ration, and Moses Gottlieb, individually and as a former officer of the corporate respondent, shall within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

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## In The Matter Of

## CHAMBERS-SHERWIN, INC., ET AL.

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

*Docket 8269. Complaint, Dec. 30, 1960—Decision, Apr. 13, 1961*

**Consent order requiring New York City furriers to cease violating the Fur Products Labeling Act by failing to comply with invoicing and labeling requirements.**

### 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 Chambers-Sherwin, Inc., a corporation, and Albert M. Chambers and Monroe Sherwin, 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. Chambers-Sherwin, 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 350 Seventh Avenue, New York, New York.

Albert M. Chambers and Monroe Sherwin are officers of the corporate respondent. They control, formulate and direct the acts and practices of the corporate respondent. Their address is the same 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, offering for sale, 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 misbranded in that they were not labeled as required under the provisions of Section 4 (2) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 4. Certain of said fur products were misbranded in violation of the Fur Products Labeling Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was mingled with non-required information, in violation of Rule 29(a) of said Rules and Regulations.

(b) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not completely set out on one side of labels, in violation of Rule 29(a) of said Rules and Regulations.

PAR. 5. Certain of said fur products were falsely and deceptively invoiced by respondents in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act, and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 6. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in that information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in abbreviated form in violation of Rule 4 of said Rules and Regulations.

PAR. 7. The aforesaid acts and practices of respondents, as herein alleged, 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 under the Federal Trade Commission Act.

*Mr. Arthur Wolter, Jr.*, supporting the complaint.
Respondents, *pro se.*

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

On December 30, 1960, the Federal Trade Commission issued a complaint charging the above-named respondents with misbranding

and falsely and deceptively invoicing 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, Acting Associate 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, hereby accepts such agreement, makes the following jurisdictional findings, and issues the following order:

### JURISDICTIONAL FINDINGS

1. Respondent Chambers-Sherwin, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Individual respondents Albert M. Chambers and Monroe Sherwin are officers of said corporate respondent. Said individual repondents formulate, direct and control the acts, policies and practices of the corporate respondent. All respondents have their office and principal place of business at 350 Seventh Avenue, New York, New York.

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

ORDER

*It is ordered*, That respondents Chambers-Sherwin, Inc., a corporation, and its officers, and Albert M. Chambers and Monroe Sherwin, 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, offering for sale, transportation or distribution in commerce of fur products; or in connection with the sale, manufacture for sale, advertising, offering for sale, transportation or distribution of fur products which have been made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur products" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

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

2. 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 mingled with non-required information.

3. Failing to set forth on labels affixed to fur products all the information required to be disclosed by Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder on one side of such labels.

B. Falsely or deceptively invoicing fur products by:

1. Failing to furnish invoices to purchaseres of fur products 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. Setting forth information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form.

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 April 1961, become the decision of the Commission; and, accordingly:

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

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

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IN THE MATTER OF

## BILLIE LEBOW, INC., ET AL.

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

*Docket 8252. Complaint, Dec. 29, 1960—Decision, Apr. 18, 1961*

Consent order requiring New York City furriers to cease violating the Fur Products Labeling Act by pricing fur products fictitiously on invoices, by failing in other respects to observe invoicing and advertising requirements, and by failing to keep adequate records as a basis for pricing and savings claims made in advertising.

### 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 Billie Lebow, Inc., a corporation, Furs by Billie, Ltd., a corporation, and Billie Lebow, individually and as an officer of said corporations, 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. Billie Lebow, Inc. and Furs by Billie, Ltd., 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 places of business located at 333 Seventh Avenue, New York, New York.

Billie Lebow is president of both the said corporate respondents and controls, formulates and directs the acts, practices and policies of the said corporate respondents. Her office and principal place of business is the same as that of the said corporate respondents.

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 sale, advertising, and offering for sale, in commerce, and in the transportation

and distribution, in commerce, of fur products; and have sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce, as the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were falsely and deceptively invoiced by respondents in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act, and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 4. Certain of said fur products were falsely and deceptively invoiced in that the respondents, on invoices, made representations as to the prices of fur products, which prices were in fact fictitious, in violation of Section 5(b)(2) of the Fur Products Labeling Act.

PAR. 5. 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.

PAR. 6. Respondents in making pricing and savings claims and representations in advertisements failed to maintain full and adequate records disclosing the facts upon which such claims and representations were based, in violation of Rule 44(e) of the Rules and Regulations under the Fur Products Labeling Act.

PAR. 7. The aforesaid acts and practices of respondents, as herein alleged, 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 under the Federal Trade Commission Act.

*Mr. Charles W. O'Connell* and *Mr. David J. McKean* for the Commission.

Respondents, *pro se.*

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

On December 29, 1960, the Federal Trade Commission issued a complaint charging the above-named respondents with falsely and deceptively invoicing and advertising certain of their said fur prod-

ucts 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, Associate 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, hereby accepts such agreement, makes the following jurisdictional findings, and issues the following order:

### JURISDICTIONAL FINDINGS

1. Respondent Billie Lebow, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 333 Seventh Avenue, in the City of New York, State of New York.

2. Respondent Furs by Billie, Ltd., is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 333 Seventh Avenue, in the City of New York, State of New York.

3. Individual respondent Billie Lebow is president of both the said corporate respondents and controls, formulates and directs the acts, practices and policies of the said corporate respondents. Her office and principal place of business is the same as that of the said corporate respondents.

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

ORDER

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

1. Falsely or deceptively invoicing fur products by:

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

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

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

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

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

3. Making pricing claims or 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 18th day of April 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

## BOND APPLIANCE CENTERS, INC., ET AL.

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

*Docket 7315. Complaint, Nov. 25, 1958—Decision, Apr. 22, 1961*

Order dismissing, without prejudice, complaint charging a Boston, Mass., sewing machine retailer no longer in business, with bait advertising, conducting deceptive radio quiz contests, fictitious pricing, and furnishing misleading five-year guarantees.

*Mr. Garland S. Ferguson* for the Commission.
*Mr. George V. Flavan*, of Quincy, Mass., for respondents.

Initial Decision by Abner E. Lipscomb, Hearing Examiner

The complaint herein was issued on November 25, 1958, charging Respondents with violation of the Federal Trade Commission Act by the dissemination of false and deceptive statements concerning their sewing machines and the prices thereof.

On February 2, 1959, counsel for the Respondents filed a motion requesting an extension of time within which to file an answer herein, stating that on December 29, 1958, a Receiver was appointed for the corporate Respondent, Bond Appliance Centers, Inc., in Suffolk County Equity Court, Massachusetts, in the matter of De Silva Vacuum Cleaner Co. vs. Bond Appliance Centers, Inc., Docket 74980. He further stated that under Massachusetts law, upon the appointment of a State Court Receiver, the corporation involved in such receivership and its officers, were stopped from conducting the business of the corporation, and from defending or prosecuting any suit or action on behalf of the corporation. No answer on behalf of Respondents has ever been filed.

On February 16, 1961, counsel supporting the complaint submitted a motion requesting that the complaint herein be dismissed without prejudice. He states that a recent investigation of the Respondents has been conducted by the Bureau of Investigation to determine their present status, and that the final report of this investigation, dated February 7, 1961, shows that the corporate Respondent has been in receivership, as stated by counsel for the Respondents, since December 29, 1958, and that the liabilities of the corporate Respondent far exceed its assets. The report further shows that the individual Respondents have not been engaged in the business of selling sewing machines, or in a similar business, since 1958, and that they have stated that they have no intention of resuming such business. Counsel supporting the complaint states that under the circumstances, he believes that the further prosecution of this case would not be in the public interest.

The Hearing Examiner, after having considered the entire record herein, concurs in the conclusion reached by counsel supporting the complaint. Accordingly,

*It is ordered*, That the complaint herein be, and the same hereby is, dismissed without prejudice to the right of the Commission to institute further proceedings against the Respondents herein, should future circumstances so warrant.

DECISION OF THE COMMISSION

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 22nd day of April 1961, become the decision of the Commission.

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## In The Matter Of

## BORG-WARNER CORPORATION ET AL.

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

*Docket 7667. Complaint, Dec. 1, 1959—Decision, Apr. 27, 1961*

Consent order requiring a Chicago manufacturer and its corporate sales subsidiary—maintaining warehouse stocks in many States and with overall sales in 1958 approximating $533,000,000—to cease discriminating in price between different purchasers of their automotive replacement parts in violation of Sec. 2(a) of the Clayton Act, by giving jobbers belonging to buyer groups higher discounts on purchases than their non-member competitors.

COMPLAINT

The Federal Trade Commission having reason to believe that the parties respondent named in the caption hereof and hereinafter more particularly designated and described have violated and are now violating the provisions of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936, (U.S.C. Title 15, Section 13) hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, Borg-Warner Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with principal office and place of business located at 200 South Michigan Avenue, Chicago, Illinois. Borg-Warner Corporation's numerous divisions and corporate subsidiaries are variously located and engaged in the manufacture, sale and distribution of many diversified products, including repair or replacement parts for installation and use in automotive vehicles. Borg-Warner Corporation's overall product sales for 1958 totalled approximately $533,00,000.

Respondent, Borg-Warner Service Parts Company, a wholly-owned and controlled subsidiary of respondent Borg-Warner Corporation, is a corporation organized, existing and doing business under the laws of the State of Delaware, with principal office and place of business located at 6 North Michigan Avenue, Chicago, Illinois. Borg-Warner Service Parts Company is engaged in the sale and distribution of the automotive replacement parts manufactured by its parent Borg-Warner Corporation. Borg-Warner Service Parts Company maintains warehouse stocks for such purpose in the cities of Atlanta, Ga., Boston, Mass., Charlotte, N. C., Chicago, Ill., Cleveland, Ohio, Dallas, Texas, Detroit, Mich., Houston, Texas, Kansas City, Mo., Los Angeles, Calif., Minneapolis Minn., New York, N. Y., Oakland, Calif., Philadelphia, Pa., Pittsburgh Pa. Portland, Oregon, Richmond, Va., Seattle, Wash. and St. Louis, Mo.

Respondents, Borg-Warner Corporation and Borg-Warner Service Parts Company, in the course and conduct of their business as aforesaid have caused and now cause the said parts to be shipped and transported from the State or States of location of their various manufacturing plants, warehouses and places of business, to the purchasers thereof located in States other than the State or States wherein said shipment or transportation originated. Said parts have been and are so sold to different purchasers for use or resale within the United States and the District of Columbia, and respondents in the sale of said parts have at all times relevant herein been and

now are engaged in commerce, as "commerce" is defined in the Clayton Act.

PAR. 2. The aforedescribed sales of said automotive replacement parts annually total in the substantial millions of dollars and respondents, in the course and conduct of their business as aforesaid, have been and now are discriminating in price between different purchasers of their automotive replacement parts of like grade and quality, by selling said parts at higher and less favorable prices to some purchasers than the same are sold to other purchasers, many of whom have been and now are in competition with the purchasers paying the higher prices.

For example, respondents classify said different purchasers of their automotive replacement parts and extend and set terms and conditions of sale for each such classification, according to the following agreements or arrangements:

(1) Jobber Franchise:

A purchaser classified as a "jobber" is normally engaged in reselling said replacement parts to automotive vehicle fleets, and to garages, gasoline service stations, and others in the automotive repair trade serving the general public. Jobbers purchase at a net price set out in respondents' "Jobber's Net Price List". Jobbers are given a 15% discount on purchases of 100 or more in quantity of cross and bearing assemblies made at one time, but receive no discounts on the purchases of respondents' other parts. Respondents sell to approximately 2,500 such "jobber" purchasers throughout the United States.

(2) Warehouse Distributor Franchise:

A purchaser classified as a "warehouse distributor" normally resells only to jobbers. A warehouse distributor purchases from respondents' "Jobber's Net Price List" less 15%, less 2% freight allowance, in the case of all parts other than universal joints and cross and bearing assemblies. On universal joints and cross and bearing assemblies the warehouse distributor receives a 20%, plus 10% discount, which equals a 28% discount from the jobber's net price. Respondents sell to 43 such "warehouse distributors".

(3) Redistributor Franchise:

A purchaser classified as a so-called "redistributor" is a jobber who resells both as a jobber and on occasion as a warehouse distributor. Each month such a purchaser certifies as to whether the sale was made as a "jobber" or "warehouse distributor" and accordingly is allowed thereon either the "jobber's net price", or a "jobber's net price" less the aforesaid applicable warehouse distributor discount. To obtain the warehouse distributor discounts the sales must be made by the "redistributor" to other and bona fide jobbers approved

in advance by respondents' authorized sales representatives. Respondents sell to 121 such "redistributors".

(4) Purchases made by individual jobbers engaged in so-called "group buying":

In 1957 respondents commenced selling universal joints and components thereof to the Southern California Jobbers, Inc. organization at the net prices set out in respondents' "Jobber's Net Price List", with a 15% discount on all purchases of said parts without regard to the quantity purchased. Southern California Jobbers, Inc., a California corporation with principal office and place of business in Los Angeles, California, has been and is now maintained, managed, controlled and operated by and for the particular individual jobber members associated together at any given time for the effectuation of the purchasing policies and practices described in PARAGRAPH THREE following of this complaint. On March 26, 1959, respondents classified said Southern California Jobbers, Inc., as a "warehouse distributor" and commenced giving it a 28% discount from jobber's net price on purchases of universal joints and the components thereof. Shortly thereafter, in April 1959, respondents attempted, and without success, to induce the Southern California Jobbers, Inc. organization to serve as such a "warehouse distributor" for their entire line of other products subject to only the 15% discount and 2% freight allowance. Respondents' sales to the Southern California Jobbers, Inc. organization are substantial, as is indicated by a gross billing therefor of $19,742.65 for April 1959, and of $10,755.19 for May 1959.

PAR. 3. In practice and effect, Southern California Jobbers, Inc., has been and is now serving as the medium or instrumentality by, through or in conjunction with which, its numerous jobber members exert the influence of their combined bargaining power on manufacturers and sellers of automotive replacement parts. When, and if, such recognition is granted by any particular seller, the subsequent purchase transactions between said seller and the individual jobber members have been and are billed to and paid for through the aforesaid organizational device of Southern California Jobbers, Inc. Said corporation thus purports to be the commodity purchaser, when in truth and in fact, it has been and is now serving only as agent for the several individual purchasers aforedescribed, and is a mere bookkeeping device for facilitating the inducement and receipt by the said jobber purchasers from the said seller of discriminatory purchase prices.

Southern California Jobbers, Inc., has not and does not function as a purchaser for its own account for the use or resale of the commodities concerned. Respondents' recognition of this device of so-

called "group buying" and consequent classification of said group as a "warehouse distributor", results in the granting of higher and more favorable purchase price discounts to these group-buying jobbers as opposed to respondents' non-group-buying jobber customers who obtain only the purchase price discounts set forth and allowed in respondents' jobber's franchise schedule. Many of these group-buying jobbers are both competitively engaged with respondents' non-group-buying jobber customers and are also potential customers of respondents' warehouse distributor purchasers. Manufacturers and other sellers competitive with respondents, and not in such manner allowing actual or potential jobber purchasers the use of this bookkeeping device of so-called group buying, have lost and may further lose substantial patronage in both customer number and dollar amount to respondents in the offering for sale and the sale of their competitive products, as a result of respondents' continued recognition of this preferential buying practice.

PAR. 4. The effect of respondents' aforesaid discriminations in price between the said different purchasers of its said products of like grade and quality sold in manner and method and for purposes as aforestated, may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondents and the aforesaid favored purchasers are engaged, or to injure, destroy or prevent competition with said respondents, said favored purchasers, or with customers of either of them.

