FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS, JULY 1, 1961, TO DECEMBER 31, 1961

IN THE MATTER OF

PIERRE MARCHE, INC., ET AL.

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

Docket 8162. Complaint, Nov. 4, 1960—Decision, July 7, 1961

Consent order requiring a corporate manufacturer of perfumes, toilet waters, cosmetics, and other items, in St. Louis, Mo., and its corporate successor at the same address, to cease representing falsely on packages, containers, and labels that certain of their perfumes were made in France; that an excessive price was the usual retail selling price; and that they operated places of business in Paris and New York.

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 Pierre Marche, Inc., a corporation, and Fred M. Malorrus, individually and as an officer of said corporation, and Hallmark Distributors, Inc., a corporation, and Jack Yawitz, individually and as an officer 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 Pierre Marche, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri. Respondent Fred M. Malorrus is an individual and is an officer of said respondent, Pierre Marche, Inc., and in this capacity formulates, directs and controls the acts and practices of the said corporate respondent.

Respondent Hallmark Distributors, Inc. is a corporation organized, existing and doing business under and by virtue of the laws

of the State of Missouri. Respondent Jack Yawitz is an individual and is an officer of said respondent, Hallmark Distributors, Inc., and in this capacity formulates, directs and controls the acts and practices of the said corporate respondent.

The principal office and place of business of each of the respondents is located at 16 North Ninth Street, in the City of St. Louis, State of Missouri.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacturing, advertising, offering for sale, sale and distribution of perfumes, toilet waters, cosmetics and other articles of merchandise to distributors and jobbers and to retailers for resale to the public.

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

PAR. 4. Respondent Pierre Marche, Inc., for several years last past has been engaged in the business operations herein described. Respondent Fred M. Malorrus, as an officer of the said respondent Pierre Marche, Inc., has actively participated in said business operations. Subsequent to the commencement of the Commission's investigation herein, respondent Hallmark Distributors, Inc. was organized and acquired the assets and stock in trade of the said respondent Pierre Marche, Inc. and occupied the premises theretofore used by respondent Pierre Marche, Inc. Respondent Fred M. Malorrus then became associated with respondent Hallmark Distributors, Inc. The business activities engaged in by respondent Pierre Marche, Inc. were substantially curtailed. The continuity of the said business practices thereby remained unbroken.

PAR. 5. The respondents, in the course and conduct of their business, as aforesaid, and for the purpose of inducing the purchase of their said products, have made numerous statements and representations with reference to said products on the packages, containers and labels of said products.

Among and typical, but not all inclusive, of said statements and representations are the following:

The perfume offered for sale and sold under the trade name of "Spring Madness" is packaged in a container on which appears numerous scenes of French and particularly Parisian life and of monuments such as the Eiffel

Tower and the Arc de Triomphe. Imprinted on a sticker of the French Tri-Color are the words "Contains fine imported essential oils." Also on the package are the words "Spring Madness . . . French Masters . . . Parfums Chenier . . . Paris . . . New York . . ." The bottle of perfume is visible through a window in the package which is covered with a transparent material. The word "FRENCH" is prominently displayed on the base in which the perfume rests.

Other perfumes sold by respondents are labeled:

Famous Perfumes . . . $10.00 . . . Paris . . . New York.
Famous Perfumes . . . $10.00 . . . Pierre Marche, Incorporated St. Louis • Paris • New York.

PAR. 6. Through the use of the aforesaid statements and representations, and others of similar import and meaning, not specifically set out herein, respondents have represented and now represent that:

(a) The perfume described as "Spring Madness" was made in France.

(b) The perfumes described as "Famous Perfumes" have a usual and customary retail selling price of $10.00.

(c) Places of business are operated by respondents in Paris and New York.

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

(a) The perfume described as "Spring Madness" is not made in France.

(b) The usual and customary retail selling price of the perfumes described as "Famous Perfumes" is not $10.00, but is an amount substantially less than $10.00.

(c) Places of business are not operated by respondents in Paris and New York.

PAR. 8. There is a preference on the part of a substantial number of purchasers of perfumes for perfume manufactured in France.

PAR. 9. By the aforesaid practices, respondents place in the hands of jobbers, dealers and retailers the means and instrumentalities by and through which they may mislead and deceive the public as to the country of origin and the usual and customary retail selling price of perfumes.

PAR. 10. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of perfumes, toilet waters, cosmetics and other articles of merchandise of the same general kind and nature as those sold by respondents.

PAR. 11. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken beliefs. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has been, and is being, done to competition in commerce.

PAR. 12. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and to respondents' competitors and constituted, and now constitute, unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Terral Jordan for the Commission.
Mr. Henry G. Morris, of St. Louis, Mo., for respondents.

INITIAL DECISION BY RAYMOND J. LYNCH, HEARING EXAMINER

The complaint in this proceeding, issued November 4, 1960, charges the above-named respondents with violation of the provisions of the Federal Trade Commission Act.

On May 12, 1961, there was submitted to the undersigned hearing examiner an agreement between respondents and counsel supporting the complaint providing for the entry of a consent order.

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

should be dismissed for the reasons set forth in affidavits attached thereto to the effect that said respondent did not in any way participate in the affairs and operation of the business of corporate respondent Hallmark Distributors, Inc.

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 Pierre Marche, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri. Respondent Fred M. Malorrus is an individual and is an officer of said respondent, Pierre Marche, Inc., and in this capacity formulates, directs and controls the acts and practices of the said corporate respondent.

Respondent Hallmark Distributors, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri. Respondent Jack Yawitz is a former officer of said respondent, Hallmark Distributors, Inc.

The principal office and place of business of each of the respondents is located at 16 North Ninth Street, in the city of St. Louis, State of Missouri.

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

ORDER

It is ordered, That respondents Pierre Marche, Inc., a corporation, and its officers, and Fred M. Malorrus, individually and as an officer of said Pierre Marche, Inc., and Hallmark Distributors, Inc., a corporation, and its officers, and Jack Yawitz, as a former officer of said Hallmark Distributors, Inc., 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 perfumes, toilet waters, cosmetics, or any other articles of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, by preticketing or by any other means, that a certain amount is the customary or usual retail

price of such merchandise, when said amount is in excess of the price at which such merchandise is customarily and usually sold at retail in the recent regular course of business in the trade area in which offered for sale.

2. Using pictorial depictions of a French character, or the expression "Contains fine imported essential oils" or the words "French", "French Masters", "Parfums Chernier", "Paris" or any other words, terms or pictures, either singly or in combination in any manner so as to represent, directly or indirectly, that said merchandise, manufactured or compounded in the United States or in any country other than France, was manufactured or compounded in France.

3. Using any words, terms or pictures either singly or in combination in any manner so as to represent, directly or indirectly, that said merchandise was manufactured, compounded or originated in a certain country or geographical region unless such is the fact.

4. Representing, directly or indirectly, that respondents operate places of business in Paris or New York; or that respondents operate places of business in any other locality or place unless such is the fact.

5. Furnishing or placing in the hands of retailers or dealers in said merchandise the means and instrumentalities by and through which they may mislead or deceive the public in the manner or as to the things hereinabove inhibited.

It is further ordered, That the complaint be and the same hereby is dismissed as to Jack Yawitz in his individual capacity.

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 7th day of July 1961, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Pierre Marche, Inc., a corporation, Fred M. Malorrus, individually and as an officer of said corporation, Hallmark Distributors, Inc., a corporation, and Jack Yawitz, as a former officer of said corporation, shall within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Decision

IN THE MATTER OF

THE C. F. SAUER COMPANY

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

Docket 8312. Complaint, Mar. 13, 1961—Decision, July 7, 1961

Order dismissing without prejudice complaint charging a Richmond, Va., manufacturer of spices, extracts, mayonnaise, and other items, with making discriminatory advertising allowances to customers in violation of Sec. 2(d) of the Clayton Act.

R. E. Cabell, Jr., Esq., of *Moncure & Cabell*, of Richmond, Va., for respondent.

Robert Cutler, Esq., supporting the complaint.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

The complaint in this proceeding issued on March 13, 1961. It charges respondent with violating § 2(d) of the Clayton Act as amended by the Robinson-Patman Act. Respondent, The C. F. Sauer Company, is a Virginia corporation with its principal place of business at 2000 West Broad Street, Richmond, Virginia. Respondent now is, and has been, engaged for many years last past in the manufacture, sale and distribution of spices, extracts, food colors, flavorings, mayonnaise, relish, sandwich spread, salad dressing, edible vegetable oils, cough syrup and liniment. Respondent sells and distributes its products to wholesalers and retailers, including retail chain store organizations. Respondent has been and is now engaged in a continuing course of trade in said products in commerce as "commerce" is defined in the Clayton Act as amended. The Federal Trade Commission has jurisdiction over the parties and the subject matter of this proceeding.

At the time the instant complaint was issued, there was and now is in full force and effect a cease and desist order issued by this Commission against this identical respondent on July 31, 1941, and reported in Volume 33 *Federal Trade Commission Decisions*, pages 812; 828–829, inclusive. Counsel supporting the complaint has represented that said cease and desist order is substantially the same as he would seek in the event he should successfully go to hearing on the present complaint and win this case on the merits. It appears that the current complaint does not require an adjudication de novo.

It is ordered, That this complaint filed in this proceeding on March 13, 1961, against The C. F. Sauer Company of Richmond,

Virginia, a Virginia corporation, be and it hereby is dismissed, without prejudice to such further action as may be initiated by the Federal Trade Commssion.

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 7th day of July 1961, become the decision of the Commission.

IN THE MATTER OF

ENGLISH SPORTSWEAR, INC., ET AL.

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

Docket 8345. Complaint, Apr. 5, 1961—Decision, July 7, 1961

Consent order requiring manufacturers in New York City to cease violating the Wool Products Labeling Act by labeling as "English Sports Coat", products manufactured in the United States.

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 English Sportswear, Inc., a corporation, and Manny Zisser and Perry Zousmer, 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 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 English Sportswear, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Individual respondents Manny Zisser and Perry Zousmer are, respectively, president and secretary-treasurer of said corporate respondent. The individual respondents formulate, and direct and control the acts, policies and practices of the corporate respondent including the acts and practices hereinafter referred to. All respondents have their office and

principal place of business at 126 Fifth Avenue, New York, New York.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, and more especially since July 1959, respondents have manufactured for introduction into commerce, 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 by the 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 stamped, tagged, labeled, or otherwise identified with respect to the place of manufacture.

Among such misbranded wool products were men's sportcoats labeled or tagged by respondents "English Sports Coat", thereby implying that the products were manufactured in and imported from England, whereas, in truth and in fact, said products were neither manufactured in England, nor English styled, but were manufactured by the respondents in the United States.

PAR. 4. 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 men's sportcoats.

PAR. 5. 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.

PAR. 6. In the course and conduct of their business, the respondents have engaged and are now engaegd in the practice of otherwise falsely representing that their products sold and distributed by them in commerce, were manufactured in and imported from England. In furtherance of this practice, and for the purpose of inducing the purchase of their said products, respondents have caused false statements, representations and implications, purporting to be descriptive of such products, to be inserted in booklets, magazines, and other types of advertising matter disseminated among the trade and the purchasing public throughout the United States.

PAR. 7. Among and typical of the acts and practices above described, the respondents in the aforesaid advertising represented said products as, for example, "English Sports Coat".

In truth and in fact said coats were not made in England, nor English styled, but were in fact manufactured by the respondents in the United States.

PAR. 8. The use by the respondents of the aforesaid representations, and others of similar import, has the capacity and tendency to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing and consuming public as to the place of manufacture of respondents' said products, and as a result of that deception or mistaken belief many members of the purchasing public have purchased in commerce, and are likely to continue to purchase in commerce, substantial quantities of respondents' said products.

PAR. 9. The aforesaid acts and practices of the respondents as alleged in Paragraphs Six, Seven and Eight above are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Harry E. Middleton, Jr., supporting the complaint.

Respondents, *pro se*.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on April 5, 1961, charging misrepresentation of the place of manufacture of men's wool clothing in violation of the Wool Products Labeling Act of 1939 and the Federal Trade Commission Act.

On April 25, 1961, there was submitted to the hearing examiner an agreement between the respondents and counsel supporting the complaint providing for the entry of a consent order.

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

constitute an admission by the respondents that they have violated the law as alleged in the complaint.

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

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

1. Respondent English Sportswear, Inc., is a New York corporation with its office and principal place of business located at 126 Fifth Avenue, New York, New York.

The respondents Manny Zisser and Perry Zousmer are individuals and officers of the corporate respondent and have the same business address as does the corporate respondent.

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

ORDER

It is ordered, That respondents English Sportswear, Inc., a corporation, and its officers, and Manny Zisser and Perry Zousmer, individually and as officers of said corporation, their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of respondents' clothing or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, in advertising, offering for sale or selling products designed and manufactured in the United States as "English Sportswear".

2. Misrepresenting in any manner the place of origin or manufacture of respondents' clothing.

It is further ordered, That said respondents English Sportswear, Inc., a corporation, and its officers, and Manny Zisser and Perry Zousmer, individually and as officers of said corporation, their 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, transporta-

tion or distribution in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, of wearing apparel, or other wool products, as such products are defined in and subject to the Wool Products Labeling Act, do forthwith cease and desist from misbranding said products by:

Falsely or deceptively stamping, tagging, labeling, or otherwise identifying such products, either directly or by implication, as to the country of origin.

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 7th day of July 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.

IN THE MATTER OF

TEXTILE MILLS COMPANY ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND THE TEXTILE FIBER PRODUCTS IDENTIFICATION ACTS

Docket 8279. Complaint, Jan. 27, 1961—Decision, July 8, 1961

Consent order requiring Chicago manufacturers of textile fiber products to cease violating the Textile Fiber Products Identification Act by falsely identifying ironing board covers on labels, invoices, and in advertising, as "50% Asbestos, balance 44% cotton, 6% rayon", when the covers contained substantially less asbestos and more cotton and rayon than so represented; by failing to label certain textile fiber products as required; and by furnishing false guaranties that their products were not misbranded.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Textile Mills Company, a corporation, and Kurt Goldsmith and John H. Niebuhr, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of such Acts and the Rules

and Regulations under the Textile Fiber Products Identification 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 Textile Mills Company is a corporation duly organized under the laws of the State of Illinois, with its principal place of business at 2762 Clybourn Avenue, Chicago, Illinois.

Individual respondent Kurt Goldsmith is President and individual respondent John H. Niebuhr is Vice President of the said corporate respondent. Said individual respondents formulate, direct and control the acts, practices and policies of the corporate respondent. The office and principal place of business of the individual respondents is the same as that of the corporate respondent.

PAR. 2. Subsequent to the effective date of the Textile Fiber Products Identification Act on March 3, 1960, respondents have been and are now engaged in the introduction, delivery for introduction, manufacture for introduction, sale, advertising and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, and in the importation into the United States of textile fiber products; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce, textile fiber products, either in their original state or which were made of other textile products so shipped in commerce, as the terms "commerce" and "textile fiber products" are defined in the Textile Fiber Products Identification Act.

PAR. 3. Certain of said textile fiber products were misbranded by respondents in that they were falsely and deceptively stamped, tagged, labeled, invoiced, advertised or otherwise identified as to the name or amount of constituent fibers contained therein.

Among such textile fiber products were ironing board covers labeled "Center panel cover: 50% Asbestos, balance 44% cotton, 6% rayon". In truth and in fact, such ironing board covers contained substantially less asbestos and substantially more cotton and rayon than they were so represented.

PAR. 4. Certain of said textile fiber products, to wit, ironing board covers, were misbranded by respondents in that they were not stamped, tagged or labeled with the information required under Section 4(b) of the Textile Fiber Products Identification Act, and in the manner and form as prescribed by the Rules and Regulations promulgated under such Act.

PAR. 5. The respondents have furnished false guaranties that their textile fiber products were not misbranded in violation of Section 10 of the Textile Fiber Products Identification Act.

PAR. 6. The respondents, in the course and conduct of their business as aforesaid, were and are in substantial competition with other corporations, firms and individuals likewise engaged in the manufacture and sale of textile fiber products, including ironing board covers, in commerce.

PAR. 7. The acts and practices of respondents as set forth herein were in violation of the Textile Fiber Products Identification Act 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.

Mr. William A. Somers for the Commission.

Arnold, Fortas & Porter, by *Mr. Abe Krash*, of Washington, D.C., and *Schwartz & Freeman*, of Chicago, Ill., for respondents.

INITIAL DECISION BY RAYMOND J. LYNCH, HEARING EXAMINER

The complaint in this proceeding, issued January 27, 1961, charges the above-named respondents with violation of the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act and the Rules and Regulations issued thereunder.

On May 3, 1961, there was submitted to the undersigned hearing examiner an agreement between respondents and counsel supporting the complaint providing for the entry of a consent order.

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

individual capacity only, should be dismissed for the reasons set forth in an affidavit attached thereto to the effect that said respondent did not participate in and had no knowledge of the acts and practices challenged in this proceeding.

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 Textile Mills Company is a corporation duly organized under the laws of the State of Illinois, with its principal place of business at 2762 Clybourn Avenue, Chicago, Illinois.

Respondent Kurt Goldsmith is President and respondent John H. Niebuhr is Vice President of the said corporate respondent. The office and principal place of business of the individual respondents is the same as that of the corporate respondent.

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

ORDER

It is ordered, That respondents Textile Mills Company, a corporation, and its officers, and Kurt Goldsmith, as an officer of said corporation, and John H. Niebuhr, individually and as an officer of said corporation, and their representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, manufacture for introduction, sale, advertising and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, and the importation into the United States of textile fiber products; selling, offering for sale, advertising, delivering, transporting, or causing to be transported, textile fiber products which have been advertised or offered for sale in commerce, and with selling, offering for sale, advertising, delivering, transporting, and causing to be transported, after shipment in commerce, textile fiber products, either in their original state or which have been made of other textile fiber products shipped in commerce, as the term "commerce" is defined in the Textile Fiber Products Identification Act, of ironing board covers or other "textile fiber products", as such products

are defined in and subject to the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by:

1. Falsely and deceptively stamping, tagging, labeling, invoicing, advertising, or otherwise identifying such products as to the name or amount of constituent fibers contained therein.

2. Failing to affix labels to such products showing each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

B. Furnishing false guaranties that textile fiber products are not misbranded under the provisions of the Textile Fiber Products Identification Act.

It is further ordered, That the complaint be dismissed as to Kurt Goldsmith individually, but not as an officer of said corporate respondent.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 8th day of July 1961, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Textile Mills Company, a corporation, Kurt Goldsmith, as an officer of said corporation, and John H. Niebuhr, individually and as an officer of said corporation, shall within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

GOLDEN PRESS, INC.

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

Docket 8342. Complaint, Apr. 5, 1961—Decision, July 8, 1961

Consent order requiring a Poughkeepsie, N.Y., publisher of children's books to cease violating Sec. 2(d) of the Clayton Act by paying for services furnished by some of its customers while not making allowances available on proportionally equal terms to all competitors of the latter, such as paying favored retail customers for promoting and displaying its publications on newsstands and in retail outlets such as drug chains and department stores, and making the payments on the basis of individual negotiations and not on proportionally equal terms.

COMPLAINT

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

PARAGRAPH 1. Respondent Golden Press, Inc., is a corporation organized and doing business under the laws of the State of New York, with its principal office and place of business located at North Avenue, Poughkeepsie, New York.

