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

the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Kriss Electronics, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 191-195 Oraton Street, Newark, New Jersey.

Respondent Charles Kriss is an individual and an officer of said corporation. He formulates, controls and directs the policies, acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His 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 manufacture, offering for sale, sale and distribution of rebuilt television picture tubes containing used parts to distributors who sell to others 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 New Jersey 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. In the course and conduct of their business, and for the purpose of inducing the sale of their products, respondents made certain statements concerning their products on labels and by other media. Among and typical of such statements is the following:

NEW Television Picture Tubes

PAR. 5. Through the use of the aforesaid statement, respondents represented that certain of their television picture tubes were new in their entirety.

PAR. 6. Said statement and representation was false, misleading and deceptive. In truth and in fact, the television picture tubes represented as being "new" are not new in their entirety.

PAR. 7. The television picture tubes sold by respondents are rebuilt and contain used parts. Respondents do not disclose on the tubes, on invoices or in an adequate manner on the cartons in which they are packed, or in any other manner, that said television picture tubes are rebuilt and contain used parts.

When television picture tubes are rebuilt containing used parts, in the absence of any disclosure to the contrary, or in the absence

of an adequate disclosure, such tubes are understood to be and are readily accepted by the public as new tubes.

PAR. 8. By failing to disclose the facts as set forth in Paragraph Seven, respondents place in the hands of uninformed or unscrupulous dealers means and instrumentalities whereby they may mislead and deceive the public as to the nature of their said television picture tubes.

PAR. 9. In the conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of television picture tubes.

PAR. 10. The use by respondents of the aforesaid false, misleading and deceptive statement and representation, and the failure of respondents to disclose on their television picture tubes, on invoices, and in an adequate manner on the cartons in which they are packed, or in any other manner, that the tubes are rebuilt containing used parts have had, and now have, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said picture tubes are new in their entirety and into the purchase of substantial quantities of respondents' tubes by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

PAR. 11. 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. Michael J. Vitale for the Commission.

Ravin & Ravin, by *Mr. David N. Ravin*, of Newark, N.J., for respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated November 14, 1960, the respondents are charged with violating the provisions of the Federal Trade Commission Act.

On May 25, 1961, the respondents entered into an agreement with counsel in support of the complaint for a consent order.

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

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

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

1. Respondent Kriss Electronics, Inc. is a corporation existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 191–195 Oraton Street, in the City of Newark, State of New Jersey.

Respondent Charles Kriss is an officer of said corporate respondent. He formulates, directs and controls the acts and practices of said corporate respondent. His address is the same as the corporate respondent.

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

ORDER

It is ordered, That respondents Kriss Electronics, Inc., a corporation, and its officers, and Charles Kriss, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of rebuilt television picture tubes containing used parts, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that said television picture tubes are new.

2. Failing to clearly disclose on the tubes, on the cartons in which they are packed, on invoices, and in advertising that said tubes are rebuilt and contain used parts.

3. Placing any means or instrumentality in the hands of others whereby they may mislead the public as to the nature and condition of respondents' television picture tubes.

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 22d 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

SHULTON, INC.

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

Docket 7721. Complaint, Jan. 5, 1960—Decision, July 25, 1961

Order requiring a manufacturer of toiletry, chemical, and pharmaceutical products with main office in Clifton, N.J.—with total sales in 1958 in excess of $37,000,000—to cease violating Sec. 2(d) of the Clayton Act by such practices as paying to J. Weingarten, Inc., of Houston, Tex., $6,000 as compensation for newspaper advertising of one of its deodorant products in connection with the chain's anniversary sales.

Mr. Fredric T. Suss and *Mr. Timothy J. Cronin, Jr.*, for the Commission.

Howrey, Simon, Baker & Murchison, by *Mr. David C. Murchison* and *Mr. Richard L. Perry*, of Washington, D.C., for respondent.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

The respondent is charged with having made discriminatory payments to some of its customers in violation of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act. Subsequent to the issuance of the complaint, respondent filed a number of pleadings, but it will serve no purpose to make a recital

thereof, in that respondent, in its last answer filed pursuant to Rule 3.7 of the Rules of the Commission, elected not to contest the allegations of fact set forth in the complaint, admitted all material allegations to be true and waived a hearing as to the facts so alleged. In such answer the respondent reserved the right to submit proposed findings of fact and conclusions of law, and such other rights as it may have in the premises.

The findings of fact and conclusions of law, and other requests proposed by the parties, not hereinafter specifically found or concluded, are herewith rejected. The Hearing Examiner, having considered the record herein, makes the following findings of fact and conclusions:

1. Respondent, Shulton, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 697 Route 46, Clifton, New Jersey.

2. Respondent is now and has been engaged in the business of manufacturing, selling and distributing toiletry, chemical and pharmaceutical products. It sells its products to retail chain store organizations, independent drug and grocery stores, department stores, and wholesalers throughout the United States, and certain countries in Europe and Latin America. Respondent's total sales are substantial, having exceeded $37,000,000 in the year 1958.

3. In the course and conduct of its business, respondent has engaged and is now engaging in commerce, as "commerce" is defined in the Clayton Act, as amended, in that respondent sells and causes its products to be transported from the respondent's principal place of business, located in New Jersey, to customers located in other states of the United States, and certain countries in Europe and Latin America.

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 by or through such customers in connection with their offering for sale or sale of products sold to them by respondent, and such payments were not made available on proportionally equal terms to all other customers competing in the sale and distribution of respondent's products.

5. An example of the kind of activities which occurred in the course and conduct of respondent's business as found in paragraph 4 above is that during the year 1958, respondent contracted to pay and did pay to J. Weingarten, Inc., $6,000 as compensation or as

an allowance for advertising or other services or facilities furnished by or through J. Weingarten, Inc. in connection with its offering for sale or sale of products sold to it by respondent. Such compensation or allowance was not offered or otherwise made available on proportionally equal terms to all other customers competing with J. Weingarten, Inc. in the sale and distribution of products of like grade and quality purchased from respondent.

CONCLUSION OF LAW

The foregoing facts as alleged and admitted support the following conclusion:

The acts and practices of respondent are in violation of subsection (d) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act.

ORDER

It is ordered, That respondent, Shulton, Incorporated, a corporation, its officers, employees, agents or representatives, directly or through any corporate or other device, in or in connection with the sale in commerce, as "commerce" is defined in the Clayton Act, as amended, of toiletry products, chemical products, pharmaceutical products or other merchandise, do forthwith cease and desist from:

Making or contracting to make, to or for the benefit of J. Weingarten, Inc., or any other customer, any payment of anything of value as compensation or in consideration for advertising or other services or facilities furnished by or through such customer, in connection with the handling, offering for resale, or resale of respondent's products, unless such payment is made available on proportionally equal terms to all other customers competing in the distribution or resale of such products.

OPINION OF THE COMMISSION

By SECREST, *Commissioner*:

This matter has come on for hearing on respondent's appeal from the initial decision of the hearing examiner filed January 5, 1961. The complaint charged respondent with violating subsection (d) of Section 2 of the Clayton Act, as amended. The following allegations were made therein:

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 by or through such customers in connection with their offering for sale or sale of products sold to them by respondent, and such pay-

ments were not made available on proportionally equal terms to all other customers competing in the sale and distribution of respondent's products.

PAR. 5. For example, during the year 1958 respondent contracted to pay and did pay to J. Weingarten, Inc., $6,000 as compensation or as an allowance for advertising or other services or facilities furnished by or through J. Weingarten, Inc. in connection with its offering for sale or sale of products sold to it by respondent. Such compensation or allowance was not offered or otherwise made available on proportionally equal terms to all other customers competing with J. Weingarten, Inc. in the sale and distribution of products of like grade and quality purchased from respondent.

