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.

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

organized on March 17, 1953, and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 916 South Riverside Drive, St. Clair, Michigan.

(b) The business of Diamond Crystal was originally founded in 1886 as the Diamond Crystal Salt Company, Inc., at St. Clair, Michigan. In 1929, the outstanding capital stock of Diamond Crystal Salt Company, Inc., was acquired by General Foods Corporation which dissolved the original corporation in 1946. Following the dissolution, the business, along with the operations of the Colonial Salt Company, Akron, Ohio, which was acquired in 1945, were continued as the Diamond Crystal-Colonial Salt Division of the General Foods Corporation. On March 30, 1953, Diamond Crystal purchased the assets and business of the Diamond Crystal-Colonial Salt Division from General Foods Corporation.

(c) Respondent is engaged in the business of producing and distributing sodium chloride, hereinafter sometimes referred to as salt. The salt produced by respondent is offered for sale, sold, and distributed to purchasers thereof located in various States of the United States and in the District of Columbia. In the course and conduct of its business, respondent has engaged in commerce, as "commerce" is defined in the Clayton Act, as amended.

(d) Diamond Crystal owns two salt producing plants, one located at St. Clair, Michigan that operates eleven salt wells, and another at Akron, Ohio that operates six salt wells. Diamond Crystal's salt reserves at St. Clair, Michigan and Akron, Ohio are substantial, and it also owns two proven but capped salt wells at Hammondsport, New York. Prior to January, 1957, Diamond Crystal was an evaporated salt producer, producing sodium chloride by the solution mining method of injecting water into underground deposits, creating salt wells, and pumping out artificial brine which is evaporated to produce salt. Evaporated salt of many types and grades is produced by Diamond Crystal for table use as well as for commercial and industrial purposes.

(e) Prior to January 1957, Diamond Crystal sold and distributed salt under the brand names, "Diamond Crystal," "Colonial," "Weather-Pruf," and "Shaker," among others. Sales of salt were made in various States of the United States and also exported, but the principal marketing territory of Diamond Crystal was East of the Mississippi River. Diamond Crystal sold salt, among others, to the following classes of customers: food processors, meat packers, grocery distributors, feed dealers and mixers, industrial consumers, chemical manufacturers, various governmental agencies, and other salt producers.

(f) Diamond Crystal is a growing and profitable concern which, at the end of 1956, was one of the five largest dry salt producers in the United States. During the first three years of its operations, from on or about April 1, 1953, to March 31, 1956, Diamond Crystal's net sales increased from $10,196,013 to $11,585,417, an increase of about 14 percent, and its net income increased from $363,920 to $909,473, an increase of about 150 percent. During this same period, its total assets increased from $7,375,416 to $8,966,902, an increase of about 22 percent.

PAR. 2. (a) Prior to January 1957, Jefferson Island Salt Company, hereinafter sometimes referred to as Jefferson Island, was a corporation organized on July 29, 1919, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 136 St. Matthews Avenue, Louisville 7, Kentucky. The name of the corporation was changed in February, 1947, from Jefferson Island Salt Mining Company to Jefferson Island Salt Company.

(b) Jefferson Island was engaged in the business of producing and distributing sodium chloride. The salt produced by Jefferson Island was offered for sale, sold and distributed to purchasers thereof located in various States of the United States and in the District of Columbia. In the course and conduct of its business, Jefferson Island was engaged in commerce, as "commerce" is defined in the Clayton Act, as amended.

(c) Jefferson Island owned and operated a salt producing mine and processing plant, with railroad, truck and barge loading facilities located at New Iberia (Jefferson Island, P.O.), Louisiana. At this site, it controlled substantial salt reserves, owning or possessing mineral rights to salt deposits of an estimated depth of 25,000 feet, and of a purity ranging from 99.30 to 99.86 percent sodium chloride. Jefferson Island mined and extracted sodium chloride from this deposit by means of the room and pillar mining method. From a shaft that has been sunk into this deposit, large rooms have been cut out of pure salt. Salt is blasted loose, loaded into cars and hoisted to the surface for processing and refining. Jefferson Island was principally a rock salt producer, producing all types and grades of rock salt for table use as well as for commercial and industrial purposes.

(d) The Jefferson Island plant also had boilers, evaporators and other facilities and equipment for producing evaporated salt, and Jefferson Island produced a substantial quantity of evaporated salt for table use as well as for commercial and industrial purposes.

(e) Jefferson Island sold and distributed salt under the brand

names, "Jefferson Island," "Everready," "Old Rip," "Sof-T-Salt," "Champions Choice," "Big Steer," "Salt All" and "Self-Fed," among others. Sales of salt were made in various States of the United States East of the Rocky Mountains and for export, however, the principal marketing territory of Jefferson Island was East of the Mississippi River. Jefferson Island sold salt, among others, to the following classes of customers: food processors, meat packers, grocery distributors, feed dealers and mixers, industrial consumers, chemical manufacturers, various governmental agencies, and other salt producers.

(f) Prior to January, 1957, Jefferson Island was the largest independent dry salt producer in the South and was one of the six largest dry salt producers in the United States. Jefferson Island's net sales increased from approximately $3,425,000 for the year ended December 31, 1950, to $3,802,638 for the eleven months ended November 30, 1956, an increase of about 11 percent. Its net income increased from about $309,000 for the year ended December 31, 1950 to $508,670 for the eleven months ended November 30, 1956, an increase of about 64 percent. During this same period its total asset increased from approximately $2,890,000 in 1950 to $4,022,120 as of November 30, 1956, an increase of about 39 percent.

PAR. 3. (a) Sodium chloride, or salt, is one of the oldest, most commonly used and widely distributed mineral materials. In its natural state, it is generally found in two forms, as solid rock salt and as natural brine, and it is produced commercially from either form. Sodium chloride is the same chemically, wherever found, containing 39.34 percent sodium and 60.66 percent chloride. It is produced and sold commercially in a dry state for table use and for various other commercial and industrial purposes.

(b) For marketing purposes in the dry salt industry, there are two basic salt products, rock salt and evaporated salt. Rock salt and evaporated salt are functionally interchangeable for many uses. However, evaporated salt is used for some purposes for which rock salt may not be feasible, desirable, or advisable.

(c) The terms "sodium chloride" or "salt," as used in this complaint, refer to salt as produced and sold commercially in a dry state and include both evaporated salt and rock salt. As used herein, said terms do not include brine such as that which is produced and consumed by the chemical industry and is not marketed as dry salt.

(d) Sodium chloride, or salt, is produced by salt producers in the United States by means of three basic production methods, dry mining, solution mining and solar production.

(e) The production by dry mining involves the sinking of mine

shafts into underground salt beds or domes from which rock salt is excavated and transported to the surface. The excavated rock salt is then processed by being crushed, screened and refined into various types and grades of salt. The sodium chloride produced by this process is known as rock salt. Rock salt after being mined may be, and sometimes is, reduced to artificial brine from which evaporated salt is produced.

(f) The production by solution mining involves the extraction of salt from underground salt beds and domes by means of the injection of water into such cavities that melts the salt and forms wells of artificial brine. The brine is then pumped to the surface and evaporated. The salt resulting from the evaporation is then processed and refined into various types and grades of salt. The sodium chloride produced by this process is known as evaporated salt. This method of salt production is employed where the salt deposits are so far below the earth's surface as to make it impractical or impossible to remove the rock salt by sinking mine shafts down into such deposits.

(g) Solar production is another method of producing evaporated salt. This method involves the use of sea water, salt water from lakes or other natural brines which is evaporated from beds by exposure to the sun. The resulting salt in the beds is then processed and refined into various types and grades of salt.

(h) Sodium chloride produced by any of these three basic production methods may be processed or refined to meet particular user specifications or preferences with respect to the size and shape of the salt crystal, as well as the chemical and/or biological purity of the salt. In addition, various chemicals and/or minerals are sometimes added to either rock salt or evaporated salt to meet user specifications.

PAR. 4. (a) Prior to January 1957, Diamond Crystal and its predecessors and Jefferson Island were, and had been for many years, substantial dry salt producers. Diamond Crystal's two salt producing plants had a total annual productive capacity of approximately 495,000 short tons of evaporated salt. Approximately 255,000 short tons of this capacity, or 52 percent, consisted of Alberger evaporated salt, approximately 215,000 short tons, or 43 percent, vacuum pan evaporated salt, and approximately 25,000 short tons, or 5 percent, pressed block salt. The pressed block salt capacity could be increased approximately 25,000 short tons or an additional 5 percent, by decreasing the Alberger or vacuum pan capacities.

(b) Jefferson Island's plant had a total annual productive capacity of approximately 700,000 short tons of salt of which approxi-

mately 665,000 short tons, or 95 percent, consisted of rock salt and approximately 35,000 short tons, or 5 percent, consisted of vacuum pan evaporated salt. Of the approximately 665,000 short tons of rock salt capacity, approximately 30,000 short tons, or 4 percent, consisted of pressed block rock salt.

(c) In 1955, Diamond Crystal was the fourth largest dry salt producer in the United States, with shipments of 434,043 short tons of dry salt, or 4.7 percent of all dry salt sold or used by the dry salt producing industry. Diamond Crystal was the third largest producer of evaporated salt, as its shipments of 434,043 short tons represented 10.9 percent of all evaporated salt sold or used by the dry salt producing industry in the United States in 1955.

(d) In 1955, Jefferson Island was the sixth largest dry salt producer in the United States, with shipments of 388,771 short tons of dry salt, or 4.2 percent of the total dry salt sold or used by the dry salt producing industry. Jefferson Island was the third largest producer of rock salt sold or used in 1955 in the United States, as its shipments of 365,548 short tons of rock salt represented 6.9 percent of the total rock salt sold or used by the dry salt producing industry. Jefferson Island also shipped 23,223 short tons of evaporated salt, or .6 percent of the total evaporated salt sold or used by the dry salt producing industry in the United States in 1955.

PAR. 5. (a) The dry salt industry in the United States is highly concentrated in that the six largest dry salt producers, including Diamond Crystal and Jefferson Island, shipped in excess of three-fourths of the total dry salt sold or used in the United States in 1955. The dry salt producing industry in the United States, including Hawaii and Puerto Rico, in 1955 consisted of 48 dry salt producers, which sold or used 5,293,282 short tons of rock salt and 3,986,967 short tons of evaporated salt, or a total of 9,280,249 short tons of dry salt. In 1955 the six largest dry salt producers in the United States shipped 7,281,859 short tons, or 78.5 percent of the 9,280,249 short tons of the total dry salt sold or used by dry salt producers in the United States.

(b) Of the 5,293,282 short tons of rock salt sold or used by dry salt producers in the United States in 1955, the three largest rock salt producers, including Jefferson Island, shipped 3,661,299 short tons of rock salt, or 69.1 percent, of the total rock salt sold or used by dry salt producers.

(c) Of the 3,986,967 short tons of evaporated salt sold or used by dry salt producers in the United States, including Hawaii and Puerto Rico, in 1955 the five largest evaporated salt producers, including Diamond Crystal, shipped 2,984,859 short tons of evaporated

salt, or 74.9 percent of the total evaporated salt sold or used by dry salt producers.

(d) In 1940 there were 62 dry salt producers in the United States, including Hawaii and Puerto Rico, which sold or used 5,048,289 short tons of dry salt, as compared with the 48 dry salt producers which sold or used 9,280,249 short tons of dry salt in 1955. Between 1940 and 1955, the number of dry salt producers in the United States decreased by 14 or 22.6 percent, while the amount of dry salt sold or used by the dry salt producing industry increased 4,231,960 short tons, or 83.8 percent.

(e) The dry salt producing industry is difficult for a new producer to enter. Entry into the business is limited because of the heavy capital outlays required for resources, plant and equipment; the unavailability to new entrants of commercially usable salt resources; the large expenditures required to obtain business and overcome public acceptance of entrenched suppliers and brands; the inelasticity of demand for salt; the high degree of concentration of resources and production facilities in the industry; and the substantial idle capacity in the industry.

PAR. 6. On or about January 4, 1957, respondent entered into an agreement to purchase not less than 90 percent of the 40,122 issued and outstanding shares of common stock of Jefferson Island at $125.00 per share or in excess of $5,000,000 in the aggregate for all of the 40,122 issued and outstanding shares. This agreement was consummated on or about January 10, 1957, and respondent thereby acquired control and ownership of Jefferson Island. Respondent operated Jefferson Island as a subsidiary until on or about April 1, 1957, after which Jefferson Island was dissolved and its assets and business were merged into respondent.

PAR. 7. (a) Prior to January 1957, substantial competition, and substantial potential competition, existed between Diamond Crystal and Jefferson Island, and between them and others, in the sale and distribution of dry sodium chloride in interstate commerce in the area of the United States, East of the Rocky Mountains, and especially in the southeastern part of the United States in the nine state area of Louisiana, Mississippi, Alabama, Florida, Georgia, South Carolina, North Carolina, Kentucky and Tennessee and in various parts thereof.

(b) In 1955, Jefferson Island ranked third in dry salt shipments in the aforesaid nine state area. Jefferson Island shipped 229,636 short tons of dry salt, or 21.4 percent, and Diamond Crystal shipped 38,252 short tons of dry salt, or 3.6 percent of the 1,072,347 short tons of dry salt sold or used in the said nine state area in 1955.

On the basis of the 1955 shipments, Diamond Crystal now has 25 percent of the dry salt business and ranks third in the industry in the said area.

(c) The shares of the dry salt market which Diamond Crystal and Jefferson Island had in each State of the aforesaid nine state area in 1955, and, on this basis, the combined share of said market that Diamond Crystal now has as a result of the acquisition is as follows:

State	Diamond Crystal	Jefferson Island	Diamond Crystal and Jefferson Island
Louisiana	.3	39.5	39.8
Mississippi	2.7	17.3	20.0
Alabama	2.3	18.8	21.1
Florida	1.4	17.2	18.6
Georgia	4.5	15.3	19.8
South Carolina	5.3	14.1	19.4
North Carolina	6.6	15.2	21.8
Kentucky	3.1	22.9	26.0
Tennessee	6.8	19.7	26.5

(d) On the basis of 1955 shipments of dry salt in the aforesaid nine state area, Diamond Crystal and the two largest dry salt producers in the United States now control over 90 percent of total shipments of dry salt made in said area. On this basis, the acquisition increased the share of the nine state area market held by the three largest dry salt producers doing business in said market from 86.6 percent to 90.1 percent. On the basis of 1955 shipments, the combined share of the dry salt market which Diamond Crystal-Jefferson Island and the two largest dry salt producers in the United States now control in each State of the said nine state area, as a result of acquisition, is as follows:

State of destination	*Percentage of shipments*
Louisiana	90.0
Mississippi	71.4
Alabama	93.4
Florida	85.0
Georgia	81.5
South Carolina	93.5
North Carolina	98.2
Kentucky	94.3
Tennessee	84.0

(e) In 1955, Diamond Crystal shipped 38,252 short tons of evaporated salt, or 16.1 percent, and Jefferson Island 12,752 short tons of evaporated salt, or 5.4 percent of the 237,121 short tons of evaporated salt shipped in the aforesaid nine state area. As a result of the acquisition, Diamond Crystal, on the basis of 1955 evaporated

salt shipments, now has 21.5 percent of the evaporated salt shipments in the said area market.

The shares of the evaporated salt market which Diamond Crystal and Jefferson Island had in each State of the said nine state area in 1955, and, on this basis, the combined share of said area market that Diamond Crystal now has as a result of the acquisition is as follows:

State	Diamond Crystal	Jefferson Island	Diamond Crystal and Jefferson Island
Louisiana	2.5	6.7	9.2
Mississippi	13.3	10.0	23.3
Alabama	23.7	6.0	29.7
Florida	6.1	3.6	9.7
Georgia	16.7	4.3	21.0
South Carolina	14.5	6.4	20.9
North Carolina	16.1	3.5	19.6
Kentucky	16.2	6.6	22.8
Tennessee	22.9	6.3	29.2

(f) On the basis of 1955 shipments of evaporated salt in the aforesaid nine state area, Diamond Crystal and the two largest dry salt producers in the United States now control over 78 percent of all shipments of evaporated salt made in said area market. On this basis the acquisition increased the share of the said nine state area market held by the three largest dry salt producers doing business in said market from 73.2 percent to 78.6 percent. On the basis of 1955 shipments, the combined share of the evaporated salt market which Diamond Crystal-Jefferson Island and the two largest dry salt producers in the United States now control in each State of the said nine state area, as a result of the acquisition, is as follows:

State of destination	*Percentage of sales*
Louisiana	49.6
Mississippi	53.2
Alabama	58.2
Florida	89.5
Georgia	79.8
South Carolina	96.6
North Carolina	94.4
Kentucky	82.9
Tennessee	68.1

PAR. 8. The aforesaid acquisition by respondent of Jefferson Island may have the effect of substantially lessening competition or tending to create a monopoly in the production and sale of dry sodium chloride, including both evaporated and rock salt, and in the production and sale of evaporated salt and of rock salt separately, in commerce, as "commerce" is defined in the Clayton Act.

More specifically, the aforesaid effects include the actual or potential lessening of competition or a tendency to create a monopoly in violation of Section 7 of the Clayton Act, as amended, in the following ways, among others:

(a) Actual and potential competition between respondent and Jefferson Island has been, and will be, eliminated in the production and sale of dry sodium chloride, including both evaporated and rock salt, and in the production and sale of evaporated salt and of rock salt separately, in the areas in which they competed, and especially in the aforesaid nine state area and in various parts thereof;

(b) The acquisition of Jefferson Island substantially increases respondent's salt resources, productive facilities, share of the dry sodium chloride, and evaporated salt and rock salt markets, and overall position in the dry salt producing industry, thus increasing and enhancing respondent's competitive advantage over other dry salt producers to the detriment of actual or potential competition;

(c) By substantially increasing the productive and competitive position of respondent in the areas designated which may be to the detriment of actual or potential competition;

(d) Jefferson Island has been permanently eliminated as an independent source of both rock salt and evaporated salt, and this may cause single line producers of either crushed rock salt or evaporated salt that would otherwise have purchased from Jefferson Island to become dependent upon respondent, which is, or may be, one of their principal competitors;

(e) Jefferson Island has been permanently eliminated as one of the substantial independent producers of dry sodium chloride, including both evaporated salt and rock salt and of evaporated salt and of rock salt separately, and is no longer a competitive factor in the areas designated;

(f) Concentration generally has been further increased and enhanced in the dry salt industry in that the salt resources, production facilities and shares of the dry salt market held by respondent and the two largest dry salt producers in the United States have been greatly increased which has been or may be substantially to lessen competition;

(g) Entry into the dry salt producing business has been or may be discouraged because of the dominant position respondent and two other dry salt producers now occupy in the industry in the areas in which they competed, and especially in the aforesaid nine state area, and in various parts thereof, which has been or may be substantially to lessen competition;

(h) Actual and potential competition generally in the production

and sale of dry sodium chloride, including both evaporated and rock salt, and in the production and sale of evaporated salt and of rock salt separately, has been, and may be, substantially lessened, and industry wide concentration in the production and sale of such products, separately and collectively, has been or may be increased.