PAR. 2. Respondent has been engaged and is presently engaged in the business of publishing and distributing children's books under various titles. Its sales of such books exceed twenty-five million dollars annually. Said children's books are distributed by respondent to customers through its national distributor, Affiliated Publishers, Inc. In its capacity as national distributor for respondent, Affiliated Publishers, Inc. served and is now serving as a conduit or intermediary for the sale, distribution and promotion of publications of the respondent.

PAR. 3. Respondent, either directly or through a conduit or intermediary, has sold and distributed and now sells and distributes its publications in substantial quantities in commerce, as "commerce" is defined in the amended Clayton Act, to competing customers located throughout various states of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business in commerce, respondent paid or contracted for the payment of something of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished, or contracted to be furnished, by or through such customers in connection with the handling, sale, or offering for sale of publications sold to them by respondent. Such payments or allowances were not made available on proportionally equal terms to all other customers of respondent competing in the distribution of such publications.

For example, respondent has made said payments or allowances to certain favored retail customers for promoting and displaying its publications on newsstands and in retail outlets such as drug chains and department stores. Respondent made many of said payments to its favored customers on the basis of individual negotiations.

Among said customers, such payments were not made on proportionally equal terms.

PAR. 5. The acts and practices of respondent as alleged above are in violation of the provisions of subsection (d) of Section 2 of the amended Clayton Act.

Mr. J. Wallace Adair and *Mr. Jerome Garfinkel* supporting the complaint.

Mr. Selig J. Levitan, of New York, N. Y., for respondent.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

The complaint was issued in this proceeding against the above-named respondent on April 5, 1961. It charged respondent with making payments or allowances to some of its customers not made available on proportionally equal terms to other customers in sales in commerce of children's books, contrary to the provisions of Section 2(d) of the Clayton Act.

On April 27, 1961 counsel submitted to the undersigned an agreement dated April 26, 1961 executed by respondent, its counsel and counsel supporting the complaint. The agreement was duly approved by the 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 respondent of all jurisdictional facts alleged in the complaint.

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 conclusions of law;

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

(3) Any right to challenge or contest the validity of the order entered in accordance with the agreement.

In addition the agreement contains the following permissive provision: A statement that the signing of said 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.

The agreement is entered into subject to the condition that the initial decision based thereon shall become the decision of the Commission in this matter on the same date that the initial decision in the matter of Grosset & Dunlap, Inc., et al., Docket No. 8343 becomes the decision of the Commission.

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 Golden Press, 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 North Road, Poughkeepsie, New York, (erroneously cited in the complaint as "North Avenue").

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

ORDER

It is ordered, That respondent Golden Press, Inc., its officers, agents, representatives or employees, directly or through any corporate or other device, in connection with the distribution, sale or offering for sale of children's books in commerce, as "commerce" is defined in the amended Clayton Act, do forthwith cease and desist from paying or contracting for the payment of an allowance or anything of value to, or for the benefit of, any customer as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the handling, offering for sale, sale or distribution of any children's book published, sold or offered for sale by such respondent, unless such payment or consideration is affirmatively offered or otherwise made available on proportionally equal terms to all of its other customers competing with such favored customer in the distribution of such children's book.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

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

IN THE MATTER OF

GROSSET & DUNLAP, INC., ET AL.

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

Docket 8343. Complaint, Apr. 5, 1961—Decision, July 8, 1961

Consent order requiring three affiliated New York City publishers of children's books to cease violating Sec. 2(d) of the Clayton Act by making payments for services furnished by some of their customers while not making allowances available on proportionally equal terms to all competitors of the latter, such as paying favored retail customers for promoting and displaying their publications on newsstands and in retail outlets including drug chains and department stores, and making the payments on the basis of individual negotiations and not on proportionally equal terms.

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 (d) of Section 2 of the Clayton Act (U.S.C. Title 15, Section 13), as amended by the Robinson-Patman Act, hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Grosset & Dunlap, Inc., is a corporation organized and doing business under the laws of the State of New York, with its principal office and place of business located at 1107 Broadway, New York, New York.

Respondent Wonder Books, Inc., is a corporation organized and doing business under the laws of the State of Delaware, with its principal office and place of business located at 1107 Broadway, New York, New York.

Respondent Treasure Books, Inc., is a corporation organized and doing business under the laws of the State of Delaware, with its principal office and place of business located at 1107 Broadway, New York, New York.

Respondent Grosset & Dunlap, Inc., owns 50 percent or more of the common stock of Wonder Books, Inc., and Treasure Books, Inc.

PAR. 2. Each of the respondents has been engaged and is presently engaged in the business of publishing and distributing children's books under various titles. Their combined sales of such books exceed eight million dollars annually. Said children's books are distributed by respondents through The Curtis Circulation Company, a national distributor, or through others. The distributors of said children's books served and are now serving as conduits or intermediaries for the sale, distribution and promotion of publications of the respondents.

PAR. 3. Each of the respondents, either directly or through conduits or intermediaries, has sold and distributed and now sells and distributes its publications in substantial quantities in commerce, as "commerce" is defined in the amended Clayton Act, to competing customers located throughout various states of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their businesses, each of the respondents 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, or contracted to be furnished, by or through such customers in connection with the handling, sale, or offering for sale of publications sold to them by such respondent. Such payments or allowances were not made available on proportionally equal terms to all other customers of such respondent competing in the distribution of such publications.

For example, each of the respondents has made payments or allowances to certain favored retail customers for promoting and displaying its publications on newsstands and in retail outlets such as drug chains and department stores. Each respondent made many of said payments to its favored customers on the basis of individual negotiations. Among said customers, such payments were not made on proportionally equal terms.

PAR. 5. The acts and practices of respondents as alleged above are in violation of the provisions of subsection (d) of Section 2 of the amended Clayton Act.

Mr. J. Wallace Adair and *Mr. Jerome Garfinkel* supporting the complaint.

Weil, Gotshal & Manges, of New York City, for respondents.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

The complaint was issued in this proceeding against the above-named respondents on April 5, 1961. It charged respondents with making payments or allowances to some of their customers not made available on proportionally equal terms to other customers in sales in commerce of children's books, contrary to the provisions of Section 2(d) of the Clayton Act.

On April 27, 1961 counsel submitted to the undersigned an agreement dated April 26, 1961 executed by respondents, their counsel and counsel supporting the complaint. The agreement was duly approved by the 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 respondent parties of all jurisdictional facts alleged in the complaint.

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 conclusions of law;

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

(3) Any right to challenge or contest the validity of the order entered in accordance with the agreement.

In addition the agreement contains the following permissive provision: 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.

The agreement is entered into subject to the condition that the initial decision based thereon shall become the decision of the Commission in this matter on the same date that the initial decision in the matter of Golden Press, Inc., Docket No. 8342, becomes the decision of the Commission.

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 Grosset & Dunlap, Inc., is a corporation, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 1107 Broadway, New York, New York.

2. Respondent Wonder Books, Inc., is a corporation organized and doing business under the laws of the State of Delaware, with its principal office and place of business located at 1107 Broadway, New York, New York.

3. Respondent Treasure Books, Inc., is a corporation organized and doing business under the laws of the State of Delaware, with its principal office and place of business located at 1107 Broadway, New York, New York.

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

ORDER

It is ordered, That each of the named respondents, Grosset & Dunlap, Inc., Wonder Books, Inc., Treasure Books, Inc., its officers, agents, representatives or employees, directly or through any corporate or other device, in connection with the distribution, sale or offering for sale of children's books in commerce, as "commerce" is defined in the amended Clayton Act, do forthwith cease and desist from paying or contracting for the payment of an allowance or anything of value to, or for the benefit of, any customer as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the handling, offering for sale, sale or distribution of any children's book published, sold or offered for sale by such respondent, unless such payment or consideration is affirmatively offered or otherwise made available on proportionally equal terms to all of its other customers

competing with such favored customer in the distribution of such children's book.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

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

ENCYCLOPAEDIA BRITANNICA, INC.

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

*Docket 7137. Complaint, May 5, 1958—Decision, July 10, 1961**

Order requiring a prominent publisher, with headquarters in Chicago, to cease representing falsely—through statements of its door-to-door salesmen and in advertising and promotional literature it furnished to them and which they displayed and distributed to prospects—that the price quoted for the Encyclopaedia Britannica, and particularly the price quoted for a combination offer including the Encyclopaedia Britannica and other books, services, and merchandise, constituted a special or reduced price, and that such offer was available for a limited time only, usually described by the agent as the time of his call on the prospect.

Mr. Terral A. Jordan supporting the complaint.

Mr. James T. Welch, of Washington, D.C., *Mr. A. M. Gilbert*, of New York City, and *Mr. Harry J. Joy* of Chicago, Ill., for respondent.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

The complaint in this proceeding alleges that Encyclopaedia Britannica, Inc., a corporation, hereinafter called respondent, violated the provisions of the Federal Trade Commission Act by making certain misrepresentations in its printed advertising and promotional literature and oral statements by its salesmen in connection with the sale of its books and services, including the En-

* Decision of June 16, 1961, as modified by order of July 10.

cyclopaedia Britannica. The respondent denied the allegations set forth in the complaint.

Specifically, the complaint is directed against two alleged practices of the respondent which the complaint alleges to be in violation of the Act. First, it is alleged that the respondent, in printed advertising and promotional literature and oral statements by its solicitors or salesmen represented to prospective purchasers that the price quoted for its books, including the Encyclopaedia Britannica, particularly the price quoted for a "combination offer," including the Encyclopaedia Britannica and other books, services and merchandise, constituted a special price for a sale price other than the regular price at which said books, services and merchandise were offered; Secondly, that its offer to sell books, either singly or in combination, at the prices quoted was available for a limited time only, which was usually described by respondent's representatives as being limited to the time of the call on the prospective purchaser.

It was further alleged that the prices quoted by respondent and its representatives were not special or reduced prices either singly or in combination, but were respondent's usual and regular retail selling price for said books, services and merchandise as offered, either singly or in combination; that respondent's offer to sell said books, etc., was not limited to a particular call or visit by respondent's salesmen but was usually available on the price and terms stated to the prospective purchaser.

Hearings have been held at which oral testimony and documentary evidence were received in support of and in opposition to the allegations of the complaint. Approximately twenty-one so-called "public" witnesses testified in support of the complaint. These witnesses purported to testify concerning oral statements and representations made by respondent's salesmen in the course of the latter's sales presentations of respondent's books, especially respondent's "combination offer" of its Encyclopaedia Britannica. One of these "public" witnesses was an attorney-advisor in the employ of the Federal Trade Commission who testified to a sales presentation made to him after he was aware of the investigation being made by the Federal Trade Commission in this matter and after he had talked with the attorney-advisor who was actually conducting the investigation on behalf of the Federal Trade Commission. At the time of the sales presentation by respondent's saleslady to the attorney-advisor, the latter did not intend to purchase respondent's books but submitted to the sales presentation in order to obtain evidence and testimony to be used in this pro-

ceeding. Under such circumstances, the hearing examiner does not give any weight to the testimony of the attorney-advisor employed by the Commission. Another "public" witness was a former salesman employed by respondent who, during approximately four weeks of such employment, unknown to respondent, was simultaneously and successively employed by two of respondent's competitors. Ultimately, the salesman was discharged, leaving respondent's employment considerably in debt to one of respondent's district managers. The testimony of this witness was not worthy of belief. While on the witness stand the witness evidenced noticeable hostility toward the respondent. For these reasons the hearing examiner has given no weight to his testimony in making the findings of fact in this decision.

Proposed findings of fact, conclusions of law and order have been filed by counsel supporting the complaint. A motion to dismiss the complaint and brief in support thereof has been filed by counsel for respondent. These have been considered. All proposed findings of fact and conclusions of law not specifically found or concluded herein are rejected. Upon the basis of the entire record the undersigned hearing examiner makes the following findings of fact, conclusions of law and order:

FINDINGS OF FACT

1. The respondent Encyclopaedia Britannica, Inc., is a corporation organized and doing business under the laws of the State of New York with its office and principal place of business located at 425 North Michigan Avenue, Chicago, Illinois.

2. The respondent Encyclopaedia Britannica, Inc., is now, and for more than two years last past has been engaged in the business of publishing, distributing and selling books, including an encyclopaedia called Encyclopaedia Britannica. The respondent causes its said books, including the Encyclopaedia Britannica, when sold, to be transported from its place of business in Chicago, Illinois to purchasers located in various states of the United States and the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained a substantial course of trade in commerce between and among the various states of the United States and the District of Columbia in said books including the Encyclopaedia Britannica. Respondent is now and has been in substantial competition in commerce with other individuals, firms and corporations engaged in the sale in commerce of books of the same general kind and nature as those sold by respondent.

3. The respondent Encyclopaedia Britannica, Inc. sells its said books, including the Encyclopaedia Britannica and allied products, at retail to the ultimate consumer. Respondent advertises and promotes the sale of its books, including the Encyclopaedia Britannica, by mailing advertising and promotional pieces direct to the ultimate consumer and by advertisements placed in national magazines and periodicals. Persons interested in purchasing respondent's books often answer these advertisements by clipping and removing a coupon from the advertisement, writing their name and address thereon and returning it to respondent. The name and address of the person answering the advertisement is then referred by respondent to one of its salesmen, who then makes a personal call on the prospect at the address given. In their sales presentations, respondent's salesmen and representatives make representations concerning the quality, composition and prices of respondent's books, including the Encyclopaedia Britannica. Some of these representations are contained in advertising and promotional literature displayed and distributed by respondent's salesman to said prospective purchasers and some of said representations are orally made by respondent's salesmen to said prospective purchasers. Said advertising and promotional literature is furnished to its salesmen by respondent.

4. It is the contention of counsel supporting the complaint that respondent, in its advertising and promotional literature mailed by respondent to prospective purchasers and also published in magazines, periodicals and newspapers and exhibited to prospective purchasers by respondent's salesmen, as well as by oral statements made by respondent's salesmen to prospective purchasers, has represented that the price quoted to prospective purchasers for its books, including the Encyclopaedia Britannica, and particularly the price quoted for a "combination offer," including the Encyclopaedia Britannica, and other books, services and merchandise, constituted a special price, or some other kind of money saving price other than the regular price at which said books, services and merchandise were and are offered for sale and sold, and that savings were and are afforded to purchasers. Respondent's so-called "combination offer" includes the 24 Volume set of Encyclopaedia Britannica, the 2 Volume Britannica Language Dictionary, the Britannica World Atlas, bookcase to contain the set of Britannica and Atlas, the Library Research Service and Britannica Book of the Year. The basic combination is the set of Encyclopaedia Britannica and the privilege to purchase the Year Book at a claimed reduction in price and the research service. To these may be added the dictionary, Atlas, and bookcase, either one

or all of them. In support of his contention that respondent's advertising represents that its set of Encyclopaedia Britannica and other products are offered for sale at reduced prices and that purchasers are realizing savings in their purchases, counsel supporting the complaint offered numerous exhibits. The following are excerpts from some of respondent's advertising and promotional literature:

CX 4A reads in part, "Here is an offer we are making on the *New Edition* of ENCYCLOPAEDIA BRITANNICA . . . We believe you'll want to have a preview of this combination offer. It is one of the *greatest* MONEY-SAVING offers that Britannica has made in its nearly 200-year history!"

CX 4C reads in part, "MONEY SAVING OFFER . . . WITHOUT COST OR OBLIGATION, please let me have illustrated preview booklet and details of your money saving offer on the ENCYCLOPAEDIA BRITANNICA . . ."

CX 7 and CX 8 read in part, "Now available . . . direct to you from the publisher BRAND NEW EDITION OF THE WORLD FAMOUS ENCYCLOPAEDIA BRITANNICA On Easy . . . Book a Month Payment Plan . . . You may wonder how we're able to make this truly amazing offer. First, because of the great demand for this magnificent set, we have ordered a tremendous printing. Also, by offering this set Direct from the Publisher, we have saved many distribution costs. *These savings are passed on to you.*" (underscoring supplied)

5. In addition to the advertising and promotional material distributed by respondent, excerpts from some of which are quoted above, respondent also prepared and published for use by its salesmen a sales presentation, CX-26A through S. These were sometimes referred to as "flip cards." Respondent instructed its salesmen to follow and use the sales method and technique contained in these cards in presenting respondent's "combination offer" to prospects. Respondent also authorized its salesmen to read from CX-26 to their prospects. Supporting Commission counsel's claim that respondent represented that the price to prospective purchasers for the Encyclopaedia Britannica under its "combination offer" was a reduced price or some other kind of money saving price other than the regular price and that purchasers will realize savings in the purchase of said books are the following excerpts from CX-26A-S:

> Moreover, this program provides an opportunity for you to acquire the WORLD'S MOST CHERISHED REFERENCE LIBRARY at a fraction of the cost of the material in any other manner,—which represents a unique discount to your family. (26B)

We advertise and retail the Book of the Year at $12.00 a volume. This program, however, entitles you to the privilege of securing one volume each year for the next 10 years for only four ninety-five a volume.

This is a discount of approximately 60% of the retail price, *as outlined in our brochure.* (26E)

The individual retail price of each item is listed in our official price list.

In return for your cooperation of assisting us in compiling a list of local families of your intellectual level, who would appreciate receiving advertising literature describing the new edition, the individual retail price will not apply in connection with our co-operative offer.

The retail prices are listed merely for a basis of comparison.

Please refer to our *official price list* for the regular retail prices. (26N)

In return for your cooperation—this is our new "Book a Month" proposal.

This plan makes the ownership of Britannica—as convenient as the purchase of daily newspapers and magazines.

It is subject, however, to withdrawal without notice. Therefore, if your family has an appreciation for a reference work as fine as Britannica—we urge you to take advantage of the immediate opportunity.