The hearing examiner's initial decision was based on the complaint and an answer filed by respondent pursuant to § 3.7(a)(2) of the Commission's Rules of Practice admitting all material allegations of fact set forth in the complaint. Respondent has appealed from a ruling of the hearing examiner and from the order to cease and desist contained in the initial decision. Since two of the arguments in this appeal are based primarily on the alleged failure of the hearing examiner to consider the entire record in making his initial decision, we will summarize briefly what transpired prior to respondent's filing an admission answer.

The complaint herein was issued by the Commission on January 5, 1960. After having been granted an extension of time within which to file its answer, respondent by motion filed March 23, 1960, requested an order directing counsel supporting the complaint to furnish a bill of particulars and further requested a pre-hearing conference on said motion. This conference was held on May 19, 1960, but, prior to that date, respondent filed its answer admitting in part and denying in part the allegations of the complaint. A second pre-hearing conference was held on June 23, 1960, at which time respondent moved for leave to adduce evidence that payments for services and facilities to one of its customers had been made in good faith to meet payments and allowances granted that customer by a competitor. This motion was denied by order of the hearing examiner filed June 28, 1960. Thereafter, respondent moved for and was granted leave to file an answer pursuant to § 3.7(a)(2) of the Rules of Practice. An answer which included a motion to dismiss was filed by respondent on July 11, 1960. In reply thereto, counsel supporting the complaint contended that respondent's answer failed to admit all material allegations of the complaint and requested that hearings be scheduled for the purpose of proving that allegations not admitted by respondent were true and to controvert certain statements made in respondent's answer. Respondent then moved that the proceedings be closed. The hearing examiner denied this motion by order dated September 9, 1960, and

scheduled an initial hearing. Respondent then filed its answer admitting the material allegations of the complaint.

We will consider first respondent's contention that the hearing examiner erred in failing to limit the scope of the order to the practice disclosed by the record or to practices reasonably related thereto. It argues in this connection that counsel supporting the complaint had stated at the conference held on May 19, 1960, that the evidence in the case related solely to payments and allowances made by respondent to one customer, J. Weingarten, Inc. It further argues that as a result of this understanding, it filed an answer wherein it made the following admission:

> Payments made to J. Weingarten, Inc., in 1958 and 1959 in connection with the chain's anniversary sales described in the Federal Trade Commission's press release (January 20, 1960) accompanying the complaint herein were compensation for newspaper advertising by J. Weingarten, Inc. of one of respondent's deodorant products, and none other. Said newspaper advertising for 1958 is attached hereto and made a part hereof as Exhibit 1 (answer, July 11, 1960, par. 5).

Stated briefly, respondent's version of the facts of record is that J. Weingarten, Inc., solicited and induced payments from respondent for newspaper advertising of one of respondent's deodorant products, which payments, respondent apparently concedes, were not made available on proportionally equal terms to other purchasers of such products competing with Weingarten. Respondent contends, therefore, that the only practice involved in this case was participation by respondent in a buyer sponsored promotion and that this participation extended only to the making of payments for newspaper advertising to be furnished by the customer in connection with the sale of only one of respondent's products. Consequently, respondent argues, the order to cease and desist should go no further than to prohibit this specific practice.

Respondent's argument must be rejected for two reasons. First of all, an examination of the transcript of the pre-hearing conference held on May 19, 1960, discloses that counsel supporting the complaint did not indicate to respondent that the case to be ultimately presented in support of the complaint would be restricted to evidence relating solely to respondent's transactions with a single customer. Moreover, the record fails to show that any order of the hearing examiner or other document was entered on the record pursuant to the requirement of § 3.10(b) of the Rules of Practice that the "record shall show the matters disposed of by agreement" in a pre-trial conference. The record does disclose, however, that subsequent to the conference in question, counsel supporting the complaint twice requested that hearings be held for the purpose of

proving allegations not admitted by respondent and for the purpose of controverting statements made by respondent, which statements respondent now contends are facts of record. Hence, we find no substance to respondent's argument that the record discloses any pertinent facts concerning the alleged unfair trade practice other than those set forth in the complaint and admitted in the answer filed by respondent pursuant to § 3.7(a)(2) of the aforementioned rules.

Secondly, we would not limit the order in the manner requested by respondent even if the evidence of a violation related solely to respondent's participation in the Weingarten promotion. The order proposed by respondent would prohibit it from granting discriminatory allowances only, among other things, when such allowances are induced by the customer and only when the service or facility furnished by the customer is newspaper advertising. Such an order would be virtually worthless since it would do little more than prohibit respondent from engaging in the illegal practice by the same means it had previously employed. Contrary to respondent's assertion, there is no mandate, or even a suggestion, in the legislative history of the Clayton Act Finality Act (P.L. 86–107, 86th Cong., July 23, 1959) that the Commission should issue orders of such narrow scope. While certain members of Congress have expressed the need for clear, understandable orders, we find no indication in the Committee reports or elsewhere in the legislative history of the aforementioned statute that Congress intended that Clayton Act orders should prohibit only the specific acts engaged in by a respondent rather than the practices condemned by the statute.

Respondent's argument confuses the discriminatory practice alleged in the complaint with the acts by which this practice may have been manifested. Respondent is charged in this connection with violating Section 2(d) of the Clayton Act. The specific practice declared illegal by this subsection is the making of discriminatory payments by a seller to a buyer for advertising or promotional services or facilities rendered by the latter. The record shows that respondent has engaged in this practice and the order merely prohibits it from doing so again.

In further excepting to the order, respondent has interpreted such order to require that if it elects to accord advertising or promotional allowances on any product within a product line, such as toiletries, such allowances must be granted on all other products within that line, including those which are not of like grade and quality. Section 2(d), of course, does not impose such a requirement, but neither, however, does the order to cease and desist. Although the order

covers all products which respondent sells, respondent will be required thereby to extend allowances granted in connection with a particular product only to those customers competing in the distribution or resale of that product or products of like grade and quality purchased from respondent.

Respondent has also taken exception to the hearing examiner's ruling denying its request for leave to adduce evidence that payments for services and facilities to one of its customers had been made in good faith to meet payments and allowances granted that customer by a competitor. This ruling is consistent with the views expressed by the Commission in the matters of *Henry Rosenfeld, Inc.*[1] and *Exquisite Form Brassiere, Inc.*[2], wherein we held that the meeting competition defense set forth in the Section 2(b) proviso is not available as a matter of law to a respondent charged with violating Section 2(d). The question was carefully considered in both cases and there is nothing in respondent's briefs which convinces us that we should now adopt a position contrary to that which we have previously taken. The argument is therefore rejected.

The appeal of respondent is denied and the initial decision is being adopted as the decision of the Commission. An appropriate order will be entered.

Commissioner Elman dissented and Commissioner Kern dissented joining Commissioner Elman.

DISSENTING OPINION OF COMMISSIONER KERN

Heeding Cromwell's plea: "I beseech ye think that ye may be mistaken", and following the mandate of such enlightened skepticism, I have carefully reviewed my own prior views on the identical question raised by this proceeding [1]—views still held by the majority.