PAR. 9. The foregoing acquisition, acts and practices of respondent, as hereinbefore alleged and set forth, constitute a violation of Section 7 of the Clayton Act (U.S.C. Title 15, Section 18) as amended and approved December 29, 1950.

Mr. William J. Boyd, Jr. and *Mr. Arthur J. Hessburg* for the Commission.

Dickinson, Wright, Davis, McKean & Cudlip, by *Mr. Edward P. Wright*, of Detroit, Mich., for respondent.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated December 2, 1958, the respondent is charged with violating the provisions of section 7 of the Clayton Act, as amended.

On February 9, 1959, respondent filed its answer to the complaint herein. A number of hearings were held for the reception of evidence in support of the allegations of the complaint. Thereafter, on November 16, 1959, there was submitted to the undersigned hearing examiner an agreement between respondent, its attorney, and counsel supporting the complaint, providing for entry of a consent order to cease and desist and to divest.

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

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

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

1. Respondent, Diamond Crystal Salt Co., is a corporation existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 916 South Riverside Drive, in the City of St. Clair, State of Michigan.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

ORDER

(1) *It is ordered*, That respondent, Diamond Crystal Salt Co., shall divest itself absolutely, in good faith, of all right, title, and interest, real and personal, in the property described in the next succeeding paragraph of this order, located in the Seneca Lake region in the State of New York, consisting of whatever real estate, appurtenances, attachments, facilities, mining rights, and other interests in such property, which respondent acquired from the former Jefferson Island Salt Company at the time the stock, business, and assets of the said Jefferson Island Salt Company were acquired by respondent.

The aforementioned Seneca Lake property may be more particularly described as all that tract or parcel of land, situate in the Town of Reading, County of Schuyler, and State of New York, lying east of the Northern Central Division of the Pennsylvania Railroad, bounded on the east by the shores of Seneca Lake, on the north by lands of William Davis, on the west by lands of the Northern Central Division of the Pennsylvania Railroad, and on the south by lands of the Watkins State Bank; being that portion of the so-called Baker Farm lying east of the aforesaid railroad consisting of 16 acres of land more or less; together with mining rights on that portion of the Baker Farm lying west of said railroad and east of the so called Lake Road, consisting of 54 acres of land more or less.

Such divestiture shall be completed within six months from the date of this order, and shall consist of the disposition by respondent of all right, title, and interest, real and personal, in the above described "Seneca Lake" property currently owned by respondent. Respondent shall not sell or transfer any such right, title, or interest, directly or indirectly, to any officer, director, employee, distributor, agent, or subsidiary of, or any one otherwise directly or indirectly under the control or influence of, respondent or any of its officers or directors, nor shall respondent sell or transfer any such right, title and interest in said "Seneca Lake" property to any other salt

producer whose annual production of dry salt averaged in excess of 350,000 short tons during the five calendar years, 1954–1958.

(2) *It is provided, however*, That if any property or interest is not sold or disposed of entirely for cash, nothing herein contained shall be deemed to prohibit respondent from retaining, accepting, and enforcing a bona fide lien, mortgage, deed of trust, or other form of security on said property or other interest for the purpose of securing to respondent full payment of the price at which said property is disposed of or sold, and

(3) *Provided further*, That if, after a good faith divestiture of the aforesaid property or interest, the buyer fails to perform his purchase obligation to respondent and respondent thereby regains ownership or control over the aforesaid property, respondent shall redivest itself of the property and other interests within three months in the same manner as ordered originally.

The term "salt" as used herein, shall mean a mineral containing recoverable sodium chloride in commercial quantities.

The term "commerce" as used herein shall mean " commerce" as defined in the Clayton Act, as amended.

(4) *It is further ordered*, That for a period of ten years from the date of issuance of this order by the Federal Trade Commission, respondent shall cease and desist from acquiring, directly or indirectly, through subsidiaries or otherwise, by merger, consolidation, or purchase, the physical assets, stock, share capital of, or any other interest in any corporation, in commerce, engaged in the business of producing and/or distributing salt in any form, specifically including salt in a dry state produced by any dry mining method, or produced by an evaporation method, and salt in brine.

(5) *It is further ordered*, That if at any time after ten years from the date of issuance of this order by the Federal Trade Commission, respondent intends to acquire, directly or indirectly, through subsidiaries or otherwise, by merger, consolidation, or purchase, the physical assets, stock, share capital of, or any other interest in any corporation engaged in the business of producing and/or distributing salt, as hereinbefore described, in any form, in commerce, or respondent intends to sell, merge, or consolidate the whole or any part of its stock or other share capital, or the whole or any part of its assets, with another corporation, in commerce, respondent shall notify the Commission at least 90 days prior to the effective date of the proposed acquisition, consolidation, merger, or sale, and submit to the Commission, for its consideration full and complete disclosure of the facts with respect to such proposed acquisition, consolidation, merger, or sale, and the reasons therefor.

Nothing contained in either of the two preceding paragraphs shall preclude respondent from buying or selling, from any seller or to any buyer, physical assets retired by it or by the seller from salt production or not directly related to the production of salt.

(6) *It is ordered*, That for a period of ten years from the date of the issuance of this order by the Federal Trade Commission, respondent shall cease and desist from selling more than 70% of the total annual production of Rock Salt mined at the respondent's plant at Jefferson Island, Louisiana until amounts not exceeding 30% of such Rock Salt have been made available in good faith in accordance with respondent's regular credit requirements, and at respondent's regular prices, terms and conditions, and in weights and packages, types and grades, regularly produced at respondent's Jefferson Island plant, to all other producers of salt for sale who do not have resources and facilities for the production of Louisiana Rock Salt by means of a dry mining method (or who, to the knowledge of respondent, are not owned or controlled by others possessing such resources and facilities), the amount to be offered in each of respondent's fiscal years to each such qualifying producer to be not less than the largest amount purchased by any of such qualified producers in any one of the five years prior to respondent's acquisition of Jefferson Island Salt Company. After any such producer shall have purchased such Rock Salt from respondent for three consecutive fiscal years after the date of this order in an aggregate amount not less than its total annual entitlement hereunder, respondent shall on such producer's request negotiate in good faith with such producer for a long term contract to provide such producer with such salt in an annual amount not required hereby to be greater than 25,000 tons, or five percent, of respondent's annual production at its Jefferson Island plant, whichever shall be the lesser amount; or any such producer may after such three year period, in lieu of negotiating for such a long term contract, purchase annually thereafter 106 percent of the amount such producer had purchased in any preceding year during the ten year period subsequent to the date of this order. No such sales need be made on delivery schedules at a rate or rates which for any two consecutive calendar months would exceed 25% of the total annual stipulated entitlement of the purchaser hereunder nor on delivery schedule incompatible with production limitations applying to particular types and grades. Respondent will be deemed to have made such Rock Salt available in good faith within the meaning of this paragraph *inter alia*, if it has during January of each calendar year made an offer in writing in accordance with the provisions of this order to every producer of salt for sale known by it to be qualified hereunder.

(7) *Provided, however*, That nothing contained in the preceding paragraph shall require respondent to make available to the producers of salt for sale who qualify under the provisions of the preceding paragraph and to present non-consuming purchasers with long term contracts, an aggregate amount of more than 30% of its annual production of Jefferson Island Rock Salt.

The term "annual production," as used herein, shall mean (i) for any calendar year during the ten year period subsequent to the date of this order, the number of tons of Rock Salt produced for sale by respondent at its plant at Jefferson Island, Louisiana in the preceding calendar year, and (ii) for any period less than a calendar year, the number of tons of Rock Salt so produced during the corresponding period in the preceding calendar year.

Nothing contained in this order shall be considered to have been violated by any action or inaction of respondent over which respondent shall have had no control, where such action or inaction shall have been occasioned by war, civil insurrection, strikes, embargoes, catastrophies, or Acts of God.

Jurisdiction is retained so that respondent may at any time hereafter petition the Commission for construction or modification of this order which the Commission will consider and, upon proper showing by respondent, allow to the extent it finds such construction or modification to be warranted and consistent with Section 7 of the Clayton Act, as amended.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

This matter having come on to be heard by the Commission upon its review of the hearing examiner's initial decision filed on November 19, 1959, and the Commission having determined that said initial decision is adequate and appropriate in all respects to dispose of this proceeding:

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

It is further ordered, That the respondent Diamond Crystal Salt Co. shall, within sixty (60) days from the date of service of this order, (1) submit a report, in writing, setting forth in detail the manner and form in which it has complied with Paragraphs 4, 5 and 6 of the order to cease and desist and to divest contained in said initial decision, and (2) further submit, in writing, for the consideration and approval of the Commission its plan for compliance with Paragraph 1 of said order and its related provisions respecting divestiture, including the date within which compliance can be effected, the time for filing of report of compliance with the

order to divest to be hereafter fixed by order of the Commission and jurisdiction being retained for that purpose.

IN THE MATTER OF

SAMUEL A. MANNIS AND COMPANY

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

Docket 7062. Complaint, Feb. 12, 1958—Decision, Feb. 9, 1960

Order requiring the concessionaire of the fur department of a Pasadena department store, added by the purchaser of the store's merchandise following its bankruptcy, to cease violating the Fur Products Labeling Act by failing to comply with labeling, invoicing and advertising requirements including failure to use the term "Second-Hand," naming other animals than those producing certain furs, and representing himself falsely as the manufacturer of his fur products; by advertising sales below cost, fur products as from a distress source and as guaranteed, etc.; and by failing to keep adequate records as a basis for pricing claims.

Mr. John J. McNally supporting the complaint.

Mr. Jerome Weber, Mr. Benjamin Held and *Mr. David Hoffman* of Los Angeles, Calif., for respondent.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

Commission complaint issued February 12, 1958, and duly served charged respondent with violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and also with the violation of the Federal Trade Commission Act. Respondent's answer admitted the first and second paragraphs of the complaint. The second paragraph so admitted charged respondent with the sale, advertising, transportation and distribution in commerce of fur products and contained other allegations, which admitted, give the Commission jurisdiction in this proceeding. The answer also admitted that one of his advertisements contain certain representations alleged and quoted in the complaint. All other allegations of the complaint were denied.

On April 14, 1958, the original date set for hearing in Los Angeles, California, the matter was continued over until April 21, 1958. Thereafter, beginning April 21, 1958, seven days of hearings were held for the taking of evidence in support of and in opposition to the allegations of the complaint. Both sides then rested their case insofar as the taking of evidence was concerned.

During the hearings the following facts were developed: There was another Federal Trade Commission proceeding pending entitled "In the Matter of Mannie Feigenbaum, Inc., a corporation, and Manuel Feigenbaum, individually and as an officer of said corporation." The latter proceeding bears Docket No. 7064, and is in effect a companion case to this one. That is, much of the evidence in this proceeding is applicable to the proceeding in Docket No. 7064. Respondents in both proceedings were represented by the same counsel, and the same attorney was counsel supporting the complaint in both cases. After considerable discussion both on and off the record, it was agreed on the record between counsel on April 21, 1958, that these two proceedings be consolidated for the purpose of taking the evidence. Thereupon, on page 104 of the record, the hearing examiner, with consent of counsel directed such consolidation and further directed that all of the testimony previously taken and to be taken thereafter in both cases be made a part of the record in each case. Later, also with consent of counsel the reporter was directed to mark each exhibit received as an exhibit in both Docket Nos. 7062 and 7064.

Both sides were represented by counsel at all of the hearings and given full opportunity to introduce evidence pertinent to the issues, examine witnesses and argue points of law and evidence. Both sides were given the opportunity to and did file proposed findings, conclusions and orders together with the reasons therefor.

This proceeding is now before the hearing examiner for an initial decision upon the entire record including the pleadings, evidence and the proposed findings, conclusions and orders and the reasons therefor. All such proposed findings, conclusions and orders not hereafter adopted, found or concluded are hereby specifically rejected.

Upon the entire record and from the observation of the witnesses while testifying, the hearing examiner makes the following findings as to the facts, conclusions and order.

FINDINGS AS TO THE FACTS AND CONCLUSIONS

The respondent is an individual trading as Samuel A. Mannis and Company. He is engaged in the retail sale of fur coats, stoles and other fur products, with his principal place of business now being located at 6340 Hollywood Boulevard, Hollywood, California. He has been engaged in this business for the past eight or ten years. Respondent's salesmen frequently take furs from the store at the above location to the homes of prospects for the purpose of making a sale, in addition to the business done at the store. Respondent has also conducted fur auctions at other locations and has sold furs

as a concessionaire in other stores at other locations. It is estimated that in all his different operations he has sold approximately 50,000 fur products during the past ten years. The T. W. Mather operation is typical of his business as a concessionaire.

A department store in Pasadena, California, operating under the name of T. W. Mather's went into bankruptcy and its assets were sold under court order to the highest bidder. Another concern, Mannie Feigenbaum, Inc., one of the respondents in Commission Docket No. 7064 was the successful bidder. This store had a fur department. Mannie Feigenbaum, Inc., decided to conduct a sale on the premises which was highly advertised. In addition to the bankrupt stock it was decided that other goods should be brought into the store and sold during the sale.

Mannie Feigenbaum, Inc., contacted the respondent Samuel A. Mannis. As a result the respondent Mannis brought fur coats and other fur products into the T. W. Mather store and sold them there. The arrangement was that respondent Mannis would pay Mannie Feigenbaum, Inc., 10% of his gross sales as rent, with a certain minimum rent agreed upon. The sale was advertised under the name of T. W. Mather's. Respondent Mannis' furs were advertised in the same advertisement with the goods being offered in the other departments of the store. No prospective purchaser could tell from the advertisements whose furs were being offered for sale. The only name appearing was that of T. W. Mather's. Respondent Mannis also paid his proportionate part of the advertising for the sale, based on the amount of space used to advertise his fur products and a certain proportion for his part of the general advertising of the sale. The T. W. Mather sales slips were used, on which were placed a code number, assigned to Mannis, so that the copy of the sales slips revealed to Mannie Feigenbaum, Inc., that the particular sale was made by Mannis or his employees.

The advertising copy for the fur department used in the store advertisements was prepared by a Mannis employee, authorized by Mannis, and turned over to the Mannie Feigenbaum, Inc., employee who had charge of advertising for the store.

Some of the other departments in the store were let out to concessionaires like Mannis and some were run directly by Mannie Feigenbaum, Inc. The record does not show how long the sale lasted but it evidently did last more than 30 days.

Removal of Labels

The first charge in the complaint is that respondent has removed or caused or participated in the removal of, prior to the time certain

fur products were sold and delivered to the ultimate consumer, labels required by the Fur Products Labeling Act to be affixed to such products.

The evidence on this is limited to two sales, one to the witness Velma Welch and the other to the witness Nancy Finley. Having heard the witness Nancy Finley testify the hearing examiner is of the opinion that her testimony on this issue should be disregarded. The facts on this issue in regard to the Welch sale are as follows:

After seeing one of respondent's newspaper advertisements in January 1957, Miss Welch called respondent's store and indicated that she was interested in purchasing a mink stole within a certain price range. In response to her call, respondent's salesman Francis carried eight gaments to the Welch residence for her to choose from. She decided to buy one of them for the price of $525. This particular garment was one that respondent had on consignment, and still carried the manufacturer's tag or label on it. It was respondent's practice in regard to consigned merchandise, not to purchase the garment until he knew he had it sold. Such garments were not given an item number on respondent's stock record book until they were sold. They were not given a Mannis tag or label. The manufacturer's tag or label was left attached to the garment.

Miss Welch gave Francis a check for $125 on the purchase price and he gave her what has been called a temporary invoice, describing the garment, stating the purchase price, giving credit for the $125 and reciting the terms agreed upon for the payment of the balance. Miss Welch wanted the garment left with her and this was done after Francis had obtained permission from the store manager over the phone. Before he left the cape, Francis took the manufacturer's tag or label from it and carried the tag back to the store with him for the purpose of using the information on it in writing up the sale on respondent's regular form.

The record does not show that Miss Welch ever received any other title papers although she did later receive an appraisal of the garment by respondent. She later tried to back out of the transaction and was told she could not do so. She still has the coat and has made the monthly payments called for by the "temporary invoice" left with her.

On the basis of these facts, counsel supporting the complaint contends that Section 3(d) of the Fur Products Labeling Act has been violated by removal of the manufacturer's tag or label prior to the time the fur product was "sold and delivered to the ultimate consumer."

The general rule is that title to personal property passes from the seller to buyer with delivery of the goods, unless from the conduct

of the parties or other circumstances surrounding the transaction a different intention is ascertained.[1] Under the facts shown here the sale was consummated at the Welch residence and at the time of the removal of the tag or label the fur garment had been sold and delivered to the ultimate consumer. Hence there was no violation of the law. It is so found.

"Original by House of Mink"

Paragraph 4 of the complaint charges labels sewn in some of respondent's fur products, containing the above wording, as misbranding in violation of Section 4(1) of the Fur Products Labeling Act. Paragraph 15 of the complaint charges the use of statements in advertising bearing this wording as false advertising in violation of Section 5(a)(5) of said Act. These two charges will be considered together.

For approximately two years prior to the hearing in Los Angeles, California, in April 1958, respondent used the name "House of Mink" as a trade name. This was registered in the County of Los Angeles as a trade name of respondent. He recently changed the trade name in use to "Furs by Mannis." While respondent was using the "House of Mink" trade name, he had woven labels sewed into some of his mink fur products reading as follows:

Original
by
House of Mink
hollywood—california

Also during that period of time, in advertisements in newspapers that were disseminated in interstate commerce, respondent's advertisements contained a picture of the label. Below that picture we find the following:

Here is the label you will see in the most fabulous furs now brought to you EXCLUSIVELY by one of the largest furriers in America, at PRICES that are breathtaking, and unbelievably LOW.

The words "Original by House of Mink" as used in labeling and as used in the advertising suggest that garments bearing that label are exclusive creations, designed by respondent, and that the woman wearing such garment may rest assured that she will not see another similar garment. There is testimony in the record that this label went on all new mink garments placed in stock; that respondent

[1] *Louisville & Nashville Railroad Company* v. *United States*, 267 U.S. 395; *Pacific Electric Railway Company* v. *United States*, 71 F. Supp. 987, 989, affirmed 172 F. 2d 222.

Mannis while not physically designing any garments had "mental thoughts" about the garments he wanted which he communicated to his suppliers; that when offered new mink garments by his suppliers, Mannis would suggest that the coat should be longer or that the collar should be higher; that Mannis picked out of the garments offered by his suppliers, those that fitted his ideas as to what he wanted. From these various statements and others in the record, the truth seems to be that Mannis had two mink coats made according to his designs for a particular customer. Other than that he did no designing or manufacturing. He did want and tried to see that only high class and stylish mink garments bore this label. When he found what he wanted among the garments offered by his suppliers, he took them and the label was attached. To other suppliers he would say, "I don't like the length of that coat" or "I don't like the collar, etc." That supplier would bring back other garments, either out of stock or that had been altered to meet Mannis' criticism. Mannis would buy them and the labels would be attached. The record shows that some of the garments bearing the label were trade-ins and some were from a lot generally conceded not to be high class merchandise. They probably were exceptions. In any event, however, at least the majority of the garments bearing the label "Original by House of Mink," were not designed by Mannis, but were high class garments from the stock of Mannis' suppliers.