PAR. 5. The aforesaid acts and practices of respondents constitute violations of the provisions of subsection (a) of Section 2 of the Clayton Act (U.S.C. Title 15, Section 13), as amended by the Robinson-Patman Act, approved June 19, 1936.

*Mr. Eldon P. Schrup* for the Commission.

*Mr. Charles W. Houchins*, *Mr. Robert W. Murphy* and *Mr. Russell J. Parsons*, *of* Chicago, Ill., for respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated December 1, 1960, the respondents are charged with violating the provisions of subsection (a) of section 2 of the Clayton Act, as amended.

On February 1, 1961, the respondents and their attorneys 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, does not constitute an admission by the respondents that they have violated the law as alleged in the complaint, and that said complaint may be used in construing the terms of the order.

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 complaint insofar as it concerns the allegation of "primary line injury", namely, to substantially lessen competition or tend to create a monopoly in the lines of commerce in which respondents are engaged, or to injure, destroy or prevent competition with said respondents, may be dismissed on the grounds that the evidence at hand in the light of subsequent developments is insufficient to substantiate such allegations.

The agreement does not preclude a further investigation and the issuance of a complaint against Borg-Warner Corporation's sales of replacement parts to original equipment manufacturers, if such be indicated.

The agreement also provides that the term "purchaser" as used in the order to cease and desist herein shall include any purchaser buying directly or indirectly from respondents, or a subsidiary, division, or affiliate of respondents by means of group buying or any related device but shall not be construed in the instant proceeding to include original equipment manufacturers, their divisions, subsidiaries, or affiliates purchasing automotive parts from respondents for replacement use or sale.

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 Borg-Warner Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with principal office and place of business located at 200 South Michigan Avenue, Chicago, Illinois. Respondent is engaged in the manufacture and sale of many diversified products, including the manufacture and sale to automotive vehicle manufac-

turers of parts for both original installation and replacement use in automotive vehicles.

Respondent Borg-Warner Service Parts Company, a wholly-owned and controlled subsidiary of respondent Borg-Warner Corporation, is a corporation organized, existing and doing business under the laws of the State of Delaware, with principal office and place of business located at 6 North Michigan Avenue, Chicago, Illinois. Borg-Warner Service Parts Company is engaged in the sale and distribution, principally to automotive parts wholesalers, of automotive replacement parts manufactured by various and numerous manufacturers, including Borg-Warner Corporation.

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

ORDER

*It is ordered*, That the respondents Borg-Warner Corporation, a corporation, and Borg-Warner Service Parts Company, a corporation, and said respondents' officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the sale to purchasers engaged in jobber distribution or redistribution to jobbers of automotive replacement parts and such related items as are shown on pricing sheets of Borg-Warner Service Parts Company, in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from discriminating in the price of such products of like grade and quality:

1. By selling to any one purchaser at net prices higher than the net prices charged to any other purchaser who, in fact, competes with the purchaser paying the higher price in the resale and distribution of respondents' said products.

*It is further ordered*, That the allegation in the complaint to substantially lessen competition or tend to create a monopoly in the lines of commerce in which respondents are engaged, or to injure, destroy or prevent competition with said respondents, be dismissed.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 27th day of April 1961, 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

# RODNEY, INC., ET AL.

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

*Docket 8046. Complaint, July 18, 1960—Decision, Apr. 27, 1961*

Order dismissing complaint charging an insolvent Chicago sewing machine distributor with advertising purported "contests" to obtain leads to prospective customers, and awarding so-called "credit certificates" in connection therewith to apply on the purchase price of sewing machines.

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

*Mr. Seymour Tabin*, of Chicago, Ill., for respondents Irwin Ratner and Joseph Wandel.

INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER

Respondents in the above-entitled proceeding are charged in a complaint issued by the Federal Trade Commission on July 18, 1960, with violation of the Federal Trade Commission Act in connection with the promotion, sale, and distribution of sewing machines. Appearances were filed on behalf of the individual respondents, as well as answers in which the corporate respondent was alleged to be in bankruptcy.

Counsel supporting the complaint now moves that the complaint be dismissed without prejudice. He confirms that the corporate respondent had entered into involuntary bankruptcy six months prior to the issuance of the complaint, that said corporation is completely insolvent, and that another corporation has succeeded to certain of the assets of the corporate respondent but not to the right to do business as Rodney, Inc. Counsel supporting the complaint states further:

> . . . the individual respondents, from the best information available to the movant, are insolvent, their present addresses are not ascertainable, and that one of said individual respondents is employed as a collector of accounts for some corporation and the other is selling water coolers on a commission basis for another company, and said respondents will not enter into the type of business conducted by them through the corporate respondent at any future date.

Under the circumstances, there would appear to be no public interest in a continuation of these proceedings either against the corporate respondent which has gone out of business, or against the individual respondents whose present addresses are not ascertainable and who appear to have no likelihood of re-entering this type of employment.

ORDER

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

DECISION OF THE COMMISSION

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner on the 27th day of April 1961, become the decision of the Commission.

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IN THE MATTER OF

## DUNSHAW, INC., ET AL.

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

*Docket 8158. Complaint, Oct. 28, 1960—Decision, Apr. 27, 1961*

Consent order requiring New York City retailers of contact lenses to cease misrepresenting in advertising the effectiveness, comfort, and safety of the contact lenses as in the order below set forth.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that Dunshaw, Inc., a corporation, and A. R. Dunlavy and F. A. Dunlavy, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said 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 Dunshaw, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its main office and principal place of business located at 130 West 42nd Street, New York, New York.

Respondents A. R. Dunlavy and F. A. Dunlavy are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the sale of contact lenses at retail to the consuming public.

Contact lenses are devices designed to correct the vision of the wearer and are "devices," as the term "device" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their said business respondents have disseminated, and caused the dissemination of, certain advertisements concerning their contact lenses by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, newspapers, circulars and other advertising matter, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said contact lenses; and have disseminated and caused the dissemination of, advertisements concerning said preparation by various means, including but not limited to the aforesaid media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Among and typical, but not all inclusive, of the statements contained in said advertisements disseminated as hereinabove set forth are the following:

**Today if the patient has motivation and an earnest desire to wear them, in the hands of a good fitter, there should be no reason for not being able to do so.**

**See in comfort and safety all day long.**

**It is safer to wear contact lenses than regular spectacle lenses because the plastic lens acts as a protective covering of the eye.**

**Yes. Contacts are invisible—yet they actually give you better eyesight than ordinary spectacles—better side vision, no steaming, no cleaning, no breaking.**

PAR. 5. Through the use of the statements in the aforesaid advertisements, and others of similar import not specifically set out herein, respondents represented, directly or by implication, that:

1. All persons in need of visual correction can successfully wear respondents' contact lenses.
2. There is no discomfort in wearing respondents' lenses.
3. All persons can wear respondents' lenses all day without discomfort.
4. Said lenses act as a protective covering for the eye.
5. Said lenses will correct all defects in vision.
6. Said lenses are unbreakable.

PAR. 6. The said advertisements were misleading in material respects and constituted "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact:

1. A significant number of persons in need of visual correction cannot successfully wear respondents' contact lenses.

2. Practically all persons will experience some discomfort when first wearing respondents' contact lenses. In a significant number of cases discomfort will be prolonged.

3. Many persons cannot wear respondents' contact lenses all day without discomfort and no person can wear said lenses all day with comfort until such person has become fully adjusted thereto.

4. Said lenses afford protection only to the small portion of the eye that is covered by them.

5. Said lenses will not correct all defects in vision.

6. Said lenses are not unbreakable.

PAR. 7. The dissemination by the respondents of the false advertisements, as aforesaid, constituted unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

*Mr. Frederick McManus* for the Commission.
Respondents, *pro se.*

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated October 28, 1960, the respondents are charged with violating the provisions of the Federal Trade Commission Act.

On February 10, 1961, 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, does not constitute an admission by the respondents that they have violated the law as alleged in the complaint, and that said complaint may be used in construing the terms of the order.

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 Dunshaw, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its main office and principal place of business located at 130 West 42nd Street, in the City of New York, State of New York.

Respondents A. R. Dunlavy and F. A. Dunlavy are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent. Their address is the same as that of the corporate respondent.

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

ORDER

*It is ordered*, That Dunshaw, Inc., a corporation, and its officers, and A. R. Dunlavy and F. A. Dunlavy, 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 contact lenses, do forthwith cease and desist from, directly or indirectly:

1. Disseminating, or causing to be disseminated, any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication that:

a. All persons in need of visual correction can successfully wear respondents' contact lenses.

b. There is no discomfort in wearing respondents' lenses.

c. Respondents' contact lenses can be worn all day without discomfort unless it is clearly revealed that this is possible only after the wearer has become fully adjusted thereto.

d. Respondents' lenses protect the eye unless limited to the portion of the eye that is covered thereby.

e. Respondents' lenses will correct all defects in vision.

f. Said lenses are unbreakable.

2. Disseminating, or causing to be disseminated, any advertisement by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of said products in commerce, as "commerce" is defined in the Federal Trade Commis-

sion Act, which advertisement contains any representation prohibited in paragraph 1 above, or which fails to reveal the facts required by paragraph 1 (c) thereof.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 27th day of April 1961, become the decision of the Commission; and, accordingly:

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

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IN THE MATTER OF

## DAVID LIPPEL ET AL. TRADING AS DORCHESTER WOOLEN COMPANY

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

*Docket 8184. Complaint, Nov. 23, 1960—Decision, Apr. 27, 1961*

**Consent order requiring New York City importers to cease violating the Wool Products Labeling Act by labeling as "wool reprocessed" and as "30% reprocessed wool, 70% rayon (Fiocco)", woolen fabrics from Italy which contained substantially less woolen fibers than thus represented, and by failing in other respects to comply with labeling requirements.**

### COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that David Lippel, David Gleicher and Arthur Herman, individually and as co-partners trading as Dorchester Woolen Company, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool 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. Respondents David Lippel, David Gleicher and Arthur Herman are co-partners, trading as Dorchester Woolen Company. Their office and principal place of business is located at 218 West 37th Street, New York, New York.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, and more especially since March 1959, respondents have imported from Italy and introduced into commerce, sold, transported, distributed, delivered for shipment, and offered for sale in commerce, as "commerce" is defined in said Act, wool products, as "wool products" are defined therein.

PAR. 3. Certain of said wool products were misbranded when imported by respondents and afterwards misbranded by respondents within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder in that they were falsely and deceptively labeled or tagged with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded woolen products were woolen fabrics tagged or labeled as "wool reprocessed" and as "30% reprocessed wool, 70% rayon (Fiocco)" whereas, in truth and in fact, said woolen fabrics contained substantially less woolen fibers than represented, in each instance.

PAR. 4. Certain of said wool products were further misbranded in that they were not stamped, tagged or labeled as required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

PAR. 5. The respondents, in the course and conduct of their business, as aforesaid, were and are in substantial competition in commerce, with corporations, firms and individuals likewise engaged in the sale of wool products of the same general nature as those sold by respondents.

PAR. 6. The acts and practices of the respondents, as set forth above, were and are in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

*Charles W. O'Connell, Esq.*, and *Michael P. Hughes, Esq.*, for the Commission.

*Schaeffer & Goldstein*, by *Maxwell H. Goldstein, Esq.*, of New York, N.Y., for respondents.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on November 23, 1960, charging them

with having violated the Wool Products Labeling Act, the rules and regulations issued thereunder, and the Federal Trade Commission Act, by misbranding and falsely representing their wool products. Respondents appeared by counsel and entered into an agreement, dated February 16, 1961, containing a consent order to cease and desist, disposing of all the issues in this proceeding without further hearings, which agreement has been duly approved by the Bureau of Litigation. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with §3.25 of the Rules of Practice of the Commission.

Respondents, pursuant to the aforesaid agreement, have admitted all of the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been made duly in accordance with such allegations. Said agreement further provides that respondents waive all further procedural steps before the hearing examiner or the Commission, including the making of findings of fact or conclusions of law and the right to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has also been agreed that the record herein shall consist solely of the complaint and said 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 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, that said order to cease and desist shall have the same force and effect as if entered after a full hearing and may be altered, modified, or set aside in the manner provided for other orders, and that the complaint may be used in construing the terms of the order.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing the consent order, and it appearing that the order and agreement cover all of the allegations of the complaint and provide for appropriate disposition of this proceeding, the agreement is hereby accepted and ordered filed upon this decision and said agreement becoming part of the Commission's decision pursuant to §§3.21 and 3.25 of the Rules of Practice, and the hearing examiner accordingly makes the following findings, for jurisdictional purposes, and order:

1. Respondents David Lippel, David Gleicher and Arthur Herman are individuals and co-partners trading as Dorchester Woolen

Company with their principal place of business located at 218 West 37th Street, 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 Wool Products Labeling Act and the Federal Trade Commission Act, and this proceeding is in the interest of the public.

*It is ordered*, That respondents David Lippel, David Gleicher and Arthur Herman, individually and as co-partners trading as Dorchester Woolen Company, or under any other name or names, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction 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 fabrics or other "wool products", as such products are defined in and subject to said Wool Products Labeling Act, do forthwith cease and desist from misbranding such products by:

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

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 27th day of April 1961, become the decision of the Commission; and, accordingly:

*It is ordered*, That respondents David Lippel, David Gleicher and Arthur Herman, individually and as co-partners trading as Dorchester Woolen Company, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

# A. NEUSTADTER & SON, INC., ET AL.

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

*Docket 8237. Complaint, Dec. 28, 1960—Decision, Apr. 27, 1961*

Consent order requiring New York City furriers to cease violating the Fur Products Labeling Act by setting out on invoices of fur products certain prices which were fictitious, and by failing in other respects to comply with labeling and invoicing requirements.

## 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 A. Neustadter & Son, Inc., a corporation, and Adolph Neustadter and Edward Neustadter, 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. A. Neustadter & Son, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 333 Seventh Avenue, New York, New York.

Adolph Neustadter and Edward Neustadter are officers of the corporate respondent. They 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.

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, 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 misbranded in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 4. Certain of said fur products were misbranded in violation of the Fur Products Labeling Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not completely set out on one side of labels, in violation of Rule 29(a) of said Rules and Regulations.

(b) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not set forth separately on labels with respect to each section of fur products composed of two or more sections containing different animal furs, in violation of Rule 36 of said Rules and Regulations.

PAR. 5. Certain of said fur products were falsely and deceptively invoiced by respondents in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act, and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 6. 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. 7. The aforesaid acts and practices of respondents, as herein alleged, 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 under the Federal Trade Commission Act.

*Charles W. O'Connell, Esq.*, for the Commission.
*Charles Goldberg, Esq.*, of New York, N. Y., for respondents.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on December 28, 1960, charging them with having violated the Fur Products Labeling Act, the rules and regulations issued thereunder, and the Federal Trade Commission Act, by misbranding and falsely invoicing their fur products. Respondents appeared by counsel and entered into an agreement, dated February 18, 1961, containing a consent order to cease and desist, dispos-

ing of all the issues in this proceeding without further hearings, which agreement has been duly approved by the Bureau of Litigation. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with §3.25 of the Rules of Practice of the Commission.