The problem of statutory construction before us here is a difficult one; to disguise the difficulties or the closeness of the question is to apply gloss. In such a situation it is necessary to wrestle with doubt—and in this case even to wrestle with my own prior views—and doubt can sometimes be more cruel than the worst of truths. The line between the words of a statute and the purpose behind it is a difficult one to determine. It is hard to be true to both. I have always been sensitive to the possible accusation of going beyond law interpreting and of entering the prohibited area of law making. Perhaps it was my reticence in this regard that brought me when this problem was presented earlier to the Commission to side with

[1] *Henry Rosenfeld, Inc.*, 52 F.T.C. 1535 (1956).
[2] *Exquisite Form Brassiere, Inc.*, Docket No. 6966 (1960).
[1] *Exquisite Form Brassiere, Inc.*, Docket 6966, decided October 31, 1960.

the majority. While I still respect their views, I find persuasive the cogent analysis by Commissioner Elman of the legislative materials. Without repeating it except by reference, I find in that analysis ample justification to depart from the strict words of the statute. I am fortified in that conclusion by the belief that in doing so it removes what otherwise would be a serious dissonance in connection with the application of the Robinson-Patman Act, for the close interrelationship between Sections 2(d) and 2(e) is beyond argument and consistency in their application is clearly desirable. I am also fortified by the fact that in dealing with this difficult statute the courts previously have found it necessary to supply words which were considered to be intended [2] and I am further fortified by certain statements made in oral argument by counsel supporting the complaint in this proceeding.[3]

I am also influenced by the recent decision of *Delmar Construction Co.* v. *Westinghouse Electric Corp.*[4] This case was decided on February 24, 1961 and was therefore not available to us as a precedent when the *Exquisite Form Brassiere* case was before us for consideration. In the *Delmar* case plaintiff's complaint charged a violation of Section 2(d) of the Robinson-Patman Act. The defense of 2(b) being raised by the defendant, plaintiff moved to strike such defense from the answer. The court in denying the motion, squarely held that "the 'meeting competition' defense of § 2(b) of the Robinson-Patman Act is applicable to cases arising under § 2(e) of the Act . . . and, because of the close inter-relation of § 2(d) and § 2(e), it is both logical and reasonable to likewise recognize such defense in cases arising under § 2(d) . . ." [citations omitted]. It seems to me that this recent and sole direct precedent of a federal court on this question is entitled to more than the usual precedential weight of such decisions. Especially is this true where it brings harmony to the statute and is supported by a viable theory of legislative interpretation.

I realize the vice inherent in any deciding authority's struggling to bring artistic symmetry to a statute by blurring clear statutory language; to attempt to rebuild a statutory edifice along symmetric lines may have artistic but not legal justification. But this is not to say that one should ignore the meaning and overall objectives

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[2] *E.g., Elizabeth Arden Sales Corp.* v. *Gus Blas Co.*, 150 F. 2d 988, 991–993 (8th Cir. 1945), *cert denied* 326 U.S. 773 (1945), in which the court did not hesitate to build into Section 2(e) the "commerce" prerequisite that Congress omitted, and *Atlanta Trading Corp.* v. *Federal Trade Commission*, 258 F. 2d 365, 369 (2d Cir. 1958), in which the words "of like grade and quality" were judicially supplied to Section 2(d).

[3] Tr. of oral argument, p. 37, l. 17–25; p. 42, l. 18–20.

[4] CCH Trade Reg. Rep. Par. 69,947 (S.D. Fla. 1961).

that those drafters of the statute, as evidenced by the progression of the legislation to final enactment, meant to achieve.

To be bound by prior precedent of the Commission, which when uttered expressed my own views, after I have come to believe otherwise, would be unworthy of my statutory trust. If my present judgment tells me that my prior views were wrong, it seems desirable to say so; for it would seem more commendable to lay aside all else and seek truth rather than try to make my prior views prevail. This is not to say that truth has now been found; it is only to say that there has been a conscientious and continuing struggle to achieve it. The great body of our law has been built up in just that way.

In conclusion, having striven with the words of the statute, with the legislative materials out of which the intended meaning and overall objectives must be distilled, and with the entire record in this proceeding, I have reached, obviously with considerable difficulty and with humility, my decision to join Commissioner Elman in dissent.

Commissioner ELMAN, dissenting:

The question of statutory construction presented by this case—whether a seller charged with having paid discriminatory allowances to some customers for advertising or other services or facilities, in violation of Section 2(d) of the Robinson-Patman Act, may defend under Section 2(b) by showing that the payments were made in good faith to meet competition—is an open one. Although the Commission has passed on it several times, most recently in *Exquisite Form Brassiere, Inc.*, Docket 6966, decided October 31, 1960, the issue has not been considered and decided by any appellate court. The *Exquisite Form* case is now pending on review in the Court of Appeals for the District of Columbia Circuit; and, with all deference to the position there taken by the Commission, it seems to me that the persuasive arguments to the contrary presented in Commissioner Tait's dissenting opinion have not yet been answered. It would serve no useful purpose to repeat those arguments here, and I shall add only a few marginal comments.

1. The Supreme Court's holding in *Standard Oil Company* v. *Federal Trade Commission*, 340 U.S. 231, that Section 2(b) provides an absolute defense, and does not merely shift the burden of going forward with evidence, would seem irrelevant to the instant problem. Nevertheless, the defeat suffered by the Commission in that case seems to have left its mark here. There the Commission had

relied heavily on the legislative history to support its view. The majority of the Supreme Court, however, found the language of the section to be controlling and rejected the arguments drawn from the legislative history. It does not follow, however, that the *Standard Oil* decision has established a different or special rule of statutory construction for Section 2(b), under which legislative history is to be downgraded or given less weight than in the case of other enactments.

I am sure the Commission would reject such a reading of the majority opinion in the *Exquisite Form* case, but it almost seems to say: "If the Supreme Court wishes to ignore the legislative history of Section 2(b), as it did in the *Standard Oil* case, and to base construction solely on a 'literal interpretation of the language of the statute', well so be it and we shall do the same in dealing with every other problem arising under that section." It is one thing not to read into a law that which has been deliberately omitted by the Congress; it is something else again to stick in the bark of words and to reject all aids to construction beyond the language itself. In construing a statute, one always begins with its words. But it is not very often that a court or agency can safely stop there. John Marshall was not announcing a novel principle in *United States* v. *Fisher*, 2 Cranch 358, 386 (1804), when he wrote: "Where the mind labors to discover the design of the legislature, it seizes everything from which aid can be derived * * *."

Confining inquiry to the "literal" or "precise" terms of a statute is more treacherous than it would seem to a layman; for, as Judge Learned Hand has observed, there "is no surer way to misread any document than to read it literally."[1] One may, and frequently must, look to the legislative history "to see whether that raises such doubts that the search for meaning shall not be limited to the statute itself."[2] This would seem particularly appropriate in dealing with a statute like the Robinson-Patman Act as to which, the Supreme Court has noted, "precision of expression is not an outstanding characteristic."[3] The Court may have erred, as some believe, in the

[1] *Guiseppi* v. *Walling*, 144 F. 2d 608, 624 (C.A. 2) (concurring opinion).

[2] *Employees v. Westinghouse Corp.*, 348 U.S. 437, 444 (opinion of Frankfurter, J.).

[3] *Automatic Canteen Co.* v. *Federal Trade Commission*, 346 U.S. 61, 65. It has become almost conventional, when lawyers gather to discuss the Robinson-Patman Act, to deplore its verbal infelicities. E.g., Frederick M. Rowe, in 17 A.B.A. (August 1960) Antitrust Section Proceedings, p. 310: "a cryptic and sloppy statutory text, which literally *invited* extreme and controversial interpretation." The Commission has also been frequently reminded of its responsibility, as the agency charged with enforcement of the law, for achieving coherent interpretation and administration, within the permissible limits of its function. E.g., Mr. Justice Jackson in *Federal Trade Commission* v. *Ruberoid Co.*, 343 U.S. 470, 480 *et seq.* (dissent).

construction which it gave to Section 2(b) in the *Standard Oil* case; but surely it did not hold or even suggest that legislative history, as a relevant aid to construction, is to be given less significance in construing Section 2(b) than in the case of other statutes.

2. Turning to the "precise language" of Section 2(b), I find it to be by no means as "specific" as my colleagues apparently do. So far as pertinent here, it provides:

> Upon proof being made * * * that there has been discrimination in * * * services or facilities furnished, the burden of rebutting the prima facie case thus made by showing justification shall be upon the person charged with a violation of this section * * *: *Provided, however*, That nothing herein contained shall prevent a seller rebutting the prima facie case thus made by showing that * * * the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet * * * the services or facilities furnished by a competitor.