It is found that garments bearing the label "Original by House of Mink" were falsely and deceptively labeled in violation of Section 4(1) of the Fur Products Labeling Act. It is further found that the advertising with a picture or facsimile of the label in the context in which it was used was false advertising in violation of Section 5(a)(5) of the Act. This label and advertising in evidence had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public. There is no necessity for proof of actual deception or additional proof of such capacity and tendency.[2] The respondent's contentions to the contrary are rejected.

Other Violations of Section 4 and the Rules and Regulations of the Commission in Regard to Labeling

These violations are charged in paragraphs 5 and 6 of the complaint. The evidence consists of certain labels on tags and the testimony in regard to them. Commission exhibits 41A through H

[2] *Zenith Radio Corporation* v. *F.T.C.*, 143 F. 2d 29, 31; *Charles of the Ritz Distributors* v. *F.T.C.*, 143 F. 2d 676, 680.

were tags or labels taken from garments of respondent at the T. W. Mather's store during the sale.

The Commission investigator, Edwin H. Anderson, testified that Commission exhibits 41A through H were the original tags taken from garments by respondent's employee, Mr. Weiss, on June 8, 1956 and given to him at his request. These garments were among those of respondent's in stock at that time at the T. W. Mather's sale in Pasadena. He further said that Mr. Weiss replaced these tags with other tags in an attempt to show the required information in a proper manner. The hearing examiner has looked at each of these tags, Commission exhibits 41A through H and they are each deficient, that is, each of these tags do not contain all of the information required in the manner required by the Act and the rules and regulations promulgated by the Commission. For the respondent's benefit, Mr. Anderson in his testimony explained the deficiencies of each tag.

Anderson stated on direct examination, and it is brought out more clearly on cross, that there were also other tags on the garments from which these tags, Commission exhibits 41A through H were taken. Anderson stated that none of these other tags contained all of the required information in the proper manner, and for that reason he did not take the other tags. Respondent's Manager Weiss testified that he was familiar with the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and he was equally positive that the other tags which Anderson admits were on the garments did have on each of them all of the required information. This was a direct statement in addition to other general statements. Aside from being contradicted by Weiss on this point, to accept Anderson's testimony that these garments were misbranded, is to accept his conclusion, without any other evidence to support it, that the tags remaining on the garments did not comply with the Fur Products Labeling Act and the Rules and Regulations. In certain cases opinion evidence of experts may be accepted upon the ultimate issues before the Commission. This however, is not that type of case. The proof therefore is lacking to support a finding that the garments from which Commission exhibits 41A through H were taken, were misbranded.

Commission exhibits 42 through 56D were all duplicates of tags attached to respondent's fur garments in stock at his store on Hollywood Boulevard during the month of June 1957. These tags are from garments selected at random in respondent's store. In this instance where there was more than one tag on a garment, Anderson secured duplicates of all the tags on each of the garments se-

lected and they are all in evidence. Weiss' general statement that all fur products in stock bore more than one tag does not stand up against Anderson's specific testimony in regard to the garments from which these particular tags were taken.

In this series where a garment carried more than one tag, they are given sub-numbers, such as 45A and B.

Commission exhibits 48A and B being all the tags attached to one garment violate Section 4(2) in showing "Alaska Seal" which is not a name listed in the Fur Products Name Guide.

Commission exhibits 43, 44, 52 and 53 violate Section 4(2) in failing to show the name or other identification issued and registered by the Commission of one or more persons who manufactured these fur products for introduction into commerce, introduced them into commerce, advertised or offered them for sale in commerce or transported or distributed them in commerce. On some of these tags there are numbers, but under the evidence they are clearly item numbers of the fur products, rather than identification numbers issued by the Commission.

Commission exhibits 45A and B, 46A and B, 47A and B, 48A and B, 49A and B, 50A and B, 51A and B and 54A and B violate Section 4(2) in that all the information required is not shown on one tag on each garment. This section of the Act says particularly that the fur product is misbranded if there is not affixed to it *a label* giving the required information. Rules 29 and 30 interpret this provision. The purpose of the labeling provisions of the Act would largely be nullified if the required information could be spread over several tags.

Commission exhibits 47A and B, and 54A and B further violate Rule 4 insofar as it applies to labeling in that some of the required information is set forth in abbreviated form.

Commission exhibits 45A and B and 46A and B use the term "blended." Commission exhibits 66 and 67 being tags taken from one fur product also use the term "blended." If this means that these fur pieces have been pointed, bleached, dyed or tip dyed it is in Violation of Rule 19. If it means anything else it is in violation of Rule 30 which states the sequence in which the required information on the label shall be set out, and also in violation of Rule 29(a) in regard to mingling required and non-required information. These rules and others were promulgated by the Commission governing the manner and form of disclosing information required by the Act. The Commission is directed to do this by the Act. The Court has held that such rules are a valid exercise of the Commission's

power and that violation thereof comes within the prohibitions of the Act.[3]

Mr. Weiss testified that pink labels (or red as they were called by counsel supporting the complaint) were only put on used garments. Commission exhibits 42, 43 and 44 were such colored labels but did not otherwise show that the garments had been used. This was in violation of Rules 21 and 23.

Commission exhibits 42, 43, 44, 52 and 53 contain non-required information mingled with required information in violation of Rule 29(a). For instance Commission exhibit 43 says "White Mink Cape." The word "Mink" is required information but the words "White" and "Cape" are not.

Respondent argues that if there have been any violations of the labeling provisions of the Act they were of minimal quantity and quality. It will be remembered that the series of labels, Commission exhibits 42 and 56D were a random selection from respondent's stock at his store on Hollywood Boulevard in Los Angeles and did not purport to be all the defective labels on the garments in that stock. The deficiencies mentioned were clear cut violations.

False Invoicing

The charges in the complaint in regard to false invoicing of respondent's fur products are contained in paragraphs 7 through 9. The invoices in evidence offered in support of these charges are Commission exhibits 11 through 17, 34, 38, 71, 73, 74, 76, 78, 80, 82, 83, 84, 86, 88, 89 and 91. Unlike the labels in evidence, these invoices appear to be the result of a systematic effort on the part of the Commission investigator, Mr. Anderson, to discover all the invoices of respondent which he considered to be defective during certain periods of time. They cover the T. W. Mather Store sale, the Crenshaw or White Front sale and sales made at respondent's own store on Hollywood Boulevard. Many of them alleged to be deficient are what are called "temporary invoices." The evidence is not clear as to whether they were replaced with regular invoices containing the required information, and if so, how soon. Other claimed irregularities are rather far-fetched. For instance, one invoice, Commission exhibit 82, is claimed to offend because instead of "Muskrat" the name of the fur was inadvertently spelled "Mustrak." Again it is argued that the invoice of a fur garment was defective in failing to show that it was a used garment, because the record shows that respondent acquired it as part of the purchase

[3] *Jacques LEGorter et al v. F.T.C.*, 244 F. 2d 270.

price on another fur product. The traded in garment may have itself been purchased that day or the day before. It may or may not have been used. The evidence is not clear on this point. There is a difference between defective labeling or misbranding and false invoicing. If a label on a garment is defective it may be corrected while the garment is still in stock, provided there is a desire to label correctly. Once an invoice is written it goes immediately into the customer's hands and no inadvertent error can be corrected. Considering all the alleged defects in the invoices and their number plus the amount of business done by respondent, the hearing examiner cannot say that there was substantial proof of false invoicing by respondent.

False Advertising

The charges of false advertising are set forth in paragraphs 10 through 21 of the complaint. It was stipulated that the newspapers carrying respondent's advertising, copies of which were introduced in evidence including those particular issues of those newspapers were disseminated in commerce. A glance at the advertisements in evidence shows that they were intended to aid, promote and assist directly or indirectly in the sale and offering for sale of the fur products so advertised. That the advertisements did aid, promote and assist in the sale and offering for sale of said fur products is evident from the record. If these advertisements are false or do not otherwise comply with the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, a violation of the Act has been established.

Paragraph 11 of the complaint charges among other things that respondent's advertising contained information required under Section 5(a) of the Act and the Rules and Regulations in abbreviated form in violation of Rule 4.

The record contains a stipulation to the effect that in a number of instances respondent's advertisements in the Los Angeles Examiner showed the abbreviation of "Jap. Mink" for "Japanese Mink" and the abbreviation "Sqrl" for "Squirrel." In at least one instance in a Los Angeles Times' advertisement the abbreviation "Sqrl" appeared and also "Pers. Lamb."

The defense to this was that the copy for all advertisements had the required information spelled out in full, but in setting up the advertisement the newspapers frequently substituted the abbreviations, without authority from respondent in order to get the advertisement into the space purchased. In fact the advertising manager of the Los Angeles Examiner testified to this effect in regard to

the classified advertisements in his paper. He further said that respondent had complained of this being done. According to the advertising manager the abbreviations occurred because the advertising copy furnished by respondent would not fit into the space purchased without abbreviation. It appears that this went on for some time and for all the record shows may still be going on. The answer to this is for the respondent to either purchase more space for his advertisements or cut down on the number of words. The respondent has been paying for all the advertisements in which the abbreviations occurred and has gotten the benefit of them. Respondent cannot repeatedly accept the benefits of a violation of the law under these circumstances and then say he was not a party to the violation.

Paragraph 11 of the complaint also charges that respondent's advertisements were deceptive in failing to show that the fur products offered were second hand in violation of Section 5(a)(2) of the Act and Rules 21 and 23.

In support of this it is argued that the record shows that many garments sold as new were trade-ins. The record of sales compiled by the witness Anderson, Commission exhibits 94–102, does not show a sale of a new Mink garment for as little as $99, while during the same period of time, respondent was advertising Mink garments from $99 up, without any indication that they were used garments. These facts are not sufficient to serve as the basis for an order. However there is more. Anderson testified from notes made at the time of the transaction that on July 14, 1957 he showed respondent's manager, Mr. Weiss, Commission exhibit 68, a newspaper advertisement published on July 14, 1957, and asked to be shown one of the Ranch Mink coats advertised therein for $598. The coat shown him was a used garment. Anderson said he then inquired whether there were any new Ranch Mink coats in stock for $598 and Weiss replied that there were not. The advertisement makes no mention of any of the garments offered being used. From memory, Weiss denied telling Anderson that there were no new Ranch Mink coats in stock for $598. However, Anderson's testimony, based on notes made at the time is more credible. It is therefore found that respondent has advertised fur products for sale, without revealing that they were used, contrary to Rules 21 and 23.

Paragraph 12 of the complaint charges respondent with falsely advertising fur products at cost or below in violation of Section 5(a)(5) of the Act and Rule 44(a). Paragraph 18 charges that respondent, through the use of percentage savings claims, such as "save up to 60%" falsely represented that the regular or usual retail

prices charged by respondent for fur products in the recent regular course of his business were reduced in direct proportion to the percentage saving stated, in violation of Section 5(a)(5) of the Act.

Various advertisements in evidence say "Save 50% or more, some at cost, some below cost." "Save up to 50% or more." "Save up to 50%." "Reduced from 40% to 60%, many at and way below cost." "Some furs at cost, some below." In addition there is in evidence by agreement a long list of newspaper advertisements published in 1956 and 1957 in which respondents offered his furs "at cost or below."

It is found that these representations in the context in which they appear, represent directly and by implication that respondent was offering the furs advertised at below the cost at which he had purchased them and that the regular or usual retail prices charged by respondent for fur products in the recent regular course of his business were reduced in direct proportion to the percentage savings stated in the advertisements.

The witness Mrs. Velma Welch bought her fur coat from respondent because of seeing an advertisement in January 1957 offering furs "at cost and below cost." She paid $525 for it.

The witness John P. Franklin was offered as an expert witness on the cost and value of furs. At the time he testified he had been a fur buyer for the Broadway Department Store for three years and had been in the fur business for 26 years. His appraisal of the retail value of the Welch garment at the time and place of sale was between $299 and $359. He further said that garments of that type at the time of sale sold wholesale in New York for between $185 and $195. Locally in Los Angeles at the time of sale, if bought through a jobber, the wholesale price was between $210 and $225.

Daniel J. Papaport, another expert witness, had been in the retail and wholesale selling and manufacture of fur garments for 50 years, in California since 1933. He fixed the retail value of the Welch coat at the time and place of sale between $300 and $375, not including the tax.

Malvin Myron, another fur manufacturer and wholesaler, who sells very little at retail, said that the price of a fur garment depends on where it is bought and how much the traffic will bear. The sale of furs both at wholesale and at retail is a negotiated sale. He finally said the garment *could* be sold in a store at anywhere from $575 to $750 without tax.

Mrs. Carolyn Rider, an employee of the Commission in Los Angeles testified that in June 1957 she went to the store of respondent

with one of his advertisements (Commission exhibit 58) offering fur garments at "cost or below" and asked respondent's salesman, Sidney Stevens, to see some grey mink stoles being offered at cost or below. She was shown two garments, one at $375 and the other at $575 and was assured that these prices were "at cost or below." She wrote down the prices and the stock numbers from the tags on the garments, and she testified from the notes made at the time of the transaction. Commission investigator Edwin H. Anderson testified that from an examination of respondent's stock record book, which shows the stock numbers, both of the stoles shown Mrs. Rider cost respondent less than the prices quoted to her by Mr. Stevens. He also testified from notes made at the time of his examination of the stock record book.

Through Commission investigator Anderson, there were also put in evidence tabulations made from respondent's records of all the sales of new Mink garments made during certain periods of time and at certain locations where respondent was conducting sales. These periods of time correspond with the dates of advertisements in evidence offering fur garments at cost or below. These tabulations show that no such garments were sold at cost or below.

Respondent's answer to all of this was a general denial coupled with the statement that he had on hand at all times many furs that were out of date and undesirable that he was willing to sell below what he had paid for them. This may be true, but the advertisements in question, or at least some of them, leave the impression that the best furs, respondent had in stock, those bearing the "Original by House of Mink" label, as an illustration, were being offered below cost and at the savings figures shown in the advertisements.

The preponderance of the evidence on this point is to the effect that respondent's advertisements offering furs "at cost and below" and his advertisements of percentage savings claims, in the context in which they appeared, were false as alleged in the complaint.

Paragraph 13 of the complaint charges respondent with false advertising of furs in representing in an advertisement on April 17, 1957 that the furs offered were those of a manufacturer and jobber willing to sacrifice his stock for immediate cash.

The facts are that respondent did have a letter making the statements quoted in paragraph 13 of the complaint and did have the furs from this manufacturer or many of them in stock on April 17, 1957 when the advertisement was published. The letter was dated March 5, 1956. However, respondent testified that through many telephone conversations subsequent to the date of the letter the plea of urgency in disposing of the furs for cash regardless of the price

was maintained. This testimony is undisputed. The wording and arrangement of the advertisement (Commission exhibit 60) however belies respondent's explanation. It is headed by a picture of respondent's store followed by these words:

One of America's Largest Furriers. Manufacturers and Jobbers Need Immediate Cash. We quote from a jobber's letter: "I implore you now to dispose of these goods immediately, regardless of cost or losses. I am not interested in profits right now. Time is of the essence. I must raise cash! Joe Fadin & Son New York City."

There follows a description of the furs offered for sale which are nothing but Mink. They are described as "Magnificent, New, Highest Quality, Advanced Styles at Low Prices and in Every Color."

Anyone reading this advertisement would come to the conclusion that the furs described in the advertisement were those obtained from Joe Fadin & Son. Elsewhere in the record Mr. Mannis had described the Joe Fadin & Son furs as Muskrat, Marmot and Squirrel and said that the public were all so "Mink minded * * * so the only success we had (in disposing of any of them) was at a sale down in San Diego * * * where we did manage to sell, I don't know, four or five pieces."

It is evident therefore, that respondent was using the Joe Fadin & Son letter to lead the public to believe contrary to the fact that the garments Joe Fadin & Son wanted disposed of "regardless of cost or losses" were of new, highest quality and advanced styles.

From the evidence it is apparent that the advertising quoted in paragraph 15 of the complaint referred to some of the furs shipped to respondent by Joe Fadin & Son. Respondent had been receiving furs from this manufacturer for about ten years, giving his note for them with the right to return the furs, or any of them unsold and receive credit on his note. About five years prior to the date of his testimony, respondent tried to return some of the furs but Joe Fadin & Son would not receive them. Respondent thought he finally established his right to return the furs and receive credit for them a number of years ago but the matter has resulted in litigation yet unsettled. In the meantime this manufacturer continually urged respondent not to return the furs but to sell them at a low price and account to the manufacturer for the proceeds of the sale less his profit. This happened long before the letter of March 5, 1956 was written. As stated before, most of these furs were out of date in style and most of them were not Mink furs. As early as 1955 they had become a drug on the market. It was in this situation that respondent in December 1955 ran two advertisements containing the statement "Save by buying direct from the wholesale

manufacturer who needed cash." There is nothing in these two advertisements, unless we consider the heading of each "Samuel A. Mannis & Company, Fur Liquidators," to apprise a purchaser or prospective purchaser that Samuel A. Mannis & Company was not the wholesale manufacturer who needed the cash. In fact these two advertisements (Commission exhibits 62 and 63) had the capacity and tendency to cause a substantial portion of the purchasing public to think that respondent was that manufacturer and wholesaler.

Respondent is not a manufacturer and wholesaler and did not manufacture the furs offered in these two advertisements. Even if it could be considered that in selling the furs that come from Joe Fadin and Son, respondent was only acting as agent for that manufacturer, as contended by the respondent, the advertisement is also deceptive for another reason. The reference to "thousands of furs of every style and description" and the emphasis on Mink make it fairly inferable that many of the furs so advertised were not a part of the stock received from Joe Fadin & Son.

As alleged in paragraph sixteen of the complaint respondent constantly advertised in the newspapers "3 years guarantee" on furs without specifying or disclosing the nature and extent of the guarantee. When furs were bought from respondent, on the back of sales slip the following is stated. "Three year guarantee on rips and tears." Thus the terms of the guarantee, not shown in the advertising, are limited to rips and tears in the sale.

The word "guarantee" as used in the advertisements is incomplete. The Commission has held many times that the use of the word "guaranteed" in advertising without disclosing the nature and extent of the guarantee, is deceptive. The fact that the nature and extent of the guarantee is revealed at the time of the sale is no defense.[4]

Paragraph 17 of the complaint charges false advertising of free storage when in fact purchasers of fur products were required to pay storage under the guise of insurance.

The record establishes that respondent did furnish storage for fur products without charge to its customers. If they desired to insure the garments, they were charged for that. There is some testimony to the effect that other sellers of furs, not advertising free storage, charged the same amount for storage and insurance as respondent charged for insurance. Although the owners of most fur products may desire them insured when stored, there is no substantial evidence to the effect that respondent's offer of free stor-

[4] *Carter Products, Inc., et al.* v. *F.T.C.*, 186 F. 2d 821 and cases therein cited.

age led the purchasing public to believe that the garments would also be insured without charge, or had that capacity and tendency. This charge of false advertising is dismissed.

