percent and Arrow gained 18.9 percent. All of their officials who testified attributed this to Arrow's October 1, 1957, price cut. And Arrow's president knew it was below his cost. This is in contrast to substantial increases in sales from 1953 to 1956 by Highland, Catty, Jacobson, and Western Foils. Only Jacobson and Highland met Arrow's October 1957 price cut. Both have operated in the red since then. The others did not meet the price cut and have lost sales materially since then, two of them to the vanishing point. Six months after filing of the complaint herein Arrow, Highland, and Catty all went back up to 75 percent per roll. Jacobson has not. Nevertheless, the power has been demonstrated as has the damage which its exercise causes.

68. Respondent's response to this is that it was forced by foreign foil competition. The latter first appeared in this florist foil market in early 1954 at 52 cents a roll compared to \$1.00 a roll domestic. In the succeeding two years all the domestic florist foil sellers operated at a profit. Foreign foil was under a competitive disadvantage with them in that a minimum order of 2,500 rolls was required which only 10 percent of the market could afford, three months' delivery and spot cash. Notwithstanding this foreign foil competition price-wise, in 1956 Arrow raised its prices another 15 cents a roll to \$1.00 and remained there until one month after the acquisition by respondent when it was again cut to 85 cents a roll. Raising its prices cost Arrow no loss in sales—they and the profits therefrom increased in spite of this foreign foil competition. The hearing examiner does not accept this as the sole cause of the below-cost cut. Whether it was or was not, the power to sustain repeated losses and sell below cost has been demonstrated, a power not before possible to Arrow, in view of its financial resources as shown by its statements.

69. In any event, a heavily loaded donkey may still bear the burden, if that last additional sack is not added. It cannot be said that he was overloaded in the first place. The florist foil commerce had this foreign cross to bear since 1953, and moved on to increased sales and profits notwithstanding, but apparently from this record this acquisition and the subsequent price cutting was that last full measure which broke the donkey's back.

70. There are no accurate or reliable sales statistics of total florist foil market in the record, hence market shares as of acquisition time cannot be determined. But some idea can be obtained from various documents and other evidence in the record. Respondent named as its chief competitors in 1955 the following: Arrow Brands, Highland Supply Corporation, H. Jacobson & Company, M. H. Levine Corporation, John T. Raisin Corporation, and Bruder-Tach. In addition, the record shows two others: H. D. Catty Corporation and Western Foil Converters—seven in all. The sales of five of these are in the record for 1954-7. For the year 1956 these totaled \$913,174.76. Adding Arrow's 1956 sales of \$589,551.53 makes a total for six out of the eight of \$1,502,726.29. Of this, total Arrow in 1956, therefore, accounted for more than 33 $\frac{1}{3}$  percent. Accepting respondent's official estimate of a *potential* market of \$2,000,000, Arrow accounted for more than 25 percent of the total possible. On this basis of quantitative substantiality the acquisition cannot be said to be de minimis.

## Findings

71. Respondent contends, and correctly, that the effect of this acquisition on the national economy, the aluminum industry in all its manifold aspects as a whole, on the entire foil market, is de minimis. It also contends, but incorrectly, that there has been no exclusion of competitors. Respondent now has the power to exclude its aluminum foil producing competitors from selling to Arrow Brands, Inc. True, Arrow's purchases from respondent in 1955 were only 135,000 pounds with 10 percent bought elsewhere, amounting to only about 150,000 pounds total as against a total of aluminum foil sold in 1955 of more than 175 million pounds, but the record abundantly shows that this relatively small amount was evidently quite important sales-wise not only to respondent but to its competitors, Alcoa, Kaiser and others, because of their constant solicitation and promotion, as do respondent's documents contemporaneous with the acquisition.

72. Respondent's entire de minimis argument, stressed so repeatedly, that there has been no shut-off or reduction in foil production or its conversion, that access to supplies and machinery for both have been unaffected, that retail florists have undiminished access to foil at cheap prices, that ease of entry is unaffected, and upon statistical comparisons seems to be founded basically on the assumption that the law ignores the capture of small markets from small businessmen. This hearing examiner does not believe the statute as amended was so intended. This case presents the picture of eight or ten small commercial units in imminent danger of being forced out of a formerly commercially livable enterprise by reason of the acquisition attacked. Much damage has already occurred, more with finality is reasonably to be expected. If the present and probable plight of these victims is to be ignored and written off as too insignificant it will have to be for others, at higher levels, to do it.

73. Respondent also seems to contend for Sherman Act criteria of control of supply, ability to raise or lower prices at will without regard to competition, power to exclude or eliminate competitors in the aluminum industry as a whole or in the entire foil market as necessary elements to be proved in this proceeding. Such are unnecessary—only a substantial *lessening* of competition in any affected market or segment of a larger market as found, or a *tendency* to monopoly—not the monopoly found in the old Alcoa case or others. It is the market, as above found, which has been affected, not foil production, or basic aluminum production, or their facilities, nor supplies, nor sellers—it is buyers, and their custom.

Conclusions

56 F.T.C.

74. The conclusory findings on probable effect, therefore, is that the acquisition of Arrow Brands, Inc. by respondent may substantially lessen competition or tend to monopoly in the relevant line of commerce, as above found, in violation of section 7 of the Clayton Act, as amended.

75. One further point must be disposed of. That is that this proceeding should be dismissed because on October 7, 1957, the Commission sent respondent the following letter:

Re File No. 5710630.  
REYNOLDS METALS COMPANY,  
*Reynolds Metals Building,*  
*Richmond 18, Va.*

FEDERAL TRADE COMMISSION,  
OFFICE OF THE SECRETARY,  
WASHINGTON 25, October 7, 1957.

GENTLEMEN: Reference is made to past correspondence regarding the acquisition of Arrow Brands, Inc., by Reynolds Metals Company, which has been examined by the Commission with a view to determining whether possible violation of Section 7 of the Clayton Act may be involved.

You are advised that the Commission contemplates no further action in this matter at this time and it is accordingly being closed. You are advised further that the Commission reserves the right to take action in the future if other evidence or subsequent developments warrant such action.

Your cooperation in supplying the information as requested is greatly appreciated.

By direction of the Commission.

(Signed) ROBERT M. PARRISH,  
Robert M. Parrish,  
*Secretary.*

The contention is that this record shows no "other evidence or subsequent developments" to warrant the issuance of the complaint.

76. Discretion to issue or not to issue complaints, is vested by statute solely in the Commission, which discretion has not been delegated, assuming that it even can be, to this hearing examiner. No master or referee can question the discretion of the District Court which appointed him—neither can I. Having no authority, the contention must be ignored.

77. Respondent's other motions to dismiss this proceeding are denied.

#### CONCLUSIONS OF LAW

1. The burden of proof to establish potential competitive effect on "any line of commerce" affected by any acquisition attacked under Section 7 of the Clayton Act is on the proponent.<sup>8</sup>

2. Vertical as well as horizontal acquisitions are within the purview of the statute.<sup>8</sup>

3. Determination of the relevant market or line of commerce is a necessary predicate to a finding of a violation because the threatened

<sup>8</sup> U.S. v. E. I. du Pont de Nemours & Co., et al., 353 U.S. 586.

monopoly must be one which will substantially lessen competition "within the area of effective competition."<sup>8</sup>

4. Substantiality can be determined only in terms of the market affected.<sup>8</sup>

5. One test is that the products involved have sufficient peculiar characteristics and uses to constitute them products sufficiently distinct from all other similar products to make them a "line of commerce" within the meaning of the Clayton Act.<sup>8</sup>

6. The market affected must be substantial.<sup>8</sup>

7. Other considerations in determining the relevant market or line of commerce, as well as physical characteristics and uses of the products involved, are price behavior, distributional differences, recognition or treatment by the industry or by respondent of a separate product market.<sup>9</sup>

8. Factors in determining the probability of the proscribed effects of the acquisition are a significant increase by reason thereof, of a producer's already substantial share of the market (quantitative substantiality), number of competitors, degree of concentration, ease of entry both before and after in each case, as well as the general competitive situation vis-a-vis the relevant market as found.<sup>10</sup>

9. The "reasonable interchangeability" test of the Cellophane case<sup>11</sup> is not controlling in a Section 7 case. That was a Sherman Act case, requiring a showing of actual monopoly—the power to raise or lower prices independently of competition and the power to exclude or eliminate competitors.<sup>12</sup>

10. By all of these tests, the acquisition of Arrow Brands, Inc., by respondent, may have the effect of substantially lessening competition or tending to create a monopoly in the conversion and sale of decorative aluminum foil to the florist trade in violation of Section 7 of the Clayton Act, as amended (U.S.C. Title 15 Section 18).

#### ORDER

*It is ordered*, That respondent Reynolds Metals Company, a corporation, and its officers, directors, agents, representatives, and employees, shall, within a time to be fixed by the Commission, divest itself of all of its right, title, and interest in and to:

(a) All stock, assets, patents, trade-marks, trade names, contracts, business and goodwill, and all other properties, rights and privileges

<sup>8</sup> U.S. v. E. I. du Pont de Nemours & Co., et al., 353 U.S. 586.

<sup>9</sup> In re Brillo Mfg. Co., Inc., Docket 6557, May 23, 1958.

<sup>10</sup> In re Brillo Mfg. Co., Inc., Docket 6557, May 23, 1958.

<sup>11</sup> U.S. v. E. I. du Pont de Nemours & Co., 351 U.S. 377.

<sup>12</sup> U.S. v. Bethlehem Steel Corporation, et al, U.S.D.C. S.D.N.Y. Civil 115-328 Nov. 20, 1958 (see footnote 36 of that opinion).

acquired by the Reynolds Metals Company as a result of the acquisition by the Reynolds Metals Company of the stock or share capital of Arrow Brands, Inc.

(b) All other assets and properties acquired by Arrow Brands, Inc. since the acquisition of said Arrow Brands, Inc., by the Reynolds Metals Company.

*It is further ordered,* That after the date of the issuance of this order by the Federal Trade Commission, respondent shall cease and desist from acquiring, directly or indirectly, the whole or any part of the stock or other share capital, or the whole or any part of the assets of, any corporation engaged in the manufacture or distribution of decorative aluminum florist foil.