If we deliver—in the next two or three weeks—the entire 24 volume of the new edition—keep your library up to date for the next ten years with the Britannica Book of the Year—permit you to utilize our research facilities for the next ten years—AT OUR EXPENSE—

AND ALSO INCLUDE the other important items outlined in our brochures —which in the opinion of many top authorities makes the Britannica program the finest educational program ever published—

ALL OF WHICH—IF PURCHASED SEPARATELY AT REGULAR RETAIL PRICES—WOULD AMOUNT TO $511.50 of Britannica merchandise—

But then, if we "X" out the regular retail price—AND MERELY PASS ALONG TO YOU—THE SMALLEST DOLLAR AND CENT COST POSSIBLE —AN AVERAGE OF ONLY $37.30 A YEAR—DELIVER THE ENTIRE 24 VOLUMES ALL AT ONE TIME—AND GO ONE STEP FURTHER—PERMIT YOU TO SEND ONE MEMO EACH MONTH—TO MATCH THE 24 VOLUMES—CAN WE COUNT ON YOUR COOPERATION? (26P)

6. Through the use of the above-quoted statement in respondent's sales presentation (CX-26P) "ALL OF WHICH—IF PURCHASED SEPARATELY AT REGULAR RETAIL PRICES—WOULD AMOUNT TO $511.50 OF Britannica merchandise—But then, if we "X" out the regular retail price—AND MERELY PASS ALONG TO YOU—THE SMALLEST DOLLAR AND CENT COST POSSIBLE—AN AVERAGE OF ONLY $37.30 A YEAR —DELIVER THE ENTIRE 24 VOLUMES ALL AT ONE TIME —AND GO ONE STEP FURTHER—PERMIT YOU TO SEND ONE MEMO EACH MONTH—TO MATCH THE 24 VOLUMES —CAN WE COUNT ON YOUR COOPERATION?" respondent thereby represents the price of $511.50 to be the "regular retail price" of the Encyclopaedia Britannica under the "combination offer." On the other hand, Mr. G. Clay Cole, respondent's Vice-president in charge of sales testified that the price of $511.50 repre-

sented the sum total of the prices set forth on CX–25. (CX–25 is an accordion-type brochure purporting to show prices and pictures of the Encyclopaedia Britannica, the Book of the Year, the Research Service, the Bookcase, the Dictionary, the World Atlas and the Home Reading Guides under the respondent's "combination offer.") Mr. Cole further testified that the price of $414.50 shown on the first panel of CX–25 covers the merchandise shown on the first three panels of the exhibit, namely, the set of Encyclopaedia Britannica in in the Red Royal Binding (priced at $294.50 for the set only on CX–22B, respondent's price list), plus the Year Books at $12.00 per volume for 10 years or $120.00, plus the privilege of the Research Service. The price of $511.50, therefore, consists of the set of Encyclopaedia Britannica at $294.50, 10 year books @ $12.00 per volume, or $120.00, the bookcase for $37.50, the Dictionary for $35.00 and the Atlas for $25.00. Thus it is seen that the purported regular price of $511.50 is fictitiously padded in the amount of $120.00 since the purported reduced price of $373.00 does not include anything for the Year Books. By and through the use of the word and figure "price $414.50" directly under the picture of a set of Encyclopaedia Britannica in the Red Royal Binding, on the first panel of CX–25, respondent thereby represented that $414.50 was the regular retail selling price of the Encyclopaedia Britannica alone, whereas, in truth and in fact, the regular retail selling price of the Encyclopaedia Britannica in the Red Royal Binding was actually $294.50, as shown by respondent's price list, CX–22B. Respondent's representations of discounts and savings are false. There are no actual savings to purchasers and respondent's regular retail prices of the various "combination offers" are shown on CX–22A and B. With the exception of the price of the Encyclopaedia Britannica in the Blue Levantex binding, the prices contained in CX–22A and B have been the same since 1949. Respondent's salesmen are not permitted to deviate from the prices set forth in CX–22A and B. Accordingly, it is found that the prices quoted by respondent and its salesmen for the Encyclopaedia Britannica either singly or in combination were and are not reduced prices but are the usual and regular retail selling prices for said books, services and merchandise as offered either singly or in combination and do not afford savings to purchasers.

7. The second count in the complaint concerns the allegation that respondent's offer to sell its books, etc., either singly or in combination at the quoted prices was available for a limited time only which was usually described by respondent's salesmen as being limited to the time of the call on the prospective purchaser, whereas

respondent's offer to sell said books was not limited to a particular call or visit by the salesmen but was usually available on the price and terms stated to the prospect. Respondent instructed its salesmen not to make return calls to prospects. Respondent employs approximately 2,500 salesmen. Through experience it was found that if a salesman was unable to make a sale at the conclusion of his sales presentation to a prospect, it was not economically feasible for the salesman to make a return call on that prospect. Experience showed that, if the prospect did not purchase respondent's books at the conclusion of the salesman's presentation, the salesman's time would be put to more productive use if he called on a new prospect and made a new sales presentation rather than a call back to the previous prospect. Accordingly, when a customer requested time to think over and decide whether to purchase the Encyclopaedia Britannica after the salesman's presentation, the salesman customarily replied to the effect that the customer should make up his mind that day or that evening because the salesman would not make a return call tomorrow or tomorrow evening. In the opinion of this hearing examiner such a practice in and of itself is not illegal and is not a representation that the offer to sell respondent's books was available for a limited time only. However, these statements cannot be considered alone in view of the statements in respondent's printed and promotional material, such as CX–4A, CX–5, CX–6, CX–7, CX–8 and CX–26 where respondent states: "This offer is necessarily subject to withdrawal without notice;" "Since this offer is necessarily limited" and "It is subject, however, to withdrawal without notice." Also, CX–45 and CX–46 place a time limit on the availability of the offer. When these written statements are considered along with the oral statements by respondent's salesmen to the prospect that the salesmen would not make a call back, the customer interpreted these statements to mean that respondent's offer was limited in point of time. Respondent thereby represented that its offer to sell books at the advertised prices and terms was available for a limited time only, although, as a matter of fact, respondent's books, services and merchandise are usually and regularly available at the prices and on the terms and conditions stated to the prospective purchaser.

8. The aforesaid false, misleading and deceptive representations by respondent in its advertising and promotional material used in connection with the sale of its books, services and merchandise has had and now has the tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that said misrepresentations were and are true and into the

purchase of substantial quantities of respondent's books and merchandise by reason of such erroneous belief. As a result thereof, substantial trade in commerce has been unfairly diverted to the respondent from its competitors and substantial injury has been done to competition in commerce.

9. Counsel for respondent urges that respondent should not be held conclusively responsible for each and every misrepresentation made by its salesmen because it could not continue to sell through salesmen in the face of such liability. Counsel also argues that the testimony shows that many of the public witnesses who testified at the request of the Commission did not remember the exact oral statements and representations made to them by respondent's salesmen several years previous to the date on which they testified and that the testimony of other public witnesses was vague and indefinite and did not comport to the standard of reliable, probative and substantial testimony required by The Administrative Procedure Act. Counsel also urges that the testimony of some of the Commission witnesses should be disregarded entirely by reason of their obvious prejudice and hostility toward respondent. Some of these objections of counsel are well taken. However, the findings of fact made herein are not based upon the oral testimony of witnesses who appeared and testified in support of the complaint, but are based largely upon documentary evidence printed and distributed by respondent. This documentary evidence was received in evidence and has been discussed in this decision. It is sufficient to establish the substantial allegations set forth in the complaint. Counsel also urges that many of the advertising pieces and promotional material have been discontinued and replaced by less objectionable material. CX-4A, CX-5, CX-6, CX-7, CX-8 and CX-26 were in use until approximately the year of 1958. The statements in these advertising pieces were made by respondent in spite of Stipulation No. 3242 (CX-1) signed by respondent and the Cease and Desist Order dated June 12, 1952, entered by the Commission in *Encyclopaedia Britannica, Inc.*, Docket No. 5384. This record does not disclose any "unusual circumstances" which would relieve respondent from the prohibitions of a cease and desist order.

ORDER

It is ordered, That the respondent, Encyclopaedia Britannica, Inc., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of encyclopaedias, periodic supplements thereto, research memberships, or any other books or

publications, or any other articles of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly:

1. That the prices or terms at which the aforesaid goods and services are customarily or regularly offered for sale, or sold, either singly or in combination with other goods or services, are special, reduced or discounted prices or terms; or are special, reduced or discounted prices or terms as a part of an offer to a special or selected class or group of purchasers or as a part of an advertising survey program or as a part of an introductory offer or as a part of any other kind of sales or promotional program; or afford any savings to the purchaser.

2. That any offer to sell said goods or services at their regular or customary prices or terms or at prices or terms generally the same as their regular or customary prices or terms is limited or otherwise restricted or unavailable.

OPINION OF THE COMMISSION

By Secrest, *Commissioner:*

The complaint in this matter charges respondent with violating Section 5 of the Federal Trade Commission Act by falsely representing that certain books, merchandise and services were offered for sale at special or reduced prices and that the offer to sell at such prices was available for a limited time only. The hearing examiner held in his initial decision that the allegations of the complaint were sustained by the evidence and both sides have appealed from this decision. Respondent has appealed from certain findings and from the order to cease and desist. Counsel supporting the complaint has taken exception to certain rulings and statements contained in the decision and to the hearing examiner's failure to base his findings on certain portions of the record.

We will consider first respondent's contention that the findings upon which the order is based are not supported by the evidence.

Respondent is engaged in the business of publishing and selling books, including an encyclopaedia called "Encyclopaedia Britannica". In addition to the encyclopaedia, respondent also sells other books, merchandise and services, including a 2-volume language dictionary, a world atlas, a bookcase specially designed to hold the encyclopaedia and atlas, a library research service, and the Britannica Book of the Year. Sales of these items are made directly to the ultimate purchaser through respondent's own sales organization. Respondent also sells and distributes other merchandise but, for the

purpose of this opinion, it is necessary to consider only respondent's practices in connection with the sale of the aforementioned goods and services.

The Encyclopaedia Britannica is offered in several different bindings and the price of the basic set of 24 volumes ranges from $294.50 to $671.50. This set of books is usually and regularly offered for sale and sold by respondent either separately or in combination with other books, merchandise, or services. The basic combination offer is the encyclopaedia, the research service for 10 years, and the privilege of purchasing the Book of the Year at $4.95 per volume for 10 years. This combination may also be purchased with the atlas, dictionary or bookcase or with any two or all three of these accessories. The price of the encyclopaedia in each binding, except the "Blue Levantex" binding, has remained the same since 1949, and the prices of the various combinations, other than those which include the encyclopaedia in the "Blue Levantex" binding, have also remained the same since that year. Since the representations made by respondent in connection with the offering for sale and sale of the encyclopaedia in "Red Royal" binding and combinations which include the encyclopaedia in this binding are typical of those made by respondent in connection with the offering for sale and sale of the encyclopaedia in all other bindings and combinations which include the encyclopaedia in such other bindings, we will confine our discussion to the alleged unfair practices as they relate to the sale of the encyclopaedia in the "Red Royal" binding and combinations which include the encyclopaedia in this binding.

Sales are made by respondent directly to the public through its own salesmen who make personal calls on prospective customers. The prices at which the aforementioned books, merchandise and services are sold are set forth in a price list furnished the salesmen and the salesmen are not permitted to deviate from these prices. The following is a list of the prices at which the encyclopaedia in the "Red Royal" binding and the various accessory items have been sold since 1949:

Encyclopaedia only	$294.50
Basic combination offer: encyclopaedia, research service for 10 years and privilege of purchasing Book of the Year for 10 years at $4.95 per volume	298.00
Basic combination offer, including any one of the accessory items—atlas, dictionary or bookcase	323.00
Basic combination offer, including any two of the accessory items	348.00
Combination offer, including all three accessory items	373.00

In selling the aforementioned books, merchandise and services, the salesman is required to follow a standard sales presentation prepared

and approved by respondent. This sales presentation is an offer to sell the encyclopaedia in combination with the various accessory items. According to respondent, its sales representatives "are painstakingly and repeatedly schooled and instructed as to the use of the single form of sales presentation prepared and approved by the Respondent and are directed and required to follow both the form and substance of such presentation without deviation therefrom." Since all sales to the general public are made through respondent's salesmen and since the salesmen are required to adhere to the aforementioned price list and sales presentation, it is clear that respondent usually and regularly sells the various accessory items in combination with the encyclopaedia and that the usual and regular prices for these items are the prices set forth in the price list. Although there is some testimony that the accessory items have been sold separately at prices other than those contained in the price list, it is apparent, for the foregoing reasons, that these items are not usually sold in this manner and that such sales must necessarily be isolated and infrequent occurrences.

Although respondent has for a number of years usually and regularly sold the encyclopaedia and accessory items at the prices set forth in the aforementioned price list, the record discloses that it has represented in written advertising and in the sales presentation made by its representatives that such prices are special or reduced prices and that the offer to sell at such prices is a limited or restricted offer. The following representations are typical of those used by the respondent to convey the impression that the prices at which its books, merchandise and services are usually and regularly sold are special or reduced prices:

Here is an offer we are making on the *New Edition* of ENCYCLOPAEDIA BRITANNICA . . . We believe you'll want to have a preview of this combination offer. It is one of the *greatest* MONEY-SAVING offers that Britannica has made in its nearly 200-year history!

MONEY SAVING OFFER . . . WITHOUT COST OR OBLIGATION, please let me have illustrated preview booklet and details of your money saving offer on the ENCYCLOPAEDIA BRITANNICA . . .

Now available . . . direct to you from the publisher BRAND NEW EDITION OF THE WORLD FAMOUS ENCYCLOPAEDIA BRITANNICA On Easy . . . Book a Month Payment Plan . . . You may wonder how we're able to make this truly amazing offer. First, because of the great demand for this magnificent set, we have ordered a tremendous printing. Also, by offering this set Direct from the Publisher, we have saved many distribution costs. These savings are passed on to you.

Moreover, this program provides an opportunity for you to acquire the WORLD'S MOST CHERISHED REFERENCE LIBRARY at a fraction of the cost of the material in any other manner—which represents a unique discount to your family.

We advertise and retail the Book of the Year at $12.00 a volume. This program, however, entitles you to the privilege of securing one volume each year for the next 10 years for only four ninety-five a volume.

This is a discount of approximately 60% of the retail price, *as outlined in our brochure.*

The individual retail price of each item is listed in our official price list.

In return for your cooperation of assisting us in compiling a list of local families of your intellectual level, who would appreciate receiving advertising literature describing the new edition, the individual retail price will not apply in connection with our co-operative offer.

The retail prices are listed merely for a basis of comparison.

Please refer to our *official price list* for the regular retail prices.

In return for your cooperation—this is our new "Book a Month" proposal.

This plan makes the ownership of Britannica—as convenient as the purchase of daily newspapers and magazines.

It is subject, however, to withdrawal without notice. Therefore, if your family has an appreciation for a reference work as fine as Britannica—we urge you to take advantage of the immediate opportunity.

If we deliver—in the next two or three weeks—the entire 24 volumes of the new edition—keep your library up to date for the next ten years with the Britannica Book of the Year—permit you to utilize our research facilities for the next ten years—AT OUR EXPENSE—

AND ALSO INCLUDE the other important items outlined in our brochures —which in the opinion of many top authorities makes the Britannica program the finest educational program ever published—

ALL OF WHICH—IF PURCHASED SEPARATELY AT REGULAR RETAIL PRICES—WOULD AMOUNT TO $511.50 of Britannica merchandise—

But then, if we "X" out the regular retail price—AND MERELY PASS ALONG TO YOU—THE SMALLEST DOLLAR AND CENT COST POSSIBLE —AN AVERAGE OF ONLY 37.30 A YEAR—DELIVER THE ENTIRE 24 VOLUMES ALL AT ONE TIME—AND GO ONE STEP FURTHER—PERMIT YOU TO SEND ONE MEMO EACH MONTH—TO MATCH THE 24 VOLUMES—CAN WE COUNT ON YOUR COOPERATION?

As pointed out by the hearing examiner in the initial decision, respondent has represented that the price of $511.50 is the regular retail price of the encyclopaedia and accessory items under the combination offer. The price of $511.50 is arrived at by totaling the individual prices of the various items included in the combination offer, i.e., the encyclopaedia at $294.50, ten volumes of the Book of the Year at $12.00 per volume, or $120.00, the bookcase for $37.00, the dictionary for $35.00, and the atlas for $25.00. Since the purchaser does not receive the Book of the Year under the combination offer but merely the privilege of purchasing this item at $4.95 per volume, the representation that $511.50 is the usual and regular price of the books, merchandise and services, included in the combination offer, is false on its face. Using respondent's own figures, the price of $511.50 is fictitiously padded at least in the amount of $49.50.

The hearing examiner also found that respondent had misrepresented the price of the encyclopaedia in the "Red Royal" binding by placing the word and figure "Price $414.50" directly beneath a picture of the encyclopaedia in one of its advertisements. Respondent contends, however, that the amount of $414.50 is the price of the encyclopaedia, together with the Book of the Year and research service which are also depicted in the same piece of literature. We have examined the advertising in question and agree with the hearing examiner that it is designed in such a manner as to create the impression that the price of the encyclopaedia alone is $414.50. Moreover, the price of the encyclopaedia in combination with the Book of the Year and research service is not $414.50, as contended by respondent. According to respondent's price list, this combination sells for $298.00 plus $4.95 per year for ten years, or a total of $347.50.

These findings alone are sufficient to support an order prohibiting respondent from misrepresenting the usual and regular prices of its merchandise. The hearing examiner has also made the following findings or conclusions which relate generally to the various claims and representations made by respondent to the effect that the prices at which its encyclopaedias are sold either singly or in combination with other books, merchandise or services are special or reduced prices:

> Respondent's representations of discounts and savings are false. There are no actual savings to purchasers and respondent's regular retail prices of the various "combination offers" are shown on CX-22A and B. With the exception of the price of the Encyclopaedia Britannica in the Blue Levantex binding, the prices contained in CX-22A and B have been the same since 1949. Respondent's salesmen are not permitted to deviate from the prices set forth in CX-22A and B. Accordingly, it is found that the prices quoted by respondent and its salesmen for the Encyclopaedia Britannica either singly or in combination were and are not reduced prices but are the usual and regular retail selling prices for said books, services and merchandise as offered either singly or in combination and do not afford savings to purchasers.

Respondent takes exception to this statement, arguing that the prices of its books, merchandise and services are higher when sold separately than when sold in combination and that the difference between the two prices represents a saving to the purchaser. Although we are in substantial agreement with the hearing examiner's conclusions, we believe that his findings of fact are inadequate and should be modified to state more specifically the manner in which respondent has misrepresented the prices of its goods and services.

It is clear from the record in this connection that respondent has represented that the prices at which its encyclopaedia and accessory

items are sold in combination are special or reduced prices. In making this representation, respondent has compared its combination prices with the prices at which the various items included in the combinations are sold separately and individually. It has thereby represented directly and by implication that the usual and regular price of any combination of items is the sum of the prices at which the various items included in the combination are sold separately and individually. Such representations are misleading and deceptive. As contemplated and preordained by respondent's prepared sales presentation, the various accessory items are usually and regularly sold in combination with the encyclopaedia, not separately and individually; and the usual and regular price of any combination has been the price of that combination as set forth in respondent's price list, not the sum of the prices required to be paid by purchasers who might buy the component items separately. Consequently, the prices at which respondent's encyclopaedia and accessory items are sold in combination are not special or reduced prices and the difference between such prices and the sum of the individual prices of the items included in the combination does not represent a saving to the purchaser.

Respondent also takes exception to the hearing examiner's finding that it had represented that its offer to sell its goods or services at the regular prices or terms was available for a limited time only. The record shows, in this connection, that respondent represented in advertising that its combination offer was subject to withdrawal without notice. This same offer had been made for many years and was in fact respondent's standard offer. With the exception previously noted, there had been no variation in prices since 1949. Nevertheless, as respondent has pointed out, such offer could be withdrawn without notice and a statement to that effect was not untruthful. The record also discloses that whenever a prospective purchaser could not decide whether to purchase respondent's goods or services at the conclusion of a sales presentation, the salesman was instructed to, and did, inform the prospect that if he intended to make the purchase he would have to make up his mind at that time since the salesman would not make a return call. Although there is some conflict in the evidence on this point, it appears that respondent's salesmen usually do not make return calls. Consequently, this statement by the salesmen would also seem to be true.

The foregoing considerations are not controlling to decision, however, since we are of the opinion that the salesman's "no-return call" statement was made under such circumstances that the prospective purchaser would reasonably interpret it to mean that the combi-

nation offer would be withdrawn if not accepted at the time of the salesman's call. Having been led to believe by respondent's advertising and the sales presentation that respondent's books, services and merchandise were being offered to him at a special or reduced price, the prospective purchaser might well understand the salesman's "no-return call" statement to mean that the offer to sell at such price was limited to the time of the call. That the statement was so interpreted is shown by the testimony of witnesses who had heard the sales presentation. It is clear that these witnesses were under the impression that the offer to sell at the prices quoted by respondent's salesmen would be withdrawn if not accepted at the time of the salesman's call. Consequently, we agree with the hearing examiner that respondent had represented that the offer to sell at its usual and regular prices was limited or otherwise restricted. Respondent's appeal on this point is rejected.