Paragraph 19 of the complaint charges that respondent falsely advertised "Written bonded appraisal with all furs"; that the appraisal figures given when a sale was made were fictitious in that they did not represent a bona fide appraisal and did not represent the true retail value, nor the regular and usual retail selling price.

The evidence shows that the representation alleged occurred in many if not all of respondent's newspaper advertisements in evidence. The evidence further shows as a whole that while the appraisals were not made out until a sale was completed, the salesmen did at times before the sale was completed tell the customer what the appraisal figure would be. In most instances the appraisal figure was higher than the selling price. It was contended by respondent that the garments were appraised at the highest figure he and his sales manager thought they could be sold for; that the variations in selling price of similar fur garments were so tremendous between department stores, specialty shops and other sellers that the fair retail market value of a fur garment had to be a very flexible thing; that appraisals were only for insurance purposes and that no insurance company had ever turned down one of respondent's appraisals.

Coupled with respondent's continual advertising of selling below cost and at large percentage savings figures, an appraisal far beyond the purchase price was a valuable adjunct in selling fur garments. The evidence and the inferences to be drawn therefrom show that many of the fur products sold by respondent could be replaced for a figure much less than the appraisal value. The highest figure for which a fur garment might be sold does not establish its true retail value. The fact that no insurance company has questioned respondent's appraisals has no bearing on the matter in view of the other evidence. The conclusion must be that respondent's appraisals were in many instances fictitious and did not represent the true retail value of the fur product sold. As used in respondent's business the advertising was deceptive and had the capacity and tendency to cause the customer to think the fur product was worth more than it actually was.

Paragraph 20 of the complaint charges respondent with falsely advertising that he had a stock of "thousands of furs to choose from" or "thousands of furs of every style and description." This language did occur in a number of advertisements in evidence. The size and character of respondent's stock of fur products necessarily

varied as it was sold and replaced and new purchases made by him. There is no question but what he did carry on hand a large stock of furs, some old styles which he had been unable to sell or return and some new styles.

At one time the commission investigator, Mr. Anderson, questioned respondent's manager, Mr. Weiss, about current advertising of "thousands of furs to choose from." At that particular time, they checked the stock record book and it showed 1,200 fur products in stock. Weiss stated, and it is undisputed, that a short time before the number of garments in stock had exceeded 2,000. Under the circumstances, with the large varying stock carried by respondent, the advertising challenged in paragraph 20 of the complaint is considered legitimate puffing and not deceptive.

The charges in paragraph twenty-one of the complaint concern advertising run by respondent as a part of the advertising of what is called the "White Front" sale. This is one of the instances in which respondent sold furs at another location than his own store, under arrangement as a concessionaire. It was similar to the T. W. Mather Store arrangement already described. The advertising challenged is in evidence. It was newspaper advertising and is as follows:

Distinctive Collection of
Furs
Including
Mink
in all Styles
Reduced from 40%
to 60% off . . .
Many at & Way Below Cost

3 year guarantee
and free storage

These furs are spectacular buy-out values from Fellman Furs of L.A. Country of Origin of Imported furs shown on label.

Respondent testified that the furs offered for sale at the White Front sale consisted of furs from his own inventory before the purchase of the Fellman furs plus those he had bought from Fellman when that concern went out of business. He couldn't say what proportion was from his own original stock or from the furs purchased from Fellman.

The way the advertisement is worded, it has the capacity and tendency to cause prospective purchasers to think that all the furs offered at the White Front sale were furs purchased at a "spectacular buy-out" from Fellman. This being untrue the advertising was deceptive.

Paragraph 22 of the complaint charges respondent with failing to maintain adequate records disclosing facts upon which respond-

ent's comparative prices and percentage savings claims, used in advertising, were based, in violation of Rule 44(e).

The manager of respondent's business, Mr. Weiss, who kept the records admitted on the witness stand that no such records were kept. Rule 44(e) requires such records to be kept. Therefore failure to keep such records was a violation of that particular rule.

The use by respondent of the false, misleading and deceptive statements and representations hereinabove found has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public and thereby induce the purchase of substantial quantities of respondent's fur products. As a result, substantial trade in commerce has been unfairly diverted to respondent from its competitors and substantial injury has been and is being done to competition in commerce.

CONCLUSIONS

The acts and practices of the respondent hereinabove found are false, misleading and deceptive and are in violation of the Fur Act and the Rules and Regulations promulgated thereunder, and constitute unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

This proceeding is in the public interest, and an order to cease and desist the above-found unlawful practices should issue against respondent.

Respondent has not, as alleged in the complaint, violated the Fur Act or the Rules and Regulations by the removal of, or caused or participated in the removal of, prior to the time certain fur products were sold and delivered to the ultimate consumer, labels required by the Fur Products Labeling Act to be affixed to such products; or falsely invoiced certain said fur products as charged in Paragraphs Seven through Nine of the complaint; or falsely advertised free storage as alleged in Paragraph Seventeen of the complaint; or falsely advertised that he had "thousands of furs to choose from" or "thousands of furs of every style and description," as alleged in Paragraph Twenty of the complaint.

ORDER

It is ordered, That respondent Samuel A. Mannis, an individual, doing business as Samuel A. Mannis and Company, or under any other trade name or names, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, ad-

vertisement, offer for sale, transportation, or distribution in commerce of any fur product, or in connection with the sale, advertisement, offer for sale, transportation, or distribution of any fur product which is 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. Falsely or deceptively labeling or otherwise identifying any such product as having been manufactured or originally created or designed by or for respondent.

B. Failing to affix labels to fur products showing:

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

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

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

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

C. Using the term "blended" on labels to refer to or describe fur products which contain or are composed of bleached, dyed, or otherwise artificially colored fur.

D. Failing to set forth the term "secondhand used fur" on labels as required by Rule 23 of the Rules and Regulations.

E. Setting forth on labels affixed to fur products information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder which is abbreviated, handwritten, or mingled with non-required information.

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

A. Sets forth information required by Section 5(a)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form.

B. Fails to disclose that any such fur products contain or are composed of secondhand used fur, when such is the fact.

C. Represents, directly or by implication, and contrary to the facts, that any such fur products;

(1) Are being offered for sale at or below respondent's wholesale cost;

(2) Must be sold by respondent without regard to cost or loss;

(3) Could be purchased directly from the manufacturer or wholesaler, or without a middleman's profit;

(4) Were manufactured or originally created or designed by or for respondent;

(5) Are guaranteed, unless the nature and extent of such guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously set forth;

(6) Were secured by respondent from a source that is in financial or other distress;

D. Represents, through percentage savings claims or otherwise, that the regular or usual retail prices charged by respondent for fur products of similar grade or quality in the recent regular course of business have been reduced in direct proportion to such savings claims.

E. Uses the term "written bonded appraisal," or terms of similar import or meaning, to represent the value of fur products being offered for sale unless such valuations are based upon authentic and bona fide appraisals of value by qualified appraisers having no pecuniary or other interest in such fur products.

F. Sets forth comparative prices, savings claims, or representations as to selling or offering to sell at or below cost, unless there are maintained by respondent full and adequate records disclosing the facts upon which such claims and representations are based, as required by Rule 44(e) of the Rules and Regulations.

It is further ordered, That the allegations of the complaint that the respondent removed, or caused or participated in the removal of, prior to the time certain fur products were sold and delivered to the ultimate consumer, labels required by the Fur Products Labeling Act to be affixed to such products; or falsely invoiced certain said fur products as charged in paragraph 7 through 9 of the complaint; or falsely advertised free storage as alleged in paragraph 17 of the complaint; or falsely advertised that he had "thousands of furs to choose from" or "thousands of furs of every style and description" as alleged in paragraph 20 of the complaint be, and hereby are, dismissed.

OPINION OF THE COMMISSION

By ANDERSON, *Commissioner:*

The complaint in this matter charges respondent with misbranding, false invoicing and false advertising of fur products, the failure to maintain records and the removal of labels in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder. Counsel supporting the complaint has appealed from certain findings and rulings by the hearing examiner, from the dismissal of several allegations of the complaint and from the limited scope of the order pertaining to misbranding. Respondent has appealed from certain findings by the hearing examiner and from the order to cease and desist.

APPEAL OF COUNSEL SUPPORTING THE COMPLAINT

The first issue raised on this appeal concerns the dismissal of the charge that labels affixed to certain fur products were removed by respondent prior to the time such fur products were sold and delivered to the ultimate consumer. The hearing examiner ruled that the only credible evidence on this point was the testimony of one customer concerning a single transaction. He found in this connection that one of respondent's salesmen had removed a label from a fur garment sold by respondent, but that he had done so after the garment had been sold and delivered to the ultimate consumer. We have carefully reviewed the record concerning this particular transaction and can find nothing therein which would require us to reach a different conclusion. The evidence does not show that the label was removed prior to the consummation of the sale.

Counsel supporting the complaint argues, however, that we should hold that the Act was violated even if the label was removed by the salesman after the fur product had been sold and delivered to the ultimate consumer. This argument ignores both the wording of the charge on this point and the express language of the statutory provision upon which the charge is based. Subsection (d) of Section 3 relates to the removal or the mutilation of a required label "prior to the time any fur product is sold and delivered to the ultimate consumer." We do not agree with counsel supporting the complaint that this provision can be construed as prohibiting the removal of a required label after the fur product has been sold and delivered to the ultimate consumer, nor can we find any support for this interpretation in the legislative history of the Act.

It is also asserted in this appeal that the hearing examiner erred

in failing to find that certain garments were misbranded. The documentary evidence offered in support of these charges includes a number of original labels taken by the Commission investigator from garments in respondent's stock. The hearing examiner found that all of these labels were deficient in that they did not contain "all of the information required in the manner required by the Act." The investigator testified that there were other tags on the garments from which the defective labels had been removed but that none of these tags contained all of the information required by Section 4(2) of the Act. One of respondent's employees testified that each of the garments involved had affixed to it at least one tag containing all of the required information. The hearing examiner, after commenting on the fact that the investigator's testimony had been contradicted, stated that in the absence of any supporting evidence he could not accept the investigator's conclusion that "the tags remaining on the garments did not comply with the Fur Products Labeling Act and the Rules and Regulations."

We do not agree with this ruling. The investigator testified that none of the tags remaining on the garments contained all of the information required by Section 4(2). We think that the witness, with his extended experience in this field, was qualified to make such a determination on the basis of his observation of the tags.

The investigator's testimony is opposed by a general statement of the aforementioned employee to the effect that each of the garments in question was properly labeled under Section 4(2). The employee's testimony reveals, however, that his recollection of the occurrence was imperfect. He did not recall in this connection that the investigator had removed labels from the garments and he testified, incorrectly, that he had made copies of the labels.

Each of the labels which the investigator removed from the garments clearly purports to be the label containing the information required by Section 4(2). This fact, together with the investigator's testimony, leads us to believe that there were no other labels on the garments which contained all of the required information. Since the labels obtained by the investigator were deficient, as found by the hearing examiner, we are of the opinion that there is sufficient evidence to support the finding that the fur garments to which such labels had been attached were misbranded.

Counsel supporting the complaint also excepts to the dismissal of the charges pertaining to false invoicing. The points raised in this exception relate to the hearing examiner's appraisal of the evidence offered in support of these charges and to his holding with respect to so-called "temporary invoices." The record discloses that in

certain sales made by respondent, two invoices were issued to the purchaser. The first, or so-called temporary invoice, was prepared by the salesman and given to the purchaser at the time of the transaction. This invoice was later replaced by a second, or so-called permanent invoice. Many of the invoices alleged herein to be deficient are the "temporary" ones. Although the hearing examiner did not specifically rule that invoices of this type are not covered by the Act, he apparently felt that it was incumbent upon counsel supporting the complaint to show as part of his case that any defects in such a document had not been corrected by a second invoice. Such a showing, however, was not necessary. The term "invoice" as defined in subsection (f) of Section 2 of the Act includes any "written account, memorandum, list, or catalog, which is issued in connection with any commercial dealing in fur products or furs, and describes the particulars of any fur products or furs, transported or delivered to a purchaser, consignee, factor, bailee, correspondent, or agent, or any other person who is engaged in dealing commercially in fur products or furs." The "temporary" invoices issued by respondent, regardless of whether or not they were later replaced by permanent ones, come within this definition. Consequently, if the invoices as originally issued were defective, a later correction thereof would have no bearing on their legality under the Act.

We have examined the various invoices offered in support of the charges relating to false invoicing and have found therein violations of Sections 5(b)(1) and 5(b)(2) of the Act and of Rule 23 of the Rules and Regulations promulgated under the Act. Some of these instances of violation are of a technical nature, as found by the hearing examiner, but they nevertheless constitute false invoicing within the meaning of the Act and, consequently, should be prohibited.

Counsel supporting the complaint also urges that we reverse the hearing examiner's dismissal of the allegation that respondent falsely advertised "free storage" of fur garments. He also asserts that the hearing examiner erred in striking certain testimony relating to this charge. We think that a determination of the latter point is unimportant since we agree with the hearing examiner that the testimony in question would have very little probative value insofar as the allegation in question is concerned. Moreover, we concur with his holding that the evidence fails to sustain the charge that respondent had falsely advertised "free storage." There has been no showing that the public understands "free storage" to include free insurance, nor is there any proof that respondent failed to provide

free storage when requested to do so. There is evidence that respondent has, in fact, furnished storage for fur garments without charge. The appeal on this point is, therefore, denied.

Counsel supporting the complaint also urges that we overrule the hearing examiner's dismissal of the charge that respondent misrepresented the number of fur products he had in stock. The record discloses that respondent regularly advertised "thousands of furs to choose from," when the average number of fur products in his stock was considerably less than 2,000. At one point, the total was 1,263, of which 515 were used garments. We think it is clear that since respondent did not have at least 2,000 fur products in stock, his claim that a purchaser could make a selection from "thousands of furs" was a misrepresentation within the purview of Section 5(a)(5) of the Fur Act.

It is also asserted on this appeal that the order pertaining to misbranding is too limited in scope in that it does not require respondent to affix labels to fur garments showing all items of information specified in Section 4(2) of the Act. We agree that the order is not in accord with Commission policy as to the form of inhibition necessary to proscribe the practice of misbranding prohibited by this section. The order will therefore be modified to require respondent to observe all of the requirements of Section 4(2).

Counsel supporting the complaint has also taken exception to other rulings by the hearing examiner excluding evidence offered in support of certain allegations. In view of the fact, however, that these charges are supported by other evidence of record, a determination of the questions raised by these exceptions is not material to this decision and, consequently, will not be made.

RESPONDENT'S APPEAL

Respondent argues on appeal that the evidence does not support any of the findings that he had violated the Fur Act or the Rules and Regulations promulgated thereunder. He specifically asserts as grounds for his exceptions to certain of the findings that there has been no showing of intent to deceive the public and that there is no proof of actual deception resulting from various claims held by the examiner to be in violation of the statute. He also contends that many of the violations found by the hearing examiner were of "minimal quantity and quality."

We have examined the record in this proceeding and are of the opinion that, except as hereafter noted, the evidence fully supports the findings from which respondent's appeal is taken.

In a proceeding for violation of the Fur Act, it is not necessary to show that a respondent has knowingly failed to comply with the requirements of the Act or the Rules and Regulations promulgated thereunder or that he intended to deceive the public. It is also unnecessary to establish that any instance of misbranding, false invoicing or misrepresentation in advertising resulted in deception of the public, nor is it necessary to show that such a practice has the capacity and tendency to deceive the public. Respondent's argument that there has been a failure of proof on these points is rejected. Also rejected is respondent's contention that the violations involved here are so technical that they do not warrant the issuance of an order to cease and desist. As noted in the preceding discussion, the proved infractions viewed collectively constitute evidence of a course of action which in the public interest should be effectively prohibited.

The hearing examiner has found that respondent violated Rules 21 and 23 in the advertising and labeling of fur garments. His findings are based on evidence that respondent had offered for sale fur garments that had been used or worn by ultimate consumers without designating such garments "Second-hand" in advertising or on labels affixed thereto. This evidence supports a finding that respondent violated Rule 23, which requires that such garments be designated "Second-hand," but does not sustain the charge that he violated Rule 21 by failing to disclose that the garments contained or were composed of used fur.

Paragraph 18 of the complaint alleges that respondent, through use of such representations as "Save Up To 60%." falsely represented that the regular or usual retail price charged by respondent for fur products in the recent, regular course of his business were reduced in direct proportion to the percentage savings stated, in violation of Section 5(a)(5) of the Fur Products Labeling Act. The hearing examiner held that this allegation had been sustained but did not set forth in the initial decision the evidence upon which he relied to make this finding.

According to the proposed findings of counsel supporting the complaint, several tabulations of sales of fur products by respondent, which had been introduced in evidence, constitute proof that the usual and regular prices of the advertised products had not been reduced "Up To 60%." These tabulations, prepared by the Commission's investigator, show the gross profit made by respondent on fur garments sold at respondent's usual and regular prices and the gross profit realized by respondent during various periods when he advertised that fur garments offered for sale were reduced in

price. According to these tabulations, respondent took substantially the same markup on fur garments advertised at a reduction in price as that ordinarily taken by him in the sale of fur garments in the normal course of business.

The showing, however, that respondent took his normal markup during a "sale" does not in itself constitute proof that the prices at which the garments were offered for sale at such time had not been reduced from higher prices usually and regularly charged by respondent for such garments. Such a showing does not negate the possibility that respondent had obtained the advertised garments from a supplier at prices lower than those which he would ordinarily have paid for them. If respondent had paid less for the garments, his normal markup applied to his lower cost would result in retail prices lower than those usually and regularly charged by him for such garments.

The record fails to show at what prices the advertised garments were usually and regularly sold by respondent. It is our opinion, therefore, that there is insufficient evidence to support the allegation that respondent's usual and regular prices for the advertised products had not been reduced in direct proportion to the percentage savings claimed. The appeal on this point is, therefore, granted.

To the extent indicated herein, respondent's appeal and the appeal of counsel supporting the complaint are granted and in all other respects they are denied. As modified in accordance with this opinion, the initial decision is adopted as the decision of the Commission. An appropriate order will be entered.

FINAL ORDER

Respondent and counsel in support of the complaint having filed cross-appeals from the initial decision of the hearing examiner, and the matter having been heard on briefs; and the Commission having rendered its decision granting in part and denying in part the appeals of respondent and counsel in support of the complaint and directing modification of the initial decision:

It is ordered, That the paragraph beginning at the bottom of page 7 of the initial decision with the words "Anderson stated," be modified to read as follows:

Certain of the products to which these labels had been affixed were misbranded in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act. Three of the labels did not disclose the name or names (as set forth in the Fur Products Name Guide) of the animal or animals

that produced the fur. One of the labels did not disclose that the fur product contained dyed fur. One of the labels did not disclose the name or registration number required by subsection (E) of Section 4(2).

Certain of the products were misbranded in that they were not labeled in accordance with the Rules and Regulations promulgated under the Fur Products Labeling Act in the following respects:

(a) Information required under Section 4(2) of the Fur Products Labeling Act was abbreviated on labels in violation of Rule 4.