Broadly speaking, the type of unfair trade practice which Congress outlawed in Section 2 of the Robinson-Patman Act consists of a seller's discriminating in favor of one or some of his customers at the expense of others, thereby putting the latter at a substantial competitive disadvantage. Viewed in the light of this manifest statutory design, it does not stretch the language of Section 2(b), "the furnishing of services or facilities," to read it as including both direct and *indirect* furnishing of services or facilities, through payment of allowances, reimbursements, or the like. Certainly, so far as the realities of the market are concerned, an unfavored purchaser is no less disadvantaged by the indirect furnishing of services or facilities to his competitors through such payments. It is only when Section 2(b) is read in conjunction with Sections 2 (d) and (e) that one is given pause in reaching this conclusion. For Congress has dealt specifically and separately with indirect and direct furnishing of services or facilities, explicitly proscribing the former in subsection (d) and the latter in subsection (e). Since subsection (e) relates expressly to the "furnishing" of services or facilities, and subsection (d) to the "payment of anything of value * * * for any services or facilities furnished," the Commission apparently feels constrained by this differentiation in the terms and structure of the Act to conclude that Section 2(b), in its reference to "the furnishing of services or facilities," must be construed to apply only to subsection (e) and not to subsection (d).

While the Commission's construction of the statute may produce a strange result from the standpoint of economic realities, that is, of course, no reason for rejecting it. We must take the statute as

we find it; and if the statute contains inconsistencies or incongruities, the remedy is for Congress, not the agency created by it to enforce the law. But we must also be mindful, in approaching the Robinson-Patman Act no less than other enactments, of the Supreme Court's admonition that "All statutes must be construed in the light of their purpose. A literal reading of them which would lead to absurd results is to be avoided when they can be given a reasonable application consistent with their words and with the legislative purpose."[4] And here, as Commissioner Tait pointed out in his dissenting opinion in the *Exquisite Form* case, the legislative history of the Robinson-Patman Act, unilluminating and obscure though it may be in other respects, supports "a reasonable application" of Section 2(b) "consistent with [its] words and with the legislative purpose."

3. Senator Robinson's bill, S. 3154, and Representative Patman's bill, H.R. 8442, as originally introduced in June 1935 at the 74th Congress, 1st Session, were identical. Neither bill contained two provisions which ultimately emerged in the final legislation: the 2(b) defense of meeting competition in good faith; and the express 2(e) prohibition against discriminatory furnishing of services or facilities. However, both bills contained a provision—numbered Section 2(c)(1)—prohibiting the payment of "anything of value * * * for any services or facilities furnished * * *." This prohibition was essentially similar to what is now Section 2(d).

Section 2(b) first came into the legislation by an amendment made on the floor of the Senate. "As reported out of Committee," the Supreme Court noted in *Federal Trade Commission* v. *Simplicity Pattern Company*, 360 U.S. 55, 70, note 17, the Senate bill "contained neither a provision comparable to § 2(b) nor one comparable to § 2(e). S. Rep. No. 1502, 74th Cong., 2d Sess. A provision identical to § 2(b) was adopted as a floor amendment at a time when the bill did not in terms even cover the furnishing of services and facilities. 80 Cong. Rec. 6435–6436. The short debate on the amendment is not enlightening." Accordingly, when the Senate added Section 2(b), with its reference to "furnishing of services or facilities," those words, unless absolutely devoid of any meaning or significance, had to mean "furnishing of services or facilities" of the *indirect* kind proscribed in Section 2(c)(1) of the original bill (renumbered 2(d)(1) in the bill as passed by the Senate), which was the *only* kind of "furnishing of services or facilities" expressly prohibited by the bill at that time. It would seem too clear for argument, therefore, that as passed by the Senate, Section 2(b)

[4] *Haggar Co.* v. *Helvering*, 308 U.S. 389, 394.

was unquestionably available as a defense to what is now known as a Section 2(d) violation.

H.R. 8442 was later amended in the House to add Section 2(e) as well as 2(b). But there is nothing in the legislative materials to suggest that the House, by adding subsection (e), thereby altered or reduced the scope of Section 2(b), which remained in the form adopted by the Senate, so as to knock out its application to Section 2(d)—which *was* in the Senate bill. Surely, if the House—or any member responsible for the handling of the legislation had any design to bring about such an inexplicable result, there would be some indication to that effect in the legislative history. There is none.

The evolution of the Robinson-Patman Act through the legislative process, with all the various adding and subtracting amendments, is enveloped in clouds, and one must be wary not to distill too much from the legislative materials. But this much, at least, seems clear: no distinction appears to have been drawn in the debates, so far as their economic nature or effect was concerned, between the furnishing of services or facilities directly (subsection (e)) and indirectly through compensating allowances and payments for such services and facilities (subsection (d)). It is conceivable that Congress may have intended that the "good-faith meeting of competition" defense provided by Section 2 (b) should be available in the one instance, but not the other, despite their essential similarity. If the language compelled such a curious result, we would of course be bound by it. But, viewing the statute as part of a legislative process having a history and a purpose from which its words cannot be severed without being mutilated, and bearing in mind that the Robinson-Patman Act is directed to economic realities and not abstract or theoretical relationships, I must respectfully dissent.

FINAL ORDER

This matter having been heard by the Commission upon respondent's appeal from the hearing examiner's initial decision, and upon briefs and oral argument in support thereof and in opposition thereto; and the Commission having rendered its decision denying the appeal and adopting the initial decision:

It is ordered, That respondent, Shulton, 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.

Commissioner Kern dissenting and Commissioner Elman dissenting.

Decision

IN THE MATTER OF

BENNER TEA COMPANY

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

Docket 7866. Complaint, Apr. 19, 1960—Decision, July 25, 1961

Order dismissing complaint charging with knowing inducement of discriminatory payments from suppliers, a corporate operator of a chain of retail grocery stores which was sold more than a month prior to issuance of the complaint, resulting in complete change of ownership.

Mr. John Perry for the Commission.

McDermott, Will & Emery, by *Mr. James O. Smith*, of Chicago, Ill., for respondent.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on April 19, 1960, issued its complaint herein, charging the above-named respondent with having violated the provisions of § 5 of the Federal Trade Commission Act (U.S.C. Title 15, § 45) in certain particulars, and respondent was duly served with process.

On May 8, 1961, there was submitted to the undersigned hearing examiner, by counsel supporting the complaint, a Motion to Dismiss, setting forth the following facts and circumstances:

The above-mentioned complaint was issued against Benner Tea Company, an Iowa corporation, with its office and principal place of business located at 3400 Mt. Pleasant Street, Burlington, Iowa. More particularly, Paragraph Five of the complaint states as follows:

PAR. 5. In the course and conduct of its business in commerce, and particularly since 1957, respondent has knowingly induced or received from some of its suppliers the payment, or contracts for the payment, to it or for its benefit, of money or other things of value as compensation or in consideration for services or facilities furnished by or through respondent in connection with the sale or offering for sale of products sold to it by said suppliers. But such payments were not made available by such suppliers on proportionally equal terms to all their other customers competing with respondent in the sale and distribution of such suppliers' products.

An answer was duly filed to the complaint herein; but it was filed by Benner Tea Company, a Delaware corporation, and not by

Benner Tea Company, an Iowa corporation, respondent herein. Among other things, said answer states as follows:

Effective March 16, 1960 BTC, Inc., a Delaware corporation, purchased 100% of the stock of Benner Tea Company, an Iowa corporation, named as Respondent in the complaint herein. On March 31, 1960 Benner Tea Company, an Iowa corporation, ceased to exist by virtue of being merged into BTC, Inc., a Delaware corporation, which subsequently changed its name to Benner Tea Company, a Delaware corporation, which presently maintains its office and principal place of business at 3400 Mt. Pleasant St., Burlington, Iowa.

From the facts stated in the answer, it is evident that the company against which the complaint was issued, namely, Benner Tea Company, an Iowa corporation, was not even in existence on the date of issuance of the complaint.