Respondent's contention that the first paragraph of the order to cease and desist is too restrictive is also rejected. This paragraph would prevent respondent from representing in connection with the offering for sale, sale or distribution of its encyclopaedias or other books, merchandise and services:

> That the prices or terms at which the aforesaid goods and services are customarily or regularly offered for sale, or sold, either singly or in combination with other goods or services, are special, reduced or discounted prices or terms; or are special, reduced or discounted prices or terms as a part of an offer to a special or selected class or group of purchasers or as a part of an advertising survey program or as a part of an introductory offer or as a part or any other kind of sales or promotional program; or afford any savings to the purchaser.

Respondent argues, in effect, that unless the clause "when such is not the fact" is included in the paragraph, respondent will be prohibited from making truthful representations with respect to its special prices to selected classes of customers or with respect to the savings afforded by its combination prices.

We do not agree. As hereinbefore stated, the prices at which respondent usually and regularly sells its books, merchandise and services are the combination prices set forth in its price list. If, as respondent contends, sales are made to selected classes, such as members of the Armed Services, at prices less than the combination prices, there is nothing in the order to prevent respondent from so representing. The order will, however, prohibit respondent from representing directly or by implication that the usual and regular price of any combination of items is the sum of the individual prices of the various items in the combination by comparing the prices at which its goods and services are sold in combination with the prices

at which such good sand services are sold separately and individually or in any other manner. The order will also prohibit respondent from otherwise representing that the prices at which its books, merchandise and services are usually and regularly sold are special or reduced prices or that the difference between the usual and regular prices, namely, the combination prices, and the sum of the prices at which the items included in any combination are sold separately and individually represents a saving to the purchaser.

The second paragraph of the order contained in the initial decision would prohibit respondent from representing in connection with the offering for sale, sale or distribution of encyclopaedias or other books, merchandise and services:

> That any offer to sell said goods or services at their regular or customary prices or terms or at prices or terms generally the same as their regular or customary prices or terms is limited or otherwise restricted or unavailable.

We agree with respondent that this inhibition would prevent it from making truthful and nondeceptive representations concerning the availability of an offer to sell at certain prices or terms. For example, if respondent would in good faith decide to increase the usual and regular price of any combination of goods or services, it would not be permitted by the order to inform prospective purchasers of such price change prior to the date on which it would go into effect. Consequently, we believe that this paragraph should be modified to permit nondeceptive representations concerning such limitations or restrictions which respondent may impose on offers to sell its goods and services.

The appeal of counsel supporting the complaint is directed primarily at certain rulings in the initial decision whereby the hearing examiner either rejected or refused to give weight to the testimony of certain witnesses who had testified in support of the complaint. One of the issues raised by this appeal concerns the following statement by the hearing examiner with respect to the testimony of certain witnesses who had been contacted by respondent's sales representatives:

> Counsel [for respondent] also argues that the testimony shows that many of the public witnesses who testified at the request of the Commission did not remember the exact oral statements and representations made to them by respondent's salesmen several years previous to the date on which they testified and that the testimony of other public witnesses was vague and indefinite and did not comport to the standard of reliable, probative and substantial testimony required by The Administrative Procedure Act. Counsel also urges that the testimony of some of the Commission witnesses should be disregarded

entirely by reason of their obvious prejudice and hostility toward respondent. Some of these objections of counsel are well taken. However, the findings of fact made herein are not based upon the oral testimony of witnesses who appeared and testified in support of the complaint, but are based largely upon documentary evidence printed and distributed by respondent.

Counsel supporting the complaint has taken exception to the last sentence of this ruling insofar as it implies that the examiner has rejected all of the testimony of the witnesses. We agree with counsel supporting the complaint that the ruling is vague and ambiguous. It is particularly confusing since elsewhere in the initial decision the hearing examiner apparently relies on the testimony in question. On page 9 thereof, he refers to certain representations made by respondent and finds that "the customer interpreted these statements to mean that respondent's offer was limited in point of time."

If the hearing examiner meant to reject the testimony in question by the above-quoted ruling, he was in error. We do not agree that the testimony was vague and indefinite or that it "did not comport to the standard of reliable, probative and substantial testimony required by The Administrative Procedure Act." The fact that the witnesses did not recall "the exact oral statements and representations" made to them by respondent's salesmen is certainly no reason to disregard their testimony. Although the hearing examiner stated that the respondent's various contentions included arguments that "some" of the witnesses were prejudiced and biased, he merely concluded that "some of these objections" were well taken. Hence, there was no suggestion by the hearing examiner that all of the witnesses were so biased. As a matter of fact, we find nothing in the testimony or elsewhere in the record to indicate that these wtinesses were so biased and hostile toward respondent that they could not be believed. The statements of these witnesses with respect to the beliefs and impressions which they testified were engendered by respondent's sales presentation are significant. The import of their testimony is that they had been led to believe that respondent's combination prices were reduced or special prices and that the offer to sell at such prices was available for a limited time only. This coincides with our own interpretation of respondent's claims and supports the allegation that the representations made by respondent's salesmen were misleading and deceptive. Consequently, we agree with counsel supporting the complaint that the hearing examiner should not have refused to place any reliance on this testimony, even though his findings could be sustained by other evidence of record.

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

All arguments made by respondent which have not been discussed herein are rejected.

To the extent indicated herein, respondent's appeal and the appeal of counsel supporting the complaint are granted and in all other respects they are denied. The initial decision, in those respects in which it is contrary to the views expressed herein, is modified to conform with such views. An appropriate order will be entered.

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

FINAL ORDER

Respondent and counsel in support of the complaint having filed cross-appeals from the initial decision of the hearing examiner, and the matter having been heard on briefs and oral argument; and the Commission, for the reasons stated in the accompanying opinion, having granted in part and denied in part the appeals of respondent and counsel in support of the complaint, and having modified the initial decision to the extent it is contrary to the views expressed in said opinion:

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

It is ordered, That the respondent, Encyclopaedia Britannica, Inc., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of encyclopaedias, periodic supplements thereto, research memberships, or any other books or publications, or any other articles of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly:

1. That the prices or terms at which the aforesaid goods and services are customarily or regularly offered for sale, or sold, either singly or in combination with goods or services, are special, reduced or discounted prices or terms; or are special, reduced or discounted

prices or terms as a part of an offer to a special or selected class or group of purchasers or as a part of an introductory offer or as a part of any other kind of sales or promotional program; or afford any savings to the purchaser.

2. That any offer to sell said goods or services which is not limited or otherwise restricted as to time, price or any other factor is so limited or restricted.

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

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

Chairman Dixon and Commissioner Elman not participating.

ORDER MODIFYING ORDER TO CEASE AND DESIST

The Commission having issued its decision in this proceeding on June 16, 1961, containing its order to cease and desist; and

It appearing that through inadvertence the word "other" was omitted from the fifth line of paragraph 1 of said order to cease and desist and that the words "or as part of an advertising survey program" were omitted from the twelfth line of paragraph 1 of said order to cease and desist; and

It appearing that said order to cease and desist should be modified to correct these omissions:

It is ordered, That paragraph 1 of said order to cease and desist be, and it hereby is, modified to read as follows:

1. That the prices or terms at which the aforesaid goods and services are customarily or regularly offered for sale, or sold, either singly or in combination with other goods or services, are special, reduced or discounted prices or terms; or are special, reduced or discounted prices or terms as a part of an offer to a special or selected class or group of purchasers or as a part of an advertising survey program or as a part of an introductory offer or as a part of any other kind of sales or promotional program; or afford any savings to the purchaser.

Chairman Dixon and Commissioner Elman not participating.

IN THE MATTER OF

DIAMOND CRYSTAL SALT CO.

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

Docket 7323. Modified order, July 11, 1961

Order modifying divestment order of Feb. 4, 1960 (56 F.T.C. 818), by excluding from its prohibition of future acquisitions, the purchase of three affiliated companies engaged in the sale of salt in small packets designed for use as individual servings.

Before *Mr. Walter R. Johnson*, hearing examiner.

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

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

ORDER RULING ON PETITION FILED JUNE 7, 1961, AND MODIFYING PARAGRAPH 4 OF THE ORDER TO DIVEST AND TO CEASE AND DESIST

The respondent having filed a petition on June 7, 1961, which requests that the Commission approve the respondent's proposed purchase of certain package manufacturing machinery and patents attendant thereto, the land and building housing such machinery, and the existing inventory now owned by three affiliated companies known as Unit-Packet Corporation, Packet Products Corporation and Hoag-Russell Company, which concerns have been engaged in the sale of salt in small packets designed for use as individual servings; and

The Commission having issued its decision in this proceeding on February 4, 1960, containing its order to divest and to cease and desist, which order, among other things, prohibits the respondent from acquiring any time during the succeeding ten years the assets or share capital of any corporation in commerce and engaged in the business of producing and/or distributing salt; and the Commission having accordingly determined that respondent's petition should be treated as a request that the order be duly modified to exclude the above purchase from its purview; and

It appearing from the facts stated in the petition and in the answer filed by counsel supporting the complaint, which joins in the request that the petition be granted, that there is no reasonable probability that any of the anticompetitive effects proscribed by the relevant statute will result from the proposed purchase, and the

Commission having further determined that the public interest now requires that this proceeding be reopened solely for the purpose of altering and modifying the order so that it shall not prohibit the respondent from effectuating such acquisition:

It is ordered, That this proceeding be, and it hereby is, reopened and that paragraph 4 of the order to divest and to cease and desist be, and it hereby is, modified to read as follows:

(4) *It is further ordered*, That for a period of ten years from February 4, 1960, the respondent shall cease and desist from acquiring, directly or indirectly, through subsidiaries or otherwise, by merger, consolidation, or purchase, the physical assets, stock, share capital of, or any other interest in any corporation, in commerce, engaged in the business of producing and/or distributing salt in any form, specifically including salt in a dry state produced by any dry mining method, or produced by any evaporation method, and salt in brine; provided, however, that the respondent shall not be prohibited hereby from effectuating the proposed purchase of the assets referred to in the first paragraph of the Commission's order ruling on the petition filed by the respondent on June 7, 1961.

IN THE MATTER OF

MARADO TRADING CORPORATION ET AL.

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

Docket 7863. Complaint, Apr. 8, 1960—Decision, July 13, 1961

Consent order requiring New York City distributors to cease selling sunglasses imported from Japan with no markings to show the country of origin or with markings so indistinct or so easily obliterated in ordinary handling as to constitute inadequate disclosure of their foreign manufacture.

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 Marado Trading Corporation, a corporation, and Adolph Shefts and Marte Previte, 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, Marado Trading Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with an office at 19 West 34th Street, New York, New York.

Respondents Adolph Shefts and Marte Previte 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 offering for sale, sale and distribution of sunglasses to wholesalers who resell the same to retailers who in turn resell to the purchasing public.

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

PAR. 4. Respondents' sunglasses are manufactured in Japan and imported into the United States. Some are not marked to show the country of origin. Some are marked to show the country of origin in such an indistinct manner as not to constitute adequate disclosure of the country of origin. Some are enclosed in cellophane bags which are marked to show the country of origin, but the markings are made in such a manner that they are readily obliterated in the ordinary handling of the bags and do not constitute adequate disclosure of the country of origin.

PAR. 5. In the absence of an adequate disclosure that a product, including sunglasses, is of foreign origin, the public believes and understands that it is of domestic origin. A substantial number of the purchasing public prefer domestic products over foreign products, including sunglasses. Many domestic sunglasses sell for higher prices than imported sunglasses but there are among the purchasing public those who are willing to pay these higher prices for such domestic sunglasses.

PAR. 6. In the course and conduct of their business, at all times mentioned herein, respondents have been in substantial competition in commerce, with corporations, firms and individuals in the sale of

sunglasses of the same general kind and nature as those sold by respondents.

PAR. 7. The failure of the respondents to disclose, or adequately disclose, the foreign origin of their product has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said products are of domestic manufacture and into the purchase of substantial quantities of respondents' products by reason of such erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, diverted to respondents from their competitors and substantial injury has thereby been, 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 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. Frederick McManus for the Commission.

Sylvester & Harris, by *Mr. Charles L. Sylvester*, of New York, N.Y., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents, who are engaged in the offering for sale, sale and distribution of sunglasses to wholesalers who resell the same to retailers who in turn resell to the purchasing public, with violation of the Federal Trade Commission Act, by failing to disclose, or adequately disclose, the foreign origin of their sunglasses, which are manufactured in Japan and imported into the United States.

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

The agreement states that respondent Marado Trading Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with an office at 19 West 34th Street, New York, New York, and that respondents Adolph Shefts and Marte Previte are officers of the corporate re-

spondent and formulate, direct and control the acts and practices of the corporate respondent, their address being the same as that of the corporate respondent.

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

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

The Hearing Examiner has determined that the aforesaid agreement containing the consent order to cease and desist provides for an appropriate disposition of this proceeding in the public interest, and such agreement is hereby accepted. Therefore,

It is ordered, That the respondents, Marado Trading Corporation, a corporation, and its officers, and Adolph Shefts and Marte Previte, indivdually and as officers of said corporation, and respondents' officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of sun-glasses or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Offering for sale or selling any product which is in whole or substantial part of foreign origin, without clearly and conspicuously disclosing on such product, or in immediate connection therewith, and, if such product is enclosed in a package or container, on the package or container, in such a manner that it will not be hidden or readily obliterated, the country of origin of the product or part thereof.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission having considered the hearing examiner's initial decision, filed December 28, 1960, accepting an agreement containing a consent order to cease and desist, theretofore executed by the respondents and counsel supporting the complaint; and

Respondent Marte Previti, by letter received March 9, 1961, having advised that the correct spelling of his name is "Previti"; and

It appearing that the initial decision erroneously refers to said respondent as "Marte Previte" and should be corrected to reflect the correct spelling of this name:

It is ordered, That the initial decision be, and it hereby is, amended by striking therefrom the name "Marte Previte" wherever it appears therein and substituting therefor the name "Marte Previti."

It is further ordered, That the initial decision as so amended, shall, on the 13th day of July 1961, become the decision of the Commission.

It is further ordered, That 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 amended.

IN THE MATTER OF

NATION-WIDE FUR STORAGE AND CLEANERS ET AL.

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

Docket 8251. Complaint, Dec. 29, 1960—Decision, July 14, 1961

Order requiring furriers in Cleveland, Ohio, to cease violating the Fur Products Labeling Act by failing to comply with labeling requirements.

Mr. Ernest D. Oakland and *Mr. Charles W. O'Connell* supporting the complaint.

No appearance for the respondents.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

The complaint in this proceeding was issued December 29, 1960. It charges respondents with violation of the Federal Trade Commission Act and the Fur Products Labeling Act for failure to label certain fur products and for improper labeling of others.

Each respondent was duly served with a copy of the complaint and neither filed an answer thereto. Each respondent was also duly served with an order setting March 31, 1961 as the date for a hearing in this matter to be held at 10:00 A.M. in Room 251, Federal Trade Commission Building, Washington, D.C. The proceeding was called to order at 10:00 A.M. on that date, and place, and there being no appearance on behalf of either respondent was again called to order at 10:15 A.M. with the same result. On motion of counsel supporting the complaint the hearing examiner duly noted the default and pursuant to Rule 3.7(b) of the Rules of Practice for Adjudicative Proceedings found the facts to be as alleged in the complaint and conducted a hearing to determine an appropriate form of order. A proposed form of order was submitted by counsel supporting the complaint and has been marked CX–1. By reason of respondents failure to answer or appear in this proceeding; the hearing examiner was authorized without further notice to them to enter an initial decision based on the facts as alleged in the complaint. He was also authorized to make findings of such facts and appropriate conclusions and order.

Accordingly, the following findings are made, conclusions reached and order issued:

1. Respondent Nation-Wide Fur Storage and Cleaners 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 618 West St. Clair Avenue, Cleveland, Ohio.

2. Respondent Bernard Golden is president of the said corporate respondent and controls, formulates and directs the acts, practices and policies of the said corporate respondent, including the acts and practices hereinafter set forth. His office and principal place of business is the same as that of the said corporate respondent.

3. 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, 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 products" are defined in the Fur Products Labeling Act.

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.

5. 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 set forth in abbreviated form in violation of Rule 4 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 mingled with non-required information in violation of Rule 29(a) of said Rules and Regulations.

(c) 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.

(d) 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.

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

6. The aforesaid acts and practices of respondents, 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.

7. This proceeding is in the public interest. Therefore,

It is ordered, That Nation-Wide Fur Storage and Cleaners, a corporation, and its officers, and Bernard Golden, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce of 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 misbranding fur products by:

A. Failing to affix labels 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 in abbreviated form.

(2) 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) 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 separately on labels attached to fur products composed of two or more sections containing different animal furs the information required 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.

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

This matter having come on to be heard by the Commission upon its review of the initial decision filed by the hearing examiner on April 18, 1961, and the Commission having determined that said initial decision is adequate and appropriate in all respects to dispose of this proceeding:

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

It is further ordered, That the respondents, Nation-Wide Fur Storage and Cleaners, a corporation, and Bernard Golden, individually and as an officer of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Complaint

IN THE MATTER OF

ALEX SANDRI WHITE TRADING AS AUREA PUBLICATIONS

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

Docket 8056. Complaint, July 26, 1960—Decision, July 18, 1961

Consent order requiring a representative of correspondence schools in Great Britain and Italy, with headquarters in Central Valley, N.Y., to cease representing falsely in advertising in national magazines, brochures, and circulars, that such foreign correspondence schools were accredited in the United States and their degrees and diplomas recognized by accredited educational institutions in this country; and to cease using the words "University" or "College" as part of their trade names.

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 Alex Sandri White, trading as Aurea Publications, 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 Alex Sandri White is an individual trading and doing business as Aurea Publications, with his office and principal place of business located in Central Valley, New York.

PAR. 2. Respondent, in the course of trading as Aurea Publications, has acted and presently acts as representative or agent for certain correspondence schools located primarily in Europe. As agent or representative for the aforesaid foreign correspondence schools, respondent's duties include the solicitation of individuals located in this country as students in various courses given by said foreign correspondence schools. Individuals in this country enrolling with the above-mentioned foreign correspondence schools are required to submit their applications to and pay their entrance fees to respondent, who, in turn, transmits said applications and fees to the various foreign correspondence schools, less commissions. Said foreign correspondence schools, for which respondent has acted and now acts as representative or agent, confer college degrees or diplomas to students who either successfully complete special courses offered by said schools through the mails, or who have suffi-

cient credits to enable them to receive college degrees or diplomas without the necessity of taking special correspondence courses.