(b) Information required under Section 4(2) of the Fur Products Labeling Act was mingled with non-required information on labels in violation of Rule 29(a).

(c) Information required under Section 4(2) of the Fur Products Labeling Act was set forth in handwriting on labels in violation of Rule 29(b).

It is further ordered, That the first paragraph on page 10 of the initial decision, beginning with the words "The charges in the complaint" be modified to read as follows:

Certain fur products sold by respondent were falsely and deceptively invoiced in that they were not invoiced as required under the provisions of Section 5(b)(1) of the Fur Products Labeling Act. Three of the invoices did not set out the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur contained in the garments. Six of the invoices failed to disclose that the garments described therein were composed of dyed fur. Three of the invoices failed to disclose that the garments described therein were composed in whole or in substantial part of bellies. Two of the invoices failed to disclose the country of origin of the invoiced garments.

Certain fur products sold by respondent were falsely and deceptively invoiced under Section 5(b)(2) of the Fur Products Labeling Act in that invoices issued in connection with the sale of such products contained the name of an animal other than the name of the animal that produced the fur contained in such garments.

Certain fur products sold by respondent were falsely and deceptively invoiced in that such garments had been used by ultimate consumers and the invoices issued in connection with the sale thereof did not designate such products "Second-hand" as required by Rule 23 of the Rules and Regulations promulgated under the Fur Products Labeling Act.

It is further ordered, That the last paragraph on page 17 of the initial decision, beginning with the words "At one time," be modified to read as follows:

At one time the Commission investigator, Mr. Anderson, questioned respondent's manager, Mr. Weiss, about current advertising of "thousands of furs to choose from." At that particular time, they checked the stock record book and it showed a stock of 1,263 fur garments, of which 515 were used garments. Since respondent did not have at least 2,000 fur products in stock at that time, his claim that a purchaser could choose from "thousands of furs" was a misrepresentation in violation of Section 5(a)(5) of the Fur Products Labeling Act.

It is further ordered, That the fourth paragraph on page 19 of the initial decision, beginning with the words "Respondent has not," be modified to read as follows:

The record fails to sustain the allegations of the complaint that respondent has violated the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder by removing, or causing or participating in the removal of, prior to the time certain fur products were sold and delivered to the ultimate consumer, labels required by the Fur Products Labeling Act to be affixed to such products; or that he has falsely invoiced certain fur products as charged in subparagraphs (a) and (c) of Paragraph Nine of the complaint; or falsely advertised free storage as alleged in paragraph 17 of the complaint or falsely advertised fur products through use of deceptive percentage savings claims as alleged in paragraph 18 of the complaint.

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

It is ordered, That respondent Samuel A. Mannis, an individual, doing business as Samuel A. Mannis and Company, or under any other trade name or names, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, offering for sale, transportation or distribution in commerce of any fur product, or in connection with the sale, advertising, offering for sale, transportation or distribution of any fur product which has 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. Falsely or deceptively labeling or otherwise identifying any such product as having been manufactured or originally created or designed by or for respondent.

B. Failing to affix labels to fur products showing in words and figures plainly legible all information required to be disclosed by

each of the subsections of Section 4(2) of the Fur Products Labeling Act.

C. Using the term "blended" on labels to refer to or describe fur products which contain or are composed of bleached, dyed, or otherwise artificially colored fur.

D. Failing to set forth the term "Second-hand" on labels affixed to fur products that have been used or worn by an ultimate consumer.

E. Setting forth on labels affixed to fur products information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder which is abbreviated, handwritten or mingled with non-required information.

2. Falsely or deceptively involving fur products by:

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

B. Setting forth on invoices the name or names of any animal or animals other than the name or names of the animal or animals that produced the fur contained in said fur product.

C. Failing to set forth the term "Second-hand" on invoices issued in connection with the sale of fur products that have been used or worn by an ultimate consumer.

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. Sets forth information required by Section 5(a)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form.

B. Fails to designate as "Second-hand" fur products that have been used or worn by an ultimate consumer.

C. Represents, directly or by implication, and contrary to the facts, that any such fur products:

(1) Are being offered for sale at or below respondent's wholesale cost.

(2) Must be sold by respondent without regard to cost or loss.

(3) Were manufactured or originally created or designed by or for respondent.

(4) Were secured by respondent from a source that is in financial or other distress.

D. Represents, contrary to the fact, that respondent has thousands of fur products for customers to choose from.

E. Represents, directly or by implication, that respondent is a manufacturer or wholesaler of fur products or that fur products can be purchased from respondent without a middleman's profit.

F. Represents, directly or by implication, that any fur product is guaranteed, unless the nature and extent of such guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously set forth.

G. Uses the term "written bonded appraisal," or terms of similar import or meaning, to represent the value of fur products being offered for sale unless such valuations are based upon authentic and bona fide appraisals of value by qualified appraisers having no pecuniary or other interest in such fur products.

H. Making pricing claims and representations of the type referred to in subparagraph (1) of paragraph C above unless there are maintained by respondent full and adequate records disclosing the facts upon which such claims and representations are based.

It is further ordered, That the allegations of the complaint that the respondent removed, or caused or participated in the removal of, prior to the time certain fur products were sold and delivered to the ultimate consumer, labels required by the Fur Products Labeling Act to be affixed to such products; or falsely invoiced certain fur products as charged in subparagraphs (a) and (c) of paragraph 9 of the complaint; or falsely advertised free storage, as alleged in paragraph 17 of the complaint; or falsely advertised fur products through use of deceptive percentage savings claims, as alleged in paragraph 18 of the complaint, be, and they hereby are, dismissed.

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

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

IN THE MATTER OF

MANNIE FEIGENBAUM, INC., ET AL.

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

Docket 7064. Complaint, Feb. 12, 1958—Decision, Feb. 9, 1960

Order requiring a corporation—which had purchased the stock of a bankrupt department store in Pasadena, Calif., brought in new merchandise, added a fur department operated on a concession basis, and participated with

the concessionaire in the sale and promotion of fur products—to cease violating the Fur Products Labeling Act by failing to comply with labeling, invoicing and advertising requirements, including failure to set forth the term "secondhand used fur" where required and naming an animal other than that which produced certain fur; by advertising in newspapers which falsely represented, among other things, fur products as on sale "some at cost" and "some below cost," falsely represented a "three year guarantee" and that it was a manufacturer or wholesaler; and by failing to maintain adequate records as a basis for said pricing claims.

Mr. John J. McNally supporting the complaint.

Mr. Jerome Weber, *Mr. Benjamin Held* and *Mr. David Hoffman* of Los Angeles, Calif., for respondents.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

Commission complaint issued February 12, 1958, and duly served charged respondents with violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and also with the violation of the Federal Trade Commission Act. Respondents' answer admitted the first and second paragraphs of the complaint, with the exception of denying that the individual respondent Manuel Feigenbaum controls the corporate respondent. The second paragraph so admitted charged respondents with the sale, advertising, transportation and distribution in commerce of fur products and contained other allegations, which admitted, give the Commission jurisdiction in this proceeding. All other allegations of the complaint were denied.

On April 18, 1958, the original date set for hearing in Los Angeles, California, the matter was continued over until April 21, 1958. Thereafter, beginning April 21, 1958, seven days of hearings were held for the taking of evidence in support of and in opposition to the allegations of the complaint. Both sides then rested their case insofar as the taking of evidence was concerned.

During the hearings the following facts were developed: There was another Federal Trade Commission proceeding pending entitled "In the Matter of Samuel A. Mannis, an individual trading as Samuel A. Mannis and Company." The latter proceeding bears Docket No. 7062, and is in effect a companion case to this one. That is, all of the evidence in this proceeding is applicable to the proceeding in Docket No. 7062 and much of the evidence in Docket No. 7062 is applicable to this proceeding. Respondents in both proceedings were represented by the same counsel, and the same attorney was counsel supporting the complaint in both cases. After considerable discussion both on and off the record, it was agreed on the record between

counsel on April 21, 1958, that these two proceedings be consolidated for the purpose of taking the evidence. Thereupon, on page 104 of the record, the hearing examiner, with consent of counsel directed such consolidation and further directed that all of the testimony previously taken and to be taken thereafter in both cases be made a part of the record in each case. Later, also with consent of counsel the reporter was directed to mark each exhibit received as an exhibit in both Docket Nos. 7062 and 7064.

Both sides were represented by counsel at all of the hearings and given full opportunity to introduce evidence pertinent to the issues, examine witnesses and argue points of law and evidence. Both sides were given the opportunity to and did file proposed findings, conclusions and orders together with the reasons therefor.

This proceeding is now before the hearing examiner for an initial decision upon the entire record including the pleadings, evidence and the proposed findings, conclusions and orders and the reasons therefor. All such proposed findings, conclusions and orders not hereafter adopted, found or concluded are hereby specifically rejected.

Upon the entire record and from the observation of the witnesses while testifying, the hearing examiner makes the following findings as to the facts, conclusions and order.

FINDINGS AS TO THE FACTS AND CONCLUSIONS

1. Respondent, Mannie Feigenbaum, Inc., is a corporation organized and existing under and by virtue of the laws of the State of California with its office and principal place of business located at 8159 West Third Street, Los Angeles, California.

2. Individual respondent Manuel Feigenbaum, owns most of the stock, is president of the corporate respondent and formulates, controls and directs the acts, practices and policies of the corporate respondent. His address is the same as that of the corporate respondent.

3. The corporate respondent under the control of the individual respondent is engaged in the business of conducting auction sales and liquidating retail businesses both as an agent and also for its own account after purchase. The charges in the complaint grew out of the following operation:

A department store in Pasadena, California, operating under the name of T. W. Mather went into bankruptcy and its assets were sold to the highest bidder. Respondent Mannie Feigenbaum, Inc., acquired the bankrupt stock of goods. This store had a fur department. Mr. Feigenbaum said it was his intention at first to continue the business, presumably under the same name. They started off

with a sale on the premises that was highly advertised. In line with respondents' first idea of continuing the business (which was changed as the sale progressed) it was decided that other goods in addition to the bankrupt stock should be brought in.

4. Respondents herein contacted Samuel A. Mannis a Los Angeles furrier who is respondent in Docket No. 7062. As a result Samuel A. Mannis brought fur coats and other fur products into the T. W. Mather store and sold them there. The arrangement was that Mannis would pay Mannie Feigenbaum, Inc., 10% of his gross sales as rent, with a certain minimum rent agreed upon. The sale was advertised under the name T. W. Mather. Mannis' furs were advertised in the same advertisement with the goods being offered in the other departments of the store. Mannis also paid his proportionate part of the advertising for the sale, based on the amount of space used to advertise his fur products and a certain proportion for his part of the general advertising of the sale. The T. W. Mather sales slips were used, on which were placed a code number, assigned to Mannis, so that the copy of the sales slips revealed to Mannie Feigenbaum, Inc., that the particular sale was made by Mannis or his employees.

5. The advertising copy for the fur department used in the store advertisements was prepared by a Mannis employee, authorized by Mannis, and turned over to the Mannie Feigenbaum, Inc., employee who had charge of advertising for the store. Some of the other departments in the store were let out to concessionaires like Mannis and some were run directly by Mannie Feigenbaum, Inc. From the advertising in evidence in the Los Angeles papers and what was said about it being advertised solely in Pasadena in the beginning, the sale evidently lasted more than 30 days.

6. Under the above facts respondents contend that they were not in the fur business and not subject to the provisions of the Fur Products Labeling Act. Paragraph Two of the complaint reads as follows:

> Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents in cooperation and conjunction with Samuel A. Mannis and Company have been engaged in the introduction in commerce and in the sale, advertising and offering for sale in commerce, and in the transportation and distribution in commerce of fur products; and have sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which has been shipped and received in commerce as "commerce," "fur," and "fur product" are defined in the Fur Products Labeling Act.

7. This paragraph was evidently the interpretation by both parties at the time of the legal effect of the facts set forth above, because respondents in their answer admitted this paragraph of the com-

plaint. Aside from the answer, the profits of respondents herein increased in proportion to the fur business done by Mannis. Respondents' representative, Mr. Clejan, handled the advertising for all the concessionaires like Mannis, in fact for the whole store. Respondents paid the bills for all the advertising and were reimbursed by the concessionaires including Mannis for the respective amount due from each. This was not a "one shot" proposition as urged by respondents. The sale went on for a number of weeks. There are in evidence advertisements published in the Los Angeles papers during four different weeks. Respondents wanted only concessionaires who would offer goods at a bargain. Respondent Manuel Feigenbaum stated that such an operation as the Mather store sale had to offer goods below cost to get the people into the store. Respondents therefore would set the general tone of the advertising. It would be inequitable to let respondents profit from the fur sales brought in by such advertising without being subject to the Commission's jurisdiction in the administration of the Fur Products Labeling Act. Although respondent Manuel Feigenbaum had been relatively inactive in handling liquidating sales for a number of years prior to this sale he was reentering the field with the Mather store operation. It therefore is unimportant that he had never before had a fur concession in any of his sales.

Alleged Violations of Section 4 of the Fur Products Labeling Act and the Rules and Regulations Relative Thereto

8. These violations are charged in paragraphs 3 and 4 of the complaint. The evidence consist of certain labels or tags and the testimony in regard to them. Commission exhibits 41A through H were tags or labels taken from garments at the T. W. Mather store during the sale.

9. The Commission investigator, Edwin H. Anderson, testified that Commission exhibits 41A through H were the original tags taken from garments by Mannis' employee, Mr. Weiss, on June 8, 1956 and given to him at his request. These garments were among those in stock at that time at the T. W. Mather sale in Pasadena. He further said that Mr. Weiss replaced these tags with other tags in an attempt to show the required information in a proper manner. The hearing examiner has looked at each of these tags. Commission exhibits 41A through H and they are each deficient, that is, each of these tags do not contain all of the information required in the manner required by the Act and the Rules and Regulations promulgated by the Commission. For the respondents' benefit, Mr. Anderson in his testimony explained the deficiencies of each tag.

10. Anderson stated on direct examination, and it is brought out more clearly on cross, that there were also other tags on the garments from which these tags, Commission exhibits 41A through H were taken. Anderson stated that none of these other tags contained all of the required information in the proper manner, and for that reason he did not take the other tags. Mr. Weiss testified that he was familier with the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and he was equally positive that the other tags which Anderson admits were on the garments did have on each of them all of the required information. This was a direct statement in addition to other general statements. Aside from being contradicted by Weiss on this point, to accept Anderson's testimony that these garments were misbranded, is to accept his conclusion, without any other evidence to support it, that the tags remaining on the garments did not comply with the Fur Products Labeling Act and the Rules and Regulations. In certain cases opinion evidence of experts may be accepted upon the ultimate issues before the Commission. This however is not that type of case. The proof therefore is lacking to support a finding that the garments from which Commission exhibits 41A through H were taken, were misbranded.

False Invoicing

11. The charges in the complaint in regard to false invoicing are contained in Paragraphs 5 and 6. The Mather Store sales slips in evidence consist of Commission exhibits 11 through 17 and Commission exhibit 38. Commission exhibit 11 is said to violate Sec. 5(b)(1)(c) and 5(b)(1)(F) because it does not show that the fur is dyed and imported. Commission exhibit 16 is said to offend Rule 4 in abbreviating the word "Jacket." This word is not a part of the required information. Com. Exhibit 13, 14, 16 and 17 are said to offend Rules 21 and 23 in regard to "second hand used fur." With the exception of Com. Ex. 11 and 38 all of the exhibits seem to be in substantial compliance. As a matter of discretion the hearing examiner does not think that a cease and desist order should be based upon these two exhibits aside from what is said in the Mandel case. If letter perfect compliance on every sales slip is insisted upon, the answer is found in the *Mandel Decision*.[1] This decision by the Seventh Circuit holds that sales slips such as these are not invoices within the meaning of the Act. Although this decision is before the Supreme Court and may be reversed, it is considered as governing this case unless and until it is reversed.

[1] *Mandel Bros., Inc. v. F.T.C.*, 254 F. 2d 18.

False Advertising

12. The charges of false advertising are set forth in Paragraphs 7 through 11 of the complaint. It was stipulated that the newspapers carrying respondents' advertising, copies of which were introduced in evidence including those particular issues of those newspapers were disseminated in commerce. A glance at the advertisements in evidence shows that they were intended to aid, promote and assist directly or indirectly in the sale and offering for sale of the fur products so advertised. That the advertisements did aid, promote and assist in the sale and offering for sale of said fur products is evident from the record. If these advertisements are false or do not otherwise comply with the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, a violation of the Act has been established.

"Some at Cost, Some Below Cost"

13. The advertisements of fur products in connection with this sale that are in evidence are Commission Exhibits 4, 5, 6, 7 and 8. They were advertisements in both the Los Angeles Times and the Los Angeles Examiner. The advertisements with the exception of the first one say "Save Up to 50% or More." Four of them say "Some at Cost, Some Below Cost," all referring to the price of fur garments.

14. In paragraph 8 of the complaint it is charged that the representation of "Some at Cost, Some Below Cost," all referring to the price of fur garments, with particular emphasis on mink, is a false representation in violation of Section 5(a) of the Act and Rule 44(a).

15. In support of this allegation there was introduced in evidence a tabulation by the witness Anderson showing that no fur products were sold at this sale at cost or below, and that the average percentage of profit during the sale was 46.8% on mink and 66.9% on other furs. This is Commission exhibit 102. That is all the creditable evidence on the point. The fact that none of the fur products were sold at cost or below does not establish a preponderance of the evidence that none of the furs advertised were offered at cost or below. There is also a stipulation in the record to the effect that all of the evidence in regard to the conduct of Samuel A. Mannis, respondent in Docket No. 7062, in his other fur sales shall be considered as background evidence in this proceeding. The complaint in Docket No. 7062 makes the same charge against Mannis as is here being considered against respondents in this Docket No. 7064. The Initial

Decision in the Mannis Case, Docket No. 7062 holds that considering all the testimony on the point in that case, the charge was established by a preponderance of the evidence. Even so, respondents herein cannot be found guilty by association with Mannis because Mannis violated this section of the Act in the conduct of other sales.

"Three Year Guarantee"

16. Each of these advertisements contained the words "3 Year Guarantee" with reference to the fur products offered. In Paragraph 9 of the complaint this is alleged to be deceptive in that respondents did not clearly and conspicuously set forth in the advertisements the manner and form in which they would perform such guarantee. Commission Exhibit 11 through 17 were evidently not the only evidence of title given to purchasers of fur products at the Bather Store sale. Miss Nancy Findley received another kind of sales slip. See Commission Exhibit 38 which is evidently a photostatic copy of the back side of Commission Exhibit 20. This exhibit says "3 Years Guarantee on rips and tears." However, if each one purchasing at the Mather store sale got this kind of guarantee at the time of sale it would be no defense to the charge. The Commission has held many times that the use of the word "guarantee" in advertising, without disclosing the nature and extent of the guarantee is deceptive. The fact that the nature and extent of the guarantee is disclosed at the time of sale is no defense.[2]

"Free Storage"

17. Paragraph Ten of the complaint charges false advertising of free storage when in fact purchasers of fur products were required to pay storage under the guise of insurance.