#### OPINION OF THE COMMISSION

By TAIT, *Commissioner*:

The complaint herein charged respondent, Reynolds Metals Company, a corporation, with violating Section 7 of the Clayton Act, as amended (15 U.S.C. §18), by the acquisition of the stock and assets of Arrow Brands, Inc., a corporation. Hearings were held in due course, and on March 3, 1959, the hearing examiner filed an initial decision in which he found and concluded that the acquisition violated Section 7, as alleged. His decision contains an order directing respondent, among other things, to divest itself of the stock and property so acquired. Respondent has appealed, raising issues having to do with the relevant "line of commerce," the substantiality of the market affected, the probable competitive effect and other questions.

#### ACQUISITION FACTS

Reynolds Metals Company, a Delaware corporation, with its principal place of business in Richmond, Virginia, on August 31, 1956, acquired all of the capital stock of Arrow Brands, Inc. (sometimes referred to hereafter as Arrow), a California corporation. Both the acquired and the acquiring companies on and before August 31, 1956, were corporations engaged in commerce, as "commerce" is defined in the Clayton Act.

Reynolds Metals Company, the respondent, is a major producer of primary aluminum and fabricated aluminum products. Its production includes sheet and plate, foil and foil products, extrusions, wire, rod and bars, cable, powder and paste, and welded tubing. Its net sales in 1957 were \$446,578,767.

Arrow Brands, Inc., the acquired company, was incorporated in

1945. Mr. Harry Roth was its president and principal stockholder. At the time of the acquisition, it was principally engaged in styling, designing, producing and selling an aluminum foil product to the florist trade. This product is used to decorate flower pots and cut flowers. Its sales were almost entirely to florist wholesale supply houses and jobbers. Arrow's manufacturing operations consisted of printing, coloring and embossing plain unmounted aluminum foil. In 1955, its total sales of foil products amounted to \$497,000.00.

#### BACKGROUND FACTS

Aluminum is a soft, ductile, metallic element produced out of bauxite ore. Other elements may be added to give it varying characteristics and properties. Pig, ingot, and billet are the bulk forms in which both aluminum and aluminum alloys are sold and constitute the starting material in the production of all aluminum fabricated products.

In the production of sheet or plate aluminum, the rolling ingot, heated to an elevated temperature, is repeatedly passed between the rolls of a rolling mill to break down its cast structure and reduce its thickness. Various other production and rolling procedures result in the finished aluminum plate or sheet. Further rolling converts sheet into foil. Foil is rolled through a series of mills until it is thin enough for its intended use.

Aluminum foil is a flat-rolled sheet thinner than 0.006 inch in gauge, 99.45 percent pure aluminum, oil free and dry. It is generally available with one shiny surface and one mat or satin surface. Most aluminum foil is dead soft, 0 temper. It can be molded, crimped and formed very easily.

Aluminum foil is used widely as a packaging and wrapping material. Decorative effects can be obtained by coloring or lacquering, embossing, printing and laminating (laminating is mounting the foil to paper). Among end uses of foil are the following: containers for bakery products, semi-rigid containers for specialty foods and frozen cooked foods, and wraps for yeast, hard candy, chocolate and cheese. It is also used as a household wrap and is made into milk closures, florist wraps and many other things.

The producers of aluminum foil in the United States include three fully integrated aluminum companies, namely, Aluminum Company of America (Alcoa), Kaiser Aluminum & Chemical Corporation, and Reynolds Metals Company, and several partially integrated companies, such as Anaconda Company, through its ownership of Cochran Foil Company, and Revere Copper & Brass Company, through its ownership of Standard Rolling Mills, Inc., and through

its ownership, along with Olin-Matheson Chemical Corporation, of Ormet Corporation.

There are, in addition, a number of companies which purchase their raw material requirements from Alcoa, Reynolds Metals Company, and others, and produce aluminum foil, such as the following: Johnston Foil Manufacturing Company, St. Louis, Missouri; Republic Foil & Metals Mills, Inc., Danbury, Connecticut; Stranahan Foil Co., Inc., South Hackensack, New Jersey; R. J. Reynolds Tobacco Company, through a subsidiary, Archer Aluminum Company, Winston Salem, North Carolina; and Aluminum Foils, Inc., a subsidiary of Swiss Aluminum Company, Jackson, Tennessee.

“LINE OF COMMERCE”

The “line of commerce” is one of the essential elements of a Section 7 case which the Government must define and prove. *Pillsbury Mills, Inc.*, 50 F.T.C. 555, 569 (1953); *United States v. E. I. du Pont de Nemours*, 353 U.S. 586 (1957); *United States v. Brown Shoe Company, et al.*, United States District Court, Eastern District of Missouri, Eastern Division (November 20, 1959). The “line of commerce” relates or refers to a product market. *United States v. E. I. du Pont de Nemours, supra*; *United States v. Bethlehem Steel Corporation*, 168 F. Supp. 576 (1958); *United States v. Brown Shoe Company, supra*. A test is whether the products involved (usually those produced by the acquiring or the acquired firm or both) are shown by the facts to have such peculiar characteristics and uses as to constitute them sufficiently distinct from others to make them a “line of commerce” within the meaning of the Act. *United States v. E. I. du Pont de Nemours, supra*; *Crown Zellerbach Corporation*, Docket No. 6180 (December 26, 1957); *Brillo Manufacturing Company, Inc.*, Docket No. 6557 (On Interlocutory Appeal, May 23, 1958); *United States v. Bethlehem Steel Corporation, supra*; *United States v. Brown Shoe Company, supra*.

In *Brillo, supra*, we held that the factor that the acquired and acquiring corporations both made the same product, industrial steel wool, was only one circumstance to be considered; that the additional factors which could have been taken into account included data relating to the manner in which the products were marketed, the physical characteristics, prices and possibly other things bearing on the question of whether or not they may be distinguished competitively from other wares.

It is clear that while a “line of commerce” may include an entire industry such as “the iron and steel industry,” it may also be confined to a lesser portion of the whole industry. *United States v.*

*Bethlehem Steel Corporation, supra.* In any such instance, the practices in the industry are of great significance. Each case requires an examination of its own particular facts before a determination can be made.

In this matter, the "line of commerce" alleged in the complaint was "the production and sale of decorative aluminum foil to the florist trade."

There are a large number of "converters" of aluminum foil in the United States who purchase their requirements of foil from domestic or foreign sources, including aluminum foil producers mentioned above, and who convert it for a variety of end uses. Some of these converters manufacture or "produce" a product which is sold to wholesale florist supply houses and jobbers for resale to retail florists who use it to decorate flower pots and cut flowers. The trade refers to such aluminum foil as "florist foil." Florist foil is clearly distinguishable from aluminum foil.

#### Physical Characteristics

Florist foil is usually made in a gauge which is preferred by florists, namely, .00065 of an inch thickness. This compares, for example, with .0007 gauge in which general household foil is made. The preference for .00065 gauge is due to the fact that it is the least expensive foil that can be practicably used as a florist wrap. The producers have bowed to the florists' preference in this connection. The florist foil purchased by florists is wound on an individual core in fifty foot lengths, 20 inches wide. It is wrapped in cellophane and attractively boxed. On the other hand, aluminum foil, marketed by aluminum producers and foil rollers, generally, is sold in jumbo mill rolls and is neither packaged nor boxed. The originality or newness of designs and coloring is also a factor in distinguishing florist foil from aluminum foil.

#### End Use

Florist foil is used by retail florists to wrap around and decorate potted plants and cut flowers. There is no evidence that it is used for other purposes.

Aluminum foil other than florist foil might be used by florists for decorating purposes; even household aluminum wrap could be so used. But the fact is that the florist foil business is a specialty business, and florists do not use other foils to any appreciable extent. They purchase florist foil because of styling, price and other reasons. Products like lace and colored cellophane, chipmats, grass mats and

others are used by florists for decorating purposes, but in a relatively minor way. There is no practical substitute for the florist foil.

Since the merger, Arrow has put on the market a product trade-named "Snap wrap" which is designed particularly for florist use. This further illustrates the distinctive nature of the product market.

#### Market Factors

The market for florist foil consists of the wholesale florist supply houses and jobbers who resell the product to retail florists. It appears that the M. H. Levine Corporation of New York, New York, first introduced into the United States aluminum foil to be used as a decorative wrap for potted plants. Among the companies which thereafter entered the field as "converters" or producers of florist foil were Metal Goods Corporation, St. Louis, Missouri; H. D. Catty Corporation, Huntley, Illinois; Highland Supply Corp., Highland, Illinois; Arrow Brands, Inc., Los Angeles, California; H. Jacobson & Company, Worcester, Massachusetts; John T. Raisin Corporation, San Francisco, California; Western Foil Converters, Berkeley, California, and Lion Ribbon Company, New York, New York.

Producing and selling florist foil developed into a specialty business. It is clear that Reynolds Metals Company and others recognized it as such. Florists had peculiar needs, such as in designs and coloring, and in service requirements. Arrow became one of the leaders, if not the leader, in the development of styles and colors. Price was a large factor in shaping and defining the market. Selling florist foil in such sizes and quantities as the trade needed and desired was another. Due to the specialty nature of the market only a few relatively small producers occupied the field. Other producers of aluminum foil did not sell in the market to any significant extent, if at all.

In addition, aluminum foil producers, generally, do not mail catalogs or price lists to customers nor employ salesmen to reach the florist market, whereas such are distinctive features in the florist foil field.

#### Prices

The price of aluminum florist foil sold to the florist trade by the florist foil producers or converters was substantially less than, and fluctuated independently from, the price of aluminum foil of a similar gauge and quality sold by major producers in other markets.

## CONCLUSION AS TO CHARACTERISTICS AND USES

The above-mentioned factors are not necessarily all of the distinctions shown herein. They indicate clearly, however, that the "florist foil" market is a distinguishable product market. The record is persuasive on this point. Our conclusion is, therefore, that the production and sale of decorative aluminum foil to the florist trade is a "line of commerce" within the meaning of Section 7.

Respondent asserts that it was uninformed and confused as to the relevant "line of commerce" and that the examiner found a "line of commerce" at variance with that alleged in the complaint; therefore, denying it due process. The complaint alleges that the acquisition had the prescribed effects "in the production and sale of decorative aluminum foil to the florist trade." We believe this is clear, particularly when considered in conjunction with the alleged details of the business of Arrow, such as follows:

"Arrow Brands was engaged almost entirely in the styling, manufacture and sale of decorative aluminum foil for the florist trade. The product is used to decorate potted flowers and cut flowers. \* \* \*"

"The sale of florist foil was made almost entirely to florist wholesale supply houses and jobbers throughout the United States. \* \* \*"

There is no inconsistency in the charge and in the examiner's finding in this connection. In his reference to "conversion" instead of "production" he simply adopts the appropriate industry term. There is no difference in meaning so far as this case is concerned. Respondent's argument that it has been denied due process is rejected.