PAR. 3. In the course and conduct of his business, respondent, as representative or agent for various correspondence schools, now causes, and for some time last past has caused, the courses of study and instruction of the aforesaid correspondence schools to be transported from said schools' places of business to purchasers located in various States of the United States. There is now, and has been at all times, a course of trade in said courses of study and instruction in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondent, in soliciting the sale of and in selling various courses of study and instruction on behalf of various correspondence schools, has inserted, and is now inserting, advertisements in various national magazines. In addition, respondent has distributed and now distributes brochures and circulars to prospective students outlining the various courses, college degrees and diplomas granted by the aforementioned correspondence schools. Typical of the statements made by respondent in advertisements in national magazines are the following:

INEXPENSIVE Correspondence courses: Science, Arts, Psychology, Engineering. Earn diplomas, degrees, colleges abroad. Aurea, Central Valley, New York.

EARN COLLEGE diploma through courses or tests by correspondence. Qualify for degree from institutes abroad. Engineering, Sciences, most subjects. Request folder #175. American Representatives: Aurea, Central Valley, New York.

DEGREE Program by mail (courses or tests). Colleges abroad—Aurea, Central Valley, New York.

PAR. 5. Through the use of the aforesaid statements, respondent represented, directly or by implication, among other things, that:

(1) Foreign correspondence schools are accredited institutions of higher learning in this country;

(2) The degrees or diplomas issued by foreign correspondence schools are recognized by accredited institutions of higher learning in this country.

PAR. 6. Among other statements made, directly or by implication, in brochures and circulars are:

1. That St. Andrew Ecumenical University College, a correspondence school located in Great Britain, is an accredited educational institution of higher learning, authorized to award degrees recognized by duly accredited institutions of higher learning in the United States.

2. That Phoenix University and Minerva University, both being correspondence schools located in Bari, Italy, are accredited educational institutions of higher learning, qualified to award degrees recognized by duly accredited institutions of higher learning in the United States.

3. That Clough & Normal Colleges of Great Britain, through its correspondence school, is qualified to confer college diplomas recognized by duly accredited institutions of higher learning in the United States.

4. That the educational qualifications of those awarded degrees or diplomas from foreign correspondence schools are equivalent to the educational qualifications acquired by those attending accredited institutions of higher learning.

PAR. 7. All of the foregoing statements and representations, and others similar thereto, are false, deceptive and misleading. In truth and in fact, a college or a university, as that term is understood in the educational field, and by the general public, is an institution of higher learning, including subjects in the arts, sciences and professions, such as law, medicine and theology, with adequate equipment in the form of buildings, laboratories, libraries, dormitories for resident students, and sufficient financial resources to operate and maintain such institutions; with an adequate and competent faculty of learned persons qualified and trained to teach the respective subjects offered by such institutions, and possessing degrees from recognized universities and colleges. None of the correspondence schools represented by respondent meets these requirements.

A college degree or diploma is an academic rank conferred by duly recognized and accredited institutions of higher learning such as colleges and universities, and which degree or diploma conveys to the ordinary mind the idea of some collegiate or university scholastic achievement. Degrees or diplomas granted solely for work done by correspondence are not accredited and recognized by colleges and universities or by examining boards of the different professions.

Phoenix University, Minerva University, St. Andrew Ecumenical University College and Clough & Normal Colleges of Great Britain are not recognized in this country as accredited institutions of higher learning. In addition, the educational qualifications of those obtaining degrees or diplomas from foreign correspondence schools are not equivalent to the educational qualifications acquired by those attending accredited institutions of higher learning.

PAR. 8. In addition to the foregoing, by disseminating and distributing brochures and other information containing therein the names of correspondence schools having as part of their trade names

the words "University" or "College", respondent has represented, contrary to the fact, that such correspondence schools meet the requirements set out in Paragraph Seven hereof.

PAR. 9. In the conduct of his business, respondent is in competition, in commerce, with corporations, firms and individuals in the sale of correspondence courses of the same general nature as those sold by him.

PAR. 10. The use by the respondent of the aforesaid false, misleading and deceptive statements, representations and practices has the capacity and tendency to lead the public into the erroneous and mistaken belief that the statements and representations are true and into the purchase of a substantial number of the correspondence courses sold by him because of such erroneous and mistaken belief. As a result thereof, substantial trade in commerce has been unfairly diverted to respondent from his competitors and substantial injury has thereby been, and is being, done to competition in commerce.

PAR. 11. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Jerome Garfinkel, Esq., for the Commission.
Herbert J. Fabricant, Esq., of Monroe, N.Y., for respondent.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission on July 26, 1960, issued its complaint against the above-named respondent charging him with having violated the Federal Trade Commission Act by misrepresenting certain courses of instruction and study which are offered to the public. Respondent appeared and entered into an agreement dated December 16, 1960, 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.

Respondent, pursuant to the aforesaid agreement, has 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 respondent waives 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 respondent that he has 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 Alex Sandri White is an individual trading and doing business as Aurea Publications, with his office and principal place of business located in the City of Central Valley, State of New York.

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 the Federal Trade Commission Act, and this proceeding is in the interest of the public.

It is ordered, That respondent Alex Sandri White, an individual trading as Aurea Publications, or under any other trade name or names, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of courses of study and instruction, do forthwith cease and desist from:

I. Representing, directly or by implication:

(a) That any foreign correspondence school is an accredited institution of higher learning in this country;

(b) That the degrees or diplomas issued by foreign correspondence schools are recognized by accredited institutions of higher learning in this country;

(c) That any foreign correspondence school is authorized to issue college or university degrees or diplomas in this country;

(d) That the academic qualifications of those awarded degrees or diplomas by foreign correspondence schools are equivalent to the academic qualifications acquired by those attending accredited institutions of higher learning in this country; or misrepresenting in any manner the academic qualifications of those awarded degrees or diplomas by foreign correspondence schools.

II. Using the words "College" or "University" or any other word or term of similar import as a part of the trade or corporate name of a foreign correspondence school.

[For the purposes of this section, a foreign correspondence school shall mean a foreign school or entity which furnishes courses of study solely by means of correspondence.]

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

It is ordered, That respondent Alex Sandri White, trading as Aurea Publications, 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

APPROVED FORMULAS, INC., ET AL.

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

Docket 8151. Complaint, Oct. 19, 1960—Decision, July 18, 1961

Consent order requiring New York City distributors to cease representing falsely in advertising that their vitamin and mineral preparations "Staminar", "Stress & Strain", and "Revitalin" were of benefit in treating tiredness, nervousness, premature aging, and other symptoms and conditions, 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 Approved Formulas, Inc., a corporation, and Jack Bernard, Edward Yass, Richard P. Bernard and Phil Edell, 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 Approved Formulas, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 35 West 45th Street, in the City of New York, State of New York.

Respondents Jack Bernard, Edward Yass, Richard P. Bernard and Phil Edell 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 and distribution of various preparations containing ingredients which come within the classification of food, as the term "food" is defined in the Federal Trade Commission Act.

The designations used by respondents for certain of their said various preparations, the formulas thereof and directions for use are as follows:

I. *Designation:*
Staminar.

Formula:
Two capsules supply:

Vitamin A	12,500 USP Units
Vitamin B_1	10 mg.
Vitamin B_2	10 mg.
Vitamin B_6	0.5 mg.
Vitamin B_{12} Act (Cobalamin Conc.)	5 mcg.
Vitamin C	100 mg.
Vitamin D	1,250 USP Units
Vitamin E	5 Int. Units
Vitamin K (as Menadione)	1 mg.
Betaine HCL	10 mg.

Biotin	10 mcg.
Calcium Pantothenate	5 mg.
Choline Bitartrate	10 mg.
Diastase Enzyme	20 mg.
Folic Acid	0.25 mg.
Inositol	10 mg.
Intrinsic Factor Concentrate with Vitamin B_{12}	0.1 USP Unit Oral
Para-aminobenzoic Acid	10 mg.
Lemon Bioflavonoid Complex	10 mg.
L-Lysine HCL	10 mg.
di-Methionine	10 mg.
Niacinamide	50 mg.
Rutin	10 mg.
Calcium	90 mg.
Phosphorus	40 mg.
Magnesium	3 mg.
Manganese	0.5 mg.
Molybdenum	0.1 mg.
Potassium	1 mg.
Iron	10 mg.
Iodine	0.1 mg.
Cobalt	0.2 mg.
Copper	0.5 mg.
Nickel	0.1 mg.
Zinc	0.5 mg.

In a Natural Base of Whole Dried Liver, Alfalfa and Dried Brewers Yeast.

Directions:

Gayelord Hauser recommends 2 capsules daily with breakfast or dinner as a dietary supplement.

II. *Designation:*

Stress & Strain.

Formula:

Two capsules supply:

Vitamin B_1	20 mg.
Vitamin B_2	20 mg.
Vitamin B_6	3 mg.
Vitamin B_{12} Act (Cobalamin Conc.)	10 mcg.
Vitamin C	200 mg.
Vitamin A	25,000 USP Units
Vitamin D	2,000 USP Units
Vitamin E	10 Int. Units
Vitamin K (as Menadione)	2 mg.
Betaine HCL	30 mg.
Biotin	20 mcg.
Calcium Pantothenate	15 mg.
Choline Bitartrate	20 mg.
Diastase Enzyme	50 mg.
Folic Acid	0.5 mg.
Inositol	20 mg.

Intrinsic Factor Conc. with Vitamin B_{12}	⅛ USP Oral Unit
L-Lysine HCL	30 mg.
di-Methionine	20 mg.
Niacinamide	100 mg.
PABA	20 mg.
Rutin	15 mg.
Lemon Bioflavonoids	15 mg.
Calcium	100 mg.
Phosphorus	45 mg.
Iron	10 mg.
Iodine	0.1 mg.
Cobalt	0.3 mg.
Copper	1 mg.
Magnesium	4 mg.
Manganese	1.5 mg.
Molybdenum	0.2 mg.
Nickel	0.2 mg.
Potassium	2 mg.
Zinc	1 mg.

In a Natural Base of Whole Dried Liver, Alfalfa and Dried Brewers Yeast.

Directions:

Gayelord Hauser recommends two capsules daily with breakfast or dinner as a dietary supplement.

III. *Designation:*

Revitalin.

Formula:

Four capsules supply:

Choline Bitartrate	300 mg.
Inositol	100 mg.
di-Methionine	100 mg.
Betaine HCL	150 mg.
L-Lysine HCL	100 mg.
Diastase Enzyme	150 mg.
Intrinsic Factor Concentrate with Vitamin B_{12}	⅛ USP Oral Unit
Vitamin A	25, 000 USP Units
Vitamin D	1,500 USP Units
Vitamin B_1	15 mg.
Vitamin B_2	15 mg.
Vitamin B_6	5 mg.
Vitamin B_{12} Act. (Cobalamin Conc.)	15 mcg.
Vitamin C	150 mg.
Vitamin E	15 Int. Units
Vitamin K (as Menadione)	2 mg.
Biotin	30 mcg.
Calcium Pantothenate	15 mg.
Folic Acid	0.75 mg.
Niacinamide	100 mg.
Para-aminobenzoic Acid	30 mg.
Rutin	20 mg.

Lemon Bioflavonoid Complex	20 mg.
Calcium	100 mg.
Phosphorus	45 mg.
Iron	10 mg.
Iodine	0.1 mg.
Cobalt	0.3 mg.
Copper	1.5 mg.
Magnesium	5 mg.
Manganese	2.5 mg.
Molybdenum	0.3 mg.
Nickel	0.3 mg.
Potassium	3 mg.
Zinc	2 mg.

In a Natural Base of Whole Dried Liver, Alfalfa and Dried Brewers Yeast.

Directions:

Gayelord Hauser recommends two capsules with breakfast and two capsules with dinner as a dietary supplement.

PAR. 3. Respondents cause the said designated preparations, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act. The volume of business in such commerce has been and is substantial.

PAR. 4. In the course and conduct of their said business, respondents have disseminated, and caused the dissemination of, certain advertisements concerning the said preparations 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, circulars, brochures, catalogs and other media, for the purpose of inducing, directly or indirectly, the purchase of said preparations; and have disseminated, and caused the dissemination of, advertisements concerning said preparations 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 preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Among and typical of the statements and representations contained in said advertisements disseminated as hereinabove set forth, with respect to respondents' preparation designated "Staminar", are the following:

For the typical Young Adult
MORE ENERGY

FEWER COLDS
LESS IRRITABILITY

Did you end the day dragging your feet? . . . Tired? . . . over-worked? . . . worried? . . . Irritable? Do you have too many colds?

* * * Well-rounded potencies of the B-Complex factors plus Vitamin C attack nervousness and fatigue. Amazing "red" Vitamin B_{12}, Iron, Copper and Intrinsic Factor Concentrate for rich, red blood, means more energy.

The ideal answer to the common tired feeling in young adults.

Many authorities agree that the adult, during his "building years" of family and career, has specialized needs. These men and women are subjected to great, often excessive demands on their time, minds and bodies. They end the day dragging their feet . . . tired . . . over-worked . . . irritable . . . worried . . . and suffer from too many colds.

PAR. 6. Through the use of the said advertisements and others similar thereto not specifically set out herein, respondents have represented and are now representing directly and by implication, that "Staminar" will be of benefit in the treatment of tiredness, lack of energy, nervousness, irritability, worry and susceptibility to colds.

PAR. 7. The said advertisements were and are misleading in material respects and constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, "Staminar" (a) will not be of benefit in the treatment of worry or susceptibility to colds, and (b) will not be of benefit in the treatment of tiredness, lack of energy, nervousness, or irritability, except in a small minority of persons whose tiredness, lack of energy, nervousness and irritability are symptoms of an established deficiency of one or more of the nutrients provided by the preparation.

Furthermore, the statements and representations have the capacity and tendency to suggest and do suggest to persons who experience feelings of tiredness, who lack energy, and who are nervous and irritable, that there is a reasonable probability that they have symptoms which will respond to treatment by the use of "Staminar". In the light of such statements and representations, said advertisements are misleading in a material respect and therefore constitute "false advertisements" as that term is defined in the Federal Trade Commission Act, because they fail to reveal the material fact that in the great majority of persons experiencing tiredness, who lack energy, and who are nervous and irritable, these symptoms are not caused by an established deficiency of one or more of the nutrients provided by "Staminar", and that in such cases the said preparation will be of no benefit.

PAR. 8. Among and typical of the statements and representations contained in said advertisements as hereinabove set forth, with re-

spect to respondents' preparation designated "Stress & Strain", are the following:

FOR THE STRESS AND STRAIN OF MIDDLE YEARS Extra High Potencies for those who are always Tired, Depressed, never really well.

* * * * * * *

Extreme Pressures? Overwork?
Low Resistance? (in connection with depiction of sneezing woman)
Tense nerves?

* * * * * * *

"Stress and Strain" * * * speed up the conversion of food into energy . . . strengthen nerve tissues . . . and tend to reduce tensions. * * * also help overcome sensitivity to noise, loss of morale and irritability.

Vital Digestive Enzyme Added.—During these middle years, eating meals under tension, digestive upsets, gas discomforts, heartburn, etc., are all too common. * * * 50 mg. of Diastase, an invaluable aid to digestion, have been added.

PAR. 9. Through the use of the said advertisements and others similar thereto not specifically set out herein, respondents have represented and are now representing, directly and by implication, that "Stress & Strain" will be of benefit in the treatment of stress and strain, low resistance to colds, tension, loss of morale, sensitivity to noise, tiredness, depression, nervousness, irritability, digestive upsets, gas discomforts and "heartburn", and that the diastase contained in the preparation is an aid to digestion.

PAR. 10. The said advertisements were and are misleading in material respects and constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, (a) "Stress & Strain" will not be of benefit in the treatment of stress and strain, low resistance to colds, tension, loss of morale or sensitivity to noise, (b) "Stress & Strain" will not be of benefit in the treatment of tiredness, depression, nervousness, irritability digestive upsets, gas discomforts or "heartburn" except in a small minority of persons whose tiredness, depression, nervousness, irritability, digestive upsets, gas discomforts and "heartburn" are symptoms of a deficiency of one or more of the nutrients provided by the preparation, and (c) the diastase contained in the preparation is not an aid to digestion.

Furthermore, the statements and representations have the capacity and tendency to suggest and do suggest to persons who experience feelings of tiredness, who are nervous, irritable and depressed, and who have digestive upsets, gas discomforts and "heartburn", that there is a reasonable probability that they have symptoms which will respond to treatment by the use of "Stress & Strain". In the light of such statements and representations, said

advertisements are misleading in a material respect and therefore constitute "false advertisements" as that term is defined in the Federal Trade Commission Act, because they fail to reveal the material fact that in the great majority of persons experiencing tiredness, who are nervous, irritable and depressed, and who have digestive upsets, gas discomforts and "heartburn", these symptoms are not caused by an established deficiency of one or more of the nutrients provided by "Stress & Strain", and that in such cases the said preparation will be of no benefit.

PAR. 11. Among and typical of the statements and representations contained in said advertisements disseminated as hereinabove set forth, with respect to respondents' preparation designated "Revitalin", are the following:

For OLDER PEOPLE . . . an advanced Geriatric formula * * *
Feel Younger
Fewer Aches
New Vitality

Avoid Vitamin Deficiencies—Deficiences are more common as we grow older due to life-time eating habits . . . digestion difficulties . . . illnesses . . . loss of appetite . . . resulting in loss of vitality, irritability, digestive discomforts and premature aging.

Effective Lipotropic Action—The loss of liver efficiency may lead to fatty-like deposits in the arteries, affecting circulation and can ultimately lead to hardening of the arteries. Therapeutic amounts of Choline, Inositol and Methionine are included for their effects on fat digestion and reduction of Cholesterol in vitamin deficiencies.

Diastase * * * aids in overcoming discomfort of gas from improper digestion.

NEW LIFE, NEW HEALTH FOR *OLDER FOLKS*—for Premature Aging that causes constant Fatigue, Restless Sleep, Digestive Disturbances.

LOOK YOUNGER!
NEW STRENGTH AND VITALITY!
FEWER ACHES AND PAINS

PAR. 12. Through the use of the said advertisements and others similar thereto not specifically set out herein, respondents have represented and are now representing, directly and by implication, that "Revitalin" will be of benefit in the reduction of cholesterol and prevention of hardening of the arteries, that the said preparation will be of benefit in the treatment of tiredness, irritability, aches, pains, premature aging, digestive disturbances, restless sleep and loss of vitality, and that the diastase contained in the preparation aids in overcoming discomfort of gas from improper digestion.

PAR. 13. The said advertisements were and are misleading in material respects and constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, (a) "Revitalin" will not be of

benefit in the reduction of cholesterol or prevention of hardening of the arteries, (b) "Revitalin" will not be of benefit in the treatment of tiredness, irritability, aches, pains, premature aging, digestive disturbances, restless sleep or loss of vitality except in a small minority of persons whose tiredness, irritability, aches, pains, premature aging, digestive disturbances, restless sleep and loss of vitality are symptoms of a deficiency of one or more of the nutrients provided by the preparations, and (c) the diastase contained in the preparation is not an aid to overcoming discomfort of gas or any other manifestation of improper digestion.

Furthermore, the statements and representations have the capacity and tendency to suggest and do suggest to persons who experience feelings of tiredness, who are nervous and irritable, who have aged prematurely and lost vitality, whose sleep is restless, and who suffer from aches, pains and digestive disturbances, that there is a reasonable probability that they have symptoms which will respond to treatment by the use of "Revitalin". In the light of such statements and representations said advertisements are misleading in a material respect and therefore constitute "false advertisements" as that term is defined in the Federal Trade Commission Act, because they fail to reveal the material fact that in the great majority of persons experiencing tiredness, who are nervous and irritable, who have aged prematurely and lost vitality, whose sleep is restless, and who suffer from aches, pains and digestive disturbances, these symptoms are not caused by an established deficiency of one or more of the nutrients provided by "Revitalin", and that in such cases the said preparation will be of no benefit.