18. The record establishes that the concessionaire Mannis did furnish storage for fur products without charge to his customers. If they desired to insure the garments, they were charged for that. There is some testimony to the effect that other sellers of furs, not advertising free storage, charged the same amount for storage and insurance as respondent charged for insurance. Although the owners of most fur products may desire them insured when stored, there is no substantial evidence to the effect that respondents' offer of free storage led the purchasing public to believe that the garments would also be insured without charge, or had that capacity and tendency. This charge of false advertising is dismissed.

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[2] *Carter Products Inc., et al* v. *F.T.C.*, 186 F. 2d 821 and cases therein cited.

"Save 50% or More"

19. Referring again to the advertisements for this sale, Com. exhibit 4 through 8, paragraph 11 of the Complaint, charges that by advertising "Save 50% or More" or presumably by advertising "Save up to 50%" or "Save up to 50% or More," respondents have represented that the regular or usual retail prices charged by respondents for furs in the recent regular course of their business were reduced in direct proportion to the percentage of savings stated when such was not a fact in violation of Section 5(a)(5) of the Act. This advertising over the name of T. W. Mather is really a representation that the regular or usual retail prices charged by T. W. Mather for furs in the recent regular course of business were reduced in direct proportion to the percentage of savings stated. If these respondents had done buiness previously as T. W. Mather, the allegation as to the representation made would be correct. Since these respondents had never done business before under this name or been connected with a fur business under any name, this particular advertising cannot be held to make the representation alleged in Paragraph Eleven of the complaint.

Failing to Maintain Proper Records

20. Paragraph 12 of the complaint charges that in advertising fur products for sale at cost and below cost, and in advertising the percentage savings claims quoted therein, respondents failed to maintain full and adequate records disclosing the facts upon which such claims and representations were based and that this was in violation of Rule 44(e). It is a fact that no such records were kept. Mr. Feigenbaum testified to that effect and Mr. Weiss who was in charge for the concessionaire Mannis also testified to the same effect. Failure to keep such records where this type of advertising is used is a violation of Rule 44(e) without regard to whether the advertising is false.[3]

21. The aforesaid acts and practices of respondents found to be in violation of the Fur Products Labeling Act and the Rules and Regulation promulgated thereunder constitute unfair and deceptive acts and practices under the Federal Trade Commission Act. This proceeding is in the public interest and an order to cease and desist from such unlawful practices should be issued.

22. The allegations in regard to violations of the Fur Products Labeling Act and the Rules and Reglations promulgated thereunder

[3] In the *Matter of Frank Gross* doing business as Frank Gross Furs, Docket No. 6921.

contained in paragraphs 3, 4, 5, 6, the second sub-paragraph under paragraph 8, paragraphs 10 and 11 should be dismissed.

ORDER

It is ordered, That respondents, Mannie Feigenbaum, Inc., a corporation and Manuel Feigenbaum, 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 into commerce, or the sale, advertising, offering for sale, transportation or distribution in commerce of any fur product, or in connection with the sale, advertising, offering for sale, transportation or distribution of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from advertising fur products, through the use of any advertisement, representation, public announcement or notice which is intended to aid, promote or assist directly or indirectly in the sale or offering for sale of fur products, and which:

1. Represents directly or by implication that any such fur products are guaranteed, unless the nature and extent of such guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously set forth;

2. Sets forth comparative prices, savings claims or representations as to selling or offering to sell at or below cost, unless there are maintained by respondents full and adequate records disclosing the facts upon which such claims and representations are based as required by Rule 44(e) of the Rules and Regulations promulgated under the Fur Products Labeling Act.

It is further ordered, That allegations of violation of the provisions of the Fur Proucts Labeling Act and the Rules and Regulations promulgated thereunder contained in paragraphs 3, 4, 5, 6, the second sub-paragraph of paragraph 8, paragraphs 10 and 11 of the complaint be, and the same hereby are, dismissed.

OPINION OF THE COMMISSION

By ANDERSON, *Commissioner:*

The complaint in this matter charges respondents with misbranding, false invoicing and false advertising of fur products and the failure to maintain records, in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder. The hearing examiner held in his initial decision that, with the exception

of one of the charges pertaining to false advertising and the charge that respondents had failed to maintain records required by Rule 44(e), none of the allegations of the complaint had been sustained by the evidence. Both sides have appealed from this decision.

Respondents are engaged in conducting auction sales and liquidating retail businesses. In 1956 they purchased the merchandise of T. W. Mather, Inc., a Pasadena department store which had gone into bankruptcy. It is not entirely clear from the record whether respondents originally intended to continue the business or merely to conduct a sale of the store's bankrupt stock. In any event, they brought in new merchandise and added new departments, including a fur department, operated on a concession basis. A highly advertised sale of these products was started in June of 1956 and continued for several weeks. The concessionaire handling fur products during this sale was Samuel A. Mannis, respondent in Docket No. 7062. The charges of the complaint in this matter cover violations of the Fur Act and the Rules and Regulations promulgated thereunder alleged to have occurred in connection with the offering for sale and sale of fur products by respondents in cooperation with Mannis during the aforementioned sale.

RESPONDENTS' APPEAL

Respondents' sole contention on appeal is that they are not in the fur business and are not subject to the provisions of the Fur Act. They argue in this connection that they were merely landlords renting a concession in their store to Mannis, that they were without power of authority to supervise his business practices and, consequently, should not be held responsible for any of Mannis' practices found to be in violation of the statute.

We are of the opinion that the evidence does not support respondents' argument. While it is true that respondents are not regularly engaged in the fur business, the record establishes that during the sale at the Mather store, respondents were not merely renting space to Mannis but were, in fact, participating with that individual in the sale and promotion of fur products.

Respondents received 10% of Mannis' gross sales of fur products. These products were advertised in the same advertisements with goods being offered in other departments of the store. Mannis' advertising copy was turned over to one of respondents' employees who had charge of the advertising for the store and there is evidence to the effect that copy prepared by Mannis was revised by this employee. The "sale" was advertised under the name of T. W. Mather. The invoices used by Mannis in connection with the sale

of fur products bore the name of the department store. The public was not informed by either the advertising or the invoices or in any other manner that Mannis was a concessionaire or that the fur department was not part of the department store.

We agree with the hearing examiner that in these circumstances respondents should be held responsible for violations occurring in connection with the offering for sale and sale of fur products brought into the store by Mannis. Respondents' appeal is therefore denied.

APPEAL OF COUNSEL SUPPORTING THE COMPLAINT

The first issue raised on this appeal concerns the hearing examiner's dismissal of the charges that respondents misbranded fur garments in violation of Section 4(2) of the Act and Rule 29(b) of the Rules and Regulations. This same issue, involving the same factual situation, was raised in the matter of *Samuel A. Mannis*, Docket No. 7062, and we held in that case that there was sufficient evidence to support these charges of misbranding. In view of that holding, the appeal of counsel supporting the complaint on this point is granted.

Counsel supporting the complaint also takes exception to the dismissal of the allegations pertaining to false invoicing. Although the hearing examiner found two of the respondents' invoices to be defective, he ruled that "as a matter of discretion" a cease and desist order was not warranted. He also ruled, in reliance upon the decision of the United States Court of Appeals in *Mandel Bros., Inc.* v. *Federal Trade Commission*, 254 F. 2d 18 (7th Cir., 1958), that respondents' sales slips are not invoices within the meaning of the Act. We agree with counsel supporting the complaint that dismissal of the allegations on these grounds was improper. *Federal Trade Commission* v. *Mandel Bros., Inc.*, 359 U.S. 385 (1959).

We are also of the opinion that the hearing examiner erred in finding that, with two exceptions, respondents' invoices were "in substantial compliance" with the statute. The record clearly establishes that respondents violated Rule 23 by failing to set forth the terms "second-hand" on invoices issued in connection with the sale of used fur products. The evidence also shows that respondents violated Section 5(b)(1) by failing to disclose on an invoice the information required by subsections (C) and (F) of that section. We concur in the hearing examiner's ruling, however, that the abbreviation of the word "jacket" does not violate Rule 4 since this word is not part of the required information.

Another question raised on this appeal is whether the evidence supports the allegation that respondents had falsely advertised that fur products were being offered for sale at cost and below cost. The

advertisements in evidence show that respondents and their fur concessionaire, Mannis, made the following representations with respect to certain fur garments offered for sale: "Save up to 50% and more! Some at cost! Some below cost!" A tabulation of all the sales made of the garments so advertised shows that none of them was sold at cost or below cost and that the average percentage of profit was 46.8% on mink garments and 66.9% on garments composed of other furs. The hearing examiner ruled that evidence showing that no garments were sold at cost or below did not negate the possibility that other garments were offered for sale at cost or below. He held therefore that the allegation had not been sustained. We think this ruling was incorrect. Respondents represented that certain fur products were being offered for sale: "Some At Cost! Some Below Cost." In our opinion, prospective purchasers may well understand this claim to mean that all of the products so advertised would be sold at cost or below. The claim is particularly susceptible of such interpretation when viewed in context with the following claims in the advertising in which it appeared: "Mather's Went Broke," "The Death of a Great Pasadena Department Store," "Entire Stock Doomed For Immediate Selling!", "No Exceptions! Every Item Must Be Sold Regardless of Cost!" Since at least some of the advertised garments were sold above cost, we believe the record supports the allegation that respondents falsely represented that the garments featured in the aforementioned advertisements would be sold at cost or below cost.

Counsel supporting the complaint also argues that the hearing examiner erred in dismissing the allegation concerning percentage savings claims. The complaint charges that respondents falsely represented through use of such claims as "Save 50% or more" that the regular or usual retail prices charged by respondents for fur products in the recent regular course of their business were reduced in direct proportion to the percentage of savings stated. The hearing examiner held that since the advertising referred to in the charge appeared over the name of T. W. Mather, it was a representation concerning a reduction in the regular or usual prices charged by that store for fur products and was not a representation concerning prices formerly charged by respondents. We agree with the hearing examiner that such statements in advertising as "Save 50% or more" are representations of the advertiser's usual and regular prices. We do not agree with his conclusion, however, that the advertising claims in question refer to T. W. Mather's usual or regular prices for fur products. T. W. Mather did not have a fur department prior to the respondents' purchase of the assets of that store. In one of the

first advertisements of the sale at the Mather store, respondents disclosed that the store was under new ownership and that new stock had been brought in for the sale. The following notice appeared at the top of this advertisement:

DUE TO FINANCIAL DIFFICULTIES WHICH CAUSED THE PREVIOUS MANAGEMENT TO BE ORDERED INTO BANKRUPTCY BY THE U.S. COURT * * * THIS 54 YEAR OLD DEPARTMENT STORE WAS ORDERED SOLD. * * * Established California Management was the successful purchaser. We knew in advance the high caliber store * * * the fine merchandise they carried. Realizing the importance of continuing MATHER'S fine reputation, we knew it would take a lot more stock to satisfy the thousands of old MATHER'S customers. We immediately notified our staff of buyers to ship in nothing but the finest type of merchandise to be sold at unheard of prices.

We think it is clear from this statement that respondents, trading as T. W. Mather, are the advertisers. The savings claims used in connection with the prices of new merchandise, including fur products, brought in for the sale refer to respondents' usual and regular prices. Since the record shows that respondents had not previously sold fur products, the aforementioned claims challenged in the complaint were misrepresentations in violation of Section 5(a)(5) of the Act.

The final exception to the initial decision on this appeal concerns the dismissal of the allegations that respondents falsely advertised free storage. This same argument was considered and rejected in the matter of *Samuel A. Mannis*, Docket 7062. Since there is no significant difference between the facts of the two cases on this point, the appeal is denied for the reasons stated in our opinion in the *Mannis* proceeding.

To the extent indicated herein, the appeal of counsel supporting the complaint is granted and our order providing for appropriate modification of the initial decision is issuing herewith.

FINAL ORDER

Respondents and counsel in support of the complaint having filed cross-appeals from the initial decision of the hearing examiner, and the matter having been heard on briefs; and the Commission having rendered its decision denying the appeal of respondents and granting in part the appeal of counsel in support of the complaint and directing modification of the initial decision:

It is ordered. That the fourth paragraph on page 3 of the initial decision be modified by striking therefrom the sentence "This store had a fur department."

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

10. Certain of the products to which these labels had been affixed were misbranded in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act. Three of the labels did not disclose the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur. One of the labels did not disclose that the fur product contained dyed fur. One of the labels did not disclose the name or registration number required by subsection (E) of Section 4(2). Certain of the products were misbranded in that they were not labeled in accordance with the Rules and Regulations promulgated under the Fur Products Labeling Act, in that information required under Section 4(2) was set out in handwriting in violation of Rule 29(b).

It is further ordered, That paragraph 11 of the initial decision be modified to read as follows:

11. One of the fur products sold by respondents was falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that the invoice issued in connection with the sale thereof did not contain the information required by subsection (C) and (F) of Section 5(b)(1). Certain other fur products sold by respondents were falsely and deceptively invoiced in that such garments had been used by ultimate consumers and the invoices issued in connection with the sale thereof did not designate such products "Second-hand" as required by Rule 23 of the Rules and Regulations promulgated under the Act.

It is further ordered, That paragraph 15 of the initial decision be modified to read as follows:

15. The advertising in which this claim appeared contained the following representations: "Mather's Went Broke," "The Death of a Great Pasadena Department Store!", "Entire Stock Doomed For Immediate Selling!", "No Exceptions! Every Item Must Be Sold Regardless of Cost!" In this context, the statement "Some At Cost, Some Below Cost," referring to certain advertised fur products, constitutes a representation that all of the advertised fur products would be sold either at cost or below cost. A tabulation prepared by the witness Anderson shows that the average percentage of profit during this sale was 46.8% on mink garments and 66.9% on garments composed of other furs. Since some of the advertised garments were sold at a profit, the representation "Some At Cost, Some Below Cost" was false and deceptive as alleged in the complaint.

It is further ordered, That paragraph 19 of the initial decision be modified to read as follows:

19. Paragraph 11 of the complaint charges that by advertising "Save 50% Or More" respondents have falsely represented that the regular or usual retail prices charged by respondents for fur products in the recent regular course of their business were reduced in direct proportion to the percentage of savings stated. Respondents' advertisement in the June 7, 1956, edition of the Los Angeles Times contained a statement to the effect that the T. W. Mather Department Store was under new management and that new merchandise had been brought in for the "liquidation" sale. In view of this announcement and in view of the fact that T .W. Mather did not have a fur department prior to this sale, the claims "Save 50% or More," made with respect to the prices of fur products, referred to savings from respondents' usual and regular prices. Respondents had not previously sold fur products and, consequently, had no usual or regular prices for such products. Since the advertised products were not sold at a 50% reduction from respondents' usual and regular prices, such products were falsely and deceptively advertised in violation of Section 5(a)(5) of the Fur Products Labeling Act.

It is further ordered. That paragraph 22 of the initial decision be modified to read as follows:

22. The allegations in regard to violations of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder contained in subparagraph (a) of paragraph 6 and paragraph 10 of the complaint should be dismissed.

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

It is ordered, That respondents, Mannie Feigenbaum, Inc., a corporation, and Manuel Feigenbaum, 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 into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce of any fur product or in connection with the sale, advertising, offering for sale, transportation or distribution of any fur product which is made in whole or in part of fur which has been shipped 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 information required to be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act.

B. Setting forth on labels affixed to fur products required information in handwriting.

2. Falsely or deceptively invoicing fur products by:

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

B. Failing to set forth the term "Second-hand" on invoices issued in connection with the sale of fur products that have been used or worn by an ultimate consumer.

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 any fur product is being offered for sale at or below respondents' cost, when such is not the fact.

B. Represents, directly or by implication, that any fur product is guaranteed, unless the nature and extent of such guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously set forth.

C. Represents, directly or by implication, that the former, regular or usual price of any fur product is any amount which is in excess of the price at which respondents have formerly, usually or customarily sold such product in the recent, regular course of their business.

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

It is further ordered, That allegations of violation of the provisions of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder contained in subparagraph (a) of Paragraph Six and Paragraph Ten of the complaint be, and the same hereby are, dismissed.

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

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

Decision

IN THE MATTER OF

LAURIE RECORDS, INC., ET AL.

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

Docket 7695. Complaint, Dec. 18, 1959—Decision, Feb. 9, 1960

Consent order requiring New York City manufacturers of phonograph records which they sold to independent distributors for resale to retail outlets and juke box operators, to cease giving concealed "payola"—payment of money or other valuable consideration—to disk jockeys to increase sales of their records by "exposure"—broadcasting day after day and several times daily—on radio and television programs.

Mr. John T. Walker and *Mr. James H. Kelley* for the Commission.

Rosen, Seton & Sarbin, by *Mr. Charles B. Seton*, of New York, N.Y., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents with violation of the Federal Trade Commission Act in the distribution and sale of phonograph records by disbursing "payola," i.e., the payment of money or other valuable considerations to disk jockeys of musical programs on radio and television stations, to induce, stimulate or motivate the disk jockey to select, broadcast, "expose" and promote certain records in which respondents have a direct financial interest, on the express or implied understanding that the disk jockey will conceal, withhold or camouflage the fact of such payment from the listening public.

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

The agreement states that respondents Laurie Records, Inc. and Abel Productions, Inc. are corporations organized, existing and doing business under and by virtue of the laws of the State of New York, with their offices and principal place of business located at 1755 Broadway, New York, N.Y., and that individual respondents Allan Sussel, Gene Schwartz, Eliot Greenberg, and Robert Schwartz are president, vice president, secretary, and treasurer, respectively,

of both corporate respondents, their address being the same as that of said corporate respondents.

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

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

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

It is ordered, That respondents Laurie Records, Inc., a corporation, and Abel Productions, Inc., a corporation, and their officers, and Allan Sussel, Gene Schwartz, Eliot Greenberg, and Robert Schwartz, individually and as officers of said corporations, 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 9th day of February, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Laurie Records, Inc. and Abel Productions, Inc., corporations, and Allan Sussel, Gene Schwartz, Eliot Greenberg, and Robert Schwartz, individually and as officers of said corporations, 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

BAYUK CIGARS INCORPORATED

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

Docket 7895. Complaint, Feb. 5, 1959—Decision, Feb. 12, 1960[1]

Consent order requiring a cigar manufacturer with main office in Philadelphia, Pa., and branch offices in several States—a substantial factor in the cigar

[1] Replacing order to cease and desist of Aug. 27, 1959, vacated and remanded Oct. 22, 1959.

industry with net sales in 1957 exceeding $37,000,000—to cease violating Sec. 2(d) of the Clayton Act by such practices as paying to certain favored retail customers, including Walgreen Co. of Chicago, United Cigar Whelan Stores Corp. of New York City, Sun Ray Drug of Philadelphia, and Rexall Drug Co. of New York City, their full advertising costs in promoting its cigars; making special display promotional payments to certain customers, including United Cigar Whelan Stores Corp., New York City, The Union News Co., New York City, Peoples Drug Stores, Inc., Washington, D.C., Fred Harvey, Chicago, and Barkalow Bros. Co., Omaha, Nebr.; and paying The Union News Co. of New York City approximately $700 per month as consideration for advertising its cigars on book matches distributed to Union's retail outlets—all without offering proportional payments or allowances to competitors of the favored customers.