Because of these facts, counsel supporting the complaint, on November 23, 1960, filed a "Motion to Hearing Examiner to Certify Proposed Amended Complaint to Commission", transmitting therewith an amended complaint which would, in effect, substitute Benner Tea Company, a Delaware corporation, as respondent. Paragraph Four of the amended complaint stated:

PAR. 4. Respondent Benner Tea Company, a Delaware corporation (hereinafter referred to as Benner (Delaware)), as legal successor to Benner Tea Company, an Iowa corporation (hereinafter referred to as Benner (Iowa)), is legally responsible for all the unlawful acts and practices of Benner Tea Company, an Iowa corporation, hereinafter alleged.

On December 7, 1960, the hearing examiner certified the proposed amended complaint to the Commission, and on December 30, 1960, the Commission denied the motion for amended complaint, stating in part as follows:

It further appearing that neither the motion nor the proposed amended complaint attached thereto sets forth a sufficient basis for the alleged responsibility of Benner Tea Company, a Delaware corporation, for the alleged unlawful acts and practices of Benner Tea Company, an Iowa corporation, occurring prior to the purchase by the former of the stock of the latter, or sufficient reason for the Commission to believe that a proceeding against Benner Tea Company, a Delaware corporation, would be in the public interest; and

The Commission having determined that in these circumstances the motion for issuance of the amended complaint cannot be granted:

It is ordered, That said motion be, and it hereby is, denied * * *.

Thereafter, counsel supporting the complaint inquired into the ownership and the managerial setup of Benner Tea Company as

an Iowa corporation and as a Delaware corporation, and found that the ownership has completely changed hands; the officers and directors who controlled and managed the business affairs of Benner Tea Company, an Iowa corporation, in no way control the business affairs of Benner Tea Company, a Delaware corporation. The officers and directors of the new Delaware corporation are not the same as those of the old Iowa corporation; nor does counsel supporting the complaint have any evidence that Benner Tea Company, a Delaware corporation, did or will continue the acts and practices of Benner Tea Company, an Iowa corporation, upon which the complaint herein was based.

The complaint herein, therefore, is now outstanding against a non-existing corporation, namely, Benner Tea Company, an Iowa corporation, and counsel supporting the complaint cannot, at this time, show sufficient basis for the alleged responsibility of Benner Tea Company, a Delaware corporation, for the alleged unlawful acts and practices of Benner Tea Company, an Iowa corporation, or sufficient public interest in a proceeding against Benner Tea Company, a Delaware corporation, to justify the issuance by the Commission of an amended complaint herein. Counsel supporting the complaint is therefore of the opinion that dismissal of the complaint herein is justified and in the public interest, and respectfully requests that the hearing examiner dismiss the complaint against Benner Tea Company, an Iowa corporation.

Upon consideration of the record herein, the hearing examiner concurs in the opinion of counsel supporting the complaint, that said complaint should be dismissed. Accordingly, the hearing examiner hereby grants the Motion To Dismiss submitted by counsel supporting the complaint, and issues his order to that effect as follows:

It is ordered, That the complaint herein, heretofore issued against Benner Tea Company, an Iowa corporation, be, and the same hereby is, dismissed.

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 25th day of July 1961, become the decision of the Commission.

IN THE MATTER OF

SMITH-FISHER CORPORATION ET AL.

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

Docket 8169. Complaint, Nov. 8, 1960—Decision, July 25, 1961

Consent order requiring an individual in Owosso, Mich., to cease misrepresenting, in advertisements in trade journals, newspapers, circulars, etc., the effectiveness, comparative qualities, guarantee, and other relevant facts concerning their "Super Atom" electrical fence charger used to prevent cattle from straying.

On Mar. 30, 1961 (518 F.T.C. 517), the same order was consented to by the corporate manufacturer and one officer.

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 the Smith-Fisher Corporation, a corporation, and Jack D. Smith and Frank Fisher, 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 Smith-Fisher Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan. Its office and principal place of business is located at 1426 North Michigan, Route 47, Owosso, Michigan.

Individual respondents Jack D. Smith and Frank Fisher are officers of said corporation. They formulate, direct and control the policies and practices of the corporate respondent. The individual respondents' 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 manufacturing, offering for sale and selling fence chargers known as "Super Atom Charger".

In the regular and usual course and conduct of their business, respondents cause, and have caused, said fence charger, when sold, to be transported from their place of business in the State of Michigan to purchasers thereof located in various other States of the United States.

Respondents maintain, and at all times mentioned herein, have maintained, a course of trade in said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their business, and for the purpose of inducing the sale of their said product, respondents have made certain statements concerning said product in advertisements inserted in trade journals and newspapers and by means of circulars and other advertising material circulated among prospective customers in various states. Among and typical, but not all inclusive, of said statements are the following:

NEW SUPER-ATOM FENCE CHARGER

Staple fence wire to wood posts—No insulators.
Brush, Weeds, Crops, Rain, Ice—Won't short it.
Works just as good—Bone Dry or Soaking Wet.
Neon Fence Tester—Free.
Operates on 10¢ Per Month.
20 day Trial Period.
2 year Parts Warranty.
ALL THIS AND SAFER TOO.

SUPER-ATOM, the new scientifically designed fence charger offers these outstanding features: Charges felt strongly by animal stock without fear of injury to humans.

20 times more short resistant than other leading fence charges.
Will not be shorted by green grass or brush; rain or ice.
Wire can be nailed to wood posts without insulators.
Charges 50 miles of fence.
Automatically adjusts to both wet and dry weather.

PAR. 4. Through the use of the statements hereinabove set forth, and others of similar import not specifically set out herein, respondents have represented, directly or by implication, that:

1. Respondents' said product is effective in confining farm animals in an enclosure under all fencing and climatic conditions without the use of insulators.

2. Respondents' product is twenty times more short resistant than all other fence chargers.

3. Green grass, brush, rain or ice will not cause a short.

4. Respondents' fence charger will effectively and safely charge fifty miles of fence without insulators.

5. Respondents' fence charger has a mechanism that automatically adjusts it to the various climatic conditions under which it will be operated.

6. Said product is guaranteed for two years as to parts.

PAR. 5. The aforesaid statements and representations are false, misleading and deceptive. In truth and in fact:

1. Respondents' fence charger is not effective as an enclosure for farm livestock under many fencing and climatic conditions when insulators are not used.

2. Said product is not more short resistant than many other fence chargers.

3. Green grass, brush, rain or ice that contacts the fence may cause a short.

4. Respondents' product will not effectively and safely charge fifty miles of fence under normal climatic conditions in many sections of the country, with or without the use of insulators. Using insulators, said product could not be expected to be effective and safe for more than ten miles. Without the use of insulators, because of current leakage caused by various factors such as green, wet and rotted posts, it is not possible to accurately state the length of fence that will be safely and effectively charged by said product.

5. There is no mechanism in respondents' fence charger that automatically adjusts it to the various climatic conditions under which fence chargers are operated.

6. The manner in which respondents will perform under their guarantee is not set out.

PAR. 6. In the conduct of their business respondents are in substantial competition, in commerce, with corporations, firms and individuals in the sale of fence chargers.

PAR. 7. The use by respondents of the aforesaid false, misleading and deceptive statements and representations has had, and now has, the tendency and capacity to mislead and deceive members of the public into the erroneous and mistaken belief that said statements and representations were, and are, true and to induce a substantial number thereof to purchase respondents' said fence chargers as a result of such erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors and injury has thereby been 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. William A. Somers supporting the complaint.
Mr. Kenneth B. Kelly of Owosso, Mich., for respondent.