Respondents, pursuant to the aforesaid agreement, have admitted all of the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been made duly in accordance with such allegations. Said agreement further provides that respondents waive all further procedural steps before the hearing examiner or the Commission, including the making of findings of fact or conclusions of law and the right to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has also been agreed that the record herein shall consist solely of the complaint and said 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 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, that said order to cease and desist shall have the same force and effect as if entered after a full hearing and may be altered, modified, or set aside in the manner provided for other orders, and that the complaint may be used in construing the terms of the order.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing the consent order, and it appearing that the order and agreement cover all of the allegations of the complaint and provide for appropriate disposition of this proceeding, the agreement is hereby accepted and ordered filed upon this decision and said agreement becoming part of the Commission's decision pursuant to §§3.21 and 3.25 of the Rules of Practice, and the hearing examiner accordingly makes the following findings, for jurisdictional purposes, and order:

1. Respondent A. Neustadter & Son, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 333 Seventh Avenue in the City of New York, State of New York. Adolph Neustadter and Edward Neustadter are officers of the corporate respondent. They control, formulate and direct the acts, practices and policies of the corporate respondent. Their address is the same as that of the corporate respondent.

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

*It is ordered*, That A. Neustadter & Son, Inc., a corporation, and its officers, and Adolph Neustadter and Edward Neustadter, 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. Misbranding fur products by:

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

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

3. Failing to set forth separately on labels attached to fur products composed of two or more sections containing different animal furs the information required to be disclosed under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder with respect to the fur comprising each section.

B. Falsely or deceptively invoicing fur products by:

1. Failing to furnish to purchasers of fur products invoices 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. 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.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 27th day of April 1961, become the decision of the Commission; and, accordingly:

*It is ordered*, That A. Neustadter & Son, Inc., a corporation, and Adolph Neustadter and Edward Neustadter, 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.

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IN THE MATTER OF

## MORRIS BLUMENFELD ET AL. TRADING AS CITY FUR COMPANY

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

*Docket 8271. Complaint, Dec. 30, 1960—Decision, Apr. 27, 1961*

Consent order requiring New York City furriers to cease violating the Fur Products Labeling Act by failing to comply with labeling and invoicing requirements.

### 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 Morris Blumenfeld and William Blumenfeld, individually and as copartners, trading as City Fur Company, 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. Respondents Morris Blumenfeld and William Blumenfeld are individuals and copartners trading as City Fur Company with their office and principal place of business located at 236 West 27th Street, New York, New York.

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 misbranded in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 4. Certain of said fur products were misbranded in violation of the Fur Products Labeling Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was mingled with non-required information, in violation of Rule 29(a) of said Rules and Regulations.

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

(c) Required item numbers were not set forth on labels in violation of Rule 40 of said Rules and Regulations.

PAR. 5. Certain of said fur products were falsely and deceptively invoiced by respondents in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act, and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 6. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Required item numbers are not set forth on invoices in violation of Rule 40 of said Rules and Regulations.

PAR. 7. 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 under the Federal Trade Commission Act.

*Michael P. Hughes, Esq.*, for the Commission
Respondents, for themselves.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on December 30, 1960, charging them with having violated the Fur Products Labeling Act, the rules and regulations issued thereunder, and the Federal Trade Commission Act, by misbranding, and falsely invoicing their fur products. Respondents appeared and entered into an agreement, dated February 23, 1961, containing a consent order to cease and desist, disposing of all the issues in this proceeding without further hearings, which agreement has been duly approved by the Bureau of Litigation. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with §3.25 of the Rules of Practice of the Commission.

Respondents, pursuant to the aforesaid agreement, have admitted all of the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been made duly in accordance with such allegations. Said agreement further provides that respondents waive all further procedural steps before the hearing examiner or the Commission, including the making of findings of fact or conclusions of law and the right to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has also been agreed that the record herein shall consist solely of the complaint and said 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 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, that said order to cease and desist shall have the same force and effect as if entered after a full hearing and may be altered, modified, or set aside in the manner provided for other orders, and that the complaint may be used in construing the terms of the order.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing the consent order, and it appearing that the order and agreement cover all of the allegations of the complaint and provide for appropriate disposition of this proceeding, the agreement is hereby accepted and ordered filed upon this decision and said agreement becoming part of the Commission's decision pursuant to §§3.21 and 3.25 of the

Rules of Practice, and the hearing examiner accordingly makes the following findings, for jurisdictional purposes, and order:

1. Respondents Morris Blumenfeld and William Blumenfeld are individuals and copartners trading as City Fur Company with their office and principal place of business located at 236 West 27th Street, 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 Fur Products Labeling Act and the Federal Trade Commission Act, and this proceeding is in the interest of the public.

*It is ordered*, That Morris Blumenfeld and William Blumenfeld, individually and as copartners trading as City Fur Company, or under any other trade name, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction, manufacture for introduction into commerce, or the sale, advertising, or offering for sale, in commerce, or the transportation or distribution in commerce of fur products, or in connection with the sale, manufacture for sale, advertising, offering for sale, transportation, or distribution of fur products which are made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misbranding fur products by:

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

B. Setting forth on labels affixed to fur products:

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

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

C. Failing to set forth on labels the item number or mark assigned to a fur product.

2. Falsely or deceptively invoicing fur products by:

A. Failing to furnish to purchasers of fur products invoices showing all the 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 on invoices the item number or mark assigned to a 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 27th day of April 1961, become the decision of the Commission; and, accordingly:

*It is ordered*, That Morris Blumenfeld and William Blumenfeld, individually and as copartners trading as City Fur Company, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

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IN THE MATTER OF

## DE'COR FURS, INC., ET AL.

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

*Docket 8213. Complaint, Dec. 8, 1960—Decision, Apr. 28, 1961*

Consent order requiring New York City furriers to cease violating the Fur Products Labeling Act by failing to comply with labeling and invoicing requirements.

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 De'Cor Furs, Inc., a corporation, and Sol Morgenstein and Burton Hammer, 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 De'Cor Furs, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Individual respondents Sol Morgenstein and Burton Hammer are officers of said corporation. They control,

direct and formulate, the acts, practices and policies of the corporate respondent. The address and principal place of business of the corporate respondent and the individual respondents is 130 West 30th Street, New York, New York.

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, 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 the terms "commerce", "fur", and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were misbranded in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act, and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 4. Certain of said fur products were misbranded in violation of the Fur Products Labeling Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in that information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was mingled with non-required information in violation of Rule 29(a) of said Rules and Regulations.

PAR. 5. Certain of said fur products were falsely and deceptively invoiced by the respondents in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations thereunder.

PAR. 6. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in that required item numbers were not set forth on invoices, in violation of Rule 40 of said Rules and Regulations.

PAR. 7. The acts and practices of the respondents as herein alleged, 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 under the Federal Trade Commission Act.

*Michael P. Hughes, Esq.*, for the Commission.

*Morgenstern & Winnick*, by *Harry Morgenstern, Esq.*, of New York, N. Y., for respondents.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on December 8, 1960, charging them with having violated the Fur Products Labeling Act, the rules and regulations issued thereunder, and the Federal Trade Commission Act, by misbranding and falsely invoicing their fur products. Respondents appeared by counsel and entered into an agreement, dated February 28, 1961, containing a consent order to cease and desist, disposing of all the issues in this proceeding without further hearings, which agreement has been duly approved by the Bureau of Litigation. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with §3.25 of the Rules of Practice of the Commission.

Respondents, pursuant to the aforesaid agreement, have admitted all of the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been made duly in accordance wilh such allegations. Said agreement further provides that respondents waive all further procedural steps before the hearing examiner or the Commission, including the making of findings of fact or conclusions of law and the right to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has also been agreed that the record herein shall consist solely of the complaint and said 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 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, that said order to cease and desist shall have the same force and effect as if entered after a full hearing and may be altered, modified, or set aside in the manner provided for other orders, and that the complaint may be used in construing the terms of the order.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing the consent order, and it appearing that the order and agreement cover all of the allegations of the complaint and provide for appropriate disposition of this proceeding, the agreement is hereby accepted and ordered filed upon this decision and said agreement becoming part

of the Commission's decision pursuant to §§3.21 and 3.25 of the Rules of Practice, and the hearing examiner accordingly makes the following findings, for jurisdictional purposes, and order:

1. Respondent De'Cor 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 130 West 30th Street, in the City of New York, State of New York.

2. Individual respondents Sol Morgenstein and Burton Hammer are officers of said corporation. The individual respondents control, direct and formulate the acts and practices of said corporate respondent. The address of the individual respondents is the same as that of the corporate respondent.

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

*It is ordered*, That De'Cor Furs, Inc., a corporation, and its officers, and Sol Morgenstein and Burton Hammer, 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 are made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misbranding fur products by:

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

b. Setting forth on labels affixed to fur products:

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

2. Falsely or deceptively invoicing fur products by:

a. Failing to furnish invoices to purchasers of fur products showing all the 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 on invoices the item number or mark assigned to a 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 28th day of April 1961, become the decision of the Commission; and, accordingly:

*It is ordered*, That De'Cor Furs, Inc., a corporation, and its officers, and Sol Morgenstein and Burton Hammer, 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.

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## IN THE MATTER OF

## IDAHO CANNING CO. (LTD.)

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

*Docket 7495. Complaint, May 15, 1959—Decision, May 2, 1961*

Consent order requiring a Payette, Idaho, processor of fruits and vegetables to cease violating Sec. 2(a) of the Clayton Act by charging competing customers different prices for like products, and violating Sec. 2(d) by granting advertising allowances to some purchasers but not to their competitors, such as a payment of $350 to a Portland, Oreg., retail chain for participation in its 1957 coupon book promotion and reimbursing the chain 12.1¢ for each coupon redeemed, with net effect of giving it the value of one can for every two purchased.

### COMPLAINT

The Federal Trade Commission, having reason to believe that the above named respondent has violated and is now violating Sections 2(a) and 2(d) of the amended Clayton Act (15 U.S.C., Section 13), hereby issues its complaint as follows:

COUNT I

PARAGRAPH 1. Respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of Idaho, with its principal office and place of business located at 24 North Sixth in Payette, Idaho.

PAR. 2. Respondent is principally engaged in the processing, canning, and sale of various fruits and vegetable items such as whole kernel or cream style corn, in a variety of sizes under company owned and private labels.

Respondent's total sales for the fiscal year 1958 were in excess of $300,000.

PAR. 3. These products are sold by respondent for use, consumption, or resale within the United States and respondent causes them to be shipped and transported from the State or location of its canning plant to purchasers located in States other than the State in which the shipment or transportation originated.

Respondent maintains a course of trade in commerce, as "commerce" is defined in the amended Clayton Act, in such products among and between the States of the United States.

PAR. 4. Respondent maintains and operates a canning plant in Nyssa, Oregon. From this plant it ships and sells throughout the United States directly to various purchasers in the several States of the United States.

PAR. 5. Respondent, in the course and conduct of its business in commerce, is competitively engaged with other corporations and with individuals, partnerships, and firms in the sale of the products mentioned.

PAR. 6. Respondent, in the course and conduct of its business in commerce, is discriminating in price between different purchasers of its products of like grade and quality by selling to some purchasers at higher and less favorable prices than it sells to other purchasers competitively engaged in the resale of its products with the non-favored purchasers.

For example, respondent participates annually in the coupon book promotion of Fred Meyer Inc., a retail chain in Portland, Oregon. In 1957 respondent sold to Fred Meyer, Inc., about 4,000 cases of canned whole kernel or cream style corn. Respondent reimbursed Fred Meyer, Inc., for all coupons redeemed during the 1957 promotion at the rate of 12.1 cents each, the net effect of which was to pay Fred Meyer, Inc., the value of one can of corn for every two cans actually purchased.

Respondent did not grant a similar allowance, rebate, or discount to non-favored purchasers who compete in the resale of respondent's product with Fred Meyer, Inc.

PAR. 7. The effect of respondent's discriminations in price as alleged may be substantially to lessen, injure, destroy, or prevent competition or tend to create a monopoly in the lines of commerce which respondent and its customers are engaged.

PAR. 8. The foregoing acts and practices of the respondent as alleged violate Section 2(a) of the amended Clayton Act (15 U.S.C., Section 13).

COUNT II

PAR. 9. Each of the allegations contained in Paragraphs One through Five of COUNT I hereof are hereby realleged and made part of this count as fully and with the same effect as though herein again set forth in full.

PAR. 10. 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 in consideration for services or facilities furnished by or through such customers in connection with their offering for sale or sale of products sold to them by respondent, and such payments or allowances were not made available on proportionally equal terms to all other customers competing in the distribution of its products.

For example, respondent agreed to participate in the coupon book promotion of Fred Meyer, Inc., of Portland, Oregon, by paying $350 cash for its participation.

Respondent did not offer or make available on proportionally equal terms such an allowance to other customers competing in the resale of respondent's products with the customer receiving such allowance.

PAR. 11. The acts and practices of respondent as alleged above violate Section 2(d) of the amended Clayton Act (15 U.S.C., Section 13).

*Mr. Franklin A. Snyder* for the Commission.
*Mr. Vernon Daniel*, of Payette, Idaho, for respondent.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

On May 15, 1959, the Federal Trade Commission issued its complaint against the above-named respondent charging it with violating the provisions of subsections (a) and (d) of section 2 of the Clayton Act, as amended, in connection with the processing, canning and sale of various fruits and vegetable items such as whole kernel or cream style corn. On February 8, 1961, the respondent 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 respondent admits the jurisdictional facts alleged in the complaint and agrees, 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 respondent 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, does not constitute an admission by the respondent that it has violated the law as alleged in the complaint, and that said complaint may be used in construing the terms of the order. 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.

The complaint insofar as it concerns the allegation of "primary line injury", namely, to substantially lessen competition or tend to create a monopoly in the line of commerce in which the respondent is engaged, should be dismissed on the grounds that the evidence in the light of subsequent developments is insufficient to substantiate the allegation.

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 Idaho Canning Co. (LTD) is a corporation existing and doing business under and by virtue of the laws of the State of Idaho, with its office and principal place of business located at 24 North Sixth Street, in the City of Payette, State of Idaho.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent hereinabove named. The complaint states a cause of action against said respondent under subsections (a) and (d) of section 2 of the Clayton Act, as amended.

ORDER

*It is ordered*, That respondent Idaho Canning Co. (LTD), a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device in, or in connection with, the sale of food products in commerce, as "commerce" is de-

fined in the amended Clayton Act, do forthwith cease and desist from:

1. Discriminating, directly or indirectly, in the price of such products of like grade and quality by selling to any purchaser at net prices higher than the net prices charged to any other purchaser who, in fact, competes in the resale and distribution of respondent's products with the purchaser paying the higher price; and

2. Paying, or contracting for the payment of, anything of value to or for the benefit of, any customer of respondent as compensation, or in consideration for, any services or facilities furnished by or through such customer in connection with the offering for sale, sale or distribution of any of respondent's products, unless such payment or consideration is offered or otherwise affirmatively made available on proportionally equal terms to all other customers competing in the resale of such products with the favored customer.

*It is further ordered*, That the allegation of a substantial lessening of competition or tendency toward monopoly in the line of commerce in which the respondent is engaged, be dismissed.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 2nd day of May, 1961, become the decision of the Commission; and, accordingly:

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

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## IN THE MATTER OF

## GOLDSTEIN-MIGEL CO.

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

*Docket 8262. Complaint, Dec. 30, 1960—Decision, May 2, 1961*

Consent order requiring a Waco, Tex., furrier to cease violating the Fur Products Labeling Act by advertising in newspapers which failed to disclose the names of animals producing certain furs or that some fur products contained artificially colored fur, and represented prices as reduced from regular prices which were in fact fictitious, and as lower than wholesale prices of a month previous when such was not the fact; and by failing to keep adequate records as a basis for pricing and value 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 Goldstein-Migel Co., a corporation, hereinafter referred to as respondent, has 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. Goldstein-Migel Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 521 Austin Street, Waco. Texas.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondent has been and is now engaged in the introduction into commerce and in the sale, advertising and offering for sale, in commerce, and in the transportation and distribution, in commerce, of fur products; and has 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 advertised in violation of the Fur Products Labeling Act in that respondent caused the dissemination in commerce, as "commerce" is defined in said Act, of certain newspaper advertisements, concerning said products, which were not in accordance with the provisions of Section 5(a) of the said Act and the Rules and Regulations promulgated thereunder; and which advertisements were intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of said fur products.