COMPLAINT

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

PARAGRAPH 1. Respondent Bayuk Cigars Incorporated is a corporation organized and doing business under the laws of the State of Maryland, with its principal office and place of business located at 9th and Columbia Avenue, Philadelphia 22, Pennsylvania.

PAR. 2. Respondent has been and is presently engaged in the business of manufacturing, selling and distributing cigars. "Phillies" and "Webster" cigars are a few of the well-known cigars manufactured and distributed by respondent. Said respondent is a substantial factor in the cigar industry. It has branch offices, factories, and warehouses located in a number of States. Its net sales in 1957 exceeded $37,000,000.

PAR. 3. Respondent has sold and distributed and now sells and distributes its cigars in substantial quantities in commerce, as "commerce" is defined in the Clayton Act, as amended, to competing customers located throughout various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business in commerce, respondent paid or contracted for the payment of something of value to or for the benefit of some of its customers as compensation or consideration for services or facilities furnished, or contracted to be furnished, by or through such customers, in connection with the handling, sale, or offering for sale of cigars sold to them by

respondent. Such payments or allowances were not made available on proportionally equal terms to all other customers of respondent competing in the distribution of such cigars.

PAR. 5. As an example of the practices alleged herein, respondent has made payments or allowances to certain retail customers which were not offered to all other retail customers competing with the favored customers in the distribution and sale of respondent's cigars. In 1956 and 1957 respondent participated in a cooperative advertising program with certain favored retail customers wherein it agreed to pay the full advertising costs of these customers in promoting respondent's cigars. Among the favored customers receiving such payments which were not offered to all other customers competing with the favored customers in the distribution of respondent's cigars were:

Customers	*Approximate payments received*	
Walgreen Company, Chicago, Illinois	$26,900	(1956)
United Cigar Whelan Stores Corp., New York, N.Y.	14,700	(1957)
Sun Ray Drug, Philadelphia, Pa.	3,500	(1956–1957)
Rexall Drug Co., New York, N.Y.	3,000	(1957)

Respondent also made special display promotional payments to certain favored retail customers which were not offered on proportionally equal terms to all other retail customers competing with said favored customers in the sale and distribution of respondent's cigars. Among the favored customers receiving special display promotional payments in 1956 were the following:

Customers	*Approximate payments received*
United Cigar Whelan Stores Corp., New York, N.Y.	$9,581
The Union News Company, New York, N.Y.	6,000
Peoples Drug Stores, Inc., Washington, D.C.	3,298
Fred Harvey, Chicago, Illinois	1,122
Barkalow Bros. Company, Omaha, Neb.	771

Respondent made said payments on the basis of individual negotiations. Among said favored customers such payments were not made on proportionally equal terms.

Under a book match distribution plan begun in 1957, respondent paid and is presently paying The Union News Company approximately $700 per month as consideration for advertising respondent's cigars on book matches which are distributed to retail outlets operated by The Union News Company. This plan, or anything in lieu thereof, was not offered on proportionally equal terms to all other customers competing with The Union News Company in the sale and distribution of respondent's cigars.

PAR. 6. The acts and practices of respondent as alleged above are in violation of the provisions of subsection (d) of Section 2 of the Clayton Act, as amended.

Mr. J. Wallace Adair and *Mr. Jerome Garfinkel* for the Commission.

Fox, Rothschild, O'Brien & Frankel, by *Mr. A. Arthur Miller*, of Philadelphia, Pa., for respondent.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated February 5, 1959, the respondent is charged with violating the provisions of subsection (d) of section 2 of the Clayton Act (U.S.C. Title 15, sec. 13), as amended by the Robinson-Patman Act.

On December 18, 1959, the respondent and its attorney entered into an agreement with counsel in support of the complaint for a consent order.

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

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

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

1. Respondent Bayuk Cigars Incorporated is a corporation existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 9th and Columbia Avenue, in the City of Philadelphia, State of Pennsylvania.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

ORDER

It is ordered, That respondent Bayuk Cigars Incorporated, a corporation, its officers, employees, agents and representatives, directly or through any corporate or other device, in connection with the distribution, sale or offering for sale of cigars in commerce, as "commerce" is defined in the amended Clayton Act, do forthwith cease and desist from:

(1) Paying, or contracting to pay or allow, anything of value to, or for the benefit of, a customer as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the handling, processing, sale, or offering for sale of any products manufactured, sold, or offered for sale by respondent, unless such payment or consideration is affirmatively offered or otherwise made available on proportionally equal terms to all other customers competing in fact in the distribution of such products.

(2) Paying or contracting to pay to any customer, directly or indirectly through a subsidiary or otherwise, anything of value for advertising on book matches, unless such payment or consideration, or something in lieu thereof, is affirmatively offered or otherwise made available on proportionally equal terms to all other customers competing in fact in the distribution of respondent's products.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission, by order entered October 22, 1959, having vacated its order of August 27, 1959, adopting as its own decision the hearing examiner's initial decision filed July 2, 1959, and having remanded this case to the hearing examiner; and

The hearing examiner, on December 29, 1959, having filed another initial decision wherein he accepted an agreement containing a consent order to cease and desist executed by the respondent and counsel in support of the complaint, and entered his order in conformity with the agreement; and

The Commission having determined that the initial decision last referred to is appropriate in all respects to dispose of this proceeding:

It is ordered, That said initial decision shall, on the 12th day of February, 1960, become the decision of the Commission.

It is further ordered, That the respondent, Bayuk Cigars Incorporated, shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting

forth in detail the manner and form in which it has complied with the order to cease and desist contained in the aforesaid initial decision.

IN THE MATTER OF

KAISER RAND CORPORATION, ET AL.

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

Docket 7433. Complaint, Mar. 11, 1959—Decision, Feb. 12, 1960

Consent order requiring an individual and the five companies of which he was president, all of Redonda Beach, Calif., to cease using deceptive pricing, quality and guarantee claims and other misrepresentations to sell their electric storage batteries, battery additives, oil filters and other products, as in the order below set forth.

Mr. Edward F. Downs supporting the complaint.
Mr. Daniel W. Gage, of Los Angeles, Calif. for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

On March 11, 1959, 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 by making false and deceptive representations in advertising claims with respect to electric storage batteries, oil filters, battery additives and other products.

After service of the complaint the respondents Kaiser Rand Corporation, Car Parts Manufacturing Corporation, Life-Long Battery Corporation, Life-Long Manufacturing Corporation, Ardmore Investment Company, Inc., and Jack Morgan Watt, individually, by and through their attorney, answered said complaint, pointing out that the name of one of the respondents, The Cadmium Battery Corporation, was changed to Life-Long Manufacturing Corporation, one of the respondents, and the name of the corporate respondent Life-Long Battery Manufacturing Corporation has been changed to Life-Long Battery Corporation.

Thereafter, the respondents Kaiser Rand Corporation, Car Parts Manufacturing Corporation, Life-Long Manufacturing Corporation, Life-Long Battery Corporation and Ardmore Investment Company, Inc., by their duly authorized officer, and the respondent Jack Morgan Watt, individually and as an officer of said corporations, together with 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. The agreement disposes of the matters complained about.

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

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

JURISDICTIONAL FINDINGS

1. The respondent Kaiser Rand Corporation is a corporation organized and doing business under the laws of the State of California with its office and principal place of business located at 1814 So. Catalina Avenue, Redondo Beach, California.

2. The respondent Car Parts Manufacturing Corporation, also known as Car Parts Corporation, and also doing business under the names of Waterless Battery Corporation and Life-Long Spark Plug Corporation, is a corporation organized and doing business under the laws of the State of California with its office and principal place of business located at 1814 So. Catalina Avenue, Redondo Beach, California.

3. The respondent Life-Long Manufacturing Corporation, formerly known as The Cadmium Battery Corporation, is a corporation organized and doing business under the laws of the State of Cali-

fornia with its office and principal place of business located at 1814 So. Catalina Avenue, Redondo Beach, California.

4. The respondent Life-Long Battery Corporation, formerly known as Life-Long Battery Manufacturing Corporation, is a corporation organized and doing business under the laws of the State of California with its office and principal place of business located at 1814 So. Catalina Avenue, Redondo Beach, California.

5. The respondent Ardmore Investment Company, Inc., is a corporation organized and doing business under the laws of the State of California with its office and principal place of business located at 1814 So. Catalina Avenue, Redondo Beach, California.

6. The individual respondent Jack Morgan Watt is president of each of the corporate respondents. His office and principal place of business is located at 1814 So. Catalina Avenue, Redondo Beach, California.

7. 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 Kaiser Rand Corporation, Car Parts Manufacturing Corporation, Life-Long Manufacturing Corporation, Life-Long Battery Corporation, all corporations, their officers, and Jack Morgan Watt, individually and as an officer of said corporate respondents 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 electric storage batteries, battery additives, oil filters or any other product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That their batteries:

a. are comparable in design or function to the solar battery.

b. contain silicones.

c. never require the addition of water to their cells.

d. are anything other than lead-acid batteries.

e. have sold for $100.

f. will start any engine one million times, or any particular number of times in normal use.

2. That any product:

a. is guaranteed in any respect unless respondents in fact comply with the represented guarantee.

b. was conceived or is constructed upon new and revolutionary principles of design or function.

c. is sold with a guarantee the performance of which is insured by Lloyd's of London or any other independent bonding or insurance company.

d. is patented or is the object of an existing, valid patent application unless at the time of the representation, there is existing in the United States Patent Office a patent or an existing patent application incorporating the advertised product.

e. has been awarded a prize, citation or any kind of an award by an independent organization conferring such awards.

f. has been approved by any department, bureau or agency of the United States Government.

g. is advertised or will be advertised by respondents in any publication or through any media unless respondents do in fact place such advertisements in the publication or media represented.

h. has been sold at any price unless that product has been offered for sale or has been sold by respondents in recent regular course of business at the price represented.

i. is comparable in design or function to any other product, or that its characteristics are derived from such other product, unless in fact, there is a substantial similarity in design or function.

j. will convert a lead-acid battery into an alkaline nickel-cadmium battery or its equivalent.

k. contains silicone or any other substance, unless said product does in fact contain the substance represented, and unless it serves a useful function in the construction or operation of that product.

3. That test reports disseminated by respondents are results of tests performed on respondents' products by independent, unbiased research and testing organizations.

4. That reports of tests performed on any of respondents' products by independent, unbiased research and testing organizations are authentic and unbiased when in fact they have been altered, recopied, added to or subtracted from by respondents or their agents.

5. That any person, corporation or organization of any kind has approved, recommended or expressed satisfaction with any of respondents' products unless respondents have been formally notified of that fact by such person or a responsible official of the named corporation or organization.

It is further ordered, That respondent Ardmore Investment Company, Inc., a corporation, and its officers, and Jack Morgan Watt, individually and as an officer of said corporate respondent, and respondents' agents, representatives and employees, directly or

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

Representing directly, or by implication, that respondent Ardmore Investment Company, Inc., is a state chartered bonding company, or an independent bonding or insurance company of any kind.

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

It is ordered, That respondents Kaiser Rand Corporation, Car Parts Manufacturing Corporation, Life-Long Manufacturing Corporation, Life-Long Battery Corporation, Ardmore Investment Company, Inc., all corporations, and respondent Jack Morgan Watt, individually and as an officer of each corporate respondent herein named, 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

ABE DWORKIN ET AL. TRADING AS AYE DEE WHOLESALE FUR CO.

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

Docket 7553. Complaint, July 24, 1959—Decision, Feb. 12, 1960

Consent order requiring Philadelphia furriers to cease violating the Fur Products Labeling Act by advertising which failed to disclose the names of animals producing certain furs, the country of origin of imported furs, or the fact that some fur products contained artificially colored fur, and which represented prices of fur products falsely as "wholesale"; by representing falsely by their trade name that they were wholesalers; and by failing to keep adequate records as a basis for pricing claims.

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

Mr. Maurice Pollon, of Philadelphia, Pa., for respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated July 24, 1959, the respondents are charged with violating the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and the Rules and Regulations made pursuant thereto.

On December 7, 1959, the respondents and their attorney entered into an agreement with counsel in support of the complaint for a consent order.

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

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

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

1. Respondents are Abe Dworkin, Adolf Dworkin and Leon Dworkin, individuals and copartners trading as Aye Dee Wholesale Fur Co. with their principal office and place of business located at 1220 Walnut Street in the City of Philadelphia, State of Pennsylvania.

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 Abe Dworkin, Adolph Dworkin and Leon Dworkin, individually and as copartners trading as Aye Dee Wholesale Fur Co., or under any other name, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or

manufacture for introduction into commerce, or the sale, advertising, offering for sale, transportation or distribution, in commerce, of fur products, or in connection with the sale, manufacture for sale, advertising, offering for sale, transportation or distribution of fur products which have been made in whole or in part of fur which has been shipped and received in commerce as "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act do forthwith cease and desist from:

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

A. Fails to disclose:

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

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

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

B. Represents directly or by implication that the prices of fur products are "wholesale prices" when such is not the fact.

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

D. Represents through the use of the trade name Aye Dee Wholesale Fur Co., or in any other manner, that respondents are wholesalers of fur products, when such is not the fact.

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 12th day of February, 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

LOUIS PERLOFF

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

Docket 7554. Complaint, July 24, 1959—Decision, Feb. 12, 1960

Consent order requiring a Philadelphia furrier to cease violating the Fur Products Labeling Act by advertising which failed to disclose the names of animals producing certain furs, the country of origin of imported furs, or the fact that some fur products contained artificially colored fur, and which represented prices of fur products falsely as "wholesale."

Mr. Charles W. O'Connell for the Commission.
Mr. Maurice Pollon, of Philadelphia, Pa., for respodnent.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated July 24, 1959, the respondent is charged with violating the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and the Rules and Regulations made pursuant thereto.

On November 24, 1959 the respondent and his attorney entered into an agreement with counsel in support of the complaint for a consent order.

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

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

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

1. Respondent Louis Perloff is an individual with his office and principal place of business located at 733 Walnut Street, in the City of Philadelphia, State of Pennsylvania.

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

ORDER

It is ordered, That respondent Louis Perloff, an individual, trading under his own name or under any other name, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, offering for sale, the transportation or distribution, in commerce, of fur products; or in connection with the sale, advertising, offering for sale, transportation, or distribution of fur products which are made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur," and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

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

A. Fails to disclose:

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

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

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

B. Represents, directly or by implication, that the prices of fur products are wholesale prices, when such is not the fact.

C. Misrepresents in any manner the savings available to purchasers of respondent's fur 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 February, 1960, become the decision of the Commission; and, accordingly:

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

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

IN THE MATTER OF

WILLIAM PERLOFF TRADING AS LOWILL'S JEWELERS

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

Docket 7555. Complaint, July 24, 1959—Decision, Feb. 12, 1960

Consent order requiring a Philadelphia, Pa., furrier to cease violating the Fur Products Labeling Act by advertising which failed to disclose the names of animals producing certain furs, the country of origin of imported furs, or the fact that some fur products contained artificially colored fur, and which represented prices of fur products falsely as "wholesale."

Mr. Charles W. O'Connell for the Commission.
Mr. Maurice Pollon, of Philadelphia, Pa., for respondent.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated July 24, 1959, the respondent is charged with violating the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and the Rules and Regulations made pursuant thereto.

On November 24, 1959 the respondent and his attorney entered into an agreement with counsel in support of the complaint for a consent order.

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

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

The hearing examiner being of the opinion that the agreement and the proposed order provide an appropriate basis for disposition

of this proceeding as to all of the parties, the agreement is hereby accepted and it is ordered that the agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission. The following jurisdictional findings are made and the following order issued.

1. Respondent William Perloff is an individual trading as Lowill's Jewelers (erroneously named in the complaint as Lowell's Jewelers) with his office and principal place of business located at 5719 Germantown Avenue, City of Philadelphia, State of Pennsylvania.

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

ORDER

It is ordered, That respondent William Perloff, an individual trading as Lowill's Jewelers or under any other name, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, offering for sale, the transportation or distribution, in commerce, of fur products; or in connection with the sale, advertising, offering for sale, transportation, or distribution of fur products which are made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

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

A. Fails to disclose:

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

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

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

B. Represents directly or by implication that the prices of fur products are wholesale prices, when such is not the fact.

C. Misrepresents in any manner the savings available to purchasers of respondent's fur 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 February, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondent William Perloff, an individual trading as Lowill's Jewelers (erroneously named in the complaint as Lowell's Jewelers), shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist.

IN THE MATTER OF

DE WOLF, INC., ET AL.

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

Docket 7557. Complaint, July 24, 1959—Decision, Feb. 12, 1960

Consent order requiring a Philadelphia, Pa. furrier to cease violating the Fur Products Labeling Act by advertising which failed to disclose the names of animals producing certain furs, the country of origin of imported furs, or the fact that some fur products contained artificially colored fur, and which represented prices of fur products falsely as "wholesale."

Mr. Charles W. O'Connell for the Commission.
Mr. Maurice Pollon, of Philadephia, Pa., for respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated July 24, 1959, the respondents are charged with violating the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and the Rules and Regulations made pursuant thereto.

On December 7, 1959, the respondents and their attorney entered into an agreement with counsel in support of the complaint for a consent order.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing and the document includes a waiver by the respondents of all rights to challenge or contest the validity

of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint.

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

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

1. Respondent De Wolf, 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 711 Chestnut Street, in the City of Philadelphia, State of Pennsylvania.

Respondent Leon Rosenbaum is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent. His address is the same as that of the said 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 De Wolf, Inc., a corporation, and its officers, and Leon Rosenbaum, individually and as an officer thereof, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, offering for sale, the transportation or distribution, in commerce, of fur products; or in connection with the sale, advertising, offering for sale, transportation or distribution of fur products which are made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

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

A. Fails to disclose:

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

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

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

B. Represents, directly or by implication, that the prices of fur products are wholesale prices, when such is not the fact.

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

IN THE MATTER OF

PARKER PUBLISHING COMPANY, INC., ET AL.

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

Docket 7575. Complaint, Sept. 1, 1959—Decision, Feb. 12, 1960

Consent order requiring two publishing corporations, one the wholly owned subsidiary of the other, to cease representing falsely, in advertising the book "How To Live 365 Days A Year" by John A. Schindler, M.D., that the method set out therein provided a reliable treatment and cure for a great variety of ailments, an effective means of achieving healing without medicine or surgery, and a positive method of health control generally.

Mr. Charles S. Cox for the Commission.

Mr. Alfred G. Mueller, of New York, N.Y., for respondents.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

On September 1, 1959, the Federal Trade Commission issued its complaint against the above-named respondents charging them with

violating the provisions of the Federal Trade Commission Act in connection with the printing, publication, advertising, sale and distribution of books, and in particular a book entitled "How To Live 365 Days A Year" by John A. Schindler, M.D. On November 23, 1959, the respondents and counsel supporting the complaint entered into an agreement containing a consent order to cease and desist in accordance with section 3.25(a) of the Rules of Practice and Procedure of the Commission.