Respondent also contends that the question is *de minimis*. In this instance, the dollar volume of the industry is not large—about 1½ to 2 million—but the market is, nevertheless, substantial. The product is sold through some 600-700 wholesale florist supply houses or jobbers to 25,000 retail florists located over the entire United States. The impact, therefore, of any lessening of competition would be nationwide and it would involve thousands of small concerns. We agree, therefore, with the substance of the examiner's findings on this question, but to the extent they are inconsistent in detail they are rejected.

## COMPETITIVE EFFECT

Respondent argues that every level of the aluminum industry is so saturated with competition that the acquisition could not have the anticompetitive effects prescribed in the statute. In making this argument, respondent apparently is looking at the entire aluminum industry as the relevant line of commerce. The market, however,

for testing the legality of this merger is that involving the production and sale of florist foil.

Moreover, the test is not whether an actual lessening of competition has occurred but rather whether there is a reasonable probability that the merger will substantially lessen competition or tend to create a monopoly. *United States v. Bethlehem Steel Corporation, supra*; *Pillsbury Mills, Inc., supra*; *Crown Zellerbach Corporation, supra*; *United States v. E. I. du Pont de Nemours, supra*.

The evidence in this case of probable competitive effects is almost entirely confined to the effects occurring at the level of competition in which Arrow and its competitors, the converters of florist foil, are engaged. There was no increase in concentration in the industry as a direct, immediate result of the merger because respondent was not in competition with Arrow and its competitors. Reynolds Metals Company produced aluminum foil but it did not make and sell florist foil. Reynolds sold aluminum foil to Arrow which converted it into florist foil, and the florist foil was then sold by Arrow to the wholesale florist supply houses. In other words, this was a forward, vertical acquisition. Respondent acquired a company which was its customer and not its competitor.

The examiner points out in his initial decision that respondent now has the power to exclude its aluminum foil producing competitors from selling to Arrow Brands, Inc. This is obvious. However, as we construe his decision, the finding was not relied on by the examiner to support his conclusion as to a violation of Section 7. The examiner also found that a significant part of the growth of the respondent, or its predecessor, has been the result of mergers with competitors in fabricating lines. Here again he did not rely on this finding to support his conclusion of a Section 7 violation.

Our consideration will be limited to competitive effects in the level of distribution in which Arrow Brands, Inc., and its competitors in the production and sale of florist foil were engaged. There were about eight companies engaged in this line of enterprise. A number of these have been named above. Prior to the acquisition, all were of a roughly equivalent competitive status, if looked at on a broad scale. In other words, no company was very big and all were relatively small. Some had advantages not shared by all, but they each had about the same competitive capabilities. Also they were active and aggressive competitors. Prices were lower than those which prevailed in the aluminum foil market as a whole. Success depended on competitive prices, personal relationships, creative designing, the providing of services, and other things.

After the acquisition, the balance of power in this small, competi-

tive arena shifted dramatically to Arrow Brands, Inc. Some of the competing converters were practically forced out of the field; others have operated at substantial losses in their sales of florist foil. Comparing the years 1955 and 1957, Highland's sales of florist foil dropped 14.8 percent; Raisin's, 40.3 percent; Catty's, 32 percent; Western Foil's, 26.5 percent. Jacobson, for the same period showed a gain in sales of 6.5 percent, but it operated in the red. In contrast, Arrow's volume of sales increased 18.9 percent over the same period.

We believe that the shift in market position toward Arrow, suggested by the above figures, and the general chaotic conditions which developed in this field were due in considerable part to the merger.

During 1957, some of the several competitors in the florist foil business began reducing prices. Effective October 1, 1957, Arrow drastically reduced its price on florist foil across the board to new lows. Its price for plain colored foil went to 70 cents per roll. This low price was evidently below Arrow's cost of production. At one point, Mr. Roth of Arrow testified that his prices were then "slightly above cost," but his other testimony and other evidence indicates that Arrow was selling at a loss. Arrow, previously, had shown an operating profit for each fiscal year from the time of its incorporation.

The below cost prices were maintained by Arrow from October 1957 to mid-1958. The contrast between the pre-acquisition and the post-acquisition practices is manifest. Arrow could not have maintained its price at such a low for so long a period of time strictly on its own. In addition, it is extremely unlikely that Arrow on its own could have built a new plant valued at \$500,000 or more, which it was able to do after the merger with financing from the respondent. That it could do these things after the acquisition illustrates something that is the real core of this case—Arrow (now a subsidiary of respondent) became, as a result of the merger, a dominating factor in this small but important industry. Any compensating advantages which competitors might have had were entirely lost in the face of this overwhelming competitive force.

Even if Arrow had not been selling below cost, it was selling at prices so near cost and so low that it virtually ran some of its competitors out of business. Witness Hyman Jacobson, of H. Jacobson & Company, testified that his business suffered a loss of about 5 or 6 percent of invested capital for the calendar year 1957 and that "it is just a question of not being able to remain in that business." Witness Irvin Weedes, of Highland, testified that the effect of the acquisition on his business was "that it has eliminated the possibility of our making a profit on florist foil; that it will over a period of

time put us out of business." Witness Raisin, of John T. Raisin Corporation, testified that "\* \* \* our sales on florist foil in 1958 are practically nil, since this price reduction announced by Reynolds in the fall of last year. We have lost our principal accounts. We haven't been able to meet that price. \* \* \*"

Another witness, Morris H. Levine, of the M. H. Levine Corporation, asserted in his testimony that "\* \* \* our business dropped down, number one. I was originally the sole distributor for Reynolds Metals and we did a business into hundreds and thousands of dollars. Today our business of foil is down to nil." Witness Farrell, of H. D. Catty Corporation, testified that his company's sale had "fallen off" and that at the time he was selling "[v]ery little" florist foil to wholesale florists.

Finally, witness Stillman, of Western Foil, testified that he had lost most of his sales to florists because "\* \* \* we can not meet a competitive price. The price that is prevailing in the industry now is one that would be below our cost."

Respondent contends that the price reductions in 1957 were not originated by Arrow and that Arrow was meeting the low prices on imported aluminum foil. Whether or not Arrow was actually the first to reduce prices is not too important. The significance in the situation is that Arrow could lower its prices and maintain them at low levels for an extended period, which it could not have done before the merger. The acquisition gave it market power which was so dramatically demonstrated. The foreign competition had existed before the acquisition and the natural advantages of domestic producers had theretofore permitted them to reach an accommodation with it. In addition, while there was also foreign competition in other aluminum foil fields, prices were reduced only on florist foil. In any event, we do not need to be particularly concerned with the justification Arrow may have had for reducing its prices below the cost of production. It is enough that the reductions show the exercise of a market power which Arrow achieved as a direct result of the acquisition.

In this connection, respondent takes the position that the hearing examiner used a per se approach and that he found a violation simply because Arrow had been acquired by a large corporation. This is not so. The evidence, as heretofore discussed, supports a finding that the effect of the acquisition was to actually, seriously and substantially lessen competition in the relevant line of commerce. The statute prohibits mergers even when there is only the probability of a substantial lessening of competition or a tendency toward monopoly. Here, competition has been actually lessened as a result of

the acquisition. All the more then is a finding of competitive injury justified. This, of course, also disposes of respondent's further claim that there has been a shifting of the burden of proof.

Respondent has raised other questions which will be briefly considered. It objects to the examiner's finding on administered prices. On this, we reject the findings because at best it constitutes only a vague generality.

We give no credence to respondent's further claim that the proceeding involves the labor of a human being. It actually concerns the acquisition of one corporation by another.

Another matter raised in the appeal relates to the so-called clearance letter dated October 7, 1957. Respondent contends that the complaint should be dismissed because there allegedly was no evidence or subsequent development warranting a change in the Commission's position from that stated in such letter. Some of the developments connected with the price reductions of 1957 occurred after the Commission's letter dated in October of that year. This clearly was adequate to justify a change in position. Aside from this, the clearance letter on its face is no more than a tentative closing of the file. It does not purport to be a final disposition. Moreover, respondent has not claimed nor does it appear that it was prejudiced or damaged as a result of the closing letter itself.

Respondent also objects to the manner in which the examiner ruled on its proposed findings, claiming that his holding does not unmistakably inform it of the action taken on such findings. Respondent claims, in effect, that he failed to follow the requirements of §3.19 of the Commission's Rules of Practice. The relevant portion states that the record shall show the hearing examiner's ruling on each proposed findings and conclusion, except when his order disposing of the proceeding otherwise unmistakably informs the parties of the action taken by him thereon. The examiner states in his decision that he has considered carefully the proposed findings and conclusions submitted by both parties and that those not specifically found were refused. This statement considered along with the examiner's findings and conclusions leave no doubt as to his action in the matter. We believe that §3.19 has been fully complied with.

All exceptions to the initial decision taken by the respondent other than those heretofore disposed of are rejected. We agree with the initial decision in substance, but as noted above, we cannot accept certain specific statements and others, though relevant, are unnecessary. Such will be excised. In the findings of fact we will strike findings 6, 59, 71 and the words "and so it is" in the first sentence in finding 54 for reasons appearing from our discussion of the issues,

and the first sentence of finding 53 because of its uncertain meaning. We will strike the last sentence in finding 70 and also paragraph 8 of the conclusion because of the uncertain significance of the references to "quantitative substantially" and because such do not appear to be necessary for the ultimate holding. Finally, we will strike paragraphs 9 of the conclusions because it is unnecessary. A question of end use interchangeability of the kind before the court in the so-called Celophane case, *United States v. E. I. du Pont de Nemours & Co.*, 351 U.S. 377 (1956), is not involved in the proceeding.

The order will be modified to provide that the divestiture be made in such a way as to reestablish Arrow Brands, Inc., as a competitive entity in substantially the form it existed immediately prior to the acquisition. It will also be modified to prevent sale of the properties to respondent's agents or representatives, and to provide for a plan of compliance to be submitted to the Commission.

Respondent's appeal is granted to the extent heretofore indicated and in all other respects denied. It is directed that an appropriate order issue with this opinion modifying the initial decision in conformity with the views herein expressed and adopting it, as modified, as the decision of the Commission.