PAR. 4. Among and included in the advertisements as aforesaid, but not limited thereto, were advertisements of respondent which appeared in issues of the Waco Tribune Herald, a newspaper published in the City of Waco, State of Texas, and having a wide circulation in said State and various other States of the United States.

By means of said advertisements and others of similar import and meaning, not specifically referred to herein, respondent falsely and deceptively advertised fur products in that said advertisements:

(a) Failed to disclose the name or names of the animal or animals that produced the fur contained in the fur product as set forth in

the Fur Products Name Guide, in violation of Section 5(a)(1) of the Fur Products Labeling Act.

(b) Failed to disclose that fur products contained or were composed of bleached, dyed or otherwise artificially colored fur, when such was the fact, in violation of Section 5(a)(3) of the Fur Products Labeling Act.

(c) Represented prices of fur products as having been reduced from regular or usual prices where the so-called regular or usual prices were in fact fictitious in that they were not the prices at which said merchandise was usually sold by respondent in the recent regular course of business, in violation of Section 5(a)(5) of the Fur Products Labeling Act and Rule 44(a) of said Rules and Regulations.

(d) Represented, through such statements as "These furs are marked for sale to you below the price we would have had to pay for them wholesale one month ago", that prices of fur products were lower than the wholesale price of one month previous, when such was not the fact, in violation of Section 5(a)(5) of the Fur Products Labeling Act and Rule 44(a) of said Rules and Regulations.

PAR. 5. In advertising fur products for sale as aforesaid respondent made claims and representations respecting the prices and values of fur products. Respondent, in making such claims and representations, failed to maintain full and adequate records disclosing the facts upon which such claims and representations were based, in violation of Rule 44(e) of said Rules and Regulations.

PAR. 6. The aforesaid acts and practices of respondent, as herein alleged, 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 under the Federal Trade Commission Act.

*Mr. Harry E. Middleton, Jr.*, supporting the complaint.
*Mr. Herbert Scharff*, of Waco, Tex., for respondent.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on December 30, 1960, charging it with having violated the Fur Products Labeling Act, and the rules and regulations issued thereunder, and the Federal Trade Commission Act by falsely and deceptively advertising certain fur products.

On March 10, 1961, there was submitted to the hearing examiner an agreement between respondent and counsel supporting the complaint providing for the entry of a consent order.

Under the terms of this 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 the requirements of Section 3.25(b) of the Rules of the Commission.

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

1. Respondent Goldstein-Migel Co. is a Texas corporation with its office and principal place of business located at 521 Austin Street, in the City of Waco, State of Texas.

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

1. 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 by 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.

B. Represents directly or by implication that the regular or usual price of any fur product is any amount which is in excess of the price at which respondent has usually and customarily sold products in the recent regular course of business.

C. Represents directly or by implication that prices are reduced from previous wholesale prices when such is not the fact.

D. Misrepresents in any manner the savings available to purchasers of respondent's fur products.

2. Making price claims and representations respecting prices and values of fur products unless there are maintained by respondent 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 2nd day of May, 1961, become the decision of the Commission; and, accordingly:

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

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IN THE MATTER OF

## TUSECK ENTERPRISES, INC., TRADING AS THE CARL COMPANY ET AL.

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

*Docket 8117. Complaint, Sept. 16, 1960—Decision, May 3, 1961*

Order requiring a concern in Lisbon, Ohio, engaged in selling printed forms for use in collecting past-due accounts to collectors and collection agencies who in turn send them to delinquent debtors, to cease giving the impression that such papers are official forms and constitute legal process, by means of the captions "FINAL NOTICE BEFORE SUIT" or ". . . BEFORE STATUTORY GARNISHMENT", and other language used, the general make-up, size and kind of type, presence of a simulated official seal, etc.

*Mr. Daniel H. Hanscom* for the Commission.

*Moore & Moore*, of Lisbon, Ohio, by *Mr. W. B. Moore, Jr.*, for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

1. Respondents are charged with violation of the Federal Trade Commission Act through the sale and distribution of certain allegedly misleading printed forms, the forms being designed for use by creditors and collection agencies in undertaking to collect debts from delinquent debtors. In their answer respondents admit all of the factual allegations in the complaint, only the conclusions being denied. Hearings have been held at which evidence, both in support of and in opposition to the complaint, was received. Proposed findings and conclusions have been submitted, oral argument having been waived, and the case is now before the hearing examiner for final consideration. Any proposed findings or conclusions not included herein have been rejected.

2. Respondent Tuseck Enterprises, Inc., is an Ohio corporation with its office and principal place of business located at 108 West Washington Street, Lisbon, Ohio. The corporation also does business under the name The Carl Company. Respondents Frank J. Tuseck and Joyce L. Tuseck are officers of the corporation and formulate, direct and control its policies, acts and practices.

3. As already indicated, respondents are engaged in the business of selling printed forms designed for use in collecting past due debts, the forms being sold to creditors and collection agencies who in turn send them to delinquent debtors.

4. There is no dispute over the element of interstate commerce. The forms are sold and shipped by respondents in substantial quantities to purchasers located in various States of the United States other than the State of Ohio.

5. Examination of certain of the forms received in evidence leaves no doubt that they are misleading in that they simulate legal process.

One of the forms (CX 1 A) is captioned: "FINAL NOTICE BEFORE SUIT". Blanks are provided for insertion of the name of the state and county and of the creditor and debtor. The form then reads:

TO THE ABOVE NAMED DEBTOR

TAKE NOTICE: You are hereby notified that this is your final opportuntiy to pay your legally and past due debt of $----------to the above named Creditor.

THEREFORE: If payment is not received on or before the_____ day of_____A.D., 19____, proceedings may be taken against you by default.

JUDGMENT WILL BE ASKED TO INCLUDE
I FULL PRINCIPAL DUE
II MAXIMUM LEGAL RATE OF INTEREST
III ALL COURT COSTS
IV ALL COSTS OF COLLECTION
V REASONABLE ATTORNEY'S FEES

Executed this _____ day of _____ A.D. 19____, in the State and County aforesaid.

Signed_____

In the lower left-hand corner of the form is a seal simulating an official seal.

6. A second form (CX 2) is similar to that described above except that instead of reading: "*** proceedings may be taken against you by default", the form reads: "*** proceedings *will* be taken against you by default" (Emphasis supplied). This form also contains a simulated official seal.

7. A third form (CX 3 A) is captioned "FINAL NOTICE BEFORE STATUTORY GARNISHMENT" and reads:

TO THE ABOVE NAMED DEBTOR

TAKE NOTICE: That the above named creditor has a liquidated claim against you in the amount of $_____.
Demand has been made against you numerous times, but you have pleaded poverty and destitution. Now we find that you have been working all the time and earning a steady salary.

NOW THEREFORE: You are hereby ordered and directed to pay the above shown indebtedness on or before the _____ day of _____ A.D., 19____, or a garnishment proceedings may be taken against your wages, income and/or property pursuant to the laws of this state.

Here again there is a simulated official seal on the form.

8. Two of the three forms (CXs 1 A and 3 A) have on the back the words "Final Notice before Suit" or "Final Notice before Statutory Garnishment", the words in each case being in the position where such words would ordinarily appear on the back of a court summons or other legal process.

9. Not only the actual language used in the forms, but their general make-up, size and kind of type, presence of the purported seal, etc. all contribute to the impression that the papers are official forms and constitute legal process. Unquestionably they would be so understood by many debtors.

10. On behalf of respondents, it is pointed out that statutes of the State of Ohio require that advance written notice of certain court proceedings be given the defendant by the plaintiff, particularly where extraordinary legal remedies such as attachment or garnishment are sought. The answer, of course, is that the present proceeding is not at all directed against the giving of such notice as is contemplated by the statutes in question. What is involved here is the use of forms which create the impression, or certainly are likely to create the impression, that they themselves constitute legal process.

11. The fact that respondents do not themselves send the forms to debtors is immaterial, as is also the fact that respondents' own customers are not deceived. The offense here is the placing in the hands of others means and instrumentalities whereby such parties are enabled to mislead and deceive members of the public.

12. The acts and practices of respondents constitute unfair and deceptive acts and practices in commerce in violation of the Federal Trade Commission Act. The proceeding is in the public interest.

ORDER

*It is ordered*, That the respondents, Tuseck Enterprises, Inc., a corporation, trading as The Carl Company, or under any other name, and its officers, and Frank J. Tuseck and Joyce L. Tuseck, 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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, of printed forms or other material designed for use in collecting debts, do forthwith cease and desist from:

(1) Selling to or otherwise placing in the hands of others respondents' present forms designated "Final Notice Before Suit", "Demand for Payment", and "Final Notice Before Statutory Garnishment".

(2) Selling to or otherwise placing in the hands of others any other forms or material which simulate legal process.

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 3rd day of May 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

## NATIONAL TITANIUM COMPANY, INC., ET AL.

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

*Docket 8139. Complaint, Oct. 12, 1960—Decision, May 3, 1961*

Consent order requiring sellers in Pico Rivera, Calif., to cease misrepresenting, in letters and advertising literature mailed to prospective buyers, the availability, price, and quality of their "Nitrosol" "Genuine Exterior White Paint"—which "we must move immediately"—as in the order below specified.

### COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that National Titanium Company, Inc., a corporation, and Henrietta Swimmer and Tessie Somers, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said 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 National Titanium Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its office and principal place of business located at 7270 Crider Avenue, Pico Rivera, California. Respondents Henrietta Swimmer and Tessie Somers are officers of said corporation. They formulate, direct and control the policies and practices of the corporate respondent. The address of the individual respondents is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the sale of paint under the brand name of "Nitrosol" which they describe as "Genuine Exterior White Paint".

The quantitative formula of said paint is as follows:

| | | |
|---|---|---|
| 840 lbs. | Titanium Dioxide (Pure) | |
| 4,200 lbs. | Albacar 25–11 (Spec. Calcium Carbonate Extender) | |
| 840 lbs. | Kettle bodied Z6 Pure Linseed Oil | |
| 340 lbs. | Ardex P.E. (Esterfield Tall Oil) | |
| 105 lbs. | P–610 (Estergum Solution) | |
| 242 gals. | 325 Standard Thinner (Mineral Spirits) | |
| 2 lbs. | Ultra Marine Blue | |
| 3 lbs. | Phenol Mercury | |
| 5 lbs. | Maglite D. (Merck Chem. Co.) | |
| 14 lbs. | Lead Drier | |
| 14 lbs. | Cobalt Drier | |
| 7 lbs. | Manganese Drier | |
| 162 gals. | Water | boiled, cooled and filtered twice for special results, and added to above formula. |
| 17 lbs. | Ivory Flakes | |
| 7 lbs. | Tri-Sodium Phosphate | |

PAR. 3. In the course and conduct of their business respondents ship, and have shipped, their said paint from their place of business in the State of California and from their warehouse in Chicago and from public warehouses in other States to purchasers thereof located in various States other than the State in which the shipments originated, and maintain, and have maintained, a substantial course of trade in said paint, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents in the course and conduct of their business are engaged in substantial competition in commerce with corporations, firms and individuals engaged in the sale and distribution of paint.

PAR. 5. In the course and conduct of their business and for the purpose of inducing the purchase of said paints, it has been and is the practice of the respondents to mail letters and advertising literature to purchasers and prospective purchasers located in various States of the United States and therein make statements with respect to the availability, price and quality of said products. Typical but not all inclusive of the statements so made are the following:

In our western warehouse we have 60 gallons of our Genuine Exterior White Paint in 5 gallon steel pails and 140 gallons in ones packed four to the carton; which we must move immediately. We will accept $2.75 per gallon delivered in either ones or fives, and you may take all or any part of this lot.

This is our highest quality paint . . . and is guaranteed for years of outdoor exposure on almost every type of surface.

The pure Titanium in our paint assures you of excellent coverage.

Because this paint is of such high quality and worth twice the price, we suggest you take as much of this quantity as you can.

An exterior white Pure Linseed Oil and Titanium base paint, formulated for excellent durability and protection. Will not crack, chip, peel or yellow even after years of exposure to all adverse weather conditions.

COMPOSITION & DURABILITY: The combination of durable, high-hiding Titanium pigments, kettle-bodied Pure Linseed Oil and finely ground selected extenders, gives this paint those qualities necessary in every good exterior paint: DURABILITY and HIDING POWER. As extra protection, our paint is treated with a fungicide which helps protect it from attack or discoloration by mildew. Resistant to dampness, smoke, steam, fumes, salt air and water.

USES: Exterior surfaces such as wood, metal, brick, concrete, stucco, and general maintenance. Works equally well over new or previously painted surfaces.

MANUFACTURERS FOR OVER A QUARTER OF A CENTURY
LONG LASTING—NON YELLOWING

The use of Pure Titanium Dioxide, which has the highest covering power of any pigment, assures the paint of solid coverage in one coat.

PAR. 6. Through the use and by means of the foregoing statements, and others of similar import and meaning not specifically set forth, respondents represented, and now represent, directly or by implication, that:

1. Their said paint is being offered at a special reduced price of $2.75 a gallon;

2. Said paint is distress merchandise and it is necessary to sell the designated quantity immediately;

3. Only the quantity of paint set out in the advertisement is available for sale;

4. Delivery will be made of the quantity ordered;

5. Said paint is a high quality paint and is worth twice the amount at which it is sold;

6. Said paint is of excellent durability and provides excellent protection;

7. Respondents sell more than one grade of paint and their "Nitrosol" brand is their highest quality paint;

8. Said paint is guaranteed;

9. One coat of said paint gives solid coverage;

10. Said paint will not crack or yellow after years of exposure;

11. Said paint is not subject to mildew;

12. Titanium is a major ingredient in said paint; and

13. Respondents have been manufacturers of paint for 25 years.

PAR. 7. The aforesaid statements and representations are false, misleading and deceptive. In truth and in fact:

1. The price of $2.75 a gallon is not a special or reduced price but said amount is the usual and customary price at which said paint is sold by respondents;

2. Said paint is not distress merchandise, and it is not necessary for respondents to sell any quantity of said paint immediately or at any other time;

3. The quantity of paint on hand is frequently greatly in excess of the amount offered for sale;

4. Respondents frequently deliver greater quantities of paint than the quantity ordered;

5. Respondents' said paint is not a high quality paint, and it is not worth twice the amount at which it is sold;

6. Said paint is not of excellent durability nor does it provide excellent protection;

7. The paint sold by respondents under the brand name of "Nitrosol" is the only paint sold by them;

8. Such guarantee that is given by respondents for their said paint is limited and conditional, which limitations and conditions and the manner in which respondents will perform under the said guarantee are not set out in their advertisements;

9. One coat of said paint will not give solid coverage;

10. Said paint will crack and yellow in a short period of time;

11. Said paint is subject to mildew;

12. Titanium is only a minor ingredient of said paint; and

13. Respondents have not been manufacturers of paint for over 25 years.

PAR. 8. The use by the respondents of the foregoing false and misleading statements, representations and practices has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that said statements and representations were, and are, true and to induce a substantial portion of the purchasing public, because of such mistaken and erroneous belief, to purchase said product. As a result thereof, trade in commerce has been, and is being, unfairly diverted to the respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

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

*Mr. Garland S. Ferguson* and *Mr. John J. McNally* for the Commission.

