

## Syllabus

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

1. Representing directly or by implication:

(a) That employment is being offered when in fact the purpose is to obtain purchasers of such courses of study or instruction.

(b) That persons who complete their airline training course are thereby qualified for employment by major commercial airlines or any airline; or that persons completing any of their other courses of study or instruction are thereby qualified for employment in any job to which the course relates when all the qualifications for such job as established by the prospective employer or others, cannot be acquired through respondents' course.

2. Using the word "Registrar" or "Field Registrar" as descriptive of or in referring to any of respondents' salesmen.

*It is further ordered*, That the second and the fourth to seventh charges, inclusive, of the complaint as amended (subparagraphs 1, 3, 4, 5 and 6 of Paragraph Seven and Paragraph Eight) be, and they hereby are, dismissed.

*It is further ordered*, That the complaint be, and it hereby is, dismissed as to respondent Alice L. Sawyer in her individual capacity but not in her capacity as an officer of respondent corporations.

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

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IN THE MATTER OF

## GEORGE MCKIBBIN &amp; SON ET AL.

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

*Docket 7245. Complaint, Aug. 28, 1958—Decision, Feb. 14, 1961*

Order requiring Brooklyn, N.Y., printers of a one-volume reference work entitled "Webster's Encyclopedic Dictionary of the English Language", a loose-leaf edition of "Webster's Unified Dictionary and Encyclopedia"—itself based on two older works, whose publishers licensed respondents to print and sell it in supermarkets only in the U. S. and Canada, where it was sold a section at a time over a 10-week period—to cease representing falsely—in advertising circulars, window banners, store displays, and on

## Findings

the title pages of the books—that their said reference book sold regularly for \$25 and was a new publication, and that all the information contained therein was complete and up to date.

*Mr. Charles W. O'Connell*, supporting the complaint.

*Booth, Lipton & Lipton* of New York, N. Y., for respondents.

## INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

The complaint herein was issued on August 28, 1958 and charges that respondents have used false and misleading representations and have failed to disclose material facts in connection with the marketing of an encyclopedic dictionary. After the filing of respondents' answer, evidence was received in support of, and in opposition to, the allegations of the complaint. Proposed findings of fact and conclusion were submitted by counsel supporting the complaint but were not submitted by counsel for respondents.

After considering the entire record, it is concluded that the proposed findings of fact and conclusion are sustained by the evidence and they are hereby adopted and are included in the following findings as to the facts and conclusion, and the following order is issued.

## FINDINGS AS TO THE FACTS

1. George McKibbin & Son 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 place of business located at 67 - 34th Street, Brooklyn, New York.

Individual respondents Samuel Schulman and Harold S. Cohen are president and secretary, respectively, and Leslie Schwartz and Martin Sperling are vice presidents of said corporation. Their address is the same as that of the corporate respondent.

2. Respondents are now, and for some time last past have been, engaged in printing and selling a one volume reference work entitled "Webster's Encyclopedic Dictionary of the English Language." Said book is a loose-leaf edition of "Webster's Unified Dictionary and Encyclopedia" published and sold by H. S. Stuttman Co., which firm has licensed respondents to print said loose-leaf edition and to sell it in supermarkets only in the United States and Canada. Pursuant to said agreement respondents sell their said encyclopedic dictionary in pre-punched sections, offering a new section each week for a period of ten weeks. A post binder and thumb index and a so-called guide to self-education are additional units which complete the book. The several units are assembled by the purchaser.

## Findings

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Respondents cause said units of their book to be shipped from their place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain and at all times mentioned herein have maintained a substantial course of trade in their said encyclopedic dictionary in commerce, as "commerce" is defined in the Federal Trade Commission Act.

3. At all times mentioned herein, respondents have been in direct and substantial competition, in commerce, with corporations, firms and individuals engaged in the sale and distribution of dictionaries and encyclopedias.

4. In the course and conduct of their business, and for the purpose of inducing the purchase of their encyclopedic dictionary, respondents have made certain representations and statements with respect to such books in advertising circulars, window banners, store displays and on the title page of said book. Typical of such statements are the following:

Nationally Advertised

\$25.00

De Luxe Edition

And never before has this big \$25.00 volume been available at such a tiny price!

Here in this beautiful, mammoth reference work is the information and knowledge you need on any work or subject . . .

A concise and comprehensive reference work, completely new and up to date.

By means of such statements respondents have been and are representing, directly or by implication that their "Webster's Encyclopedic Dictionary of the English Language" regularly sells at retail for \$25.00; that it is a new publication and that all of the information contained therein is complete and up to date.

5. The foregoing representations were false, misleading and deceptive. In truth and in fact the usual and regular retail price of said reference book was not \$25.00 but substantially less than that amount. Said reference book is not a new publication since it is a loose-leaf edition of "Webster's Unified Dictionary and Encyclopedia" which in turn draws its basic material from two older works, namely, "Webster's New American Dictionary" and "The New American Encyclopedia", and all of the information contained therein was not complete and up to date.