PAR. 14. The dissemination by the respondents of the false advertisements, as aforesaid, constituted, and now constitutes, unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Berryman Davis, Esq., for the Commission.

Melville Ehrlich, Esq., of Washington, D.C., and *William D. Rogers, Esq.*, of New York, N.Y., for respondents.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

The complaint in this proceeding was issued by the Federal Trade Commission on October 19, 1960. It charges respondents with the dissemination in commerce of false advertising concerning the efficacy of certain preparations including: STAMINAR, STRESS & STRAIN and REVITALIN. It further charges that such advertisements constitute unfair and deceptive acts and practices in violation of the Federal Trade Commission Act.

On May 11, 1961, counsel presented to the undersigned a proposed agreement duly executed by respondents, Approved Formulas, Inc., Jack Bernard, Edward Yass, Richard P. Bernard and Phil Edell, their counsel, William D. Rogers and Melville Ehrlich, and counsel supporting the complaint. Said agreement was duly approved by the Director and Assistant Director of the Bureau of Litigation.

Attached to and made a part of said agreement are affidavits of Jack Bernard, Richard P. Bernard and Philip Edell, named in the complaint as Phil Edell, to the effect that their duties as officers of the corporation deal with matters other than matters relating to the advertising or advertising policy of the respondent Approved Formulas, Inc. The agreement recommends that the complaint be dismissed as to said Jack Bernard, Richard P. Bernard and Phil Edell in their individual capacities and the order agreed upon follows this recommendation.

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 respondent parties of all jurisdictional facts alleged in the complaint.

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 conclusions of law;

(2) Further procedural steps before the hearing examiner and the Commission;

(3) Any right to challenge or contest the validity of the order entered in accordance with the agreement.

In addition the agreement contains the following permissive provision: 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 Approved Formulas, 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 35 West 45th Street, in the City of New York, State of New York.

2. Respondent Edward Yass, is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Respondents Jack Bernard, Richard P. Bernard and Phil Edell are officers of the 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 respondents Approved Formulas, Inc., a corporation, and its officers, and Edward Yass, individually and as an officer of said corporation, and Jack Bernard, Richard P. Bernard and Phil Edell, as officers of the corporate respondent, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the preparation designated "Staminar", "Stress & Strain" and "Revitalin", or any other preparations of substantially similar composition or possessing substantially similar properties, under whatever name or names sold, do forthwith cease and desist from, directly or indirectly:

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

(a) That "Staminar":

(1) Will be of benefit in the treatment of worry or susceptibility to colds; or

(2) Will be of benefit in the treatment of tiredness, lack of energy, nervousness or irritability, unless such advertisement expressly limits

the effectiveness of the preparation to those persons whose symptoms have been caused by an existing deficiency of one or more of the nutrients provided by the preparation and, further, unless the advertisement clearly and conspicuously reveals the fact that in the great majority of persons these symptoms are caused by conditions other than those which may respond to treatment by the use of the preparation, and that in such persons the preparation will not be of benefit.

(b) That:

(1) "Stress & Strain" will be of benefit in the treatment of stress, strain, low resistance to colds, tension, loss of morale or sensitivity to noise;

(2) "Stress & Strain" will be of benefit in the treatment of tiredness, depression, nervousness, irritability, digestive upsets, gas discomforts or "heartburn", unless such advertisement expressly limits the effectiveness of the preparation to those persons whose symptoms have been caused by an existing deficiency of one or more of the nutrients provided by the preparation and, further, unless the advertisement clearly and conspicuously reveals the fact that in the great majority of persons these symptoms are caused by conditions other than those which may respond to treatment by the use of the preparation, and that in such persons the preparation will not be of benefit, or;

(3) That the diastase contained in the preparation is an aid to digestion.

(c) That:

(1) "Revitalin" will be of benefit in the reduction of cholesterol or prevention of hardening of the arteries;

(2) "Revitalin" will be of benefit in the treatment of tiredness, irritability, aches, pains, premature aging, digestive disturbances, restless sleep or loss of vitality, unless such advertisement expressly limits the effectiveness of the preparation to those persons whose symptoms have been caused by an existing deficiency of one or more of the nutrients provided by the preparation and, further, unless the advertisement clearly and conspicuously reveals the fact that in the great majority of persons these symptoms are caused by conditions other than those which may respond to treatment by the use of the preparation, and that in such persons the preparation will not be of benefit, or;

(3) That the diastase contained in the preparation is an aid to overcoming discomfort of gas or any other manifestation of improper digestion.

2. Disseminating, or causing to be disseminated, for the purpose of inducing or which is likely to induce, directly or indirectly, the

purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said preparations, any advertisement which contains any of the representations prohibited in Paragraph 1, above, or which fails to comply with the affirmative requirements of Paragraph 1, above.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to respondents Jack Bernard, Richard P. Bernard and Phil Edell as individuals.

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

It is ordered, That respondents Approved Formulas, Inc., a corporation, Edward Yass, Jack Bernard, Richard P. Bernard and Phil Edell, as officers of said corporation and Edward Yass, individually, 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

BAKERS FRANCHISE CORPORATION ET AL.

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

Docket 7472. Complaint, Apr. 13, 1959—Decision, July 19, 1961

Order requiring a New York City company, engaged in licensing bakers to bake and sell its "Lite Diet Bread", to cease representing falsely in advertisements in newspapers and by means of television and radio broadcasts, that the bread was a low-calorie food and that consumption of it as part of a diet would prevent the consumer from gaining weight; facts being "Lite Diet Bread" had as many calories as ordinary bread but was more thinly sliced and as a consequence each slice contained fewer calories than the conventional larger slice.

Before *Mr. John B. Poindexter*, hearing examiner.

Mr. Morton Nesmith and *Mr. Michael J. Vitale* for the Commission.

Mr. Gilbert H. Weil, *Mr. Francis J. Cunningham, Jr.*, and *Weisman, Allan, Spett & Sheinberg*, of New York City, and *Mr. William C. Walsh*, of Cumberland, Md., for respondents.

FINDINGS AS TO THE FACTS, CONCLUSIONS AND ORDER

This matter having been heard by the Commission on cross-appeals from the initial decision of the hearing examiner, and the Commission having rendered its decision denying the appeal of respondents and granting the appeal of counsel supporting the complaint, and having determined, for the reasons stated in the accompanying opinion, that the initial decision should be vacated and set aside, now makes in lieu thereof these its findings as to the facts, conclusions and order.

FINDINGS AS TO THE FACTS

1. Respondent, Bakers Franchise Corporation, is a New York corporation controlled, directed and dominated by its officers, respondents Irving G. Fox and Harry C. Freedman. The address of all respondents is 250 Park Avenue, New York, New York.

2. Respondents are engaged in the business of licensing bakers to produce and sell a bread made from respondents' secret recipe. Bakers so licensed are permitted to market the bread under respondents' trademark "Lite Diet". As of October, 1957, respondents had entered licensing agreements with 110 bakers located in 42 states and the Dominion of Canada. Bread is a food as "food" is defined in the Federal Trade Commission Act.

3. An important service rendered to its licensees by respondents is the supplying of advertising copy and materials. The licensees in turn utilize this copy and material by placing it in newspapers and broadcasting it over radio and television.

4. In conducting their business respondents have disseminated and caused the dissemination of advertisements concerning "Lite Diet" bread through the United States mails and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing the purchase of said bread in commerce.

5. Much of the advertising material disseminated by respondents is false in that it creates in the mind of the public the erroneous and false impression that "Lite Diet" bread is lower in calories than ordinary bread, is less fattening and is more effective in controlling body weight. In truth and in fact respondents' bread has approximately the same calorie content as other white breads.

6. Loaves of "Lite Diet" bread, as offered for sale to the public, are thinner sliced than some white bread. Therefore a slice of "Lite Diet" bread weighs 17 grams as compared to the 23 gram weight of the average slice of many white breads. Any difference in calories between a slice of "Lite Diet" bread and a slice of regular

white bread is solely due to the smaller size of the "Lite Diet" slice.

7. The words light diet are interpreted by the public to mean a low calorie, reducing diet. Thus, the use by respondents of the trademark "Lite Diet" has the capacity to mislead and does in fact mislead the public into the belief that bread so advertised is lower in calories than regular white bread.

8. The words "Lite Diet" as a designation for respondents' product are false and deceptive and cannot be properly qualified to adequately protect the public from the erroneous and mistaken impression that respondents' product is a low calorie bread; qualification of the trade name will not remove the deception inhering in its continued use.

CONCLUSIONS

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

2. This proceeding is in the public interest.

3. The respondents disseminated or caused the dissemination of false advertising in commerce. Said activity constitutes unfair and deceptive acts or practices in violation of the Federal Trade Commission Act.

ORDER

Is is ordered, That respondents, Bakers Franchise Corporation, a corporation, and its officers, and Irving G. Fox and Harry C. Freedman, 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 "Lite Diet" bread, or any other bread of substantially the same composition, whether sold under the same name or any other name, 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 represents directly or by implication:

(a) That said bread is lower in calories than other white bread;

(b) That said bread is less fattening, or is more effective in controlling body weight.

2. Disseminating or causing to be disseminated any advertisement, by means of the United States mails or by any means in commerce, as "commerce" as defined in the Federal Trade Commission Act, in which the words "Lite Diet" or words of similar import or meaning are used as the trade name or designation for respondents' bread.

3. 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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondents' product, which advertisement contains any of the representations prohibited in Paragraph 1 hereof or the trade name or designation prohibited in Paragraph 2 hereof.

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

Commissioner Kern dissenting and Commissioner Elman not participating.

OPINION OF THE COMMISSION

By SECREST, *Commissioner:*

This matter is before us for consideration of cross-appeals from the hearing examiner's initial decision dismissing the complaint. Respondents allege error only in the refusal of the hearing examiner to adopt one of their proposed findings. Counsel supporting the complaint alleges error in the conclusions of the hearing examiner including, of course, his holding that the evidence was insufficient to support the allegations of the complaint.

Respondents are engaged in the business of licensing bakers to produce and sell a bread made from respondents' secret recipe. The bakers in return, for a consideration, are licensed to market the bread under respondents' trademark, "Lite Diet". As of October, 1957, respondents had licensing agreements with 110 bakers located in 42 states and Canada.

In addition to supplying the recipe and permitting the use of their trademark, respondents supply their licensees with advertising materials and copy which the licensees place in newspapers and broadcast over radio and television facilities. During the period between October 31, 1955 and April 1, 1959 respondents have alleged that $2,500,000 has been expended in advertising "Lite Diet" bread.

Typical of the statements contained in respondents' advertising are the following:

> Who'd believe it could help you control your weight? So try it . . . Lite Diet . . . Lite Diet. * * *
>
> Here's a bread that tastes great yet helps you control weight. It's Lite Diet, Lite Diet, Lite Diet.
>
> * * * Will you listen to him? Says it helps you keep slim . . . Do try it . . . Lite Diet . . . Lite Diet.
>
> Who'd ever think such delicious bread could help you keep slim!

Fortified with B vitamins & minerals.
No added sugar or shortening.
Approx. 45 calories per 17 gram slice.
Lite Diet
WHITE SPECIAL FORMULA BREAD

The advertisements usually depict an attractively slender young woman and a loaf of bread bearing the label "Lite Diet".

The complaint charges that respondents in making such representations have falsely advertised a food in interstate commerce in violation of the Federal Trade Commission Act. It is also alleged that the trade name, "Lite Diet", is itself deceptive in that it implies that respondents' bread is a low calorie food.

The principal thrust of the complaint then deals with the issue of whether respondents are selling a low calorie bread. At two places in the record the hearing examiner, without protest or correction from either party, announced that he interpreted the complaint as follows:

> Well, it seems to me, Mr. Weil, that the key to this whole case is whether or not your bread, ["Lite Diet"], is a low calory food and whether or not it has less calories than the average bread.
>
> . . . it seems to me that the keystone or the touchstone of this complaint is that light diet ["Lite Diet"] bread is not a low calory food in the sense that it has less calories than average bread.

In keeping with this interpretation of the complaint the hearing examiner overruled respondents' objections to the testimony of consumer witnesses which tended to compare respondents' product with other bread.

The initial decision comes to grips with this "keystone" issue and answers it in both the affirmative and the negative. The hearing examiner found, and respondents admit, that in a loaf to loaf comparison or on a weight basis respondents' bread had just as many calories as "regular bread". He also found that in a slice to slice comparison respondents' bread had less calories (45 as opposed to 62) than ordinary bread. The key to this apparent enigma lies in the width of the slices. The respondents' loaves are always more thinly sliced and as a consequence each of these smaller slices has fewer calories than the conventional larger slice of bread. A slice of the respondents' bread weighs approximately 17 grams while a conventional slice of bread weighs 23 grams.

Of course, this is much the same as saying a small pat of butter has less calories than a large pat or that a thin slice of pie has less calories than a thick one. But the hearing examiner at respondents' request discerns an apparent distinction. He found: ". . . the average consumer does not weigh bread to determine its calorie content.

He determines the calorie content of bread on a per slice basis . . . ." This finding is apparently based upon the testimony of an expert witness called by respondents, for testimony to this effect was not elicited from members of the public called as witnesses. Their testimony, for the most part, dealt with bread in general and not with any particular quantity or unit thereof. But the key finding of the hearing examiner is without question entirely based upon the testimony of the consumer witnesses. This finding reads:

> In the eyes of the average consumer who testified in this proceeding, a slice of "Lite Diet" bread is a "low" calorie food as compared to a slice of regular bread.[1]

We characterize this conclusion as the hearing examiner's "key" finding because upon it he bases his ultimate decision that " . . . respondents' trademark 'Lite Diet' and advertising have not, under the evidence, been shown to be false and deceptive . . . ."

With such great weight attached to the consumer testimony we are compelled to review it. A total of ten consumer witnesses testified and respondents stipulated that if an additional ten had been called their testimony would have been substantially similar. Nine of the witnesses were women and eight of the nine were housewives. The direct examination of the consumer witnesses followed a simple pattern. They were handed one of respondents' advertisements and asked what the words "Lite Diet" as used therein meant to them, and in some instances, what the advertisement as a whole conveyed to them.

A certain amount of license is involved whenever an attempt is made to summarize testimony even though the summary is supported by quoted excerpts, but quite obviously no better course, short of an unwieldy copying of the entire transcript, is available. However, here the testimony to be summarized is short, covering less than 100 pages, and, in our opinion, is so uniform that the license is minimal. With this in mind let us summarize.

Most of the witnesses clearly testified that the advertisements impressed upon them the belief that "Lite Diet" was a low calorie food in the sense that it was lower in calories than ordinary bread. A fair sampling of their testimony would include the following statements:

> . . . and it was probably lower in calories than ordinary bread.
>
> . . . it would be the right bread to keep you slim if you are on a diet, since it says it is low in calories. . . .

[1] Actually the wording of this finding is not quite accurate since none of the witnesses testified to ever having seen a slice or loaf of respondents' bread and their knowledge thereof was apparently limited to what they were able to learn from briefly examining respondents' advertisements. Thus it should be understood that this finding refers to the witnesses' interpretations of the representations made in respondents' advertisements.

. . . it would be used as preferable to another bread.

It implies to me a low calorie bread.

. . . this implies to me that this is a low calorie bread for people who are trying to lose weight.

Well, in case you are on a diet, I imagine that would be used in preference to other kinds of bread. . . .

Well, it is lower [in calories] than the regular breads, the one that aren't advertised as light diet. . . .

As indicated the witnesses for the most part spoke of bread in general terms and not in terms of a particular quantity such as a loaf, slice or ounce. Therefore, we find no basis in this testimony for the hearing examiner's findings that the average consumer that testified thought that respondents' bread represented that ". . . a *slice* of 'Lite Diet' bread is a 'low' calorie food as compared to a *slice* of regular bread." (Emphasis added)

But even if the witnesses had testified in terms of slices we are not persuaded that such testimony would support the conclusion that the advertisements were not deceptive. The testimony of the consumer witnesses indicates that they were all completely misled by respondents' advertisements and trade name. Morever, independent of the consumer testimony we find on our own authority that respondents advertisements are deceptive and misleading.[2] In making this judgment we are aware that for the most part the advertisements create deception by implication and innuendo rather than by overt falsehoods. But this is unimportant.[3] The important consideration is that the advertisements, taken as a whole, undissected, and without the use of extrinsic, interpretative aids, create a false impression in the mind of the public.[4]

We deem it significant, but not controlling, that the advertisements do not disclose that "Little Diet" bread is thinner sliced. In our view this disclosure would not materially lessen the deceptive nature of the advertisements and consequently would not affect their illegal nature.[5] The impression created by the use of such terms as "special formula", "no added sugar or shortening" and "help you keep slim" is that respondents' product is a lower calorie reducing food and the revelation that the loaf is also thinner sliced may well enhance rather than lessen the deception.

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[2] *Zenith Radio Corp.* v. *Federal Trade Commission,* 143 F. 2d 29, 31 (7th Cir. 1944); *Charles of the Ritz Distributing Corp.* v. *Federal Trade Commission,* 143 F. 2d 676, 680 (2d Cir. 1944).

[3] *Koch* v. *Federal Trade Commission,* 206 F. 2d 311, 317 (6th Cir. 1953); *Consolidated Book Publishers* v. *Federal Trade Commission,* 53 F. 2d 942, 944 (7th Cir. 1931).

[4] *Rhodes Pharmacal Co., Inc.* v. *Federal Trade Commission,* 208 F. 2d 382, 387 (7th Cir. 1953), aff'd, 348 U.S. 940 (1955); *Earl Aronberg, et al.* v. *Federal Trade Commission,* 132 F. 2d 165, 167 (7th Cir. 1942).

[5] *General Motors Corp., et al.* v. *Federal Trade Commission,* 114 F. 2d 33, 35-36 (2d Cir. 1940), *cert. denied,* 312 U.S. 682 (1941).

Respondents contend that their trademark, "Lite Diet", is a valuable asset and that substantial sums have been spent in its promotion. It is urged that this expediture gives them a vested interest in the trade name vis-a-vis the public. They urge that the trademark is susceptible to truthful interpretation and that as a consequence we should not order its complete excision; in the words of their brief: ". . . where a trademark is concerned a deceptive meaning does not justify its excision if it also possesses a truthful meaning."

We, of course, adhere to the principle announced by the Supreme Court in *Federal Trade Commission* v. *Royal Milling Co.*[6] and quoted with approval in *Jacob Siegel Co.* v. *Federal Trade Commission*[7] to the effect that trademarks or trade names, as valuable assets, should not be excised . . . if less drastic means will accomplish the same result. But as we see it, it is the "result" to be obtained and not the partial truth or falsity of the trade name which dictates the remedy. And, of course, the result sought here is the complete eradication of deception and confusion.