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

This proceeding having now come on for final consideration by the hearing examiner on the complaint and the aforesaid agreement for consent, and it appearing that said agreement provides for an 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 Parker Publishing Company, Inc. is a corporation existing and doing business under and by virtue of the laws of the State of New York. Respondent Prentice-Hall, Inc. is a corporation existing and doing business under and by virtue of the laws of the State of Delaware. Both respondents have offices and principal place of business located at 5th Avenue and 13th Street, (i.e. 70 Fifth Avenue) New York, New York.

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 Parker Publishing Company, Inc., a corporation, and Prentice-Hall, Inc., a corporation, their respective officers, directors, agents, representatives, and employees, directly or through any corporate or other device, in connection with the promotion, advertising, sale and distribution of the book entitled "How To Live 365 Days A Year" by John A. Schindler, M.D., or any other book or books of the same or approximately the same, content, material and methods, whether sold under the same name or any other name, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing directly or indirectly that the method set out in said book:

1. Provides and constitutes an adequate, effective or reliable treatment for chronic colds, allergies, asthma, headache, migraine, sinus, cardiospasm, nausea, indigestion, gas pains, stomach pains, abdominal pains, ulcers, ulcer-like pains, colic, colitis, dizzy spells, gall bladder trouble, constipation, backache, arthritis, stiffness of joints, rheumatic pains, neuritis, nervous condition, insomnia, irritability, fatigue, general weakness, tiredness, aches and pains, glandular disturbances, sexual weakness, frigidity, fevers, bladder trouble, rashes and painful skin diseases, cramps, convulsions, degenerative diseases, diabetes, high blood pressure, angina pectoris, cancer, heart trouble, tumors, and enables one to eliminate or kick all of these health wreckers, out of one's life and will enable one to get rid of most ailments of any kind.

2. Provides and constitutes an adequate, effective or reliable means of fighting infection, preventing disease or defending against it when it attacks.

3. Will make one well if one is sick, will give one strength and energy if one is tired and run down, will enable one to pass tensions out of one's life if one is high strung, nervous, jumpy, a poor sleeper or incapable of relaxing, and will enable one to regain his or her appetite, energy and vitality and sleep well.

4. Will stop one's suffering and restore good health, will make and keep one well and in good health all one's life, will add years to one's life or give life long health and vitality and will keep one from growing old before one's time.

5. Provides and constitutes an adequate effective or reliable means of achieving medical healing without medicine or surgery and constitutes a positive method of health control, a miraculous health discovery, or the secret of good health.

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 February, 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.

IN THE MATTER OF

DONALD & DUNAGER, INC., ET AL.

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

Docket 7624. Complaint, Oct. 23, 1959—Decision, Feb. 12, 1960

Consent order requiring New York City furriers to cease violating the Fur Products Labeling Act by failing to comply with invoicing requirements, by advertising through correspondence and consignment invoices which represented prices as reduced without giving the time of the higher prices, and by failing to keep adequate records as a basis for said pricing claims.

Mr. Ames W. Williams for the Commission.

Mr. Charles Goldberg, of New York, N.Y., for respondents.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

On October 23, 1959 the Federal Trade Commission issued a complaint charging Donald & Dunager, Inc., a corporation, and Leon Dunager, Martin Donald and Samuel Shore, individually and as officers of said corporation, hereinafter referred to as respondents, with falsely and deceptively invoicing and advertising certain of their fur products in violation of the Federal Trade Commission Act and the Fur Products Labeling Act.

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

The pertinent provisions of said agreement are as follows: 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 staute for other orders; respondents waive any right to challenge or contest the validity of the order entered in accordance with the agreement and the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

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

JURISDICTIONAL FINDINGS

1. Respondent Donald & Dunager, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 345 Seventh Avenue, New York, New York.

2. The individual respondents Leon Dunager, Martin Donald and Samuel Shore are officers of said corporation and control, formulate and direct the acts, practices and policies of the corporate respondent. Their office and principal place of business is the same as that of the corporate respondent.

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

ORDER

It is ordered, That Donald & Dunager, Inc., a corporation, and its officers, and Leon Dunager, Martin Donald and Samuel Shore, 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, manufacture for introduction, 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, 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. Falsely or deceptively invoicing fur products by failing to furnish to purchasers of fur products an invoice showing all the information required to be disclosed by each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

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

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

B. Misrepresents in any manner the amount of savings available to purchasers of respondents' merchandise.

3. Making claims and representations in advertisements respecting prices or values of fur products unless there are 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 12th day of February, 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.

IN THE MATTER OF

ARONOFF & RICHLING, INC., ET AL.

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

Docket 7625. Complaint, Oct. 23, 1959—Decision, Feb. 12, 1960

Consent order requiring New York City manufacturers to case violating the Wool Products Labeling Act by labeling which described the fiber content

of ladies' dresses as "A Yarn Dyed 100% Worsted Fabric" instead of using the common generic name "wool," and by substituting the phrase "A'n R Jr." for the required manufacturer's name on tags or labels.

Mr. DeWitt T. Puckett supporting the complaint.
Mr. Irving Levine of Brooklyn, N.Y., for respondents.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

On October 23, 1959, pursuant to the provisions of the Federal Trade Commission Act, and the Wool Products Labeling Act, the Federal Trade Commission caused to be issued its complaint in this proceeding to which the above-named parties were respondents. A true copy of said complaint was served upon respondents as required by law. The complaint charges respondents with violating the Federal Trade Commission Act and the Wool Products Labeling Act by misbranding wool products which were transported in interstate commerce, and failing to label said products properly as required by §4(a)(2) of the Wool Products Labeling Act and the Rules and Regulations promulgated under said Act, and failing to indicate the name or the registered identification number of the manufacturer of the wool products as required by the Wool Products Labeling Act of 1939. After being served with the complaint, respondents appeared by counsel and entered into an agreement dated December 2, 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 the Assistant Director of the Bureau of Litigation of this Commission. Said agreement contains the form of a consent cease and desist order which the parties have agreed is dispositive of the issues involved in this proceeding. On December 16, 1959, the said agreement was submitted to the above-named hearing examiner for his consideration, in accordance with §3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

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

have, *inter alia*, by such agreement agreed: (1) the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full hearing; (2) the complaint may be used in construing the terms of said order; (3) the record herein shall consist solely of the complaint and said agreement; and (4) that said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement of December 2, 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 December 2, 1959, is hereby accepted and ordered filed at the same time that this decision becomes the decision of the Federal Trade Commission pursuant to §§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 Aronoff & Richling, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Individual respondents Sidney Richling, Abe Aronoff, Robert Silver, and Lowell Aronoff are president, secretary, treasurer and vice president, respectively, of the corporate respondent. Said individual respondents cooperate in formulating, directing, and controlling the acts, policies, and practices of the corporate respondent, including the acts and practices hereinafter referred to. All respondents have their office and principal place of business at 1400 Broadway, New York, New York.

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

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

ORDER

It is ordered, That respondents Aronoff & Richling, Inc., a corporation, and its officers, and Sidney Richling, Abe Aronoff, Robert Silver, and Lowell Aronoff, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, of woolen stocks, or other wool products, do forthwith cease and desist from:

A. Misbranding such products by:

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

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

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

(c) The name or the registered identification number of the manufacturer of such wool product or 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;

2. Failing to set forth on fiber content labels or tags the common generic names of the fiber contents of their wool 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 February, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Aronoff & Richling, Inc., a corporation, and its officers, and Sidney Richling, Abe Aronoff, Robert Silver, and Lowell Aronoff, 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

ESKA COMPANY, ET AL.

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

Docket 7536. Complaint, July 13, 1959—Decision, Feb. 13, 1960

Consent order requiring Dubuque, Iowa, distributors of power mowers to cease fictitious pricing of their products by such practices as stamping excessive price figures on the cartons in which the mowers were shipped and furnishing price lists to their retail customers with suggested selling prices, represented thereby as the usual retail prices.

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

Mr. Edward A. McDermott, of *O'Connor, Thomas, McDermott & Wright*, of Dubuque, Iowa, for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) issued its complaint herein on July 13, 1959, charging the above-named respondents with having violated the provisions of the Federal Trade Commission Act in certain particulars.

On December 16, 1959, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an "Agreement Containing Consent Order To Cease And Desist," which had been entered into by and between respondents and the attorneys for both parties, under date of December 11, 1959, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

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

1. Eska Company is a corporation existing and doing business under and by virtue of the laws of the State of Iowa with its office and principal place of business located at 100 W. 2nd Street, Dubuque, Iowa.

The individual respondents, L. D. Kascel and Janet Kascel, are officers of the corporate respondent and have their office and principal place of business at the same address as the corporate respondent.

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

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

4. Respondents waive:

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

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

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

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

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

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

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

Upon due consideration of the complaint filed herein and the said "Agreement Containing Consent Order To Cease And Desist," the latter is hereby approved, accepted and ordered filed, the same not to become a part of the record herein, however, unless and until it becomes a part of the decision of the Commission. The hearing examiner finds from the complaint and the said "Agreement Containing Consent Order To Cease And Desist" that the Commission has jurisdiction of the subject-matter of this proceeding and of each of the respondents herein; that the complaint states a legal cause for complaint under the Federal Trade Commission Act against each of the respondents both generally and in each of the

particulars alleged therein; that this proceeding is in the interest of the public; that the following order as proposed in said agreement is appropriate for the just disposition of all of the issues in this proceeding as to all of the parties hereto; and that said order therefore should be, and hereby is, entered as follows:

ORDER

It is ordered, That the respondents Eska Company, a corporation, and its officers, and L. D. Kascel and Janet Kascel, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of power lawn mowers or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, by marking prices on the cartons in which their power mowers or other products, are packaged, by preticketing such products, or in any other manner, that certain amounts are the usual and regular retail prices of their products, when such amounts are in excess of the prices at which their products are usually and regularly sold at retail in the trade area or areas where the representations are made;

2. Representing, by furnishing price lists to their customers setting out suggested retail prices of their power mowers or other products, that certain amounts are the usual and regular retail prices of their products, when such amounts are in excess of the prices at which such products are usually and regularly sold at retail in the trade area or areas where the representations are made;

3. Putting into operation any plan whereby retailers or others may misrepresent the regular and usual retail prices of respondents' products.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner did, on the 13th day of February, 1960, become the decision of the Commission: and, accordingly:

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

Decision

IN THE MATTER OF

TEACHERS COOPERATIVE ASSOCIATION ET AL.

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

Docket 7552. Complaint, July 24, 1959—Decision, Feb. 13, 1960

Consent order requiring a Philadelphia, Pa. furrier to cease violating the Fur Products Labeling Act by advertising in catalogs and cards which represented falsely that prices set forth were "wholesale."

Mr. Charles W. O'Connell for the Commission.
Mr. Maurice Pollon, of Philadelphia, Pa., for respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated July 24, 1959, the respondents are charged with violating the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and the Rules and Regulations made pursuant thereto.

On November 24, 1959, the respondents and their attorney entered into an agreement with counsel in support of the complaint for a consent order.

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

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

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

1. Respondent TCA, Inc., (erroneously named in the complaint as

Teachers Cooperative Association) is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania with its office and principal place of business located at 1418 Walnut Street, in the City of Philadelphia, State of Pennsylvania.

Respondents Royal Bright and Mary Letcher are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent. Their address is the same as that of the said 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 TCA, Inc., a corporation, and its officers and Royal Bright and Mary Letcher, individually and as officers thereof, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, offering for sale, the transportation or distribution, in commerce, of fur products; or in connection with the sale, advertising, offering for sale, transportation, or distribution of fur products which are made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Falsely or deceptively 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 prices of fur products are wholesale prices, when such is not the fact.

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 13th day of February, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents TCA, Inc., a corporation, and Royal Bright and Mary Lechter, individually and as officers thereof, 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

LEO ROBBINS

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

Docket 7556. Complaint, July 24, 1959—Decision, Feb. 13, 1960

Consent order requiring a Philadelphia, Pa., furrier to cease violating the Fur Products Labeling Act by advertising which failed to disclose the names of animals producing certain furs, the country of origin of imported furs, or the fact that some fur products contained artificially colored fur, and represented prices of fur products falsely as "wholesale."

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

Mr. Maurice Pollon, of Philadelphia, Pennsylvania, for the respondent.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated July 24, 1959, the respondent is charged with violating the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and the Rules and Regulations made pursuant thereto.

On December 7, 1959 the respondent and his attorney entered into an agreement with counsel in support of the complaint for a consent order.

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

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

The hearing examiner being of the opinion that the agreement and the proposed order provide an appropriate basis for disposition of

this proceeding as to all of the parties, the agreement is hereby accepted and it is ordered that the agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission. The following jurisdictional findings are made and the following order issued.

1. Respondent Leo Robbins is an individual with his office and principal place of business located at 8th and Walnut Streets, in the City of Philadelphia, State of Pennsylvania.

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

ORDER

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

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

A. Fails to disclose:

(1) The name or names of the animal or animals producing the fur or furs contained in the fur product, and as prescribed under the Rules and Regulations:

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

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

B. Represents directly or by implication that the prices of fur products are wholesale prices, when such is not the fact.

C. Misrepresents in any manner the savings available to purchasers of respondent's fur 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 13th day of

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

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

IN THE MATTER OF

SOUTHERN FRUIT DISTRIBUTORS, INC.

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

Docket 7566. Complaint, Aug. 7, 1959—Decision, Feb. 18, 1960

Consent order requiring canners and processors of citrus fruit, fruit juices, and peaches in Orlando, Fla., under the trade names "Bluebird" and "Cardinal" and under private labels, to cease violating Sec. 2(c) of the Clayton Act by granting "trade discounts" in lieu of brokerage, or making sales at reduced prices reflecting brokerage, on direct sales to certain buyers.

Mr. Ross D. Young for the Commission.

Mr. A. Byrne Litschgi, of Washington, D.C., and *Arnold & Matheny*, of Orlando, Fla., for respondent.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) issued its complaint herein on August 7, 1959, charging respondent Southern Fruit Distributors, Inc., a corporation, with having violated the provisions of §2(c) of the Clayton Act, as amended (U.S.C. Title 15, §13), in certain particulars.

On December 16, 1959, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an "Agreement Containing Consent Order To Cease And Desist," which had been entered into by and between rspondent and the attorneys for both parties, under date of November 19, 1959, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

On due consideration of such agreement, the hearing examiner finds that said agreement, both in form and in content, is in accord with §3.25 of the Commission's Rules of Practice for Adjudicative

Proceedings, and that by said agreement the parties have specifically agreed to the following matters:

1. Respondent Southern Fruit Distributors, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at Pineloch Avenue, in the City of Orlando, State of Florida.

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

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

4. Respondent waives:

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

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

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

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

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

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

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

Upon due consideration of the complaint filed herein and the said "Agreement Containing Consent Order To Cease And Desist," the latter is hereby approved, accepted and ordered filed, the same not to become a part of the record herein, however, unless and until it becomes a part of the decision of the Commission. The hearing examiner finds from the complaint and the said "Agreement Containing Consent Order To Cease And Desist" that the Commission has jurisdiction of the subject-matter of this proceeding and of the person of the respondent herein; that the complaint states a legal cause for complaint under the Clayton Act, as amended, against the

respondent, both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; that the following order, as proposed in said agreement, is appropriate for the just disposition of all of the issues in this proceeding as to all of the parties hereto; and that said order therefore should be, and hereby is, entered as follows:

ORDER

It is ordered, That respondent, Southern Fruit Distributors, Inc., a corporation, its successors, its officers, agents, representatives, or employees, directly or through any corporate or other device, in connection with the sale of its products, including canned citrus products, in commerce, as "commerce" is defined in the amended Clayton Act, do forthwith cease and desist from:

Paying, granting or allowing, directly or indirectly, to any buyer, or to anyone acting for or in behalf of such buyer, or to anyone who is subject to the direct or indirect control of such buyer, anything of value as a commission, brokerage or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any sale of its products to such buyer for the buyer's own account.

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 13th day of February, 1960, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

THE GREAT MINNEAPOLIS SURPLUS STORE, INC., ET AL.

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

Docket 7589. Complaint, Sept. 17, 1959—Decision, Feb. 13, 1960

Consent order requiring Minneapolis retailers of sporting goods, clothing, electrical appliances, and other commodities to cease representing falsely in

newspaper advertising, catalogs, and other advertising media—by such typical statements as "Reg. $14.95 . . . Insulated Underwear . . . 7.77 ea.," "Reg. 19.95 . . . Toastmaster Toaster . . . 12.88 ea.," "Reg. 24.95 . . . Norelco Electric Razor . . . 13.88 ea.," etc.—that their usual prices were higher than the sale prices and that the latter were reduced, and that customers would save money by purchasing at such lower prices.

Mr. Thomas A. Ziebarth for the Commission.

Sachs, Karlins, Grossman & Karlins, by *Mr. Arnold A. Karlins*, of Minneapolis, Minn., for respondents.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

On September 17, 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 sporting goods, clothing, electrical appliances and other commodities at retail. On November 30, 1959, the respondents and counsel supporting the complaint entered into an agreement containing a consent order to cease and desist in accordance with section 3.25(a) of the Rules of Practice and Procedure of the Commission.

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

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

1. Respondent, The Great Minneapolis Surplus Store, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Minnesota with its offices and principal place of business located at 323 Nicollet Avenue, Minneapolis, Minnesota.

Individual respondents James Davis and Louis F. Davis are president, and vice president and treasurer, respectively, and have 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 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 The Great Minneapolis Surplus Store, Inc., a corporation, and its officers, and respondents James Davis and Louis F. Davis, individually and as officers of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of commodities in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that the regular prices of respondents' commodities are any amounts in excess of the prices at which such commodities have been sold by respondents in their recent regular course of business.

2. Representing, directly or by implication, that any savings are realized by purchasers of such commodities at advertised prices unless such prices constitute reductions from the prices at which such commodities have been sold by respondents in their recent regular course of business.

3. Misrepresenting in any manner the amount of savings available to purchasers of any of respondents' commodities, or the amount by which the price of any commodity is reduced from the price at which it is usually and customarily sold by respondents in the normal course of their business.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 13th day of February, 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.

IN THE MATTER OF

JULIAN D. GROLLNEK, ET AL., TRADING AS G. & G. SPORTSWEAR CO., ETC.

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

Docket 7607. Complaint, Oct. 13, 1959—Decision, Feb. 13, 1960

Consent order requiring Los Angeles manufacturers to cease violating the Wool Products Labeling Act by labeling as "60% wool, 40% rayon," women's suits which contained substantially less than 60% wool, by failing to attach labels to the skirts of two-piece suits, and by failing in other respects to comply with labeling requirements.

Mr. Charles Donelan for the Commission.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated October 13, 1959, the respondents are charged with violating the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act and the Rules and Regulations made pursuant thereto.

On December 3, 1959, the respondents entered into an agreement with counsel in support of the complaint for a consent order.

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

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

The hearing examiner being of the opinion that the agreement