6. Respondents fail to adequately disclose that their said "Webster's Encyclopedic Dictionary of the English Language" is also published as "Webster's Unified Dictionary and Encyclopedia" and that it contains material from "Webster's New American Dictionary"

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and from "The New American Encyclopedia", thereby representing directly or by implication that the said "Webster's Encyclopedic Dictionary of the English Language" is an original publication containing original or new information or material when in truth and in fact said publication is a reprint of another publication of a different name and certain of the information or material contained therein has been taken or reprinted from other publications. A disclosure of this information on the copyright page of the book is not sufficient to afford adequate notice to prospective buyers.

7. The use by respondents of the foregoing false, deceptive and misleading statements and representations and their failure to disclose the aforesaid material facts has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasers and prospective purchasers of said reference book into the erroneous and mistaken belief that such statements and representations are true, and into the purchase of substantial numbers of respondents' reference book by reason of such erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce is and has been unfairly diverted to respondents from their competitors and substantial injury is and has thereby been done to competition in commerce.

## CONCLUSION

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

## ORDER

*It is ordered.* That respondent George McKibbin & Son, a corporation, and its officers, and respondents Samuel Schulman, Harold S. Cohen, Leslie Schwartz and Martin Sperling, 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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, of Webster's Encyclopedic Dictionary of the English Language or any other book or publication, whether sold under the same or any other title, do forthwith cease and desist from:

1. Representing, directly or by implication, that Webster's Encyclopedic Dictionary of the English Language is a new publication, provided that this shall not be construed to forbid respondents from

representing that the manner of presentation of the information in such book is new;

2. Representing, directly or by implication, that any book or publication is new when it is based specifically upon a previously published work or when in form or content it is recognizably based upon a previously published work;

3. Representing, directly or by implication, that the information in Webster's Encyclopedic Dictionary of the English Language is complete or up to date;

4. Representing, directly or by implication, that the information in any encyclopedia or dictionary is up to date unless such information is reasonably current at the time the representation is made;

5. Representing, directly or by implication, that a certain amount is the customary or usual retail price of Webster's Encyclopedic Dictionary of the English Language or is the customary or usual price of any other book or publication, when said amount is in excess of the price at which such book or other books or publications is customarily or usually sold at retail;

6. Offering for sale, selling or distributing books or other publications consisting wholly, or substantially, of reprints of previously published books or other publications, unless the fact that they are reprints or contain reprinted material and the names of the previously published books or other publications are clearly disclosed in all advertising and on the title page in immediate conjunction with the title or in another position on the title page which would readily attract the attention of a prospective purchaser or on the front cover.

#### OPINION OF THE COMMISSION

By ANDERSON, *Commissioner*:

The respondents have appealed from the initial decision filed by the substitute hearing examiner, in which he found that they had engaged in misrepresentations and deceptively failed to reveal material facts in connection with their distribution in commerce of an encyclopedic dictionary.

The book, entitled "Webster's Encyclopedic Dictionary of the English Language" is sold by respondents to supermarkets for resale to patrons of such stores. It is a single volume, loose-leaf work consisting of ten sections or units. The sales program calls for a new section to be offered each week to patrons of the stores. The sections are assembled by the buyer in a binder which is supplied and total cost for the book varies from \$8.00 up to \$9.00. Promotional matter or mats are furnished by the respondents to the stores for assisting

sales of the book. Its distribution by respondents is under license from H. S. Stuttman Company which publishes and sells Webster's Unified Dictionary and Encyclopedia. The latter is marketed in case-bound form and has retailed in its most expensive binding for \$25.00. When preparing their encyclopedic dictionary, respondents used films or plates for the Stuttman publication and also incorporated additional material.

The advertising furnished by respondents for promotions of the book by the supermarkets has included the statements, among others, "Nationally advertised \$25.00 DeLuxe Edition" and "never before has this big \$25.00 volume been available at such a tiny price!" In excepting to the initial decision's conclusions that the advertising has represented and implied that respondents' book has been regularly sold for \$25.00, respondents concede that their own book, that is, Webster's Encyclopedic Dictionary of the English Language, has never retailed for that amount. They argue, however, that their advertising serves only to convey impressions and beliefs that the same or a substantially similar book has retailed at \$25.00 and that such representations are justified inasmuch as Webster's Unified Dictionary and Encyclopedia has been regularly sold in one type of binding at that price by respondents' licensor. This contention, however, ignores the fact that the challenged advertising statements relate to and are closely keyed to illustrations of respondents' book and omit mention of any other publication.