INITIAL DECISION AS TO RESPONDENT FRANK FISHER, INDIVIDUALLY BY WALTER K. BENNETT, HEARING EXAMINER

The Federal Trade Commission issued its complaint against Frank Fisher (hereinafter referred to as respondent) and against Smith-Fisher Corporation and Jack D. Smith on November 8, 1960. The complaint charged respondent with making false representations concerning the guarantee of, and the effectiveness of, a device for charging wire fences electrically to prevent cattle from straying. Said representations were charged to be unfair and deceptive acts and practices and unfair methods of competition within the intent and meaning, and in violation, of the Federal Trade Commission Act.

On March 30, 1961, the Commission approved an Initial Decision by the undersigned based on an agreement by Smith-Fisher Corporation and Jack D. Smith dated January 10, 1961.

Thereafter and on May 18, 1961, counsel supporting the complaint presented to the undersigned an agreement dated April 26, 1961, executed by the respondent, his counsel, and counsel supporting the complaint, providing for the entry without further notice of a cease and desist order. The agreement was duly approved by the Director and the Assistant Director of the Bureau of Litigation.

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

A. An admission by 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 provision: A statement that the signing of said agreements is for settlement purposes only and does not constitute an admission by respondent that he has violated the law as alleged in the complaint.

Attached to and made part of said agreement is an affidavit of respondent verified April 26, 1961, alleging: that he resigned from all offices of Smith-Fisher Corporation on November 10, 1960; that the only connection he has or intends to have with Smith-Fisher Corporation so long as Jack D. Smith and his mother have anything to do with the corporation is as a minority stockholder; that this interest is one-third of the stock of the corporation; and that respondent since his resignation has not and does not intend to attend any meetings of officers, directors, or stockholders of the corporation.

On the basis of such affidavit the parties agreed that the complaint be dismissed [as] to Frank Fisher as an officer of Smith-Fisher Corporation, but not as an individual.

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, so far as it relates to respondent Frank Fisher, and finally disposes of the proceeding in all respects, 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 Frank Fisher is an individual whose address is R.R. #3, Owosso, Michigan.

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

ORDER

It is ordered, That respondent Frank Fisher, an individual, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the offer-

ing for sale, sale or distribution of a fence charger known as Super Atom Charger, or any other charger of substantially the same construction or operation, do forthwith cease and desist from representing directly or indirectly:

1. Said product is effective in confining farm animals in an enclosure under all climatic or fencing conditions without the use of insulators.

2. Said product is twenty times, or any other number of times, more short resistant than other fence chargers.

3. Green grass, brush, rain or ice will not cause a short in the operation of said product.

4. Said product will effectively or safely charge more than 10 miles of fence with insulators or will effectively or safely charge any stated number of miles of fence without insulators.

5. Said product has a mechanism that adjusts it to the various climatic conditions under which it will be operated.

6. Said product is guaranteed unless the nature and extent of the guarantee and the manner in which respondent will perform thereunder are clearly set forth.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to respondent Frank Fisher as an officer of Smith-Fisher Corporation.

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 25th day of July 1961, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Frank Fisher, an individual, 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

PARLIAMENT T.V. TUBE SALES, INC., ET AL.

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

Docket 8180. Complaint, Nov. 23, 1960—Decision, July 25, 1961

Consent order requiring Chicago distributors of rebuilt television picture tubes containing used parts, to cease representing falsely through statements on

tags and labels, price lists, and other media, that all parts in their tubes were "brand new", and that they had given "Eight years of dependable service" and were the "World's largest independent picture tube distributor"; and to cease failing to disclose clearly when tubes were rebuilt containing a used part.

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 Parliament T.V. Tube Sales, Inc., a corporation, and David Becker, Mort Posen, and Jack N. Friedman, 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 Parliament T.V. Tube Sales, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 111 N. Kedzie Avenue, Chicago, Illinois. Said corporate respondent operates a division under the name Distributors T.V. Picture Tube Co., whose principal place of business is located at 3125 West Maypole Avenue, Chicago, Illinois.

The individual respondents David Becker, Mort Posen, and Jack N. Friedman are officers of said corporation. They formulate, direct and control the acts and practices of 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 offering for sale, sale and distribution of rebuilt television picture tubes containing a used part. Parliament T.V. Tube Sales, Inc. sells to television repairmen who service T.V. sets for individual owners, and sell at retail, and through its division, Distributors T.V. Picture Tube Co., respondents sell their rebuilt television picture tubes to wholesalers, who in turn sell to retailers and television repairmen 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 Illinois to purchasers thereof located in various other States of the United States and maintain, and at all time mentioned herein have maintained, a course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business and for the purpose of inducing the sale of their products respondents made certain statements concerning their products on tags, labels, price lists, and by other media. Among and typical of such statements are the following:

All parts in this picture tube are brand new.
Eight years of dependable service.
World's largest independent picture tube distributor.

PAR. 5. Through the use of the aforesaid statements respondents represented:

1. That their television picture tubes were new in their entirety.

2. That the respondents have been in business for eight years or more.

3. That the respondents were the world's largest independent picture tube distributors, thereby selling and distributing more picture tubes than any other company in the world.

PAR. 6. Said statements and representations were false, misleading and deceptive. In truth and in fact:

1. The television picture tubes represented as being new are not new in their entirety.

2. The respondent corporation was incorporated on December 8, 1958, and went into business in that same year.

3. The respondent corporation is not the world's largest T.V. tube distributor. There are several T.V. tube distributors in the United States which sell and distribute a larger volume of T.V. tubes than the respondents.

PAR. 7. The television picture tubes sold by respondents are rebuilt and contain a used part. Respondents do not disclose on the tubes, on invoices, or in any other manner that said television picture tubes are rebuilt and contain a used part.

When television picture tubes are rebuilt containing a used part in the absence of a disclosure to the contrary, such picture tubes are understood to be and are readily accepted by the public as new tubes.

PAR. 8. By failing to disclose the facts as set forth in Paragraphs 6 and 7, respondents place in the hands of uninformed or unscrupulous dealers means and instrumentalities whereby they may mislead and deceive the public as to the nature of their said television picture tubes.

PAR. 9. In the conduct of their business and at all times mentioned herein respondents have been in substantial competition in commerce with corporations, firms and individuals engaged in the sale of television picture tubes.

PAR. 10. The use by respondents of the aforesaid false, misleading and deceptive statements and representations and the failure of respondents to disclose on their television picture tubes, on invoices or in any other manner that they are rebuilt, containing a use part, 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' said tubes by reason of said erroneous and mistaken beliefs and as a consequence thereof substantial trade in commerce has been and is being unfairly directed to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

PAR. 11. 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. Harry E. Middleton, Jr., for the Commission.

Ashman & Jaffee, by *Mr. Martin C. Ashman*, of Chicago, Ill., for respondents.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

On November 23, 1960, the Federal Trade Commission issued its complaint against the above-named respondents charging them with violating the provisions of the Federal Trade Commission Act in connection with the offering for sale, sale and distribution of rebuilt television picture tubes containing a used part. On May 1, 1961 the respondents and counsel supporting the complaint entered into an agreement containing a consent order to cease and desist in accordance with Section 3.25(a) of the Rules of Practice and Procedure of the Commission.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint and agree among other things, that the cease and desist order there set forth may be entered without further notice and shall have the same force and effect as if entered after a full hearing. The agreement includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith; and recites that the said agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commis-

sion, and that it is for settlement purposes only, does not constitute an admission by the respondents that they have violated the law as alleged in the complaint, and that said complaint may be used in construing the terms of the order. The hearing examiner finds that the content of the said agreement meets all the requirements of section 3.25(b) of the Rules of Practice.

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

1. Respondent Parliament T.V. Tube Sales, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 111 N. Kedzie Street, in the City of Chicago, Illinois.

Respondents David Becker, Mort Posen and Jack N. Friedman are individuals and officers of said corporate respondent. They formulate, direct and control the policies, acts and practices of the corporate respondent. Their address is the same as that of the corporate respondent.