#### FINAL ORDER

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

The Commission having rendered its decision granting the appeal in part and denying it in part, and having directed that the initial decision be modified in accordance with the views expressed in the Commission's opinion and that the initial decision be adopted, as so modified, as the decision of the Commission:

*It is ordered*, That the initial decision be, and it hereby is, modified by striking therefrom the following: (a) the findings of fact numbered 6, 59 and 71, in their entirety; (b) the first sentence of the finding of fact numbered 53; (c) the portion of the first sentence of the finding of fact numbered 54 which reads: "and so it is"; (d) the last sentence in the finding of fact numbered 70; and (e) the paragraphs numbered 8 and 9 in the conclusions of law, in their entirety.

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

*It is ordered*, That respondent, Reynolds Metals Company, a cor-

poration, and its officers, directors, agents, representatives, and employees, shall, within six months of the date of service of this order upon it, unless such time is extended by further order of the Commission, divest itself absolutely, in good faith, of all of its right, title, and interest in and to all stock, assets, patents, trade marks, trade names, contracts, business and good will, and all other properties, rights and privileges acquired by Reynolds Metals Company as a result of the acquisition by the Reynolds Metals Company of the capital stock of Arrow Brands, Inc., together with the new plant built after the acquisition for Arrow Brands, Inc., and so much of any other assets and properties put into the business of Arrow Brands, Inc., since the acquisition as may be necessary to restore it to at least the same relative, competitive standing it formerly had in the florist foil industry at or around the time of the acquisition.

*It is further ordered.* That in such divestment no property above mentioned to be divested shall be sold or transferred, directly or indirectly, to anyone who at the time of the divestiture is a stockholder, officer, director, employee, or agent of, or otherwise directly or indirectly connected with or under the control or influence of, respondent or any of respondent's subsidiaries or affiliated companies.

*It is further ordered.* That respondent Reynolds Metals Company shall, within sixty (60) days from the date of service upon it of this order, submit in writing, for the consideration and approval of the Federal Trade Commission, its plan for compliance with this order, including the date within which compliance can be effected.

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

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IN THE MATTER OF

GETSOS & GERSHMAN, INC., ET AL.

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

*Docket 7470. Complaint. Apr. 8, 1959—Decision. Jan. 23, 1960*

Order requiring furriers in New York City to cease violating the Fur Products Labeling Act by fictitious pricing of fur products effected by setting out on consignment memoranda two prices, one a "regular cost" price and the other a lower price at which the garments were offered, and by failing to maintain records disclosing the facts upon which the two sets of prices were determined.

*Mr. Frederick McManus* for the Commission.

*Bernstein & Bernstein*, by *Mr. Jonas H. Bernstein*, of New York, N.Y., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges that respondents have violated the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder by falsely and deceptively invoicing and advertising certain fur products through the use of fictitious prices, and by failing to maintain full and accurate records disclosing the facts upon which their pricing claims and representations were based.

After hearings, proposed findings and conclusions were submitted by counsel. Upon the basis of the entire record, the following findings are made, conclusions drawn and order issued.

1. The respondent Getsos & Gershman, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York; the respondent Morris Gershman is vice-president of the corporate respondent and directs and controls its acts, policies and practices; and the address of both respondents is 345 Seventh Avenue, New York, New York.

2. Subsequent to the effective date of the Fur Products Labeling Act of August 9, 1952, the respondents have been, and are now, engaged in the introduction into commerce and in the manufacture for 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 manufactured for sale, sold, and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce, as "commerce," "fur" and "fur products" are defined in the Fur Products Labeling Act.

3. Under §2(f) of the Fur Act, a consignment memorandum is by definition an invoice. On various consignment memoranda involving transactions between respondents and Arnold Constable, two prices were set out for certain garments—one a "regular cost" price, the other a lower price at which the garments were offered. For example, a consignment memorandum of January 5, 1957, contains the following:

		<i>Regular cost</i>	<i>Price</i>
1750/2	1 Tip-dyed Ranch Mink Stole for .....	\$295	\$200
3000/3	1 Natural Ranch Mink Clutch Cape for .....	\$250	\$200
3000/5	1 Natural Ranch Mink Clutch Cape for .....	\$250	\$200
3000/6	1 Natural Ranch Mink Clutch Cape for .....	\$250	\$200

A consignment memorandum of March 1, 1957, contains the following:

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## Decision

		<i>Regular cost</i>	<i>Price</i>
1744/48	1 Natural Ranch Mink Stole for -----	\$250	\$185
1744/49	1 Natural Ranch Mink Stole for -----	\$250	\$185
1744/50	1 Natural Ranch Mink Stole for -----	\$250	\$185
1744/51	1 Natural Ranch Mink Stole for -----	\$250	\$185
1744/52	1 Natural Ranch Mink Stole for -----	\$250	\$185
1744/53	1 Natural Ranch Mink Stole for -----	\$250	\$185
1755/7	1 Returned Natural Ranch Mink Clutch Cape for-----	\$275	\$185

## 4. The record shows that—

(a) item 1750/2 had been consigned on November 23, 1956, to Oppenheim-Collins at \$195;

(b) items 3000/3, 3000/5 and 3000/6 had also been consigned on November 23, 1956, to Oppenheim-Collins at \$195 each;

(c) item 3000/3 had also been consigned on December 12, 1956, to The May Company at \$195, and invoiced to Constable January 25, 1957, for \$195;

(d) there are no further transactions shown as to the specific 1744 and 1755 items covered by the March 1, 1957, Constable consignment memorandum, but transactions as to similar items show as follows:

20 of the 1744 items were invoiced February 28, 1957, to Bamberg's for \$160 each;

18 others went to Oppenheim-Collins on February 28, 1957, also at \$160 each;

2 were consigned February 25, 1957 to The O'Neil Co. at \$175 and \$179.50;

1755 items are shown as having been invoiced or consigned February 25, 1957, and March 8, 1957, at \$160 and \$185 each.

5. Nowhere in the record is there any showing that any of the items covered by the January 5, 1957 and the March 1, 1957 consignment memoranda to Constable were ever sold or offered for sale by respondents at the prices shown thereon under the heading "Regular Cost." Such prices were completely fictitious. The only explanation of these prices was that a Constable buyer asked respondents that they put on the memorandum or bill "what was the costs of these skins, or regular cost I would normally sell these garments (for) to make a normal profit or a regular profit." There is no evidence that "Regular Cost" prices were ever used by respondents except on the transactions with Constable. The respondents maintained no records disclosing the facts upon which such prices were arrived at or the basis upon which the two sets of prices were determined.

6. In the matter of *Leviant Brothers, Inc., et al.*, Docket No. 7194, the facts were similar to those in the instant case—the respondents

had set forth fictitious prices on consignment memoranda issued by them in consigning fur products to Arnold Constable. In its opinion issued July 31, 1959, in that case, the Commission said:

It is clear from this language that a single representation to a prospective purchaser, as distinguished from a public announcement, may constitute advertising within the meaning of the section. Moreover, there is nothing in the wording of this section or in the legislative history of the Act to indicate that a consignment memorandum may not serve as a medium for conveying a representation or notice "which is intended to aid, promote, or assist directly or indirectly in the sale or offering for sale" of a fur product or fur.

\* \* \* These consignment memorandums were received by the consignee prior to the consummation of the sale to it of the products described therein. It is clear, therefore, that these documents were intended to aid or assist in the sale or offering for sale of the products to Arnold Constable. We think the conclusion is inescapable that the fictitious prices listed therein constituted false representations to the prospective purchaser which were intended for the same purpose. It should be pointed out, in this connection that while there is no evidence that the consignee was deceived by these representations, the statute does not require any showing that a prospective purchaser was deceived or that the false representations were made under such circumstances that a prospective purchaser might be deceived. It is our opinion, therefore, that the fur products in question were falsely advertised within the meaning of §5(a)(5) of the Act.

7. It must be concluded, therefore, that the respondents have falsely and deceptively advertised and invoiced certain of their fur products in violation of §5(a)(5) and §5(b)(2) of the Fur Products Labeling Act, and have failed to maintain the records required by Rule 44(e) of the Rules and Regulations promulgated thereunder. Accordingly,

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

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

B. Falsely or deceptively advertising fur products through the use of any advertisement, representation, public announcement or notice which is intended to aid, promote or assist, directly or indirectly, in the sale or offering for sale of fur products, and which represents, directly or by implication, that the regular or usual price of any fur product 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 their business;

C. Making pricing claims or representations in advertisements respecting comparative prices, percentage savings claims, or claims that prices are reduced from regular or usual prices, unless respondents maintain full and adequate records disclosing the facts upon which such claims or 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 23rd day of January, 1960, become the decision of the Commission; and, accordingly:

*It is ordered.* That respondents Getsos & Gershman, Inc., a corporation, and Morris Gershman, 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.

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IN THE MATTER OF

G. SHERMAN CORPORATION ET AL.

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

*Docket 7515. Complaint, June 10, 1959—Decision, Jan. 23, 1960*

Order requiring a seller of men's suitings in New York City—the selling agent for a Plymouth, Mass. fabric manufacturer—to cease violating the Wool Products Labeling Act by misbranding as to wool content, swatches of various patterns it showed its customers and by failing to attach to such products labels showing fiber content.

*Mr. Thomas A. Ziebarth* for the Commission.  
*Silverstein & Levitt*, by *Mr. Abraham Silverstein*, of New York, N.Y., for respondents.

## INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

Respondents are charged in the complaint as amended with having violated the Federal Trade Commission Act, the Wool Products Labeling Act of 1939, and the Rules and Regulations promulgated thereunder. The facts are as follows:

1. Respondent G. Sherman Corporation 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 40 East 34th Street, New York, New York.

2. Individual respondent George Sherman was president and treasurer of the corporate respondent until the date of his death on June 24, 1959. The proceeding is dismissed as to him. Hereinafter, whenever the term "respondent" is used, it will refer to the respondent corporation, which is engaged in the sale of substantial quantities of men's suitings, wool products under the Act, which have been and are distributed and transported in commerce from the state of manufacture or sale to customers located in various other states of the United States.

3. Respondent is selling agent for George Mabbett & Sons Company, of Plymouth, Massachusetts, and through its representatives participates in the designing of the various fabrics which it sells. The designers or stylists agree upon patterns, designs and colorings which they think will be merchantable. The manufacturing technicians then determine the specific weights and lay out a blanket draft—a blanket consists of a series of weavings produced to display the desired number of variations in any one pattern.