In addition, companion statements in the advertising variously describe the advertised lower price as "Only A Fraction Of Regular Cost!" and as "A Fraction of the Nationally Advertised Price." We think that the advertising for the book reasonably represents and implies a prior retail price of \$25.00 by respondents for their book in regular course of business, and the appeal's exceptions to this aspect of the initial decision are denied accordingly.

In the answer which they filed in this proceeding, respondents admit, among other things, that some of their advertising has included a statement as to their reference work being "completely new." The substitute hearing examiner found that respondents have represented thereby that their book is a new publication and that such representation is false. His conclusions respecting such falsity are based on undisputed evidence that the book is a loose-leaf edition of the Stuttman book which in turn drew its basic material from two older works, namely, Webster's New American Dictionary and The New American Encyclopedia.

Respondents' publication differs from conventional encyclopedias and dictionaries in that it consecutively lists or unifies dictionary

definitions and encyclopedic material into one loose-leaf volume. Respondents in effect argue that because of an encyclopedic dictionary reports prior known facts and established word meanings, the public knows that their work was not composed of new material and that the representation of newness accordingly should be understood by purchasers as merely descriptive of its novel or unified form of presenting the information. This contention by respondents erroneously assumes, however, that a reference publication cannot be regarded as an original or new work unless dealing exclusively with knowledge never before published in any form. Furthermore, words are to be understood in their ordinary sense in the absence of clear showing that they have acquired meanings different from their popular ones. Cf. *International Parts Corp. v F.T.C.*, 133 F. 2d 883 [3 S. & D. 535] (7th Cir. 1943).

That use of the terms "new" or "completely new" to designate a reference publication composed in substantial part of material reprinted from another being contemporaneously marketed under another title has the capacity and tendency to deceive is therefore obvious, and requires no further comment. On the other hand, the order contained in the initial decision appropriately recognizes the respondents' right to make truthful and nondeceptive statements in the future respecting newness in the manner of presenting constituent information. The contentions advanced by the respondents in the Point II section of their appeal brief are accordingly rejected.

Respondents further object to the conclusions in the initial decision that they have falsely represented that all information contained in the book is complete and up-to-date. One of the advertising mats used states that the book is "Complete! Up-to-the-minute!\*\*\*", and other advertising material offers users "\*\*\* the information and knowledge you need on any word or subject." Respondents' contentions that no promises of completeness have inhered in their advertising are accordingly rejected.

The evidence presented by counsel supporting the complaint relevant to the above issues included testimony by four witnesses who were reference librarians or otherwise well qualified as experts in the science of library service. Based on their samplings of the material in respondents' book, three of those witnesses discussed various subjects or items which they regarded as inadequately developed or treated, expressed views that other specified material was out of date or erroneous and also named instances of omissions. Whereas the book has a 1957 copyright and introductory material identifies it as complete in scope and up-to-date in statistics and population figures, it appears from their testimony that the census data used in many instances were those for the year 1940. Also, the terminal dates

for certain of the political and economic histories on foreign countries go back to the late 1940's and early 1950's.

That the foregoing witnesses followed appropriate and realistic procedures when making their evaluations of respondents' book is evident from the record. The testimony of the fourth expert witness was kindred in vein to that of the other three reference librarians. It appears, however, that her opinions were based on an examination of Webster's Unified Dictionary and Encyclopedia, the related work published by respondents' licensor. This book also was received in evidence. Respondents' argument that we must completely disregard this witness' evaluations is unpersuasive, however, inasmuch as it appears that certain of the deficiencies on which she commented were common to both publications. The exceptions argued by respondents under Point III of the appeal brief are, therefore, denied.

The copyright page of respondents' publication includes statements to the effect that the book is also published as Webster's Unified Dictionary and Encyclopedia and contains new entries plus material reprinted from the two other books named. The hearing officer found that such notice, because disclosed only on the copyright page, has not sufficed to inform prospective purchasers of the facts in that respect. The order contained in the initial decision accordingly requires that respondents in the offering for sale of publications which are reprints or which consist in substantial part of reprinted material, disclose such facts in their advertising and also on either the title page or front cover of their books. Respondents argue that the public understands that reference books "must, perforce, be predicated upon prior works" and that it follows that prospective purchasers are alert to seek out information as to whether the constituent material is reprinted information. Although we agree that the material in other reference works may be regarded as authentic information by many members of such publishing fraternity and for that reason suitable for inclusion as reprint material in their works, it is also obvious that the use of authoritative commentaries by contemporary scholars or scientists which have never been previously submitted for encyclopedic publication likewise is conventional procedure, and one in harmony with the public's concept of expanding human knowledge.