*Mr. G. V. Weikert*, of Los Angeles, Calif., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on October 12, 1960, issued its complaint herein, charging the above-named respondents, who are engaged in the sale of paint under the brand name of "Nitrosol", which they describe as "Genuine Exterior White Paint", with violation of the Federal Trade Commission Act by the dissemination, in letters and advertising literature mailed to purchasers and prospective purchasers located in various States of the United States, of false, misleading and deceptive statements and representations with respect to said paint.

On February 20, 1961, 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 respondents, their counsel and counsel supporting the complaint, under date of February 7, 1961, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently 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 National Titanium Company, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 7270 Crider Avenue, Pico Rivera, California.

2. Respondents Henrietta Swimmer and Tessie Somers are individuals and are officers of said corporation and have the same address as that of said corporation.

3. 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.

4. This agreement disposes of all of this proceeding as to all parties, including provisions for the dismissal of the charges set forth in subparagraphs numbered 13 of Paragraphs Six and Seven of the complaint for reasons set forth in affidavits of respondents Henrietta Swimmer and Tessie Somers which are incorporated in the agreement by reference.

5. 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.

6. 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.

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

8. 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.

9. 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 hearing examiner approves and accepts the said agreement; finds that the Commission has jurisdiction of the subject matter of this proceeding and of the respondents herein; that the complaint states a legal cause for complaint under the Federal Trade Commission Act against the respondents, both generally and in each of the particulars alleged therein, with the exception of subparagraphs 13 of Paragraphs Six and Seven thereof, as set forth in the affidavit which is, by reference, made a part of the agreement; that this proceeding is in the interest of the public; and that the following order, as proposed and provided for in said agreement, is appropriate for the just disposition of all of the issues in this proceeding as to all of the parties hereto. The hearing examiner therefore issues the said order, as follows:

*It is ordered*, That respondents National Titanium Company, Inc., a corporation, and its officers, and Henrietta Swimmer and Tessie Somers, individually and as officers of said corporation, and respondents' respresentatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of their "Nitrosol" paint or any other paint of substantially the same composition or possessing substantially the

same properties, whether sold under said name or any other name, 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, that:

1. Any amount is a reduced price for their paint, unless it is less than the price at which respondents usually and customarily sell their paint in the normal course of business;

2. Said paint is distress merchandise or that it is necessary to sell any designated quantity immediately, or at any other time;

3. Only a limited or designated quantity of paint is available for sale;

4. Delivery will be made of the quantity ordered, unless such is the fact;

5. Said paint is a high quality paint, or that it is worth twice the amount at which it is sold; or misrepresenting the quality or worth of said paint;

6. Said paint is of excellent durability or provides excellent protection; or that it possesses any degree of durability or provides any degree of protection that is not in accordance with the fact;

7. Respondents sell more than one grade of paint;

8. Said product is guaranteed, unless the terms and conditions of such guarantee and the manner and form in which the guarantor will perform are clearly set forth;

9. One coat of said paint gives solid coverage or that one or any number of coats gives coverage to any degree that is not in accordance with the facts;

10. Said paint will not crack or yellow after years of exposure;

11. Said paint is not subject to mildew; and

12. Titanium is a major ingredient in said paint.

*It is further ordered*, That the complaint herein, insofar as it relates to the charges set forth in subparagraphs numbered 13 in Paragraphs Six and Seven thereof, be, and the same hereby is, dismissed.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 3rd day of May 1961, become the decision of the Commission; and, accordingly:

*It is ordered*, That respondents National Titanium Company, Inc., a corporation, and Henrietta Swimmer and Tessie Somers, 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.

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IN THE MATTER OF

## THE MENNEN COMPANY

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

*Docket 8146. Complaint, Oct. 17, 1960—Decision, May 4, 1961*

Consent order requiring a manufacturer of cosmetics and toilet preparations to cease using deceptive pictorial representations in television advertising—supposedly showing its products' superiority over competing brands—to sell its "Mennen Sof' Stroke" aerosol shaving cream.

### COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that The Mennen Company, a corporation, hereinafter referred to as respondent, has violated the provisions of said 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 The Mennen Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its office and principal place of business located at Morristown, New Jersey.

PAR. 2. Respondent The Mennen Company is now, and for some time last past has been, engaged in the business of manufacturing, selling and distributing various kinds of cosmetics and toilet preparations, including aerosol shaving creams, such as Mennen's Sof' Stroke, and causes such preparations, when sold, to be transported to wholesalers, distributors and retailers in States other than those in which its factories are located, and maintains and at all times mentioned herein has maintained a substantial course of trade in said products, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. Respondent The Mennen Company is now, and has been at all times mentioned herein, in substantial competition, in commerce, with corporations, firms and individuals in the sale of cos-

metics and toilet preparations, including aerosol shaving creams, such as Mennen Sof' Stroke.

PAR. 4. In the course and conduct of its business and for the purpose of inducing the sale of its Sof' Stroke aerosol shaving cream, respondent, The Mennen Company, has advertised said Mennen's Sof' Stroke aerosol shaving cream, by means of a demonstration and various statements used in connection therewith, in television broadcasts transmitted by television stations located in various States of the United States and in the District of Columbia having sufficient power to carry such broadcasts across State lines.

The demonstration and statements referred to immediately above are as follows:

| VIDEO | AUDIO |
|---|---|
| Skindiver with heavy growth of beard jumps into about six to eight feet of water at Silver Springs, Florida. He first demonstrates how competing aerosol shaving creams will rapidly dissipate in the hand before being applied to the beard. He then discharges Mennen Sof' Stroke into his cupped hand, applies it to his face and commences to shave his now lathered beard. | Mister, do you wet your face before shaving? Then keep it wet . . . really wet . . . and skin divers at Florida's Silver Springs know how . . . they use . . . New Mennen Sof' Stroke World's richest instant shave cream. It drowns your beard all through the shave. Under water, let's make the cream richness test! First, this leading shave cream. Look—that's not cream richness, that's soap suds! But here's new Mennen Sof' Stroke—that's the richness you want! Yes, Sof' Stroke is so rich that it holds up even under water—So rich that it holds the moisture to your face to drown your beard all through the shave!<br>That's why shaving with Sof' Stroke every morning is like shaving under water. You'll be getting the kind of shave you've always wanted—so clean and smooth . . . And mister, it's the kind of shave a woman really admires. So remember the next time you shave . . . drown your beard all through the shave—Get New Mennen Sof' Stroke: the world's richest instant shave cream |

PAR. 5. Through the use of the aforesaid demonstration and the statements used in connection therewith, respondent represents, directly and by implication, that such demonstration is a valid portrayal of the superiority of Mennen's Sof' Stroke aerosol shaving

cream in the presence of moisture over competing brands of aerosol shaving cream.

PAR. 6. The said demonstration and the statements and representations used in connection therewith are false, misleading and deceptive. In truth and in fact, said demonstration is not a valid portrayal of the superiority of Mennen Sof' Stroke aerosol shaving cream in the presence of moisture over competing brands of aerosol shaving cream, because of artifices (the degree in which the hand was cupped by the skin diver and a mixture of shaving cream and tooth paste applied to the diver's face) employed in the demonstration of respondent's product and which were not employed with competing aerosol shaving creams in the demonstration above described.

Further, the use by respondents of said demonstration, and the statements and representations used in connection therewith, constitute false disparagement of competitive aerosol shaving creams.

PAR. 7. The use by the respondents of the aforesaid invalid demonstration and the false, misleading and deceptive statements and representations used in connection therewith has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true, and into the purchase of a substantial quantity of respondent's Sof' Stroke aerosol shaving cream because of such erroneous and mistaken belief. As a result thereof, substantial trade has been and is being unfairly diverted to respondent from its competitors and substantial injury has been done and is being done to competition in commerce.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondent's competitors, and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

*Mr. Ames W. Williams* for the Commission.

*Mr. Philip K. Schwartz*, of *Davis, Gilbert, Levine & Schwartz*, of New York, N. Y., for respondent.

## INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER

The complaint in this matter charges the respondent with violation of the Federal Trade Commission Act in connection with the offering for sale, sale, and distribution of various kinds of cosmetics and toilet preparations including aerosol shaving creams.

An agreement has now been entered into by respondent, its counsel, and counsel supporting the complaint which provides, among other things, that respondent admits all the jurisdictional facts alleged in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the making of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in this proceeding without further notice to the respondent and when entered shall have the same force and effect as if entered after a full hearing, respondent specifically waiving all the rights it 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 respondent that it has 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 The Mennen Company is a corporation existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located in the City of Morristown, State of New Jersey.

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, The Mennen Company, a corporation, its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of Mennen Sof' Stroke aerosol shaving cream, or any similar product of substantially the same composition, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using any pictorial presentation or demonstration purporting to prove or represented as proving that such product is superior

to competing products, when such pictorial presentation or demonstration does not, in fact, so prove.

2. Disparaging by untruthful statements or any misleading or deceptive method, any product competitive with Mennen Sof' Stroke by any pictorial presentation, demonstration, or in any other manner.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 4th day of May 1961, become the decision of the Commission; and, accordingly:

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

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IN THE MATTER OF

## PACTRA CHEMICAL CO., INC., ET AL.

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

*Docket 8163. Complaint, Nov. 4, 1960—Decision, May 4, 1961*

Consent order requiring Los Angeles distributors to cease representing falsely in advertising that their "TILO" ceramic tile cleaner was safe for cleaning all types of ceramic tile when in fact it would damage all ceramic tile having a metallic finish, as well as some other types, even when used as directed.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Pactra Chemical Co., Inc., a corporation, and Alfred L. Davenport, Jr., Adrian Chalfant and Donald Barber, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said 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 Pactra Chemical Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and

place of business located at 1213 North Highland Avenue in the City of Los Angeles, State of California.

Respondents Alfred L. Davenport, Jr., Adrian Chalfant and Donald Barber, are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of a ceramic tile cleaner under the trade name "TILO" to retailers for resale to the public. Said product consists of 18% phosphoric acid, 12% isopropyl alcohol, a wetting agent, perfume and water.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said product, when sold, to be shipped from their place of business in the State of California to purchasers thereof located in various other States of the United States and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the sale of their said product, respondents have made certain statements concerning their product in leaflets distributed among retailers of said product.

Among and typical of said statements is the following:

SAFE: EFFORTLESS IN ITS ACTION:

Tilo is the result of years of research for a safe ceramic material cleaner.

The directions for use of said product are as follows:

Apply TILO to a small area of surface to be cleaned. Agitate with a stiff brush for approximately 30 seconds. Then immediately flush entire surface thoroughly with fresh water, while using a circular motion with the brush. Wipe Dry. To remove soot and smoke stains from unglazed tile, brick or flagstone fireplaces, barbecues, and swimming pools, follow above procedure. Extreme cases of stain (oil, grease, etc.) may require a second application. In cleaning a vertical surface, pour TILO in a dish and continue as described above. After cleaning with TILO use TILO WAX to protect tile and keep mortar white.

IMPORTANT

In cleaning around enamel tubs and sinks care should be exercised to prevent TILO from coming in contact with enamel finish. Should any TILO solution accidentally drip on any other surface, thoroughly rinse with water immediately or possible damage may result.

PACTRA CHEMICAL CO., Los Angeles, Calif.

PAR. 5. Through the use of the aforesaid statements respondents represent that their said product, used as directed for cleaning ceramic tile, is safe and will not damage any type of said tile.

PAR. 6. Said statements and representations are false, misleading and deceptive. In truth and in fact, said product is not safe, used as directed, for cleaning ceramic tile having a metallic finish as it will damage the finish of said tile. Said product is not safe, used as directed, in cleaning all other types of ceramic tile, as it will damage the finish of some of such tile. The most practical method by which the public can ascertain the safety of said products as to a particular tile, is to test a small section of tile, using the product as directed. The safety of said product as to some tile may depend upon the length of time that it is allowed to remain on the tile. It is therefore important that the time element set out in the directions for use be observed.

PAR. 7. By reason of the aforesaid practice respondents place in the hands of others means and instrumentalities by and through which they may mislead and deceive the public as to the safety of their said product.

PAR. 8. Respondents in the course and conduct of their business are in substantial competition in commerce, with corporations, firms and individuals in the sale of ceramic tile cleaners.

PAR. 9. The use by respondents of the foregoing false, misleading and deceptive statements has had and now has the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that respondents said product may be safely used to clean all types of ceramic tile and into the purchase of substantial quantities of said product by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade has been unfairly diverted to respondents from their competitors and substantial injury has thereby been done to competition in commerce.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

*Mr. DeWitt T. Puckett* supporting the complaint.

*Newton & Irwin*, by *Mr. Richard B. Newton* of Los Angeles, Calif., for respondents.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER.

The Federal Trade Commission issued its complaint against the above-named respondents on November 4, 1960, charging them with the use of unfair and deceptive acts and practices and unfair methods of competition, in commerce, in violation of the Federal Trade Commission Act, by the use of false, deceptive and misleading statements in the advertising, offering for sale, sale and distribution of a ceramic tile cleaner under the trade name "TILO". After being served with said complaint, respondents appeared by counsel and entered into an agreement dated February 13, 1961, containing a consent order to cease and desist purporting to dispose of all of this proceeding as to all parties. Said agreement, which has been signed by the respondents, by counsel for said respondents and by counsel supporting the complaint, and approved by the Director, Associate Director, and Assistant Director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

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

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing consent order, and it appearing that the order provided for in said agreement covers all of the allegations of the complaint and provides for an appropriate disposition of this proceeding as to all parties, said agreement is hereby accepted and is ordered filed upon this decision's becoming the decision of the Commission pursuant to Sections

3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and the hearing examiner, accordingly, makes the following jurisdictional findings and order:

1. Respondent Pactra Chemical Co., Inc. is a corporation existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 1213 North Highland Avenue, in the City of Los Angeles, State of California.

Respondents Alfred L. Davenport, Jr., Adrian Chalfant and Donald Barber are officers of the corporate respondent. They formulate, direct and control the policies and practices of the corporate respondent. Their address is the same as that of the corporate respondent.

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

ORDER

*It is ordered*, That the respondents Pactra Chemical Co., Inc., a corporation, and its officers, and Alfred L. Davenport, Jr., Adrian Chalfant, and Donald Barber, 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 the product "Tilo" or any other product containing substantially the same ingredients, whether sold under the same or any other name, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication:

(a) That said product is safe or may be safely used in cleaning ceramic tile unless ceramic tile having a metallic finish is clearly excluded.

(b) That said product is safe or may be safely used in cleaning ceramic tile, other than that having a metallic finish, unless it is clearly stated that the product is safe only when used according to the directions and the directions provide that the product should be tested on a small section of the tile before cleaning is attempted to ascertain its safety.

2. Failing to set forth in the directions for use that before the product is used for cleaning ceramic tile, it should be used according to directions on a small section of tile to ascertain its safety.

3. Furnishing means and instrumentalities to others by and through which they may mislead the public as to any of the matters and things prohibited in paragraphs 1 and 2 hereof.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 4th day of May 1961, become the decision of the Commission; and, accordingly:

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

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IN THE MATTER OF

## JACK KOTUK ET AL. TRADING AS KOTUK & CHAVIN

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

*Docket 8238. Complaint, Dec. 28, 1960—Decision, May 4, 1961*

Consent order requiring New York City furriers to cease violating the Fur Products Labeling Act by setting out fictitious prices on invoices; by furnishing false guaranties that certain of their fur products were not misbranded, falsely invoiced, and falsely advertised; and by failing to comply with labeling and invoicing requirements.