4. The blanket usually runs 80 sections long and 15 sections wide; each section measures approximately 14" by 4" and may include four or five different patterns in various colors. The wool content may vary from all wool in one section to as much as 89% wool and 11% rayon in another. The exact fiber content, however, is not known at this time, and is of little importance to the manufacturer and respondent, who wish only to test the comparative saleability of the various patterns. No labels as to fiber content are affixed to the blanket. The blanket thus made up is sent by the mill to the respondent's stylist, who "cull(s) it down to, say 100 selections" which are thought to be most saleable. These selections are shown to customers as they come in.

5. The stylist, believing particular fabrics and patterns may be popular, frequently makes up a second blanket, called a filling-tie blanket, in which the same pattern is repeated in a number of different colors, or may be repeated to show a series of variations in

wool and other fiber content. The sections in this blanket may be as much as 90" long and 60" wide. From the filling-tie blanket swatches are cut and sometimes labeled as to wool content based on estimates made by respondent. These swatches are shown to customers who come into respondent's place of business and to other customers who are visited by respondent's salesmen.

6. When enough customers have indicated a preference for a given pattern to make production of the fabric worth while, the mill is advised and sufficient yardage is manufactured to meet the estimated need. During the manufacturing process the exact fiber content of the product is determined and is put on the label attached to each bolt or piece of the material. At the same time respondent is sent a 2½ yard cut of the cloth, properly labeled, together with a cost sheet upon which the correct fiber content is stated. If there is a substantial variance between the fiber content shown on the original swatches and that shown on the mill's labels or cost sheets, it is respondent's custom to replace all incorrect labels with labels showing the exact fiber content as disclosed by the manufacturer, and to advise its customers by letter of the correct content.

7. Respondent's customers are garment manufacturers who, according to respondent's testimony, are familiar with industry practices and therefore know that the original swatches are labeled only as to probable fiber content. There was some testimony to the contrary, but the factual issue need not be determined. Giving respondent's testimony full credence, it affords little solace in this proceeding. That many of the swatches were improperly labeled is not disputed, nor is it disputed that they were used "to promote or effect sales of (such) wool products in commerce." Rule 22 of the Rules and Regulations under the Wood Products Labeling Act of 1939 specifically provides that such "samples, swatches or specimens \* \* \* shall be labeled or marked to show their respective fiber contents and other information required by law."

8. The variance between actual fiber content and that which appeared on some of the labels exceeds the limitations prescribed by the Act. Swatches labeled "all wool except decoration" actually contained:

<i>Wool</i>	<i>Other</i>
94%	6%
92%	8%
90%	10%
89%	11%
88%	12%
83%	17%
80%	20%

The respondent has violated Rule 22, mentioned above, and §4(a)(1) and §4(a)(2)(A) of the Act, which state:

§4(a)(1):

"A wool product shall be misbranded if it is falsely or deceptively stamped, tagged, labeled, or otherwise identified";

§4(a)(2)(A):

"the percentage of the total fiber weight of the wool product, exclusive of ornamentation, not exceeding 5 percentum of said total fiber weight, of (1) wool \* \* \*; (and) (4) each fiber other than wool if such percentage by weight of such fiber is 5 per centum or more"—must be shown.

9. The charges of the complaint as amended, that the respondent has violated §4(a)(1) and §4(a)(2) of the Act and Rules and Regulations thereunder, have been established by substantial, reliable, probative evidence.

10. There is another charge in the complaint—that the respondent, for the purpose of inducing the sale of its products, has made false, misleading and deceptive statements, in correspondence and otherwise, to the effect that the fiber content of its fabrics was "All wool except decorations," whereas said fabrics actually contained a substantial amount of other fibers over and above the 5 percentum of total fiber weight allowed under the Act.

11. This charge has likewise been established. The labels were incorrect, and in some instances letters were written to customers by respondent, in which the wool content of its products was misstated, and orders were taken which contained false statements as to wool and fiber content of the fabric for which the orders were given.

12. In the content of its business at all times mentioned herein, respondent has been in substantial competition in commerce with corporations, firms and individuals in the sale of woolen fabrics.

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

14. The use by respondent of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true, and into the purchase of substantial quantities of the respondent's products by reason of said erroneous and mistaken belief. As a consequence thereof, substan-

tial trade in commerce has been, and is being, unfairly diverted to respondent from its competitors, and substantial injury has thereby been, and is being, done to competition in commerce.

The Hearing Examiner, having considered the entire record herein, finds that the Federal Trade Commission has jurisdiction in this matter, and that this proceeding is in the public interest. Therefore,

*It is ordered.* That respondent G. Sherman Corporation, a corporation, and its officers, and respondent's representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction into commerce or the offering for sale, sale, transportation, or distribution in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, of fabrics or other "wool products," as such products are defined in and subject to the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

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

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

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

*It is further ordered.* That respondent G. Sherman Corporation, a corporation, and its officers, and respondent's representatives, agents, and employees, directly or through any corporate or other device, in connection with the sale or distribution of fabrics or other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly, misrepresenting the constituent fibers of which their products are composed or the percentages thereof orally, on order forms, in correspondence, or in any other manner.

*It is further ordered.* That the complaint herein, insofar as it relates to individual respondent George Sherman, bc, and the same hereby is, dismissed.

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

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

*It is ordered.* That respondent G. Sherman Corporation, 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.

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IN THE MATTER OF

ALEXANDER'S DEPARTMENT STORES, INC., ET AL.

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

*Docket 7585. Complaint, Sept. 16, 1959—Decision, Jan. 27, 1960*

Consent order requiring sellers of fur products in Bronx, N.Y., to cease violating the Fur Products Labeling Act by failing to comply with invoicing and labeling requirements; by advertising in newspapers which contained comparative prices for fur products without giving a designated time of a bona fide compared price; and by failing to keep adequate records disclosing the facts on which such pricing claims were based.

*Mr. Garland S. Ferguson* supporting the complaint.

*Mr. James P. Durante* of *Lewis, Durante & Bartel*, of New York, N.Y., for respondent.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

On September 16, 1959, pursuant to the provisions of the Fur Products Labeling Act and the Federal Trade Commission Act, the Federal Trade Commission issued its complaint in this proceeding in which the above-named parties were named as respondents. A true copy of the complaint was served upon respondents as required by law. The complaint charges respondents with violating the provisions of the Fur Products Labeling Act by misbranding certain fur products by failure to label them properly; failing to invoice certain fur products as required by the aforesaid Act; by falsely and deceptively invoicing fur products in violation of the aforesaid Act; using comparative prices in respondents' advertising of said fur products in violation of the said Act and the Rules and Regulations promulgated thereunder; and in making pricing and savings claims and representations which violated the Rules and Regulations under the Fur Products Labeling Act promulgated by the Federal Trade Commission. After being served with said complaint, respondents

appeared by counsel and, thereafter, entered into an agreement dated November 18, 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. The 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 30, 1959, the said agreement was submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

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

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing consent order, and it appearing that the order provided for in said agreement covers all of the allegations of the complaint and provides for an appropriate disposition of this proceeding as to all parties, said agreement is hereby accepted and is ordered to be filed and to become a part of the official record in this proceeding at the time this decision becomes the decision of the Commission pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings. The hearing examiner, accordingly, makes the following jurisdictional findings and enters the order hereinafter set forth:

1. Corporate respondent Alexander's Department Stores, 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 Fordham Road and Grand Concourse, Bronx 68, New York.

Individual respondents George Farkas, Louis Schwadron, R. Duffy Lewis, and Alexander Farkas are officers of said corporation. They formulate, direct and control the practices of the corporate respondent. The address of the individual respondents is the same as that of the corporate respondent.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the 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 Alexander's Department Stores, Inc., a corporation, and its officers, and George Farkas, Louis Schwadron, R. Duffy Lewis, and Alexander Farkas, 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. Misbranding fur products by failing to affix labels to fur products showing in words and figures plainly legible all of the information required to be disclosed by each of the sub-sections of Section 4(2) of the Fur Products Labeling Act.

2. Falsely or deceptively invoicing fur products by failing to furnish to purchasers of fur products an invoice showing all of the information required to be disclosed by each of the sub-sections of Section 5(b)(1) of the Fur Products Labeling Act.

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

a. Makes use of comparative prices unless such compared prices or claims are based on the current market value of the fur product or upon a bona fide compared price at a designated time.

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

4. Making claims or representations in advertisements respecting prices or values of fur products unless there is maintained by respondents full and adequate records disclosing the facts upon which such claims and representations are based.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 27th day of January, 1960, 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.

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IN THE MATTER OF

SCENIC PHOTO MURALS, INC., ET AL.

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

*Docket 6875. Complaint, Aug. 23, 1957—Decision, Jan. 28, 1960*

Consent orders requiring two individuals in Los Angeles and Chicago, respectively, to cease representing falsely—in advertisements in periodicals and by brochures supplied to distributors or dealers and by them inserted in wallpaper sample or other display books—that their so-called "Photo Murals" or "Scenic Photo Murals" were photographic murals made from enlarged photographs on photographic paper, and that they manufactured such products, which were in fact printed or mechanical reproductions of photographs purchased by them from others.

*Mr. Edward F. Downs* and *Mr. Garland S. Ferguson*, for the Commission.

*Mr. Leo E. Aronson*, of *Aronson & Aronson*, of Chicago, Ill., for respondents.

INITIAL DECISION AS TO I. W. SHELL BY J. EARL COX,  
HEARING EXAMINER

The complaint charges that respondents have engaged in the sale and distribution of printed or mechanical reproductions of photographs which they have falsely represented to have been manufac-

tured by them and to be enlarged photographs and photographic murals made from enlarged photographs on photographic paper, thereby violating the provisions of the Federal Trade Commission Act.

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

The agreement states that Respondent I. W. Shell is an individual who has been active in a personal and financial way in Scenic Photo Murals, Inc., the corporate respondent herein, and that his office and place of business are located at 1141 West Madison Street, Chicago, Illinois. The address set forth in the complaint for respondent Shell was erroneous.

The agreement provides, among other things, that the respondent, named therein, 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 he 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, 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 the agreement.

The agreement disposes of all of this proceeding as to the respondent, I. W. Shell, and recites that upon the basis of information which is regarded as reliable, counsel supporting the complaint state that this respondent is not now, and never has been, an officer of the corporate respondent, and that the remaining respondents to the complaint will be dealt with by further proceedings.