The desired result can only be obtained in this matter by complete excision of the trade name. The record indicates that the words, "Lite Diet", create in the public mind an impression that the product is a lower calorie bread. This false impression can be contradicted by qualifying words but such contradiction would be productive of more rather than less confusion. There is substantial evidence that to the average consumer a light diet is a reducing diet, low in calories. Thus the representations, "Lite Diet—Not A Low Calorie Bread" or "Lite Diet—Not Low in Calories" contain flat contradictions of terms. Nor do we believe that a revelation that respondents' bread is thinner sliced will cure the deception. Contradictory qualifying language completely at loggerheads with the words to be qualified compound rather than allay confusion. In this matter we feel that qualifying language will, at best, completely confuse the consumer and that the public interest requires the complete excision of the trade name, "Lite Diet". An order accomplishing this end will issue.

As we indicated at the outset, respondents have appealed the refusal of the hearing examiner to make one of the findings of fact which they requested. The requested finding would hold that the thinner slice of "Lite Diet" bread, because of additional enrichment, is equal in nutritional benefit to the conventional larger slice of bread. It is our conclusion that the evidence will not support such a finding. Respondents' own expert testified:

[6] 288 U.S. 212, 217 (1932).
[7] 327 U.S. 608, 612 (1946).

The point is that the smaller slice of the Lite Diet will carry with it almost as much as the larger slice of the standard white breads, in many of the ingredients. Not all of them, naturally.

But even if the record supported respondents' contention, we fail to see the necessity of a finding on this point. We are here concerned only with the calorie content of respondents' bread and the misleading representations made with respect thereto. We are aware that there are many so-called enriched foods on the market today and under respondents' theory each of these could be represented as a light diet or reducing food irrespective of calorie content. But as respondents' brief points out, ". . . there is no necessary relationship between the amount of calories contained in the foods and their richness in the protective nutritional factors." Thus as we view it, the nutritional benefit derived from eating respondents' bread is immaterial insofar as this matter is concerned. Consumers purchasing respondents' bread under the impression that it contains fewer calories are none the less deceived by reason of the fact that they may gain a nutritional bonus. "The consumer is prejudiced if upon giving an order for one thing, he is supplied with something else." [8]

The hearing examiner in his Initial Decision relied, in large measure, upon the testimony of respondents' expert witness, an outstanding medical practitioner, specializing in nutrition. This testimony, however, can make only a very small contribution to the resolution of the principal contested issue in this proceeding. For example, there is no question but that a person eating a 17 gram slice of bread will receive less calories than one eating a 23 gram slice. Also we have no quarrel with the expert's mathematical conclusions with respect to weight loss resulting from lower calorie intake produced by the smaller slice. What we fail to see is the evidentiary effect of these truths upon the deception created in the public mind by the representation that "Lite Diet", a "Special Formula" bread will ". . . help you keep slim." In truth and in fact respondents' bread, like any other bread, will help you keep slim only if you eat less of it and it should be unnecessary to point out that this can be said of any other food.

However, we are indebted to the expert testimony in this proceeding for making clear a point often overlooked by those who would be slim. One losses weight only by ingesting less calories than are required to maintain the body, thereby requiring the body to utilize its stored fat. There is no panacea or magic shrinking potion tasting like ". . . mixed flavor of cherry tart, custard, pineapple, roast

[8] *Federal Trade Commission* v. *Algoma Lumber Co., et al.*, 291 U.S. 67, 78 (1934).

turkey, toffy and hot buttered toast" such as Alice found in the never never land of Lewis Carroll's imagination. To become thin or stay thin in this practical world, one must consume a true light diet. Respondents' bread is neither more nor less suited to be an ingredient of a light diet than any other equally enriched bread and respondents' representations to the contrary constitute "false advertising".

The Initial Decision of the hearing examiner is vacated and set aside and in lieu thereof we are issuing our own findings of fact, conclusions and order to cease and desist.

Commissioner Kern dissented to the decision herein and Commissioner Elman did not participate in the decision.

DISSENTING OPINION OF COMMISSIONER KERN

I find myself in reluctant but complete disagreement with my colleagues and, with one major exception later noted, in complete agreement with the hearing examiner as to the proper disposition of this proceeding.

In connection with their business of licensing bakers to produce and sell bread made from their formula and sold under their trademark "Lite Diet" (a trade-mark on which they have expended $2,500,000 in advertising from October 31, 1953, to April 1, 1959, yet one to be excised by the order issued consistent with the majority opinion), respondents have made a number of advertising representations. Literally read, the complaint charges that respondents have falsely represented that "Lite Diet" bread is a low calorie food and that its consumption as part of a diet will prevent the consumer from gaining weight. During the proceeding counsel supporting the complaint unsuccessfully sought to amend the complaint so as to eliminate the "as part of a diet" qualification to the charge. Subsequently, however, respondents' counsel consented that the scope of the issues should not be restricted by the appearance of those words *in the complaint*. It seems to me that my colleagues have attempted to stretch that consent (or, rather, the hearing examiner's interpretation of it) out of all bounds. True, the allegation of the complaint may now be read to charge respondents with falsely representing that Lite Diet bread is a low calorie food and that its consumption [omitting "as part of a diet"] will prevent the consumer from gaining weight. But this does not alter by one iota our duty to view respondents' actual representations in contest—that is, "in their entirety, and as they would be read by those to whom they appeal." [1]

[1] *Ford Motor Company* v. *Federal Trade Commission*, 120 F. 2d 175, 182 (6th Cir. 1941).

The record relied upon by counsel supporting the complaint to sustain their burden of proof consists of the testimony of ten consumer witnesses (with the stipulation that ten other available consumer witnesses would testify to the same effect) and two expert witnesses, together with exhibits of printed advertisements and radio and television scripts used by respondents.

Coming first to the consumer testimony, I am convinced that the hearing examiner correctly found that it did not sustain the allegations of the complaint. Each of the ten consumer witnesses was asked to examine Commission Exhibits 1 and 2 [2] and to testify what those advertisements meant to him. The hearing examiner pointed out that "Even though a preponderance of the testimony of the consumer witnesses was to the effect that respondents' advertising conveyed the impression that 'Lite Diet' bread was low in calories, they explained that this was in the sense that 'Lite Diet' was suitable to be used in connection with a diet or weight control program. The great weight of their testimony was that 'Lite Diet' bread was advertised to be used in connection with a diet, and not in unlimited amounts, irrespective of the amount of consumption of other foods."

It is appropriate to a consideration of probable deception on the part of consumers that the basic and underlying advertising be considered and examined. An examination of Exhibits 1 and 2 reveals that the exact number of calories, namely, 45 calories per 17 gram slice was set out in these exhibits shown to Commission witnesses. Therefore, it seems clear that there could be no possible consumer confusion as to whether a slice of this bread was either a low calorie or a high calorie food. There is competent evidence in this record to sustain the examiner's finding that the consumer does not weigh bread to determine its calorie content, but determines the calorie content on the basis of "slice." Surely the respondents have fully satisfied the requirements of proper advertising if they set out the exact number of calories in each slice of their bread. They not only did so, but indicated the exact number of grams in each slice of bread. Furthermore Commission Exhibit 1 has a replica of respondents' bread indicating that it is a ready-sliced loaf, and Commission Exhibit 2 refers particularly to slices of bread not only in stating "approximately 45 calories per 17 gram slice" but also in stating "for one slice of this delicious white special formula bread contains only half the calories in a glass of skimmed milk."

[2] Since my colleagues rest their decision on the advertisements taken as a whole, since these two advertisements were shown to each consumer witness and formed the basis of the consumer testimony and thus may be taken as typical, and since they are the basis of my later analysis, Exhibits 1 and 2 are reproduced at the end of this opinion.

Thus, after careful study of the consumer testimony I agree with the hearing examiner's finding that these witnesses' impression of the advertising claims was that Lite Diet bread, "if used as part of a diet . . . would 'help you keep slim' or 'help you control your weight.'" As reducing diets are shown by the record to list bread in slice portions and as respondents' bread contains substantially fewer calories to the slice, the consumer testimony obviously does not support the complaint.

Since the consumer testimony was anything but helpful to their position, my colleagues have been forced into the position of deciding this matter independent of such testimony [3] and on the basis of the advertising itself. This is understandable since counsel supporting the complaint, in argument before the Commission, jettisoned the consumer testimony by thus characterizing the initial decision dismissing the complaint: "In other words [the hearing examiner] adopts the erroneous impression of consumer witnesses to establish the point that the use of the name 'Lite Diet' is not deceptive" (Transcript of oral argument p. 51). When one relates this statement to the fundamental proposition that the burden of proof is on counsel supporting the complaint to establish the deceptive quality of respondents' advertising, and to the further fact that the great bulk of the testimony offered by counsel supporting the complaint was consumer testimony, it is difficult to understand how the majority reaches the conclusion that the burden of proof has been sustained by the greater weight of the evidence. Indeed the majority opinion admits that it was necessary to resort to finding "deception by implication and innuendo." But here they are on no sounder ground, for, taken as a whole, the advertisements are clear, explicit and contain no representations not fully borne out by the record.

Turning now to a consideration of the two expert witnesses supporting the allegations contained in the complaint, the key question put to each witness by Commission's counsel confuses the matter by improper comparison:

Q. Now, Dr. Kline, assuming that Lite Diet Bread contains approximately 45 calories per 17 gram *slice* as advertised there, is it different in calorie content from the ordinary *loaf* of white bread? (Emphasis supplied.)

A. No, it is not.

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[3] As authority for ignoring the consumer testimony, the Commission opinion cites *Zenith Radio Corp.* v. *Federal Trade Commission*, 143 F. 2d 29, 31 (7th Cir. 1944), and *Charles of the Ritz Distributing Corp.* v. *Federal Trade Commission*, 143 F. 2d 676, 680 (2d Cir. 1944). In those cases the Commission did not present any public opinion (consumer) testimony. The courts merely held that such evidence was not essential to a finding of deception. Those cases do not authorize ignoring consumer testimony that has been received in the record.

Yet the record is undisputed that on a slice-for-slice basis—and this is what respondents' advertising is concerned with (the record likewise indicates that this is what the usual reduction diet is concerned with—namely, a portion or a slice), respondents' slice of bread contains 45 calories as compared with the average slice (23 grams) of ordinary bread containing approximately 62 calories. Therefore, the testimony of these expert witnesses is no more helpful than the consumer testimony.

My colleagues appear to adopt the view that if it can be established that respondents' bread is not a "low" calorie food, then respondents' advertising is false and misleading. They conclude that the hearing examiner erred in his eighth finding that the expert opinion did not conclusively determine whether a particular food, respondents' included, is a high or low calorie food but that it is a relative matter and on cross examination the admission was made by the expert witnesses that bread is not a high calorie food. While I accept the hearing examiner's evaluation of this testimony, I find that it is unnecessary to do so because, in my judgment, since the advertising clearly sets forth the exact number of calories in each slice of respondents' bread as well as setting forth the number of grams in each slice, there could be no possibility of consumer confusion on this matter of calories. Indeed, through each cellophane wrapping in which respondents' bread is wrapped, the fact that it is sliced is readily discernible and on each such wrapper appears "approx. 45 calories per 17 gm. slice" (Comm. Ex. 12).

On this issue of whether respondents' bread is not in reality a low calorie food, the opinion expressed by the United States Government through the Department of Agriculture is illuminating:

> Bread is not relatively high-calorie food. A slice of white bread one-half inch thick furnishes 63 calories; a slice of whole wheat bread, 55 calories. Some of the breads of high protein content which are low in fat may furnish as little as 46 or 48 calories (Resp. Ex. 12, p. 20).

This gives further compelling indication that the public custom is to compare breads by slices. It also certainly indicates that bread is not a high calorie food. Moreover bread is included in many weight-control diets (Resp. Ex. 7, pp. 54–57).[4]

In addition to relying upon implication and innuendo, the majority opinion states that the deceptive impression of respondents' adver-

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[4] Even the 800- and 1000-calorie diets, which are the lowest ones listed for Armed Forces hospital use, and so sparse as to be nutritionally inadequate, include the equivalent of one or two slices of bread daily (Resp. Ex. 7).

tising is heightened by such phrases as "special formula" and "no added sugar or shortening," yet the truth of both of these phrases is unchallenged in the record. In fact even my colleagues refer to respondents' products in their opinion as "a secret recipe;" moreover, the special formula is in the record (Resp. Ex. 4), although held in camera by order of the hearing examiner and with the acquiescence of counsel supporting the complaint. Indeed, the complaint in this proceeding states that respondents "sell a bread designated 'Lite Diet Bread' made in accordance with respondents' formula."

I agree with the consensus of consumer witnesses that a fair appraisal of respondents' advertising, taken as a whole, compels the conclusion that the benefits claimed are only in conjunction with a reducing diet regime or program. The words "could help you keep slim" are clearly so oriented (Comm. Exs. 1, 2, 8, 10 and 11); also the phrase "you will wonder how it can fit into your weight control program" (Comm. Exs. 3, 4, 6, 7 and 9); also the phrase "yet help you control weight" (Comm. Exs. 5 and 14). Therefore, regardless of efforts to remove this issue from the case by deletion from the complaint the phrase "as part of a diet," it cannot be accomplished because the advertising clearly indicates that its representations for its products are in connection with a diet regime. Surely one cannot blink at the phraseology contained in the advertisements themselves.

Respondents attempted to introduce evidence establishing that the nutritional value of its 17 gram slice of bread was as high as the average larger slice of bread by reason of its bread being fortified or enriched due to its special formula. Some of this evidence was initially rejected on the theory that it was not relevant to the issues in this proceeding and a requested finding of respondents was refused on the same ground. It is in this one major respect that I differ from the hearing examiner. Indeed it is my belief that this is one of the reasons my colleagues reached the cynical conclusion that all that was involved in this situation was merely the mechanical matter of slicing bread thinner than the customary slice. In my view respondents' advertising indicating that respondents' bread is helpful in the control of weight should be considered not only in connection with the reduced number of calories in each slice, but in connection with the fact that it contains as high a nutritional value, or almost as high, as an ordinary slice of bread. This surely is relevant in considering the issue as to whether or

not respondents' "Lite Diet" bread is suitable, appropriate and helpful for use on a low calorie diet. I would amend the hearing examiner's findings to include a finding on this proposition. I believe that its consideration not only is important in establishing the lack of deception in respondents' advertising, but likewise makes clearly inappropriate my colleagues' disposition of this proceeding and particularly the order excising respondents' trade-mark "Lite Diet."

To destroy respondents' business on the basis of the unconvincing record before us here, I regard as wholly without justification and this is what the order issued this day in conformity with the opinion of the majority will accomplish. Neither this record nor previous decisions of the Commission, nor principles of common fairness and equity support such action. I find myself unwilling to purchase regret at such a price. I dissent.

14–C Corpus Christi Times, Thurs., March 5, 1959

COMMISSION EXHIBIT 1

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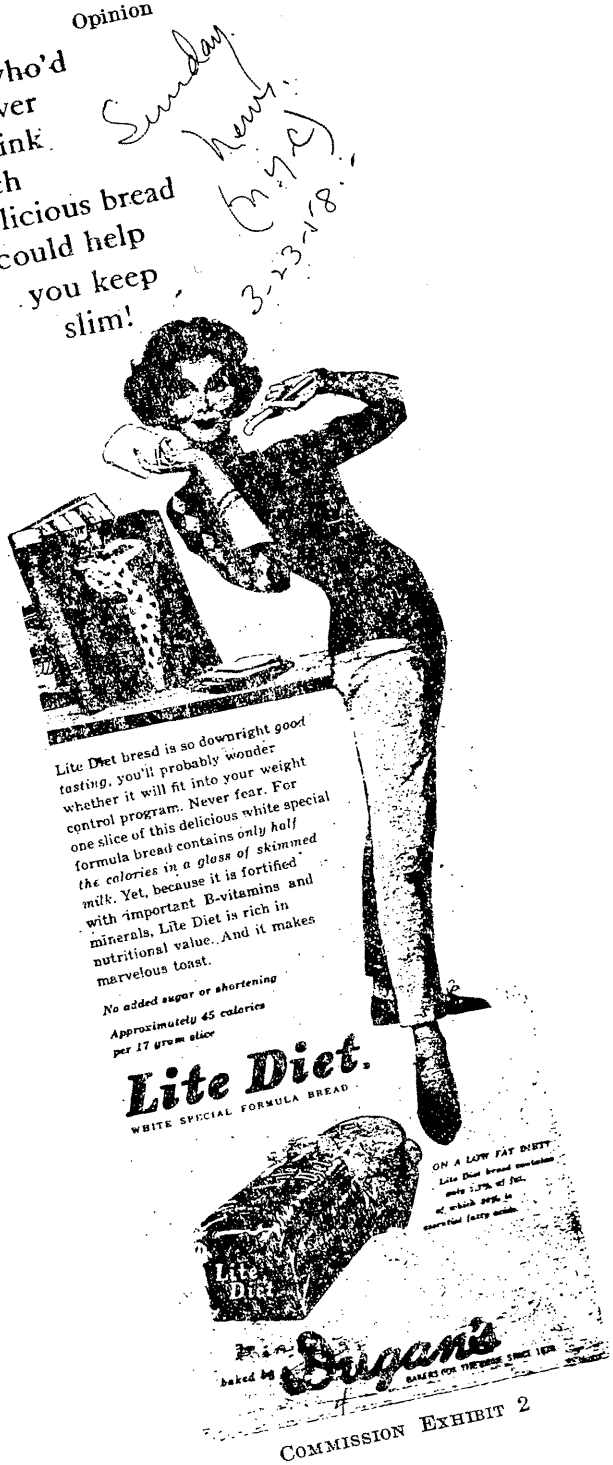

COMMISSION EXHIBIT 2

IN THE MATTER OF

J. A. MORGAN PRODUCE, INC., ET AL.

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

Docket 8128. Complaint, Sept. 26, 1960—Decision, July 19, 1961

Consent order requiring a wholesale distributor of citrus fruit and other food products, and a brokerage company owned and controlled by the distributor's president, to cease violating Sec. 2(c) of the Clayton Act by receiving and accepting from suppliers, commissions on purchases for the distributor's own account made directly or through said associated brokerage company.

COMPLAINT

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

PARAGRAPH 1. Respondent J. A. Morgan Produce, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business located at Georgia State Market, Forest Park, Georgia. Said respondent corporation was organized and incorporated on or about May 30, 1960, and is a successor to the business formerly located at the same address under the name of J. A. Morgan Produce Company, and operated as a sole proprietorship by Julian A. Morgan, Sr., and the other individual respondents named herein.

Respondent Julian A. Morgan, Sr., an individual, is president of respondent J. A. Morgan Produce, Inc.; respondent Julian A. Morgan, Jr., an individual, is vice-president of respondent J. A. Morgan Produce, Inc., and Gloria Ann Tynes, an individual, is secretary-treasurer of respondent J. A. Morgan Produce, Inc. The office and principal place of business of the individual respondents is the same as that of the corporate respondent. Said individual respondents own all, or substantially all, of the capital stock of said corporate respondent J. A. Morgan Produce, Inc., and direct and control the acts, practices and policies thereof, including the acts and practices hereinafter mentioned, and for a considerable period of time before said business was incorporated, the individual respondents directed and controlled the acts, practices and policies of its predecessors, the J. A. Morgan Produce Company.

Respondent J. A. Morgan Produce, Inc., is engaged in business primarily as a wholesale distributor, buying, selling and distributing citrus fruit, produce and other food products, all of which are hereinafter sometimes referred to as food products. This respondent purchases its food products from a large number of suppliers located in many sections of the United States and its volume of business in the purchase and sale of food products is substantial.