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 Jack Kotuk and Abraham Ackerman, individually and as copartners trading as Kotuk & Chavin, 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. Jack Kotuk and Abraham Ackerman are individuals and copartners trading as Kotuk & Chavin with their office and principal place of business located at 345 Seventh Avenue, New York, New York.

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, 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 misbranded in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 4. Certain of said fur products were misbranded in violation of the Fur Products Labeling Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in that information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not completely set out on one side of labels in violation of Rule 29(a) of said Rules and Regulations.

PAR. 5. Certain of said fur products were falsely and deceptively invoiced by respondents in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 6. 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. 7. Respondents furnished false guaranties that certain of their fur products were not misbranded, falsely invoiced and falsely advertised when respondents in furnishing such guaranties had reason to believe the fur products so falsely guaranteed would be introduced, sold, transported or distributed in commerce, in violation of Section 10(b) of the Fur Products Labeling Act.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, 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, under the Federal Trade Commission Act.

*Mr. Charles W. O'Connell* supporting the complaint.
*Mr. Charles Goldberg*, of New York, N. Y., for respondents.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on December 28, 1960. The complaint charged respondents with misbranding and falsely and deceptively invoicing, fur products. Said acts and practices were charged to be in violation of the Federal Trade Commission Act and the Fur Products Labeling Act.

On March 7, 1961, counsel submitted to the undersigned hearing examiner an agreement, among respondents, their counsel, and counsel supporting the complaint, providing for the entry without further notice of a consent order. The agreement was duly approved by the Director, the Associate Director and the Assistant Director of the Bureau of Litigation.

The hearing examiner finds that said agreement includes all of the provisions required by Section 3.25(b) of the Rules of the Commission, that is:

A. An admission by all the respondent parties thereto of jurisdictional facts;

B. Provisions that:

1) The complaint may be used in construing the terms of the order;

2) The order shall have the same force and effect as if entered after a full hearing;

3) 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;

4) The entire record on which any cease and desist order may be based shall consist solely of the complaint and the agreement;

5) The order may be altered, modified, or set aside in the manner provided by statute for other orders;

C. Waivers of:

1) The requirement that the decision must contain a statement of findings of fact and conclusion of law;

2) Further procedural steps before the hearing examiner and the Commission.

In addition the agreement contains the following permissive provisions: A waiver by the respondents of any right to challenge or contest the validity of the order entered in accordance with the

agreement, and a statement that 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.

Having considered said agreement, including the proposed order, and being of the opinion that it provides an appropriate basis for settlement and disposition of this proceeding; the hearing examiner hereby accepts the agreement but orders that it shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

The following jurisdictional findings are made and the following order issued:

1. Respondents Jack Kotuk and Abraham Ackerman are individuals and copartners trading as Kotuk & Chavin with their office and principal place of business located at 345 Seventh Avenue in the City of New York, State of New York.

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

ORDER

*It is ordered*, That Jack Kotuk and Abraham Ackerman, individuals and copartners trading as Kotuk & Chavin or under any other trade name, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, 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. Misbranding fur products by:

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

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

B. Falsely or deceptively invoicing fur products by:

1. Failing to furnish to purchasers of fur products invoices 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. 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.

C. Furnishing a false guaranty that any fur or fur product is not misbranded, falsely invoiced, or falsely advertised, when the respondents have reason to believe that such fur or fur product may be introduced, sold, transported or distributed in commerce.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall on the 4th day of May 1961, become the decision of the Commission; and, accordingly:

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

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IN THE MATTER OF

## MICKEY WAKS, INC., ET AL.

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

*Docket 8260. Complaint, Dec. 30, 1960—Decision, May 4, 1961*

Consent order requiring manufacturers in New York City to cease violating the Wool Products Labeling Act by failing to label separately each unit of multiple-piece garments sold in combination, and by failing to attach the required tags to certain wool products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Mickey Waks, Inc., a corporation, and

Mickey Waks, individually and as officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool 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 Mickey Waks, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its office and place of business located at 102 West 38th Street, New York, New York.

Respondent Mickey Waks is president 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 corporate respondent.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, and more especially since May 1, 1958, respondents have manufactured for introduction into commerce, sold, transported, distributed, delivered for shipment, and offered for sale in commerce, as "commerce" is defined in said Act, wool products as "wool products" are defined therein.

PAR. 3. Certain of said wool products were misbranded by respondents in that they were not stamped, tagged or labeled as required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

PAR. 4. Certain of said wool products were misbranded in violation of the Wool Products Labeling Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in that respondents failed to attach a stamp, tag or label or other means of identification containing the information required under Section 4(a)(2) of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder to each unit of multiple-piece garments sold in combination, in violation of Rule 12 of the aforesaid Rules and Regulations.

PAR. 5. The respondents in the course and conduct of their business as aforesaid were and are in substantial competition in commerce with other corporations, firms and individuals likewise engaged in the manufacture and sale of wool products, including ladies' dresses and dress and jacket ensembles.

PAR. 6. The acts and practices of the respondents as set forth above were, and are, in violation of the Wool Products Labeling

Act of 1939 and the Rules and Regulations promulgated thereunder and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

*Charles W. O'Connell, Esq.*, supporting the complaint.
*Jacob Schutz, Esq.*, of New York, N.Y., for respondents.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

On December 30, 1960, the Federal Trade Commission issued a complaint against the above-named respondents, in which they were charged with violating the Federal Trade Commission Act, and the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder by misbranding certain of the wool products sold by them in interstate commerce. The complaint alleges that respondents falsely and deceptively stamped, tagged, or labeled such products contrary to the provisions of §4(a)(2) of the Wool Products Labeling Act and the Rules and Regulations promulgated under said Act. A true and correct copy of the complaint was served upon respondents and each and all of them as required by law.

Thereafter respondents appeared and agreed to dispose of this proceeding without a formal hearing pursuant to the terms of an agreement dated March 10, 1961, containing consent order to cease and desist. The agreement was submitted to the undersigned hearing examiner on March 16, 1961, in accordance with §3.25 of the Commission's Rules of Practice for Adjudicative Proceedings. The agreement purports to dispose of this proceeding as to the respondents and each and all of them and contains the form of a consent cease and desist order which the parties have represented is dispositive of the issues involved in this proceeding. The agreement has been signed by the corporate respondent by its president, by the individual respondent individually and as an officer of said corporation, and by counsel supporting the complaint, and has been approved by the Assistant Director, Associate Director, and Director of the Bureau of Litigation of the Federal Trade Commission. In said agreement respondents admit all of the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been made in accordance with such allegations. In the agreement the 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 rights respondents may have to challenge or con-

test the validity of the order to cease and desist entered in accordance with the agreement.

The parties further agree, in said agreement, that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Federal Trade Commission; that the order to cease and desist entered in this proceeding by the Commission may be entered without further notice to the respondents, and when so entered such order will have the same force and effect as if entered after a full hearing. Said order 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.

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

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement of March 10, 1961, containing consent order, and it appearing that the order which is approved in and by said agreement disposes of all the issues presented by the complaint as to all of the parties involved, said agreement is hereby accepted and approved as complying with §§3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings. 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 findings and issues the following order:

FINDINGS

1. The Federal Trade Commission has jurisdiction over the parties and the subject matter of this proceeding; and this proceeding is in the public interest;

2. Respondent Mickey Waks, 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 102 West 38th Street, in the City of New York, State of New York.

3. Respondent Meyer Waks is president 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 corporate respondent. Meyer Waks is the same individual who was

incorrectly named in the original complaint as Mickey Waks. The agreement has been signed by Meyer Waks under his correct name.

4. Respondents are engaged in commerce as "commerce" is defined in the pertinent statutes which are invoked by the complaint filed herein. Now, therefore,

*It is ordered*, That respondents Mickey Waks, Inc., a corporation, and its officers, and Meyer Waks, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation, distribution or delivery for shipment, in commerce, as "commerce" is defined in the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, of woolen dresses or other "wool products," as such products are defined in and subject to said Wool Products Labeling Act, do forthwith cease and desist from misbranding such products by:

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

2. Failing to affix labels to each unit of multiple-piece garments sold in combination showing each element of the information required to be disclosed by §4(a)(2) of the Wool Products Labeling Act of 1939.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission having considered the hearing examiner's initial decision, filed March 21, 1961, accepting an agreement containing a consent order theretofore executed by respondents and counsel supporting the complaint; and

It appearing that the first and second sentences in the initial decision, purporting to summarize the charges in the complaint are in error; and the Commission being of the opinion that this error should be corrected:

*It is ordered*, That the first sentence contained in the first paragraph of the initial decision be, and it hereby is, modified to read as follows:

"On December 30, 1960, the Federal Trade Commission issued a complaint against the above-named respondents, in which they were charged with violating the Federal Trade Commission Act, and the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder by misbranding certain of their wool products."

It is further ordered, That the initial decision be, and it hereby is, modified by striking from said decision the second sentence in the first paragraph thereof.

It is further ordered, That the initial decision, as so modified, shall, on the 4th day of May 1961, become the decision of the Commission.

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

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IN THE MATTER OF

## JACOB KASTELMAN

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

*Docket 8267. Complaint, Dec. 30, 1960—Decision, May 4, 1961*

Consent order requiring a New York City furrier to cease violating the Fur Products Labeling Act by invoicing fur products falsely with respect to the name of the animal producing the fur; by failing to set forth on invoices the term "secondhand used fur" where required; and by failing in other respects to comply with labeling and invoicing requirements.

### 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 Jacob Kastelman, an individual, hereinafter referred to as respondent, has 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. Jacob Kastelman is an individual with his office and principal place of business located at 151 West 28th Street, New York, New York.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondent has been and is now engaged in the introduction into commerce and in the sale, advertising, and offering for sale, in commerce, and in the transportation

and distribution, in commerce, of fur products; and has 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, and has been introduced into commerce, sold, advertised, offered for sale, transported and delivered, 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 misbranded in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 4. Certain of said furs and fur products were falsely and deceptively invoiced by respondent in that such furs and fur products were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act, and in the manner and form prescribed by the Rules and Regulations promulgated thereunder;

PAR. 5. Certain of said furs and fur products were falsely and deceptively invoiced or otherwise falsely and deceptively identified with respect to the name or names of the animal or animals that produced the fur in violation of Section 5(b)(2) of the Fur Products Labeling Act.

PAR. 6. Certain of said furs and fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in that information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in abbreviated form in violation of Rule 4 of said Rules and Regulations.

PAR. 7. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) The disclosure "secondhand used fur" where required, was not set forth on invoices, in violation of Rules 21 and 23 of said Rules and Regulations.

(b) Required item numbers were not set forth on invoices, in violation of Rule 40 of said Rules and Regulations.

PAR. 8. The aforesaid acts and practices of respondent as herein alleged, 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 under the Federal Trade Commission Act.

*Mr. Michael P. Hughes*, for the Commission.
*Mr. Henry Parker*, of New York, N. Y., for respondent.

INITIAL DECISION BY RAYMOND J. LYNCH, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and the Rules and Regulations made pursuant thereto, the Federal Trade Commission on December 30, 1960, issued and subsequently served its complaint in this proceeding against the above-named respondent.

On February 24, 1961, there was submitted to the undersigned hearing examiner an agreement between respondent and counsel supporting the complaint providing for the entry of a consent order.

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

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

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

1. Jacob Kastelman is an individual with his office and principal place of business located at 151 West 28th Street, New York, New York.

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

ORDER

*It is ordered*, That Jacob Kastelman, an individual trading as Jacob Kastelman, or under any other trade 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, or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product, or in connection with the sale, advertising, advertising 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, or the introduction into commerce, the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce of fur as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

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

B. Falsely or deceptively invoicing furs or fur products by:

1. Failing to furnish to purchasers of furs or fur products invoices 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 invoicing or otherwise falsely or deceptively identifying furs or fur products as to the name or names of the animal or animals that produced the fur.

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

C. Falsely or deceptively invoicing fur products by:

1. Failing to disclose that fur products contain or are composed of secondhand used fur when such is the fact.

2. Failing to set forth the item number or mark assigned to a 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 4th day of May 1961, become the decision of the Commission; and, accordingly:

*It is ordered*, That 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

# SIMES & RESNICK, INC., ET AL.

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

*Docket 8270. Complaint, Dec. 30, 1960—Decision, May 4, 1961*

Consent order requiring New York City furriers to cease violating the Fur Products Labeling Act by invoicing artificially colored fur products as natural; by failing to disclose on labels and invoices that certain fur products were dyed, bleached, or otherwise artificially colored; and by failing in other respects to comply with labeling and invoicing requirements.

## 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 Simes & Resnick, Inc., a corporation, and Irving Simes and Abraham Resnick, 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. Simes & Resnick, 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 242 West 30th Street, New York, New York.

Irving Simes and Abraham Resnick are officers of the said corporate respondent. These individuals formulate, direct and control the acts, practices and policies of the said corporate respondent. Their office and principal place of business is the same as that of the said 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 misbranded in that they carried labels showing the name of the fur, without disclosing that the product was dyed, in violation of Section 4(1) of the Fur Products Labeling Act.

PAR. 4. Certain of said fur products were misbranded in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act, and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 5. Certain of said fur products 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 and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 6. Certain of said fur products were falsely and deceptively invoiced in that said fur products were invoiced to show that the fur contained therein was natural, when in fact such fur was bleached, dyed or otherwise artificially colored, in violation of Section 5(b)(2) of the Fur Products Labeling Act.

PAR. 7. The aforesaid acts and practices of respondents, as herein alleged, 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 under the Federal Trade Commission Act.

*Mr. Harry E. Middleton, Jr.*, supporting the complaint.
Respondents, *pro se*.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on December 30, 1960. The complaint charged respondents with misbranding and falsely and deceptively invoicing, fur products. Said acts and practices were charged to be in violation of the Federal Trade Commission Act and the Fur Products Labeling Act.

On February 28, 1961, counsel submitted to the undersigned hearing examiner an agreement, among respondents and counsel supporting the complaint, providing for the entry without further notice of a consent order. The agreement was duly approved by the Director, the Associate Director and the Assistant Director of the Bureau of Litigation.

The hearing examiner finds that said agreement includes all of the provisions required by Section 3.25(b) of the Rules of the Commission, that is:

A. An admission by all the respondent parties thereto of jurisdictional facts;

B. Provisions that:

1) The complaint may be used in construing the terms of the order;

2) The order shall have the same force and effect as if entered after a full hearing;

3) 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;

4) The entire record on which any cease and desist order may be based shall consist solely of the complaint and the agreement;

5) The order may be altered, modified, or set aside in the manner provided by statute for other orders;

C. Waivers of:

1) The requirement that the decision must contain a statement of findings of fact and conclusion of law;

2) Further procedural steps before the hearing examiner and the Commission.

In addition the agreement contains the following permissive provisions: A waiver by the respondents of any right to challenge or contest the validity of the order entered in accordance with the agreement, and a statement that 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.

Having considered said agreement, including the proposed order, and being of the opinion that it provides an appropriate basis for settlement and disposition of this proceeding; the hearing examiner hereby accepts the agreement but orders that it shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

The following jurisdictional findings are made and the following order issued:

1. Respondent Simes & Resnick, 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 242 West 30th Street, New York, New York.

2. Respondents Irving Simes and Abraham Resnick are individuals and officers of the corporate respondent. They formulate, di-

rect and control the acts and practices of said corporate respondent. Their address 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.

ORDER

*It is ordered*, That Simes & Resnick, Inc., a corporation, and its officers, and Irving Simes and Abraham Resnick, 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:

1. Misbranding fur products by:

A. Failing to disclose on labels that the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact.

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

2. Falsely or deceptively invoicing fur products by:

A. Failing to disclose on invoices that the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact.

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall on the 4th day of May 1961, 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.