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

*It is ordered.* That respondent I. W. Shell, an individual, and the said respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of mechanical reproductions of photographs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, or placing in the hands of others the means of representing, directly or by implication, that respondent's products are other than mechanical reproductions of photographs;
2. Using advertisements or brochures, or placing in the hands of others advertisements or brochures, describing products, which refer to the products as "Photo Murals," "Scenic Photo Murals" or any other description of similar import;
3. Representing that respondent manufactures the products sold by him;
4. Using the words "Photo Murals" or any word or words of similar import as a trade or corporate name or as a part of a trade or corporate name.

*It is further ordered.* That the complaint be, and the same hereby is, dismissed as to respondent I. W. Shell as an officer of Scenic Photo Murals, Inc.

*Mr. Edward F. Downs* supporting the complaint.  
Respondent, *pro se*.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

The complaint in this proceeding, filed on August 23, 1957, alleged that Scenic Photo Murals, Inc., a corporation, Joseph Troyan, Bernice Troyan, and I. W. Shell, individually and as officers of said corporation, violated the provisions of the Federal Trade Commission Act by representing that the mechanically reproduced photographs sold by said corporation as wall decorations are photographic murals, and that it manufactures these products.

Under date of December 23, 1958, the hearing examiner issued his initial decision containing an order to cease and desist in this proceeding with respect to the individual respondents Joseph Troyan and Bernice Troyan upon the basis of their failure to file answer

to the complaint within the time provided and to appear at the time and place fixed for the hearing.

Thereafter, upon motion filed by the individual respondents Joseph and Bernice Troyan, the Commission ordered said initial decision vacated and set aside and the case reopened as to said respondents Joseph and Bernice Troyan. The case was remanded to the hearing examiner for further proceedings.

The individual respondent Joseph Troyan and counsel supporting the complaint have now 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 states that the respondent Scenic Photo Murals, Inc., a corporation, was adjudged a bankrupt on November 6, 1957, in an involuntary proceeding in the District Court for the Southern District of California, and, therefore, the complaint should be dismissed as to that respondent. It is further provided that the complaint shall be dismissed as to Bernice Troyan, individually and as an officer of Scenic Photo Murals, Inc., for the reason that there is no evidence that she had any individual responsibility for the formulation, direction, or control of the policies, acts, or practices of Scenic Photo Murals, Inc. The agreement disposes of all the proceedings as to the respondent Joseph Troyan. The complaint as to the respondent I. W. Shell will be otherwise disposed of.

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

Upon consideration of said agreement the undersigned hearing examiner hereby accepts said agreement, makes the following jurisdictional findings, and issues the following order:

## JURISDICTIONAL FINDINGS

1. Respondent Joseph Troyan is an individual who has been active in a personal and financial way in Scenic Photo Murals, Inc., the corporate respondent herein. The former address of respondent Joseph Troyan was 1900 South La Cienega Boulevard, Los Angeles, California. His present address is 3117 Bagley Street, Los Angeles, California.

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

## ORDER

*It is ordered,* That respondent Joseph Troyan, an individual, and his agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution, of mechanical reproductions of photographs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, or placing in the hands of others the means of representing, directly or by implication, that respondent's products are other than mechanical reproductions of photographs;

2. Using advertisements or brochures, or placing in the hands of others advertisements or brochures, describing his products, which refer to the products as "Photo Murals," "Scenic Photo Murals," or any other description of similar import;

3. Representing that respondent manufactures the products sold by him;

4. Using the words "Photo Murals" or any word or words of similar import as a trade or corporate name or as a part of a trade or corporate name.

*It is further ordered,* That the complaint be, and the same hereby is, dismissed as to corporate respondent Scenic Photo Murals, Inc., Bernice Troyan, individually and as an officer of Scenic Photo Murals, Inc., and Joseph Troyan as an officer of Scenic Photo Murals, Inc., without prejudice to the right of the Commission to take such further action against said respondents as future facts may warrant.

## DECISION OF THE COMMISSION AND ORDER TO FILE REPORTS OF COMPLIANCE

The hearing examiner on December 23, 1958, having filed an initial decision wherein he accepted an agreement containing a consent order to cease and desist executed by respondent I. W. Shell and

counsel in support of the complaint, the effective date of which was by order of the Commission issued February 11, 1959, extended until further order of the Commission; and

The substitute hearing examiner on December 10, 1959, having filed another initial decision wherein he accepted an agreement containing a consent order to cease and desist executed by respondent Joseph Troyan and counsel in support of the complaint; and

The Commission having considered the matter and having determined that the two initial decisions constitute an adequate and appropriate disposition of this proceeding: Accordingly,

*It is ordered,* That the aforesaid initial decisions together shall, on the 28th day of January, 1960, become the decision of the Commission.

*It is further ordered,* That the respondents, I. W. Shell and Joseph Troyan, respectively, 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 he has complied with the order to cease and desist contained in the initial decision applicable to him.

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IN THE MATTER OF

REIN, RAME & GURVITCH, INC., ET AL.

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

*Docket 7512. Complaint, June 10, 1959—Decision, Jan. 30, 1960*

Consent order requiring New York City furriers to cease violating the Fur Products Labeling Act by failing to set forth the term "Dyed Mouton-processed Lamb" on invoices where required; by failing to comply in other respects with labeling and invoicing requirements; and by furnishing a false guaranty that certain of their fur products were misbranded, falsely invoiced, and falsely advertised.

*Mr. Garland S. Ferguson* for the Commission.

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

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint, as amended by agreement of all of the parties, charges respondents with misbranding and falsely and deceptively invoicing certain of their fur products, in violation of §4(2), §5(b)(1) and §5(b)(2) of the Fur Products Labeling Act and the

Rules and Regulations promulgated thereunder, and of the Federal Trade Commission Act.

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

The agreement states that corporate respondent Rein, Rame & Gurvitch, 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 247 West 30th Street, New York, New York; that individual respondents Abe W. Rein, Jack Rame and Nathan Gurvitch are officers of said corporation, and formulate, direct and control the practices thereof; and that their address is the same as that of the corporate respondent.

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

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

The order agreed upon fully disposes of all the issues raised in the complaint as amended, and adequately prohibits the acts and practices charged therein as being in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, and of the Federal Trade Commission Act. Accordingly,

the Hearing Examiner finds this proceeding to be in the public interest, and accepts the agreement containing consent order to cease and desist as part of the record upon which this decision is based. Therefore,

*It is ordered.* That respondents Rein, Rame & Gurvitch, Inc., a corporation, and its officers, and Abe W. Rein, Jack Rame and Nathan Gurvitch, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the sale, advertising, offering for sale, transportation or distribution in commerce of fur products; or in connection with the sale, manufacture for sale, advertising, offering for sale, transportation or distribution of fur products which 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:

A. Misbranding fur products by:

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

2. Setting forth on labels attached to fur products:

(a) Information required under §4(2) of the Fur Products Labeling Act mingled with non-required information;

(b) Information required under §4(2) of the Fur Products Labeling Act in handwriting;

B. Falsely or deceptively invoicing fur products by:

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

2. Setting forth information required under §5(b)(1) of the Fur Products Labeling Act in abbreviated form;

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

4. Setting forth through printed statements, or in any other manner, any form of misrepresentation or deception, directly or by implication, with respect to such fur products as prohibited by §5(b)(2) of the Fur Products Labeling Act;

5. Setting forth that respondents have on file with the Federal Trade Commission a certificate of continuing guaranty, when such is not the fact.

## DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 30th day of January, 1960, become the decision of the Commission; and accordingly:

*It is ordered*, That respondents Rein, Rame & Gurvitch, Inc., a corporation, and Abe W. Rein, Jack Rame, and Nathan Gurvitch, individually and as officers of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

## IN THE MATTER OF

## DISCOUNT FAIR, INC., ET AL.

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

*Docket 7534. Complaint, July 13, 1959—Decision, Jan. 30, 1960*

Order requiring sellers in Washington, D.C., to cease representing falsely—in newspaper advertisements and otherwise—that excessive fictitious prices were the customary retail prices at which they sold portable television sets and refrigerators, and that purchasers would realize a saving of the difference between the said higher and lower prices.

*Mr. Edward F. Downs* for the Commission.

No appearance by or for respondents.

INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER

The Federal Trade Commission on July 27, 1959 issued its complaint herein, charging respondents with having violated the provisions of the Federal Trade Commission Act. Respondents, except for George Feldman, were duly served with process. As to George Feldman, the complaint was returned by the Post Office Department with a notation that the addressee was deceased.

No answer to the complaint was filed, and on October 29, 1959 a hearing was held in Washington, D.C., at which no appearance was made by or for the respondents. At said hearing counsel supporting the complaint moved to dismiss the complaint as to George Feldman by reason of failure of service. The term "respondents" as hereinafter used, therefore, does not include George Feldman.

Under Section 3.7(b) of the Rules of Practice, Procedure and Organization of the Federal Trade Commission, a hearing was conducted to determine the form of the order. The hearing examiner finds that respondents herein are now in default; that the Commission has jurisdiction of the subject matter of this proceeding and of the respondents herein; and that the complaint states a legal cause of action under the Federal Trade Commission Act.

#### FINDINGS OF FACT

1. Respondent Discount Fair, Inc., 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 721 11th Street, N.W., Washington, D.C.

Respondents Joseph George Goldberg and Dorothy Goldberg are officers of the corporate respondent. They formulate, direct and control the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale and sale of household appliances to the consuming public.

3. In the course and conduct of their business respondents now sell and deliver, and have sold and delivered, their said merchandise to the purchaser thereof in the District of Columbia and also cause, and have caused, their said merchandise, when sold, to be shipped from their place of business in the District of Columbia to purchasers thereof located in states adjacent to the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

4. In the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of their merchandise respondents have made certain statements in advertisements published in newspapers which are circulated in the District of Columbia and across state lines. Among and typical, but not all inclusive of such statements and representations so made are the following:

Reg. 169.95 17" Portable \* \* \* TV \$99

419.95 \* \* \* AUTO. 12 cu. ft. Refrigerator \$188

5. Respondents through the use of the aforesaid statements, and others of similar import, not specifically set out herein, represented, directly or by implication, that the higher stated prices are the usual and customary retail prices charged by respondents in the recent,

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regular course of business, and that they have reduced their retail prices from the stated higher prices to the stated lower prices and that therefore purchasers of the merchandise so advertised realize a saving of the difference between the said higher and lower prices.