It does not follow, therefore, that the purchasing public understands that reference publications are composed in substantial part of material reproduced or reprinted from other reference works. Instead, the offering for sale of a reference work constitutes an implicit representation that the material or information contained therein is original and new as distinguished from that reprinted or reproduced from other reference publications. In the absence of



clear and conspicuous disclosure of the fact that such work consists in substantial part of reprinted material, the offering of such a book clearly has the capacity and tendency to mislead prospective purchasers.

Nor is there any substantial record support for respondents' contentions that placing of the statement respecting reprinted material on the copyright page constitutes adequate disclosure or better serves in that respect than inclusion on the title page as proposed by the order. While it is true that persons habitually using or working with books may recognize the copyright page as a source of information respecting any reprint lineage, the record fully supports conclusions that other members of the public are not so versed. We think that the aforementioned provision of the order to cease and desist, including its requirements for like disclosure of reprinted material in the book's advertising, is appropriate and has sound basis in law and public policy.

The respondents' appeal is denied and the initial decision is adopted as the decision of the Commission.

#### FINAL ORDER

This matter having been heard by the Commission upon the appeal filed by the respondents from the initial decision of the substitute hearing examiner; and the Commission having rendered its decision denying said appeal and adopting the initial decision as the decision of the Commission:

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

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#### IN THE MATTER OF

#### WOLOCH FURS, INC., ET AL.

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

*Docket 7982. Complaint, June 24, 1960—Decision, Feb. 16, 1961*

Consent order requiring New York City furriers to cease violating the Fur Products Labeling Act by listing fictitious prices on consignment invoices which were intended to aid in the sale of fur products, and by failing to maintain adequate records as a basis for their pricing and savings claims.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Woloch Furs, Inc., a corporation, and Raymond Woloch and Nathan Woloch, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Woloch Furs, 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 145 West 30th Street, New York, New York.

Respondent Raymond Woloch is president and secretary of the said corporate respondent, and respondent Nathan Woloch is vice president and treasurer of the said corporate respondent and as such control, formulate and direct the acts, practices and policies of the said corporate respondent. Individual respondents have an office and principal place of business at the same address as that of the corporate respondent.

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

PAR. 3. Certain of said fur products were falsely and deceptively invoiced in that the respondents set out on invoices certain prices of fur products which were in fact fictitious, in violation of Section 5(b)(2) of the Fur Products Labeling Act.

PAR. 4. Certain of said fur products were falsely and deceptively advertised in that the respondents on consignment invoices made representations and gave notices concerning said fur products, which representations and notices were not in accordance with the

provisions of Section 5(a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder; and which representations and notices were intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of said fur products.

By means of said representations and notices contained in the consignment invoices to customers, and others of similar import and meaning not specifically referred to herein, respondents falsely and deceptively advertised their fur products in that respondents thereby made representations as to the prices of fur products which prices were in fact fictitious, in violation of Section 5(a)(5) of the Fur Products Labeling Act.

PAR. 5. Respondents in making pricing and savings claims and representations, failed to maintain full and adequate records disclosing the facts upon which such claims and representations were purportedly based, in violation of Rule 44(e) of the Rules and Regulations under the Fur Products Labeling Act.

PAR. 6. The aforesaid acts and practices by respondents, as herein alleged, were and are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

*Mr. Charles S. Cox* for the Commission.

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

INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER

The complaint in this matter charges the respondents with violation of the Federal Trade Commission Act and the Fur Products Labeling Act in connection with the introduction, manufacture for introduction, sale, advertising, offering for sale, or transportation in commerce of fur products, or in connection with the sale, manufacture for sale, advertising, offering for sale, or transportation of fur products which have been made in whole or in part of fur which has been shipped or received in commerce.

An agreement has now been entered into by respondents, their attorney and counsel supporting the complaint which provides, among other things, that respondents admit all the jurisdictional facts alleged in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the making of findings of fact and conclusions of law in the decision disposing

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

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

1. Respondent Woloch Furs, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 145 West 30th Street, in the City of New York, State of New York.

Individual respondents Raymond Woloch and Nathan Woloch are officers of said corporation and their address is the same as that of the corporate respondent.

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

## ORDER

*It is ordered,* That Woloch Furs, Inc., a corporation, and its officers, and Raymond Woloch and Nathan Woloch, 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, 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:

A. Falsely or deceptively invoicing fur products by representing, directly or by implication, on invoices 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 products in the recent regular course of business.

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

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

D. Making pricing claims or representations 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 16th Day of February, 1961, become the decision of the Commission; and, accordingly:

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

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IN THE MATTER OF

AMERICAN STANDARD TELEVISION TUBE CORP. ET AL.

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

*Docket 8107. Complaint, Aug. 29, 1960—Decision, Feb. 16, 1961*

Consent order requiring a manufacturer of rebuilt television picture tubes containing used parts and its exclusive sales agent, to cease representing falsely that certain of their television tubes were new in their entirety, by such statements on labels and otherwise as "This is a NEW DuMont