# MAURICE J. FEIL ET AL. TRADING AS THE ENURTONE COMPANY

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

*Docket 6564. Modified order, May 5, 1961*

Order modifying desist order of Oct. 2, 1959 (56 F. T. C. 364), to comply with decree of the Ninth Circuit Court of Appeals, by substituting the words "caused by" for the word "involving".

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

*Mr. John J. McNally* for the Commission.

*Mr. Harold Easton*, *Mr. Theodore J. Elias*, and *Mr. Robert B. Hudson*, all of Los Angeles, Calif., for respondents.

ORDER MODIFYING CEASE AND DESIST ORDER TO BRING IT INTO CONFORMITY WITH THE DECREE OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

This matter having been brought before the Commission by the appeal of counsel supporting the complaint from the initial decision of the hearing examiner entered on the 24th day of February 1959; and, the Commission having heard the appeal on the pleadings, testimony, stipulation, exhibits, briefs and oral argument of counsel; and

The Commission, after duly considering the whole record and being fully advised in the premises, having on the 2nd day of October 1959, issued its final order in which it modified the initial decision and the order to cease and desist entered by examiner as aforesaid and adopted the initial decision as modified as the decision of the Commission; and

Respondents having filed in the United States Court of Appeals for the Ninth Circuit their petition for the review of the order to cease and desist issued by the Commission on the 2nd day of October 1959, as aforesaid, praying that the order be set aside or, in the alternative, be modified to conform to the form of the order contained in the initial decision of the examiner entered on the 24th day of February 1959, as aforesaid; and

The United States Court of Appeals for the Ninth Circuit having on the 22nd day of December 1960 (285 F.2d 879 [6 S.&D. 875]), handed down its opinion in which it, for reasons therein stated, modified the prohibitory paragraph of the order entered by the

Commission on the 2nd day of October 1959, as aforesaid, by eliminating therefrom the word "involving" and substituting therefor the words "caused by" so that the paragraph of the order shall read as follows:

That the use of said device is of value in stopping bed-wetting or correcting the bed-wetting habit unless expressly limited in a clear and conspicuous manner to cases of bed-wetting not caused by organic defects or diseases.

And as thus modified, affirmed the order and directed enforcement; and on the 18th day of January 1961, entered its final decree in which it modified the final order of the Commission as hereinabove set forth and as thus modified, affirmed said order and commanded Maurice J. Feil and Leo A. Loeb, individually and as copartners trading as The Enurtone Company to forthwith obey and comply with the terms of the order as thus modified; and the time allowed for filing a petition for certiorari having expired and no such petition having been filed; and

The Commission being of the opinion that its said order to cease and desist, issued on the 2nd day of October 1959, as aforesaid, should be brought into conformity with the aforesaid decree of the United States Court of Appeals for the Ninth Circuit modifying the said order to cease and desist, as aforesaid;

*Now, therefore, it is hereby ordered*, That the order to cease and desist issued by the Commission on the 2nd day of October 1959, as aforesaid, be modified to read as follows:

*It is ordered*, That respondents Maurice J. Feil and Leo A. Loeb, individually and as copartners trading as The Enurtone Company, or trading under any other name or names, and their respective agents, representatives, employees and lessees, directly or through any corporate or other device in connection with the offering for sale, sale, leasing or distribution of a device known as "Enurtone", or any other device which functions in substantially the same manner, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly:

That the use of said device is of value in stopping bed-wetting or correcting the bed-wetting habit, unless expressly limited in a clear and conspicuous manner to cases of bed-wetting not caused by organic defects or diseases.

*It is further ordered*, That respondents shall, within 30 days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which

they have complied with the order to cease and desist as hereinabove modified.

*It is further ordered*, That the modified order as here issued shall be served upon respondents in the same manner as was the original order to cease and desist.

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IN THE MATTER OF

## MORTON'S, INC., ET AL.

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

*Docket 6976. Modified order, May 5, 1961*

Order modifying desist order of Feb. 25, 1960 (56 F. T. C. 965), to comply with decree of First Circuit Court of Appeals, by eliminating Paragraph A(3) and Paragraph D.[1]

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

*Mr. Harry E. Middleton, Jr.*, and *Mr. Thomas A. Ziebarth* for the Commission.

*Guterman, Horvitz & Rubin*, of Boston, Mass., for respondents.

ORDER MODIFYING ORDER TO CEASE AND DESIST SO AS TO BRING IT INTO CONFORMITY WITH THE DECREE OF THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

This proceeding having been heard by the Commission upon its review of the whole record, including briefs and oral argument; and the Commission having rendered its decision and having issued its order to cease and desist on February 25, 1960; and

Respondents having filed in the United States Court of Appeals for the First Circuit their petition to review and set aside the order to cease and desist, and that Court having rendered its decision on January 24, 1961 (286 F.2d 158 [7 S.&D. 6]), eliminating therefrom Paragraph A(3) which prohibited the misbranding of fur products by—

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

and setting aside Paragraph D which prohibited respondent from—

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[1] The Paragraphs set aside read as follows:

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

"D. Making pricing claims or representations of the type referred to in Paragraph C above, unless there is [sic] maintained by respondents full and adequate records disclosing the facts upon which such claims or representations are based;"

D. Making pricing claims or representations of the type referred to in Paragraph C above, unless there is [*sic*] maintained by respondents full and adequate records disclosing the facts upon which such claims or representations are based;

and the Court having issued its decree on January 25, 1961, affirming and directing enforcement of the Commission's order as thus modified; and the time allowed for filing a petition for certiorari having expired and no such petition having been filed; and

The Commission being of the opinion that its said order to cease and desist, issued February 25, 1960, should be brought into conformity with the aforesaid decree of the United States Court of Appeals for the First Circuit modifying the said order to cease and desist, as aforesaid;

*Now, therefore, it is hereby ordered*, That the aforesaid order to cease and desist be modified to read as follows:

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

A. Misbranding fur products by:

(1) 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.

(2) Setting forth on labels affixed to fur products:

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

(b) Required information in handwriting.

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 fails to disclose the name or names of the animal or animals producing the fur or furs contained in the fur product, as set forth in

the Fur Products Name Guide and as prescribed under the Rules and Regulations.

C. Falsely or deceptively advertising fur products through use of any advertisement, representation, public announcement or notice which is intended to aid, promote or assist, directly or indirectly, in the sale or offering for sale of fur products and which represents directly or by implication that the regular or usual price of any fur product is any amount which is in excess of the price at which respondents have usually sold such products in the recent regular course of their business.

*It is further ordered*, That respondents shall, within 30 days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist as hereinabove modified.

*It is further ordered*, That the modified order as here issued shall be served upon respondents in the same manner as was the original order to cease and desist.

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IN THE MATTER OF

## NATIONAL TRADE PUBLICATIONS SERVICE, INC., ET AL.

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

*Docket 7525. Complaint, June 17, 1959—Decision, May 5, 1961*

Order requiring a concern in Overland Park, Kans., engaged in selling magazine subscriptions to the public through solicitation of their agents, generally handicapped individuals, to cease accepting payment for magazines they were not authorized to sell; requiring purchasers to substitute magazines for those subscribed to and paid for and which they were not authorized to sell and substituting magazines for those paid for without the consent of the subscriber; and representing falsely that certain publications they were authorized to sell were the same in content as others not on their selling list.

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

*Achtenberg, Sandler & Balkin*, of Kansas City, Mo., for respondents.

INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER

Respondents are charged with violation of the Federal Trade Commission Act by using false statements and misleading and un-

fair practices in the soliciting and sale of magazine subscriptions through their sales agents or representatives. In their answer, respondents denied that the solicitations and sales are made by their agents or representatives, stating that such sales are made through independent contractors or employees of independent contractors and in addition, denied the various representations and practices charged in the complaint. Hearings were held at Kansas City, Cleveland, Detroit and Washington, D. C., following which, proposed findings and conclusions were submitted by both counsel. The hearing examiner has given consideration to the proposed findings and conclusions, and all findings of fact and conclusions of law proposed by the parties not hereinafter found or concluded are herewith rejected.

## FINDINGS OF FACT

1. Respondent National Trade Publications Service, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri. Its office, originally located at 3119 Troost Avenue, Kansas City, Missouri, is now located at 7134 West Eightieth Street, Overland Park, Kansas. Individual respondent Melvin R. Lindsey is an officer of said corporation. He formulates, directs and controls the policies of the corporate respondent. Respondent Melvin R. Lindsey has traded and done business under the names of National Publishers Service and Trade Press Bureau.

2. Respondents are now and for some time last past have been engaged in the sale of magazine subscriptions to the public. Respondents are authorized to sell only certain magazines. To solicit such subscriptions, respondents engage the services of so-called "crew managers" who in turn select solicitors who conduct the actual door-to-door canvassing of the public. These crew managers are supplied by the respondents with forms which the solicitors are to use in taking subscriptions. On many of these forms the solicitor is referred to as the salesman or representative of the respondent company. The solicitors also carry a list of magazines indicating the ones which they have been authorized to sell on behalf of the respondent company. The solicitors also carry credentials identifying them as authorized representatives of the respondent company. In many communications originating from the respondent company, reference is made to the solicitor as "our salesman" or "our representative." On occasion, respondent company notifies the crew manager that he is not to allow a certain solicitor to represent the respondent company. In consequence thereof, the crew manager loses his job unless that solicitor is fired.

3. In the course and conduct of their business respondents, through their sales agents or representatives, solicit subscriptions for various magazines in various States of the United States. The subscriptions, when obtained by the agents or representatives, are sent by them from various States to respondents' place of business, orginally in the State of Missouri, now in the State of Kansas, and are then forwarded by the respondents to magazine publishers, many of whom are located in States other than Missouri and Kansas. Respondents and their sales agents and representatives retain for themselves a part or all of the subscription price of each magazine sold by them.

4. Respondents maintain and at all times mentioned herein have maintained a substantial course of trade in said subscriptions, in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondents receive subscriptions from persons in many parts of the United States as well as in Canada, Mexico and Hawaii, with total business approximating two hundred thousand subscriptions per year at an average price of three dollars each.

5. Respondents at all times mentioned herein have been in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of magazine subscriptions.

6. Respondents, through their sales agents or representatives in connection with the solicitation and sale of magazine subscriptions, have accepted and received payment for magazines which they were not authorized to sell. This charge is substantiated by the testimony of more than a half dozen witnesses, as well as by the correspondence of respondent company.

7. In at least one or two instances, respondents, through their sales agents or representatives in connection with the solicitation and sale of magazine subscriptions, have collected money in excess of the regular subscription price.

8. Respondents, through their sales agents or representatives in connection with the solicitation and sale of magazine subscriptions, have failed to provide delivery of magazines for which they were authorized to accept subscriptions. In some instances, the failure of delivery was permanent; in others, the delay ranged from six to fifteen months.

9. Respondents, through their sales agents or representatives in connection with the solicitation and sale of magazine subscriptions, have required persons to substitute other magazines for those they had subscribed to and paid for but which the respondents were not authorized to sell. Form letters of the respondent company used to correspond with subscribers in such cases as well as the testimony of a number of witnesses fully supports this charge.

10. Respondents, through their sales agents or representatives in connection with the solicitation and sale of magazine subscriptions, have substituted magazines for those subscribed to and paid for without the consent of the subscriber. The uncontradicted testimony of several subscribers corroborates this finding.

11. Respondents, through their sales agents or representatives in connection with the solicitation and sale of magazine subscriptions, have represented, contrary to the fact, that the subscription price of magazines, or a portion thereof, would be applied to a veterans' charity or organization or for the benefit of the handicapped or for some other charitable purpose. Respondent Lindsey himself admitted that he had received complaints that the solicitors had represented that they were connected with a charitable organization. Although the record does not contain a categorical and unequivocal representation that a portion of the subscription price would be applied to a veterans' charity or for some other charitable purpose, an unsuspecting and sympathetic subscriber would be misled into thinking that a part of the subscription price eventually wound up in some charitable purpose as a result of the implied representations reasonably inferable from the sales "pitch" and behavior of the solicitors, some of whom were amputees or wore army uniforms, and many of whom were physically handicapped.

12. Respondents, through their sales agents or representatives in connection with the solicitation and sale of magazine subscriptions, have represented, contrary to the fact, that certain publications which they are authorized to sell are the same in context as publications which they are not authorized to sell. The record contains the uncontradicted testimony of several subscribers to this effect. Several other subscribers were informed that the magazines on the subscription list were *similar* to (rather than the *same* as) others not on the subscription list. These other subscribers' testimony has not been considered in connection with this finding.

13. The use by the respondents of the aforesaid false statements and misleading and unfair practices has had, and now has, the tendency and capacity to induce many members of the public to purchase magazine subscriptions from respondents and, in many instances, to subscribe for magazines which they would otherwise not have subscribed for. As a consequence, substantial trade in commerce has been unfairly directed to respondents from their competitors, and substantial injury has thereby been done to competition in commerce. In addition, these acts and practices were and are all to the prejudice and injury of the public.

DISCUSSION

In the answer of the respondents to the complaint, respondents denied that the magazine subscription sales were made through its agents or representatives but stated that such sales were made through "independent contractors or employees of independent contractors." Whether or not these sales persons would be considered independent contractors at common law, the decisions are uniform in enunciating the principle that a commercial concern which holds out order-taking canvassers to the public as its representatives and benefits from their deceptive sales activities is properly subject to Commission corrective action, *Steelco Stainless Steel, Inc.* v. *Federal Trade Commission*, 187 F.2d 693 [5 S. & D. 265] (7th Cir. 1951); *Goodman* v. *Federal Trade Commission*, 244 F.2d 584 [6 S. & D. 284] (9th Cir. 1957); *International Art Co.* v. *Federal Trade Commission*, 109 F.2d 393 [3 S. & D. 188] (7th Cir. 1940)—and this is so even where the misrepresentations are made in violation of instructions and despite honest efforts by the company to prevent deception. *Standard Distributors, Inc.* v. *Federal Trade Commission*, 211 F.2d 7 [5 S. & D. 619] (2d Cir. 1954); *Perma-Maid Co.* v. *Federal Trade Commission*, 121 F.2d 282 [3 S. & D. 397] (6th Cir. 1941).

The brief of the respondents argues that Commission counsel has failed to prove that the respondents collected money in excess of the regular subscription price, citing the testimony of one witness who may have been mistaken about the term of the subscription. Respondents, however, completely ignore the uncontradicted testimony of another witness who paid twenty dollars for a three-year subscription to a magazine whose rate was only two dollars per year.

Respondents also argue that Commission counsel has not proved that respondents represented that the subscription price would be applied to charitable purposes. They point out, quite correctly, that not a single witness testified that such representation was made. The rule is well established, however, that actual deception need not be shown. It is sufficient if the practices have the capacity or tendency to deceive. Over-all impressions must be considered. In making that consideration, it must be borne in mind that the Federal Trade Commission Act is intended for the protection of all members of the public, including the "ignorant, the unthinking and the credulous." *Charles of the Ritz Dist. Corp.* v. *Federal Trade Commission*, 143 F.2d 676 [4 S. & D. 226] (2d Cir. 1944). Solicitation by one wearing an army uniform or by an amputee referring to the solicited subscription as a means of obtaining "points to go to trade school" or "points for new limbs" can, wittingly or unwittingly, easily create in the mind of the credulous the impression that his subscription was in the

nature of a charitable contribution which, of course, it was not. Such sales promotion is deceptive and unfair to competing sellers in commerce in its implications.