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

ORDER

It is ordered, That respondents Parliament T.V. Tube Sales, Inc., a corporation, and its officers, and David Becker, Mort Posen, and Jack N. Friedman, individually and as officers of said corporate respondent, and said respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale and sale of rebuilt television picture tubes, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that said television picture tubes are new.

2. Failing to clearly disclose on the tubes, on the cartons in which they are packed, on invoices and in advertising, that said tubes are rebuilt containing a used part.

3. Placing any means or instrumentalities in the hands of others whereby they may mislead the public as to the nature and condition of their television picture tubes.

4. Representing, directly or indirectly:

(a) That the corporate respondent has been in existence, or that corporate respondent or the individual respondents have been in business for any period or length of time that is not in accordance with the facts.

(b) That respondents are the world's largest television picture tube distributors.

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 25th 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

THE SCOTT & FETZER COMPANY

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

Docket 8182. Complaint, Nov. 23, 1960—Decision, July 25, 1961

Consent order requiring the Cleveland, Ohio, manufacturer of "Kirby" vacuum cleaners to cease using fictitious pricing claims, scare tactics, and other unfair practices to sell its vacuum cleaners; and to cease representing falsely, in newspaper "Want-Ads", through its distributors and otherwise, that salaried positions and guaranteed minimum compensation were available for qualified applicants.

COMPLAINT

The Federal Trade Commission, having reason to believe that The Scott & Fetzer Company, a corporation, hereinafter referred to as respondent, has violated the provisions of the Federal Trade Com-

mission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent The Scott & Fetzer Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 1920 West 114th Street, Cleveland, Ohio.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the manufacture, advertising, offering for sale, sale and distribution of electric vacuum cleaners, and accessories and attachments therefor. Respondent's vacuum cleaners are marketed under the trade names, among others, of "Kirby Home Sanitation System," "Kirby", and "Kirby System." Respondent markets its "Kirby" vacuum cleaners nationally to the purchasing public through distributors and subdistributors, and salesmen thereof who are sometimes called "dealers". Respondent is one of the largest manufacturers and sellers of electric vacuum cleaners in the industry having total sales for the year 1958 of approximately $15,891,501.

PAR. 3. In the course and conduct of its business, respondent now causes, and for some time last past has caused, its "Kirby" electric vacuum cleaners, accessories and attachments, when sold or distributed, to be transported from its factory and place of business in the State of Ohio to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in such vacuum cleaners, accessories and attachments, in commerce, between and among the various States of the United States.

PAR. 4. In the course and conduct of its business, as herein described, respondent has been for many years in substantial competition in the sale and distribution of its "Kirby" electric vacuum cleaners in commerce between and among the various States of the United States with other corporations, persons, firms and partnerships.

PAR. 5. Respondent's "Kirby" vacuum cleaners are sold primarily to prospective purchasers in their own homes during or after a demonstration accompanied by a sales talk. Respondent's distributors, subdistributors, and "Kirby" salesmen, obtain appointments with such prospective purchasers by various means including personal solicitation and contact with the general public.

Respondent promotes the sale of its "Kirby" vacuum cleaners, and aids and assists its distributors, subdistributors, and "Kirby" salesmen, in selling "Kirbys" by advertising in magazines of national

circulation. Such advertising of respondent urges the "American Home-Maker" to "Welcome your Kirby Man" because:

> He brings you an exciting story of a bright clean home without drudgery . . . He's a neighbor of yours, a good citizen of your community, a gentleman who merits your confidence—carefully chosen, trained and tested. When he rings your doorbell or telephone, welcome him. You'll be glad you did!

Respondent directs and assists its distributors, subdistributors, and "Kirby" salesmen, in the sale of "Kirby" vacuum cleaners by instructions, advice, and supervision. Respondent assists distributors and subdistributors in the procurement and training of "Kirby" salesmen. Respondent furnishes sales literature, sales manuals, booklets of advice, and the like to its distributors, subdistributors, and "Kirby" salesmen, for their education, instruction and use in the sale of "Kirby" vacuum cleaners and in meeting the variety of problems arising in the sale of respondent's "Kirby" vacuum cleaners such as, for example, obtaining appointments with prospective purchasers, demonstrating the "Kirby" in the most effective way, meeting objections and closing the sale.

PAR. 6. In selling and attempting to sell its "Kirby" vacuum cleaners respondent, directly and through its distributors, subdistributors, and "Kirby" salesmen, makes many false, misleading and deceptive statements and representations, and employs many unfair and deceptive acts and practices. For the purpose of selling respondent's "Kirby" vacuum cleaners, accessories and attachments, and in the solicitation of appointments with prospective purchasers, respondent, directly and through its distributors, subdistributors, and "Kirby" salesmen, directly or by implication, makes the following typical, but not all inclusive, false, misleading and deceptive statements and representations, and utilizes the following typical, but not all inclusive, unfair and deceptive acts and practices:

(1) Falsely represents in soliciting appointments with prospective purchasers that the appointment is sought only to obtain the prospect's opinion of the "Kirby" and conceals, or attempts to conceal, that the actual purpose for which the appointment is sought is to sell the prospect a "Kirby";

(2) Falsely advises, as a device or stratagem to obtain an appointment in the home of a prospective purchaser, that the prospect has won a "prize" or "gift";

(3) Falsely represents through the use of tickets with fictitious and exaggerated prices thereon, or otherwise, to prospects with whom appointments are sought, or have been made, that the "prize" or "gift" (known as a "door opener") offered or given to such prospects

has a value far in excess of the actual and true value of such "prize" or "gift";

(4) Falsely represents in seeking an appointment in the home of a prospective purchaser, and thereafter during such appoinment, that the appointment is sought and the presentation of the "Kirby" is made a part of, or in connection with, an advertising program, or for advertising or survey purposes;

(5) Falsely represents during appointments in the homes of prospective purchasers that the "Kirby" salesman keeping the appointment is an advertising representative, or advertising dealer, or demonstrator, or the like, or a member of the "Kirby" advertising department, and is not a salesman and that he is engaged primarily in the advertising and promotion of "Kirby" vacuum cleaners rather than in the sale of them;

(6) Falsely represents during appointments with prospective purchasers that the "Kirby" representative is there primarily to get such prospective purchaser's opinion of the "Kirby" rather than to sell a "Kirby";

(7) Falsely represents that the purpose of the "Kirby Advertisers Club" referral program, by which purchasers of "Kirby" vacuum cleaners are paid for sending in names of prospects, provided such prospects agree to permit the "Kirby" representative to "demonstrate" a vacuum cleaner to them, is primarily to advertise the "Kirby" and that any resulting sales are incidental to this;

(8) Falsely represents that the prospective purchaser, in whose home an appointment has been made, has been especially "selected" for such appointment;

(9) Employs "scare tactics" by falsely stating or emphasizing (a) that the rugs and mattresses of prospective purchasers are infested with disease causing germs; (b) that the condition of such rugs and mattresses renders them highly dangerous to prospective purchasers and their families; and (c) that the "Kirby" will correct this condition;

(10) Falsely represents that purchasers can pay for the "Kirby" vacuum cleaner by sending in names of other prospective purchasers pursuant to the so-called referral or "Kirby Advertisers Club" plan;

(11) Falsely represents to prospective purchasers that certain stated amounts are the usual and regular selling prices for "Kirby" vacuum cleaners;

(12) Falsely represents to prospective purchasers that they are being granted a special price lower than the usual and regular price of the "Kirby" vacuum cleaner;

(13) Falsely represents that the price at which the "Kirby" vacuum cleaner is offered is available for a limited time only, and that the prospective purchaser must take advantage of it and buy a "Kirby" at that time or forego indefinitely such special price;

(14) Falsely represents to prospective purchasers of "Kirby" vacuum cleaners that they are being offered or granted a special advertising allowance, or special trade-in allowance, or the like, not made available generally to prospective purchasers;

(15) Falsely represents that participation in the "Kirby Advertisers Club" is not offered to every prospective purchaser of a "Kirby", but is limited only to those prospects who have a "wide circle of friends" among whom to advertise the "Kirby";

(16) Falsely represents to prospective purchasers that they are being granted a special price lower than the usual and regular price of a "Kirby" because of an unusual impending circumstance such as the participation of the "Kirby" salesman in a contest, or the like;

(17) Falsely represents that the "Sani-Em-Tor" attachment of the "Kirby" vacuum cleaner is an exclusive feature which other vacuum cleaner firms cannot duplicate because of the patent owned on it by respondent.