PAR. 2. In addition to being president and substantial owner of the J. A. Morgan Produce, Inc., respondent Julian A. Morgan, Sr. is also doing business as the Morgan Brokerage Company, a sole proprietorship, under and by vitrue of the laws of the State of Georgia, with his office and principal place of business located at Georgia State Market, Forest Park, Georgia. This respondent is now, and for the past several years has been, engaged in the brokerage business, through the Morgan Brokerage Company, representing various principals located throughout the United States. However, a substantial part of the business done by the Morgan Brokerage Company is sales to the J. A. Morgan Produce, Inc., owned and controlled by the individual respondents as indicated above. In representing these principals, respondent Julian A. Morgan, Sr., or the Morgan Brokerage Company, is paid a brokerage fee or commission at varying rates depending on the product sold. In discussing the brokerage activities of this company, both the individual respondent Julian A. Morgan, Sr. and the Morgan Brokerage Company will sometimes hereinafter be referred to collectively as the Morgan Brokerage Company.

PAR. 3. In the course and conduct of their business the individual respondents, acting for and through the corporate respondent, J. A. Morgan Produce, Inc., as well as its predecessor, the J. A. Morgan Produce Company, have purchased and distributed, and are now purchasing and distributing, food products in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, from suppliers or sellers located in several States of the United States other than the State of Georgia, in which respondents are located. Respondents transport or cause such food products, when purchased, to be transported from the places of business or packing plants of their suppliers located in various other states of the United States to respondents who are located in the State of Georgia, or to respondents' customers located in said State, or elsewhere. Thus, there has been at all times mentioned herein a continuous course of trade in commerce in the purchase of said food products across state lines between respondents and their respective suppliers of such food products.

Respondent Julian A. Morgan, Sr., in the course and conduct of his brokerage business under the name of Morgan Brokerage Company, has been and is now selling and distributing food products in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, for his principals located in the various States of the United States other than the State of Georgia, in which respondent is located. Said respondent has transported or caused said food products, when sold, to be transported from his principals' places of business to the buyers' places of business located in other states, or to their customers located therein. Thus, there has been at all times mentioned herein a continuous course of trade in commerce in the sale of said food products across state lines between respondent and his principals, or customers thereof.

PAR. 4. In the course and conduct of their business for the past several years, but more particularly since January 1, 1959, the individual respondents acting for and through respondent J. A. Morgan Produce Company, have been and are now making substantial purchases of food products for their own account for resale from some of their suppliers, and on a large number of these purchases respondents have received and accepted, and are now receiving and accepting, from said suppliers a commission, brokerage, or other compensation, or an allowance or discount in lieu thereof, in connection therewith. For example, respondents make substantial purchases of citrus fruit from a number of packers or suppliers located in the State of Florida, and receive on said purchases, a brokerage or commission, or a discount in lieu thereof, usually at the rate of 10 cents per 1⅗ bushel box, or equivalent. In many instances respondents receive a lower price from some of said suppliers which reflects said brokerage or commission.

In addition, the individual respondents herein, acting for and through respondent J. A. Morgan Produce, Inc., and prior to its incorporation the J. A. Morgan Produce Company, in the course and conduct of their business for the past several years, but more particularly since January 1, 1959, have made numerous and substantial purchases of food products from some of their suppliers through the Morgan Brokerage Company, and on a large number of these purchases Julian A. Morgan, Sr., through the Morgan Brokerage Company, has received and accepted, and is now receiving and accepting, from said suppliers a commission, brokerage, or other compensation, or an allowance or discount in lieu thereof, in connection therewith. For example, respondent J. A. Morgan Produce, Inc., or the J. A. Morgan Produce Company, make, or have made, substantial purchases of citrus fruit from a number of packers

or suppliers located in the State of Florida through the Morgan Brokerage Company, and on these purchases the Morgan Brokerage Company has received and accepted, and is now receiving and accepting, from said suppliers a commission or brokerage, usually at the rate of 10 cents per 1⅗ bushel box, or equivalent. In view of the ownership and control as described above the said Morgan Brokerage company on such purchases is acting for and in behalf, or is subject to the direct or indirect control of the J. A. Morgan Produce, Inc., and the individual respondent named herein, and prior to its incorporation, the J. A. Morgan Produce Company.

PAR. 5. The acts and practices of respondents, and each of them, in receiving and accepting a brokerage or commission, or an allowance or discount in lieu thereof, on their own purchases, either directly or through a brokerage company owned and controlled by Julian A. Morgan, Sr., as above alleged and described, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Section 13).

Cecil G. Miles, Esq., and *Ernest G. Barnes, Esq.*, supporting the complaint.

Randolph Hayes, Esq., of *Lindsay, Simons and Hayes*, and *Guy Tyler, Esq.*, all of Atlanta, Ga., for respondents.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

On September 26, 1960, the Federal Trade Commission issued a complaint against the above-named respondents, in which they were charged with violating § 2(c) of the Clayton Act, as amended (U.S.C. Title 15, § 13), by, among other things, receiving and accepting or soliciting a brokerage or commission or an allowance or discount in lieu thereof in connection with the sale of food products bought or sold by them in interstate commerce, as "commerce" is defined in the Federal Trade Commission and Clayton Acts. A true and correct copy of the complaint was served upon respondents and each and all of them, as required by law. Thereafter respondents agreed to dispose of this proceeding without a formal hearing, pursuant to the terms of an agreement dated January 16, 1961, containing consent order to cease and desist. The agreement was submitted to the undersigned hearing examiner on January 18, 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 all the respondents and by counsel for the parties, and has been approved by the Associate Director and the 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 contest 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, and 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.

Counsel supporting the complaint has advised the undersigned that paragraph 9 of said agreement, which was placed there at the insistence of the respondents in no manner restricts or limits the order provided for in said agreement. Counsel supporting the complaint has advised the undersigned and the undersigned so finds that in the opinion of counsel supporting the complaint paragraph 9 merely permits respondent Julian A. Morgan, Sr., to continue in the brokerage business, but provides nothing more than that he may continue the activity which has always been permissible under the appropriate statute.

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 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;

2. Respondent J. A. Morgan Produce, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business located at Georgia State Market, in the City of Forest Park, State of Georgia.

3. Respondent Julian A. Morgan, Jr., and Gloria Ann Tynes are individuals and are officers of the said J. A. Morgan Produce, Inc., and Julian A. Morgan, Sr., is an individual and is an officer of the said J. A. Morgan Produce, Inc., and also does business as Morgan Brokerage Company, a sole proprietorship. All of the above-named individual respondents maintain their office and principal place of business at the same location as that shown for J. A. Morgan Produce, Inc.

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

5. The complaint filed herein states a cause of action against the respondents under § 2(c) of the Clayton Act, as amended (U.S.C. Title 15, § 13), and this proceeding is in the public interest. Now, therefore,

It is ordered, That respondents J. A. Morgan Produce, Inc., a corporation, and Julian A. Morgan, Sr., Julian A. Morgan, Jr., and Gloria Ann Tynes, individually and as officers of J. A. Morgan Produce, Inc., and respondents' agents, representatives and employees, directly or through any corporate, partnership, sole proprietorship, or other device, in connection with the purchase of citrus fruit or other food products in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly, from any seller, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase of citrus fruit or other food products for respondents' own account, or on purchases made through the

Morgan Brokerage Company, or any other brokerage organization, where, and so long as, any relationship exists between the brokerage organization and the respondents named herein, either through ownership, control or management.

It is further ordered, That respondent Julian A. Morgan, Sr., individually and doing business as Morgan Brokerage Company, or under any other name, and his agents, representatives, and employees, directly or through any corporate, partnership, sole proprietorship, or other device, in connection with the purchase or sale of citrus fruit or other food products in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly, from any seller, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase of citrus fruit or other food products for his own account, or for the account of the Morgan Brokerage Company, or for the account of the J. A. Morgan Produce, Inc., so long as any relationship exists between the brokerage organization and the buyer organization, either through ownership, control or management, or where respondent Julian A. Morgan, Sr., or the Morgan Brokerage Company, is the agent, representative or other intermediary acting for or in behalf, or is subject to the direct or indirect control, of any buyer, including the J. A. Morgan Produce, Inc.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

This matter having come on to be heard by the Commission upon its review of the hearing examiner's initial decision, filed May 29, 1961, accepting an agreement containing a consent order theretofore executed by the respondents and counsel in support of the complaint; and

It appearing that the initial decision contains a finding which is not based upon the aforesaid agreement and is, to that extent, at variance with such agreement; and

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

It is ordered, That the initial decision be amended by striking the words "Federal Trade Commission Act" from finding number 4, on page 3 of the said initial decision, and by substituting therefor the words "Clayton Act, as amended."

It is further ordered, That the initial decision, as so amended, shall, on the 19th day of July 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 amended.

IN THE MATTER OF

ISAAC LIPSITZ TRADING AS LIPSITZ FURS

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

Docket 8315. Complaint, Mar. 14, 1961—Decision, July 19, 1961

Consent order requiring a furrier in Buffalo, N.Y., to cease violating the Fur Products Labeling Act by failing to make the disclosure "secondhand used fur" where required on invoices, and failing to comply in other respects 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 Isaac Lipsitz, an individual trading as Lipsitz Furs, 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. Isaac Lipsitz is an individual trading as Lipsitz Furs with his office and principal place of business located at 68 Allen Street, Buffalo, 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, offering for sale, 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 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 respondent 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) 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.

(b) 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.

PAR. 7. 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.

Charles W. O'Connell, Esq., for the Commission.
Morris Lipsitz, Esq., of Buffalo 2, N.Y., for respondent.

INITIAL DECISION BY HERMAN TOCKER, HEARING EXAMINER

In a complaint issued March 14, 1961, the respondent, Isaac Lipsitz, doing business under the firm name and style of Lipsitz Furs, at 68 Allen Street, Buffalo, New York, was charged with violations of the Fur Products Labeling Act and the rules and regulations promulgated thereunder, such alleged violations including both failure to comply with requirements for the labeling of furs and deceptive invoicing of furs, all introduced by him into commerce.

After issuance of the complaint, the respondent (with the advice and agreement of his attorney) and counsel supporting the complaint entered into an agreement containing a consent order to cease and desist, thus disposing of all the issues involved in this proceeding.

In the said agreement it was expressly provided that the signing thereof was for settlement purposes only and did not constitute an admission by the respondent that he had violated the law as in the complaint alleged.

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

By said agreement, the respondent expressly waived any further procedural steps before the Hearing Examiner and the Commission; the making of findings of fact or conclusions of law; and all rights he may have to challenge or contest the validity of the order to cease and desist to be entered in accordance therewith.

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

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

The Hearing Examiner has considered the agreement and the order therein contained, and, it appearing that said agreement and order provide for an appropriate disposition of this proceeding, the same is hereby accepted and shall be filed upon becoming part

of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice.

Now, in consonance with the terms thereof, the Hearing Examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent named herein, and that this proceeding is in the interest of the public, and issues the following order:

ORDER

It is ordered, That Isaac Lipsitz, an individual trading as Lipsitz Furs, 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, offering for sale, transportation or distribution, in commerce, of fur products, or in connection with the sale, advertising, offering for sale, transportation, or distribution of fur products which are made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

1. Failing to affix labels to fur products showing in words and figures plainly legible all 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:

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

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

3. Failing to set forth the item number or mark assigned to a fur product.

B. Falsely or deceptively invoicing fur products by:

1. Failing to furnish invoices to purchasers 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.

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.

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the Hearing Examiner shall, on the 19th day of July 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

JACK H. TAFF DOING BUSINESS AS VIBRA-KING COMPANY OF AMERICA

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

Docket 8327. Complaint, Mar. 16, 1961—Decision, July 19, 1961

Consent order requiring Los Angeles distributors of an electric hand-operated vibrator with four attachments, sold under the name of "The Vibra-King Actavator", to cease representing falsely in a booklet prepared for and used by its salesmen that the device was a competent means for treating diseases or abnormalities of various parts of the body, overcoming baldness, etc., 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 Jack H. Taff, an individual, doing business as Vibra-King Company of America, 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 Jack H. Taff is an individual, doing business as Vibra-King Company of America, with his principal office and place of business located at 1133 South La Cienega Boulevard, in the City of Los Angeles, State of California.

PAR. 2. Respondent is now, and has been for more than one year last past, engaged in the sale and distribution of an electric hand-operated vibrator with four attachments called "Body and Foot Massager," "Beauty Cup," "Scalp-O-Lator," and "All Purpose Massager," which comes within the classification of "device" as that term is defined in the Federal Trade Commission Act. Said device is sold under the name of "The Vibra-King Actavator."

PAR. 3. Respondent causes the said device, when sold, to be transported from his place of business in the State of California to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said devices, in commerce, as "commerce" is defined in the Federal Trade Commission Act. The volume of business in such devices has been and is substantial.

PAR. 4. Respondent has prepared and sells and distributes to distributors and salesmen a booklet entitled "Massage for Health & Beauty" for use by salesmen in the sale of said devices, and for distribution by salesmen to purchasers of said devices. Respondent has disseminated, and caused the dissemination of, said booklet by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act. Said booklet is sold, distributed and disseminated in commerce as aforesaid for the purpose of inducing, and is likely to induce, directly or indirectly, the purchase of said devices. Said booklet has been prepared, disseminated and distributed for the purpose of inducing, and is likely to induce, directly or indirectly, the purchase of said devices, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Among and typical of the statements and representations contained in said booklet, disseminated as hereinabove set forth, are the following:

effects of massage . . . on the skin . . . The reactive property of the skin is stimulated by massage thus giving to it greater resistance against changes in outside temperatures, and toning it against the invasion of bacteria.

effects of massage . . . on muscles . . . The one unmistakable advantage of massage over exercise is that massage can revitalize the muscles without exhausting them. Massage may be valuable for removing the poisonous products of fatigue from the muscles.

effects of massage . . . on the vascular system . . . The activity of the circulation of the blood is greatly influenced by massage. Well regulated massage immediately speeds up the circulation; and more rapid circulation insures the more rapid accomplishment of the normal bodily processes:

1. Exchange of oxygen and waste products both at the cells and in the lungs;
2. Absorption by the tissues of needed substances:

3. Elimination of waste matters of the body.

On the bones. The skeletal system is directly influenced by massage. Any improvement in circulation carries with it a corresponding improvement on the bones. The substances needed for nutrition are brought to them more rapidly and the deposits of waste matters are the more quickly removed. Massage over the joints is therefore generally recommended in certain rheumatic conditions where stiffness is due to the accumulation of bony deposits.

Effects of massage . . . on the bodily processes. The effects of massage on the biological processes are:

1. RESPIRATION is improved through the more rapid circulation of the blood . . .

2. DIGESTION is improved through the stimulation of nerves in all the digestive organs . . .

3. EXCRETION is definitely improved by massage . . .

Care of the Hair and Scalp . . . The simplest, and most effective means of keeping the hair and scalp in good condition is regular and systematic massage of the scalp.

Oily hair . . . The only method known of combatting oiliness is through proper massage . . . this treatment should be repeated nightly until condition clears.

Dry scalp . . . Only continuous massage can draw out the natural oils to give more permanent relief to this condition.

Tight scalp. The failure to keep the scalp loose, allowing it to grow tight upon the skull is generally accompanied by much dead hair. The sooner these dead hairs are weeded out, the quicker new hair will come in to replace the old.

Oily skin . . . An ice massage daily is often recommended because it stimulates circulation and tones the tissues.

Dry skin . . . it must be remembered that it is the massaging that really does the work. The massaging induces increased circulation which brings the necessary oils to the skin from within. . .

Wrinkled skin . . . Nothing can take the place of massage to stimulate circulation and thus help to prevent lines that ultimately become wrinkles.

PAR. 6. Through the use of the above-quoted statements, and others similar thereto but not specifically set out herein, contained in said booklet, respondent has represented and is now representing, directly or indirectly:

1. That said device is a competent or reliable means for treating diseases or abnormalities of the bones or joints of the body.

2. That said device is a competent or reliable means for treating abnormalities or diseases of the organs or the respiratory, digestive, or other systems of the body.

3. That said device is a reliable or competent means of preventing, overcoming or correcting dry scalp, tight scalp, oily skin, or dry or wrinkled skin.

4. That said device will check thinning hair, prevent or overcome baldness, or prevent diseases of the hair or scalp.

PAR. 7. The said advertisements were and are misleading in material respects and constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact:

1. Said device is not a competent or reliable means for treating diseases or abnormalities of the bones or joints of the body.

2. Said device is not a competent or reliable means for treating abnormalities or diseases of the organs or of the respiratory, digestive, or other systems of the body.

3. Said device is not a reliable or competent means of preventing, overcoming or correcting dry scalp, tight scalp, oily skin, or dry or wrinkled skin.

4. Said device will not check thinning hair, or prevent or overcome baldness or prevent diseases of the hair or scalp.

PAR. 8. The dissemination by the respondent of the false advertisements, as aforesaid, constituted and now constitutes, unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Terral A. Jordan for the Commission.

Mr. Murray Jackson, of Los Angeles, Calif., for respondent.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The Commission's complaint in this matter charges the respondent with violation of the Federal Trade Commission Act through the making of certain representations regarding an electric vibrator or massaging device advertised and sold by him. An agreement has now been entered into by respondent and counsel supporting the complaint which provides, among other things, that respondent admits all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondent specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the agreement is for settlement purposes only and does not

constitute an admission by respondent that he has violated the law as alleged in the complaint.

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

1. Respondent Jack H. Taff is an individual, doing business as Vibra-King Company of America with his principal place of business located at 1133 South La Cienega Boulevard, Los Angeles, California.

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 Jack H. Taff, an individual trading and doing business as Vibra-King Company of America, or under any other trade name, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of an electric hand operated vibrator called, "The Vibra-King Actavator" or any other vibrating or massaging device, do forthwith cease and desist from directly or indirectly:

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

(a) That said device is a competent or reliable means for treating diseases or abnormalities of the bones or joints of the body; or that said device will provide any beneficial effect on the bones or joints of the body unless such is a fact.

(b) That said device is a competent or reliable means for treating abnormalities or diseases of the organs or of the respiratory, digestive or other systems of the body; or that said device will effect any improvement in the functioning of the organs or of the respiratory, digestive or other systems of the body unless such is a fact.

(c) That said device is a reliable or competent means of preventing, overcoming or correcting dry scalp, tight scalp, oily skin or dry or wrinkled skin; or that said device will effect any correction

or improvement in the condition of the skin or scalp unless such is the fact.

(d) That said device will check thinning hair, prevent or overcome baldness or prevent diseases of the hair or scalp; or that said device will effect any correction or improvement of the hair or scalp unless such is the fact.

2. Disseminating or causing to be disseminated any advertisement by any means, for the purpose of inducing, directly or indirectly, the purchase, in commerce, as "commerce" is defined in the Federal Trade Commission Act of said device, which advertisements contain the representations prohibited in paragraph 1 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 19th day of July 1961, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

KRISS ELECTRONICS, INC., ET AL.

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

Docket 8173. Complaint, Nov. 14, 1960—Decision, July 22, 1961

Consent order requiring Newark, N.J., manufacturers of rebuilt television picture tubes containing used parts, to cease labeling and otherwise representing their said products falsely as "NEW Television Picture Tubes", and to disclose clearly to purchasers that such tubes were rebuilt and contained used parts.

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 Kriss Electronics, Inc., a corporation, and Charles Kriss, individually and as an officer 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