Respondents also argue that Commission counsel has not sustained the charge that the respondents had represented its authorized magazines were the same in content as some unauthorized publications. They point to the testimony of certain of the witnesses to the effect that the solicitor claimed one magazine to be *similar* to another. Although claims of similarity made by a salesman may be warranted under some circumstances, I find it unnecessary to pass upon that point. The charge made is that the respondents represented one magazine to be not similar to, but the *same* as, another. Several witnesses corroborated the charge. Further discussion of the issue seems unnecessary since in each instance the magazines compared were not at all the same.

Another specific argument raised by the respondents is that Commission counsel has not shown that the respondents have failed to provide delivery of magazines subscribed for. Respondents point out that there has been no proof that they have failed to forward these subscriptions but only that there has been a failure of delivery to the subscriber. They argue, however, that delivery is not the responsibility of the respondents who, by contract, undertake only to forward the subscriptions to the publishers. The ordinary subscriber in dealing with a magazine solicitor is not thinking in terms of using a solicitor as a mere transmittal agent, nor do solicitors ply their trade representing themselves as mere transmittal agents. Instead, their usual behavior is that of a salesman selling a commodity and not merely placing orders on behalf of the buyer. It may well be that, nevertheless, the respondents should not be held responsible for failure to provide delivery where the failure is due to circumstances beyond their control, such as the bankruptcy of the publication or the discontinuance of summer issues, as was the case in several instances. No explanation, however, is suggested for the failure of several subscribers to receive an authorized subscription magazine for the better part of one year or more and for another subscriber's complete failure to receive his subscription to two authorized magazines. As it is said of justice, delivery delayed is delivery denied, in the absence of any justification for the delay. Respondents, however, offered no justification even to the extent of showing that they had expeditiously forwarded the subscriptions, the proof of which was entirely within their own command.

Finally, respondents argue that the quantity of the proof when compared to the volume of business handled by the respondents was

"so infinitesimal as to fail absolutely." I do not think the respondents' position is well taken. This is not the situation where the Commission's proof consists of but an isolated instance of misrepresentation. On the contrary it is a mosaic of various illegal acts, each of which constitutes an unfair practice in commerce. Taken together, these episodes give us a picture of misrepresentation and deception practiced by the respondents over a period of years in a number of widely separated communities. Respondents do not suggest what quantum of proof should be necessary to sustain such a charge in a situation such as this. Obviously, it would be impractical and unwise to bring in as witnesses a majority of the two-hundred-thousand-plus subscribers. Even as many as one thousand subscriber witnesses would constitute but a minor fraction of respondents' business, yet would enmesh the trial of this matter endlessly. The application of a *de minimis* rule to a situation such as this where there has been proof of multiple and varied misrepresentations in commerce would clearly be inappropriate whether or not such rule is warranted in other circumstances. See *Associated Dry Goods Corporation*, Federal Trade Commission Docket No. 7184, December 14, 1959; *Consumer Sales Corp.* v. *Federal Trade Commission*, 198 F.2d 404 [5 S. & D. 419] (2d Cir. 1952).

CONCLUSION

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

Upon the foregoing findings of fact and conclusions of law, the following order is hereby entered:

ORDER

*It is ordered*, That respondents National Trade Publications Service, Inc., a corporation, and its officers, and Melvin R. Lindsey, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of magazine subscriptions in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Accepting subscriptions for magazines or other publications for which they have no authority to solicit.

2. Collecting money from subscribers in excess of the regular price of subscriptions for the magazines or other publications.

3. Failing to provide subscribers delivery of magazines or other publications for which they are authorized to accept subscriptions.

4. Requiring subscribers to substitute magazines or other publications for those subscribed for.

5. Substituting magazines or other publications for those subscribed for without the consent of the subscriber.

6. Representing, directly or by implication, that the subscription price of magazines or other publications sold by them, or any portion thereof, will be applied to a veterans' charity, veterans' organization, for the benefit of the handicapped or any other charitable purpose, or will be applied or used for any other purpose that is not in accordance with the fact.

7. Representing directly, or by implication, that any magazine or publication which respondents are authorized to sell is the same in any respect to magazines or other publications which they are not authorized to sell, unless such is the fact.

OPINION OF THE COMMISSION

By Kern, *Commissioner*:

The complaint herein charges respondents with violating the Federal Trade Commission Act in seven respects in the solicitation and sale of magazine subscriptions. The hearing examiner found that all of the charges were sustained by the evidence and ordered respondents to cease and desist from the practices found to be unlawful. Respondents have appealed from this decision.

Respondents are authorized to sell only certain magazines, usually on the basis of an agreement with the publishers thereof. They solicit subscriptions through salesmen selected by "crew-managers" engaged by respondents or, in the case of trade journals only, through salesmen which they hire directly. The charges, in the order in which they are set forth in the complaint, are that respondents (1) accepted and received payment for unauthorized magazines; (2) collected money in excess of the regular subscription price; (3) failed to provide delivery of authorized magazines; (4) required persons to substitute magazines for unauthorized magazines which they have paid for; (5) substituted magazines for those paid for without the consent of the subscriber; (6) falsely represented that all or a portion of the subscription price of a magazine will be applied to certain charitable purposes; and (7) falsely represented

that certain authorized publications are the same in content as certain unauthorized publications.

Respondents first argue that the second, third, sixth and seventh charges are not supported by the evidence. With the exception of the seventh charge, we agree with respondents' contention.

The only evidence in support of the second charge, that respondents collected money in excess of the subscription price, is the testimony of two witnesses. One of these witnesses testified that she paid eight dollars for a three-year subscription to a magazine for which the three-year rate was five dollars. However, this testimony can be given little weight as the facts disclose that respondents actually entered her subscription for five years for which the subscription rate was eight dollars. The testimony of the other witness, that he paid twenty dollars for a three-year subscription to a magazine whose yearly rate was $2.50, is uncontradicted. It appears that this witness was led to believe that he was subscribing for a more expensive magazine not on respondents' authorized list, which practice is covered by the seventh charge in the complaint. In any event, we are not persuaded that this one instance warrants a conclusion that respondents engaged in the practice of overcharging subscribers.

The third charge alleges that respondents failed to provide the delivery of authorized magazines. The evidence in support of this charge shows that one subscriber never received two publications ordered through respondents and that several others did not receive authorized magazines for almost a year after subscribing. However, it is clear that respondents have no control over the publishers they represent, nor are they responsible for the failure of said publishers to fulfill subscriptions or continue publication of a magazine. Moreover, there is no showing that respondents represented to prospective subscribers that they could provide delivery. While we believe that the record demonstrates a failure on the part of respondents to promptly forward subscriptions to the publishers, we must find that the third charge, as pleaded, has not been sustained.

It is obvious from the record that the alleged false representation in the sixth charge, as interpreted by counsel supporting the complaint, was that all or a part of the subscription money price of magazines would be used as a charitable contribution to certain veterans' or other groups. It is likewise clear that, insofar as this sixth charge is concerned, the matter was tried on that issue.

As the hearing examiner correctly found, there is no showing in this record that respondents' salesmen expressly represented that the subscription price of a magazine would be applied to charitable

purposes. However, the hearing examiner inferred such a representation from the fact that certain statements were made to purchasers by respondents' salesmen who either wore army uniforms or were amputees. These statements were to the effect that subscriptions were being solicited as a means of obtaining points to go to trade school or for new limbs. We think the most that can be inferred from this evidence is that these salesmen solicited subscriptions out of sympathy for their own personal plight. In our view, the inference drawn by the hearing examiner is not warranted.

The only other evidence on this point is the testimony of respondent Lindsey to the effect that the company has received one or two complaints of such representations by their salesmen since 1951. We do not think this statement constitutes substantial evidence of the existence of the practice alleged in the sixth charge.

Respondents also take issue with the hearing examiner's ruling sustaining the seventh charge. The testimony of several witnesses fully supports a finding that respondents' salesmen represented that certain authorized publications are the same in content as publications which they are not authorized to sell. There can be no doubt that these representations were misleading and the record shows that several subscribers who relied thereon complained to respondents concerning such misrepresentation upon receipt of the authorized publication. Moreover, we agree with respondents that the distinction made by the hearing examiner between the claims of "same" and "similar," as used by respondents' salesmen in comparing publications, is too subtle for the average purchaser. We find that both claims are deceptive. Paragraph 7 of the order in the initial decision will be modified to conform with our findings on this charge.

Respondents argue that the evidence in support of the first, fourth and fifth charges, as well as the seventh charge, consists of isolated instances when considered in connection with their total yearly sales of two hundred thousand subscriptions, and that, accordingly, such evidence does not establish a course of action.

Some fifteen witnesses testified in support of the complaint. These witnesses testified as to practices which took place in Kansas City, Detroit and Cleveland, and, with one exception, all of their testimony relates to events taking place within a period of about one year. Their uncontradicted testimony discloses that in each of these cities, respondents' salesmen solicited and accepted subscriptions for magazines not on respondents' authorized list. Upon receipt of a complaint from a subscriber, respondents sent a form letter requesting the subscriber to make a substitute selection from the au-

thorized list. The form letter states that since commissions were allowed when the order was sold, no cancellations or refunds are available. In those instances in which the subscriber advised respondents that he did not want a publication on respondents' list, respondents then sent a personal letter, usually after an extensive delay, in which the subscriber was told that he must take a substitute publication. In some instances, a subscriber accepted the substitute. However, the record shows several instances wherein the subscriber persisted in his demand for a refund whereupon respondents of their own accord made the substitution.

In addition to the consumer witnesses, counsel supporting the complaint introduced the testimony of Mr. Harry Hites, Jr., Sales Director of the publisher of the Kiplinger Letter. His testimony, supported by copies of correspondence with respondents, shows that over at least a three-year period, respondents' salesmen in many different parts of the country entered numerous initial or renewal subscriptions for that publication. Respondents have never been authorized to sell subscriptions to the Kiplinger Letter.

There can be no doubt that respondents were aware of the practices of their salesmen, encouraged such practices and took an active part therein. Desipte the fact that respondents were continually advised, through correspondence, telephone calls and a personal visit by Mr. Hites, of the activities of their salesmen in soliciting subscriptions to the Kiplinger Letter, it appears that such practices continued until action was taken by the attorneys for that publisher. Also, the record shows that respondents received payment for renewal of subscriptions to the Kiplinger Letter several months prior to the time the buyer's current subscription expired. No action was taken on these orders until complaint was received from the buyer, at which time respondents sent the usual form letter requiring that a substitute selection be made.

Although the order form and subscriber's receipt which respondents furnish their salesmen caution the prospective subscriber to choose only the magazines printed thereon, there are several underlined spaces on the order form in which the name of an unauthorized magazine may be conveniently printed. That this was done by respondents' salesmen is clearly evident from several receipts in evidence. Also, the very fact that respondents used a *form* letter to advise subscribers that their subscriptions were not on the authorized list militates against any conclusion that such unauthorized sales were isolated instances. Cf. *Consumer Sales Corporation* v. *Federal Trade Commission*, 198 F.2d 404, 407 [5 S. & D. 419] (2d Cir. 1952).

The deceptive acts established in this record, occurring over the period of time and in the different locations shown, cannot be regarded as merely single, inadvertent occurrences. To the contrary, they are shown to be an integral part of the sales procedure employed by respondents in their solicitation and sale of magazine subscriptions. Such a course of conduct clearly constitutes an unfair and deceptive practice within the prohibition of Section 5 of the Federal Trade Commission Act.

Respondents' contention that paragraphs 4 and 5 of the hearing examiner's order, which are adopted as paragraphs 2 and 3 of the Commission's order, are duplicative is without substance. These paragraphs prohibit the future use of two separate unfair practices which are charged in the complaint and which are established on the record.

To the extent indicated herein, respondents' appeal is granted but in all other respects it is denied. Our order providing for appropriate modification of the initial decision is issuing herewith.

Commissioner Elman did not participate in the decision of this matter.

FINAL ORDER

Respondents having filed an appeal from the initial decision of the hearing examiner, and the matter having been heard on briefs in support thereof and in opposition thereto; and the Commission having rendered its decision granting in part and denying in part the appeal and directing modification of the initial decision:

*It is ordered*, That paragraphs 7 and 8 on page 3 of the initial decision and paragraph 11 on page 4 thereof be stricken, and that paragraphs 9, 10, 12 and 13 on pages 3 and 4 be renumbered 7, 8, 9 and 10, respectively.

*It is further ordered*, That renumbered paragraph 9 be modified to read as follows:

Respondents, through their sales agents or representatives, in connection with the solicitation and sale of magazine subscriptions, have represented that certain publications which they are authorized to sell are the same in content as publications which they are not authorized to sell. The record contains the uncontradicted testimony of several witnesses to this effect. In addition, several other witnesses were informed that the magazines on the subscription list were similar to others not on the subscription list. The testimony of these witnesses discloses that they subscribed to authorized publications as a result of such representations and later complained to

respondents that the magazines they received were not the same or similar to the magazines with which they were compared. An example of this practice is the representation by respondents' salesmen that the publication "Capper's Weekly (News)," as listed on respondents' order form, is the same as Newsweek magazine. In our opinion, the copy of Capper's Weekly in evidence (Commission Exhibit 49A–D) is obviously different from the national publication "Newsweek." We find from the evidence that the words "same" and "similar," as used by respondents' salesmen in comparing publications on the authorized list with unauthorized publications, are deceptive.

*It is further ordered*, That these paragraphs beginning with the second full paragraph on page 5 of the initial decision through and including the second full paragraph on page 6 thereof be stricken.

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

*It is ordered*, That respondents, National Trade Publications Service, Inc., a corporation, and its officers, and Melvin R. Lindsey, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of magazine subscriptions in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Accepting subscriptions for magazines or other publications for which they have no authority to solicit.

2. Requiring subscribers to substitute magazines or other publications for those subscribed for.

3. Substituting magazines or other publications for those subscribed for without the consent of the subscriber.

4. Representing directly, or by implication, that any magazine or publication which respondents are authorized to sell is

(a) the same in content as any magazine or publication which respondents are not authorized to sell, or

(b) similar to any magazine or publication which respondents are not authorized to sell when in fact the magazines or publications compared are different in either content, form, coverage or any other material respect.

*It is further ordered*, That the second, third and sixth charges of the complaint (subparagraphs 2, 3 and 6 of Paragraph Six) be, and they hereby are, dismissed.

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

*It is further ordered*, That respondents, National Trade Publications Service, Inc., and Melvin R. Lindsey, 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.

Commissioner Elman not participating.

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IN THE MATTER OF

## ART NATIONAL MANUFACTURERS DISTRIBUTING CO., INC., ET AL.

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

*Docket 7286. Complaint, Oct. 24, 1958—Decision, May 10, 1961*

Order requiring two associated concerns with common officers—a catalog mail order house and a watch manufacturer which made a substantial part of its sales through the former's catalog—to cease misrepresenting the size and extent of their business quarters, or the length of time in business; representing falsely that their "Louis" watches were shockproof, had been awarded a Gold Medal, were jeweled with rubies, and were guaranteed; and to cease preticketing their watches with excessive prices represented thereby as the usual retail prices.

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

*Mr. B. Paul Noble*, of Washington, D. C., for respondents.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

This proceeding is based upon a complaint brought under §5 of the Federal Trade Commission Act, charging respondents with the use of unfair and deceptive acts and practices and unfair methods of competition in commerce in connection with the sale and distribution of various items of merchandise, including watches.

This proceeding is now before the Hearing Examiner for final consideration upon the complaint, answers thereto, testimony and other evidence, proposed findings of fact and conclusions of law filed by all parties. The Hearing Examiner has given consideration to the proposed findings of fact and conclusions submitted, and all find-