6. The statements and representations, as hereinabove set forth, are false, misleading and deceptive. The higher prices appearing in respondents' advertisements are fictitious and in excess of the usual and customary retail prices charged by respondents in the recent, regular course of their business and respondents have not reduced their retail prices from the stated higher prices to the stated lower prices. Therefore, the purchasers of respondents' merchandise do not realize a saving of the difference between the said higher and lower prices.

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

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

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

On the basis of the record herein, the hearing examiner concludes that this proceeding is in the interest of the public and that the following order is appropriate for the just disposition of all the issues in this proceeding as to all parties hereto.

## ORDER

*It is ordered*, That respondents, Discount Fair, Inc., a corporation, and its officers, and Joseph George Goldberg, and Dorothy Goldberg, individually and as officers of said corporation, and respond-

ents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale or sale of 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 of merchandise when it is in excess of the price at which such merchandise is usually and customarily sold by respondents in the recent, regular course of their business.

(b) That any saving is afforded by the purchase of merchandise unless the price constitutes a reduction from the price at which said merchandise is usually and customarily sold by respondents in the recent, regular course of their business.

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 said merchandise is usually and customarily sold by respondents in the recent, regular course of their business.

*It is further ordered.* That the complaint herein be dismissed as to respondent George Feldman, individually and as an officer of Discount Fair, Inc., without prejudice to the right of the Commission to take such action as may be warranted by future facts.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission having considered the hearing examiner's initial decision herein, filed November 13, 1959, service of which was completed on December 30, 1959; and

It appearing that said initial decision is adequate and appropriate in all respects to dispose of this proceeding, except that it should provide for unconditional dismissal of the complaint as to respondent George Feldman, now deceased. Accordingly,

*It is ordered.* That said initial decision be modified by striking from the last paragraph of the order contained therein the words "without prejudice to the right of Commission to take such action as may be warranted by the future facts."

*It is further ordered.* That the initial decision as so modified shall, on the 30th day of January, 1960, become the decision of the Commission.

*It is further ordered.* That the respondents, Discount Fair, Inc., a corporation, and Joseph George Goldberg and Dorothy Goldberg, individually and as officers of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Com-

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mission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist contained in the aforesaid initial decision as modified.

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IN THE MATTER OF  
ALBERT PITLER TRADING AS CAVALIER RESERVE  
FUND, ETC.

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

*Docket 7538. Complaint, July 14, 1959—Decision, Jan. 30, 1960*

Order requiring an individual in Norfolk, Va., to cease use of a printed collection form he sold to merchants and others which sought to obtain information by subterfuge, including use of misleading trade names and false representations that a sum of money was being held for alleged debtors pending receipt of their current addresses.

*Mr. Michael J. Vitale* for the Commission.  
Respondent, *pro se*.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

THE PROCEEDINGS

The respondent herein is charged in the Commission's complaint issued on July 14, 1959 with violating the Federal Trade Commission Act by engaging in unfair and deceptive acts and practices in interstate commerce, through the sale and dissemination of a deceptive printed form designed to entice defaulting debtors to furnish certain information about themselves.

The form states in substance that there is "a small sum of money" for the recipient and that upon receipt of all the information requested in the form, the respondent will send such money registered in recipient's name to the address given. The form also sets forth questions which, if answered, provide information which is considered to be of value in the collection of accounts owed or alleged to be owed by the addressee.

The allegations of the complaint also aver that the object of respondent's printed form is to obtain information by subterfuge, all to the prejudice and injury of the public.

The respondent did not interpose a formal written answer. However, he did appear personally without counsel at the hearing on

October 13, 1959, before the undersigned hearing examiner heretofore designated to hear this proceeding. At said hearing, the respondent stated that he was "not in disagreement with the complaint" but that he questioned the illegality of the acts charged therein.

Pursuant to leave granted by the undersigned, proposed findings of fact, conclusions of law and an order were filed by counsel supporting the complaint. However, the respondent who appeared personally without counsel did not file proposed findings of fact or conclusions of law although granted leave to do so. No request for oral argument was made by any of the parties. Proposed findings which are not herein adopted, either in the form proposed or in substance, are rejected as not supported by the evidence or as immaterial.

Upon consideration of the entire record herein, and from his observation of the witnesses, the undersigned concludes that this proceeding is in the public interest and makes the following:

#### FINDINGS OF FACT

##### I. The Business of Respondent and the Interstate Commerce

1. Respondent Albert Pitler, is an individual, trading and doing business under the names Cavalier Reserve Fund and Liberty Reserve Fund, with his office and principal place of business located at Bankers Trust Building, Norfolk, Virginia. Respondent formulates, controls and directs the policies, acts and practices of said Funds.

2. Respondent is now, and for more than one year last past has been, engaged in the business of selling a printed mailing form. Respondent causes the printed form, when sold, to be transported from his place of business in the State of Virginia to purchasers thereof at their respective points of location in various other States of the United States. Respondent maintains a substantial course of trade in said form in commerce as "commerce" is defined in the Federal Trade Commission Act.

##### II. The Unfair and Deceptive Practices

###### A. *The Printed Form Sold*

1. The printed form sold by the respondent was designed and intended to be used and has been used by collection agencies, merchants and others to whom sold for the purpose of obtaining information concerning alleged delinquent debtors with the aid and assistance of respondent.

2. The form consists of a printed sheet captioned "Cavalier Reserve Fund." The form is designed to be forwarded to addressees in envelopes provided by the respondent in which are enclosed envelopes addressed to "Cavalier Reserve Fund, Suite 800, Bankers Trust Building, Norfolk 10, Virginia."

The form states that: "We have a small sum of money for ----- Upon receipt of the information re-

(the above named person)

quested below, we will immediately send the money registered in their name to the address given." The form then sets out questions which, if answered, provide information which is considered to be of value in the collection of accounts owed or alleged to be owed by the addressee. The purchasers of respondent's printed form fill in the appropriate data in the spaces provided, including the name of the alleged debtors and their addresses and enclose said forms in open window envelopes and deliver them in bulk to respondent at his office in Norfolk, Virginia. The respondent then mails the individual envelopes from his office. If the addressees complete the forms and mail them to respondent at Norfolk, Virginia, a check for ten cents is sent from the "Liberty Reserve Fund" signed by "Al Pyle." Respondent then processes the forms and forwards them to the purchasers.

### *B. The Representations Made*

Through the use on the form of the term "Cavalier Reserve Fund" and "Liberty Reserve Fund," and the printed format and phraseology of the form, respondent represented, and placed in the hands of purchasers of this form the means and instrumentalities whereby they represent and imply to those whom said form is mailed, that respondent has been named as a depository of a reasonably substantial sum of money to be delivered to the recipients of said form upon proper identification by furnishing all of the information requested.

### *6. The Falsity of the Representations*

1. The representations and implications set forth and contained in the form sold by respondent were, and are, false, misleading and deceptive. The respondent is not engaged in any fiduciary or other capacity to receive money for the persons to whom the forms are sent, and the only money sent them is ten cents. Said form is used to obtain information concerning alleged delinquent debtors by subterfuge. This practice constitutes a scheme to mislead and conceal the purpose for which the information is sought.

2. The use of the form sold by the respondent has had, and now has, the tendency and capacity to mislead persons to whom said forms are sent into the erroneous and mistaken belief that the said representations and implications are true and to induce the recipients thereof to supply information which they otherwise would not have supplied.

#### CONTENTIONS AND CONCLUDING FINDINGS

1. It is the position of the respondent that the persons to whom such form is sent are not deserving of public protection by reason of their debt delinquency and that the practices used are justified means to the legitimate end to procure payment of debts by such persons. The argument which respondent makes here is one which, in the main, has been fully considered, both by the Commission and the courts, and has been found to be without merit. The legitimate objective of seeking to induce debtors to pay their debts does not justify the use of illegitimate and unlawful means. There is no lack of public interest in the protection of such persons merely by reason of their delinquency. *Silverman v. FTC*, 145 F. 2d 751; *Rothchild v. FTC*, 200 F. 2d 39; *National Service Bureau v. FTC*, 200 F. 2d 362; *Deejay Stores, Inc. v. FTC*, 200 F. 2d 865; and *National Research Company, etc.*, Docket No. 6236, June 1, 1956.

2. Nor can there be any merit to a contention by the respondent that it is not a matter of the Commission's concern because no pecuniary damage is suffered. *FTC v. Algoma Lumber Co.* 291 U.S. 67, 78 [18 F.T.C. 669; 2 S & D. 247]. Furthermore, the law is well settled that it is in the public interest to prevent the perversion of interstate commerce with such deception. *FTC v. Keppel & Brother* 291 U.S. 304, 308 [18 F.T.C. 684; 2 S & D. 259].

#### CONCLUSION OF LAW

It is concluded that the acts and practices of the respondent, as hereinabove found, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

#### ORDER

*It is ordered.* That respondent, Albert Pitler, an individual, trading and doing business as Cavalier Reserve Fund and Liberty Reserve Fund, or trading and doing business under any other name or names, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the business of obtaining information concerning delinquent debtors,

or the offering for sale, sale or distribution of forms or other materials, for use in obtaining information concerning delinquent debtors, or in the collection of, or attempting to collect accounts, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the names "Cavalier Reserve Fund" and "Liberty Reserve Fund," or any other name of similar import to designate, describe or refer to respondent's business; or otherwise representing, directly or by implication, that money has been deposited with them for persons from whom information is requested, unless or until the money has in fact been so deposited, and then only when the amount so deposited is clearly and expressly stated.

2. Using, or placing in the hands of others for use, any forms, questionnaires or other materials, printed or written, which do not clearly reveal that the purpose for which the information is requested is that of obtaining information concerning delinquent debtors.

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

*It is ordered.* That the respondent herein shall, with 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.

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IN THE MATTER OF

ACTION FOR CREDITORS, INC., ET AL.

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

*Docket 7539. Complaint, July 14, 1959—Decision, Jan. 30, 1960*

Consent order requiring a Washington, D.C., concern to cease using or selling misleading "skip tracing" forms for collection of delinquent accounts which implied—through misleading titles and an eagle perched atop a shield, ambiguous statements, and a Washington, D.C., mailing address—that they were sent by a Government agency.

*Mr. Edward F. Downs* for the Commission.

*Mr. Kenneth H. Fast* of *Fast & Fast*, of Newark, N.J., for respondents.

## INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

On July 14, 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 printed forms, cards and envelopes, which are designed for use in the location of delinquent debtors, or as an aid in the collection of money owed by delinquent debtors, to credit bureaus, collection agencies, finance companies and business firms and individuals. On November 5, 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 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 record (i.e. 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 agreement further provides that the complaint insofar as it concerns respondent Fae Hoffman in her individual capacity, should be dismissed for the reasons set forth in an affidavit attached thereto to the effect that said respondent has not participated in the formulation, distribution or control of the policies, acts or practices of said corporation. 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 Action For Creditors, Inc., is a corporation organized, existing and doing business under and by virtue of the

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laws of the District of Columbia, with its principal place of business at 2000 P Street, N.W., Washington, D.C.

Respondents Edwin G. Axel and Milton S. Hoffman are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent. Respondent Edwin G. Axel's address is 364 Main Street, East Orange, New Jersey and the address of Milton S. Hoffman is 2422 Eccleston Street, Silver Spring, Maryland.

Respondent Fae Hoffman is an officer of the corporate respondent and her address is 2422 Eccleston Street, Silver Spring, Maryland.

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 Action For Creditors, Inc., a corporation, and its officers, and Edwin G. Axel and Milton S. Hoffman, individually and as officers of said corporation and Fae Hoffman as an officer 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 use of printed forms or other material in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the names "Bureau of Delinquent Accounts," "Office of Credit Investigation and Protection," the picturization of an eagle or any other name, phrase, picturization, or emblem of similar import on printed forms or otherwise.

2. Representing, directly or by implication, or placing in the hands of others any means of representing.

(a) That any investigation or other action has been, or will be, taken by any agency of the United States Government, or any other government or any branch or agency thereof;

(b) That any such forms are in any way the product of or used by any agency of the United States Government, or any other government or any branch or agency thereof;

(c) That respondents, or any of them, or their business or forms are in any way connected with the United States Government, or any other government or any branch or agency thereof.

3. Using or placing in the hands of others for use, any printed forms or other material which do not clearly reveal that respondents are engaged in the collection of delinquent debts or the sale of forms for use in the collection of delinquent debts.

4. Misrepresenting in any manner the type of business in which respondents are engaged or the purpose of any forms or other material used or sold by respondents.

*It is further ordered*, That the complaint be, and the same hereby is, dismissed as to respondent Fae Hoffman, individually, without prejudice to the right of the Commission to take such further action against said respondent as future facts may 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 30th day of January, 1960, become the decision of the Commission; and, accordingly:

*It is ordered*, That respondents Action For Creditors, Inc., a corporation, and Edwin G. Axel and Milton S. Hoffman, individually and as officers of said corporation and Fae Hoffman 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.

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IN THE MATTER OF

METRO CAP COMPANY, INC., ET AL.

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

*Docket 756J. Complaint, Aug. 6, 1959—Decision, Jan. 30, 1960*

Consent order requiring manufacturers in New York City to cease violating the Wool Products Labeling Act by labeling as 100% wool, men's caps which contained a substantial amount of other fibers; by falsely labeling caps with respect to the name of the mill producing the cloth used therein; and by failing in other respects to comply with requirements of the Act.

*Mr. Frederick McManus* for the Commission.

*Mr. David Perlow*, of New York, N.Y., for Metro Cap Co., Inc.,  
Max Bachurski, Isidore Avnet and Sam Cohen.

*Mr. James J. Pillinger*, of New York, N.Y., for Sportswear Industries, Inc., David Telson and Arnold Gray.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

Respondents are manufacturers of wool products, including men's caps, which they have introduced, distributed and sold in commerce in competition with others engaged in the manufacture and sale of similar products. They are charged with having violated the Wool Products Labeling Act of 1939, the Rules and Regulations promulgated thereunder, and the Federal Trade Commission Act, by misbranding their products (a) through falsely and deceptively labeling such products as to the character and amount of the constituent fibers contained and as to the name of the mill producing the cloth used therein, within the intent and meaning of §4(a) (1), and (b) by failing to stamp, tag, or label such products in conformity with the prescriptions of §4(a) (2), of the Wool Products Labeling Act and the said Rules and Regulations.

After service of the complaint, respondents Sportswear Industries, Inc., David Telson and Arnold Gray, their counsel, and counsel supporting the complaint, on October 9, 1959, entered into an agreement containing a consent order to cease and desist. On November 24, 1959, respondents Metro Cap Company, Inc., Max Bachurski, Isidore Avnet and Sam Cohen, their counsel, and counsel supporting the complaint entered into a similar agreement. Except as to the identity of the parties signatory thereto, the two agreements are identical. Both agreements were 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 first agreement states that respondent Sportswear Industries, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York; that individual respondents David Telson and Arnold Gray are, respectively, president and secretary of said corporate respondent; that said individual respondents cooperate in formulating, directing, and controlling the acts, policies, and practices of the said corporate respondent; and that all the foregoing respondents have their office and principal place of business at 588 Broadway, New York, New York.

The second agreement states that respondent Metro Cap Company, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York; that individual respondents Max Bachurski and Isidore Avnet are president and secretary-treasurer, respectively, of said corporate respondent, and

individual respondent Sam Cohen is an employee thereof, and was erroneously named as a stockholder therein in the complaint; that said individual respondents cooperate in formulating, directing and controlling the acts, policies, and practices of the said corporate respondent; and that all said respondents have their office and principal place of business at 48 Canal Street, in the City of New York, State of New York.

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

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

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

*It is ordered.* That the respondents, Sportswear Industries, Inc., a corporation, and its officers, and David Telson and Arnold Gray, individually and as officers of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device in connection with the introduction or manu-

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facture 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 caps or other wool products, do forthwith cease and desist from misbranding said products by:

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

2. Falsely or deceptively stamping, tagging, or labeling or otherwise identifying such products as to the name of the manufacturer of the fabric used in such products;

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

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

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

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

*It is ordered.* That the respondents, Metro Cap Company, Inc., a corporation, and its officers, and Max Bachurski and Isidore Avnet, individually and as officers of said corporation, and Sam Cohen, individually 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 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 caps or other wool products, do forthwith cease and desist from misbranding such products by:

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

2. Falsely or deceptively stamping, tagging, or labeling or otherwise identifying such products as to the name of the manufacturer of the fabric used in such products;

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

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

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

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 30th day of January, 1960, become the decision of the Commission; and, accordingly:

It is ordered that the respondents named in the caption hereof 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.

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IN THE MATTER OF

M. BENKEL & SONS, INC., ET AL.

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

*Docket 7594. Complaint, Sept. 23, 1959—Decision, Jan. 30, 1960*

Consent order requiring manufacturers in New York City to cease violating the Wool Products Labeling Act by labeling as "100% wool," caps which

contained substantially less than 100% wool, and by failing to label other wool products as required.

*Mr. Charles Donelan* supporting the complaint.

*Mr. Louis J. Zieden*, of New York, N.Y., for respondents.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

On September 23, 1959, pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act, the Federal Trade Commission issued its complaint in these proceedings against respondents. Although Morris Benkel's first name was spelled "Maurice" in the complaint, an affidavit, sworn to on November 30, 1959 is to the effect that, and the hearing examiner finds that Morris Benkel and Maurice Benkel are one and the same person, who is the respondent named in the original complaint, and an officer and director of M. Benkel & Sons, Inc. A true copy of the complaint was served upon respondents. The complaint charges respondents with violating the Wool Products Labeling Act by misbranding articles in commerce, (as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act) within the intent and meaning of Section 4(a)(1) and 4(a)(2) of the Wool Products Labeling Act.

After being served with the complaint respondents appeared by counsel. Thereafter respondents entered into an agreement dated November 30, 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 respondents, their counsel, and by counsel supporting the complaint; and has been approved by the Director and Assistant Director, Bureau of Litigation, of the Federal Trade Commission. Said agreement contains the form of a consent cease and desist order which the parties have agreed may be entered by the hearing examiner and which has been represented to be dispositive of the issues involved in this proceeding. On December 14, 1959 the said agreement was submitted to the undersigned Hearing Examiner for his consideration in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Respondents, pursuant to said 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 Federal Trade Commission;

the makings of findings of fact or conclusions of law; and all the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

The parties to the agreement have, inter alia, by such agreement agreed:

(1) The order to cease and desist issued in accordance with said agreement will be entered in this proceeding by the Commission without further notice to the respondents, and, when so entered, such cease and desist order 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 on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; and (4) the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement of November 30, 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 30, 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. Respondent M. Benkel & Sons, 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 640 Broadway, in the City of New York, State of New York.

Individual respondents Morris Benkel (herein previously complained against as Maurice Benkel), Samuel Benkel and Bernard Benkel are officers of the said corporate respondent and control, direct and formulate the acts practices and policies of the said corporate respondent. The office and principal place of business of

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the said individual respondents is the same as that of the corporate respondent.

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 Federal Trade Commission Act, and the Wool Products Labeling Act, and this proceeding is in the public interest.

## ORDER

*It is ordered*, That the respondents, M. Benkel & Sons, Inc., a corporation, and its officers and Morris Benkel (herein previously complained against as Maurice Benkel), Samuel Benkel, and Bernard Benkel, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of men's caps or other wool products, as such products are defined in and subject to the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding said products by:

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

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

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

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

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

Complaint

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## 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 January, 1960, 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.

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IN THE MATTER OF  
DIAMOND CRYSTAL SALT CO.

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

*Docket 7323. Complaint, Dec. 2, 1958—Decision, Feb. 4, 1960*

Consent order requiring one of the nation's largest salt producers—

To divest itself absolutely, within six months, of all interests in the "Seneca Lake" property it acquired in the acquisition of Jefferson Island Salt Company, Louisville, Ky., in January 1957, together with mining rights on an adjacent property:

To refrain from selling such properties to any one under its control or to any other salt producer having annual production of dry salt in excess of 350,000 short tons over a five-year period:

To desist for ten years from acquiring the assets or stock of any other salt producer or distributor;

After such ten-year period, to give prior notice to the Commission of intention to acquire any such producer or distributor or to merge with another corporation; and

For ten years to make salt produced at its Jefferson Island plant available to other producers, as in the order below specified.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated and described, has violated and is now violating the provisions of Section 7 of the Clayton Act (U.S.C. Title 15, Sec. 18) as amended and approved December 29, 1950, hereby issues its complaint, charging as follows:

PARAGRAPH 1. (a) Respondent, Diamond Crystal Salt Co., hereinafter sometimes referred to as Diamond Crystal, is a corporation