PAR. 7. In the course and conduct of its business and for the purpose of attracting and obtaining salesmen of respondent's "Kirby" vacuum cleaners, respondent directly and through its distributors and subdistributors, by means of advertisements inserted in the "Want-Ad" or classified section of newspapers, or otherwise, and other advertising media, falsely represents that salaried positions or jobs, or jobs with a guarantee of minimum earnings or compensation, are available for qualified applicants with respondent's distributors and subdistributors when in truth and in fact the positions or jobs being offered are not salaried, but are jobs selling "Kirbys" which are compensated solely by commissions earned in the sale thereof, and there is no guarantee of minimum earnings or compensation. Typical of such false and misleading advertisements are the following:

(1) GROUND FLOOR OPPORTUNITY

National mfg. orders new expansion program opening new jobs in PITTSBURGH, New Kensington, Butler, and McKeesport.

FREE TRAINING
In new job
SALARY $387.50
to start per month

RAPID ADVANCEMENT to profit sharing plan and higher earnings averaging $510 per month.

Advancement possibilities unlimited. We need in this very first group men with some mechanical skill, willing to work and enthusiasm to learn.

This is very interesting work with entirely new electrical power equipment. Call FA 1-4512 on MONDAY, OCT. 12 ONLY, 10 a.m. to 9 p.m.

(2) COLLEGE MEN

Steady work entire summer, commission basis with $300 monthly guarantee. NO CANVASSING. Must have car. Apply Kirby Co., 16 West North Ave., 10 a.m. to 4 p.m.

PAR. 8. By furnishing sales literature, sales manuals, books of advice, and the like, to its distributors, subdistributors and "Kirby" salesmen, as described in Paragraph Five, respondent places in the hands of such persons means and instrumentalities by and through which they may mislead and deceive members of the public in the respects set out herein.

PAR. 9. The use by respondent of the aforesaid false, misleading and deceptive statements and representations, and the aforesaid unfair and deceptive acts and practices has had, and now has, the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said statements and representations were and are true, and by reason of such belief into the purchase of substantial quantities of respondent's vacuum cleaners, and into undertaking the sale of such vacuum cleaners. As a result thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondent from its competitors and substantial injury has thereby been, and is being done to competition in commerce.

PAR. 10. 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 constituted and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning and in violation of Section 5 of the Federal Trade Commission Act.

Mr. Danied H. Hanscom supporting the complaint.

Roudebush, Adrion, Brown, Corlett & Ulrich, by *Mr. Oscar H. Johnson* and *Mr. Allen N. Corlett* of Cleveland, Ohio, and *Donohue & Kaufmann* by *Mr. Arnold F. Shaw* of Washington, D.C., for respondent.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

On November 23, 1960, the Federal Trade Commission issued a complaint charging that the above-named repondent had used ficti-

tious pricing, "scare tactics" and numerous other unfair practices to promote the sale of its products.

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

By the terms of said agreement, respondent admits the jurisdictional facts alleged in the complaint and agrees that the complaint may be used in construing the terms of the order. The agreement further provides that the order shall have the same force and effect as if entered after a full hearing and 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. It was further agreed that the record herein shall consist solely of the complaint and the agreement, that the order may be altered, modified, or set aside in the manner provided by statute for other orders, and the signing of said agreement was for settlement purposes only and does not constitute an admission by respondent that it violated the law as alleged in the complaint.

Under the terms of said agreement, respondent waives the filing of findings of fact and conclusions of law and any further procedural steps before the hearing examiner and the Commission, and the respondent also waives any right to challenge or contest the validity of the order entered in accordance with the agreement.

The undersigned hearing examiner having considered the agreement and proposed order, hereby accepts such agreement, makes the following jurisdictional findings, and issues the following order:

JURISDICTIONAL FINDINGS

1. The respondent, The Scott & Fetzer Company, is a corporation organized and doing business under the laws of the State of Ohio, with its office and principal place of business located at 1920 West 114th Street, Cleveland, Ohio.

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

ORDER

It is ordered, That respondent, The Scott & Fetzer Company, a corporation, its officers, agents, representatives and employees, di-

rectly, or through distributors of its products, or through any corporate or other device, in connection with the offering for sale, sale, or distribution of vacuum cleaners, accessories, and attachments, or any other merchandise, whether sold under the name "Kirby", "Kirby Home Sanitation System", "Kirby System", or any other name, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, when soliciting appointments with prospective purchasers, that the appointment is sought only to obtain the prospect's opinion of the "Kirby", and concealing, or attempting to conceal, that the actual purpose for which the appointment is sought is to sell the prospect a "Kirby".

2. Advising, as a device or stratagem, to obtain an appointment in the home of a prospective purchaser, that the prospect has won a "prize" or "gift".

3. Representing, through the use of tickets with fictitious and exaggerated retail prices thereon, to prospects with whom appointments are sought, or have been made, that the item (known as a "door opener") offered or given to such prospects has a value far in excess of the actual and true retail value of such item.

4. Representing, in seeking an appointment in the home of a prospective purchaser, and thereafter during such appointment, that the appointment is sought and the presentation of the "Kirby" is made as part of or in connection with, an advertising program, when such is not the fact.

5. Representing, during appointments in the homes of prospective purchasers, that the "Kirby" salesman keeping the appointment is an advertising representative, or advertising dealer, or demonstrator, or the like, or a member of the Advertising Department, and is not a salesman, and that he is engaged primarily in the advertising and promotion of "Kirby" vacuum cleaners rather than in the sale of them, when such is not the fact.

6. Representing, during appointments with prospective purchasers, that the "Kirby" representative is there to get such prospective purchaser's opinion of the "Kirby" rather than to sell a "Kirby".

7. Representing that the purpose of the "Kirby Advertisers Club" referral program by which purchasers of "Kirby" vacuum cleaners are paid for sending in names of prospects, provided such prospects agree to permit the "Kirby" representative to "demonstrate" a vacuum cleaner to them, is only to advertise the "Kirby" and that any resulting sales are incidental to this.

8. Representing that the prospective purchaser in whose home an appointment has been made has been "selected" for such appointment, when such is not the fact.

9. Stating or emphasizing that the rugs and mattresses in prospective purchasers' homes are disease causing and are highly dangerous to prospective purchasers and their families and that "Kirby" will correct this condition.

10. Representing that purchasers can earn all or a large part of the purchase price of the "Kirby" vacuum cleaner by sending in names of other prospective purchasers pursuant to the so-called referral or "Kirby Advertisers Club" plan, when such is not the fact.

11. Representing to prospective purchasers that any amount is the usual and regular price for the "Kirby" when it is in excess of the price at which said product is usually and regularly sold in the regular course of business. Respondent is not precluded, however, from representing that a trade-in allowance is deducted from its regular price, if such is the fact.

12. Representing to prospective purchasers of "Kirby" vacuum cleaners that they are being granted a special price lower than the usual and regular price of "Kirby" vacuum cleaners, accessories and attachments, when such is not the fact.

13. Representing to prospective purchasers of "Kirby" vacuum cleaners that they are being granted a special price lower than the usual and regular price of "Kirby" vacuum cleaners, accessories and attachments, that such special price is available for a limited time only, and that the prospective purchaser must take advantage of it and buy a "Kirby" at that time or forego indefinitely such special price, when such is not the fact.

14. Representing to prospective purchasers of "Kirby" vacuum cleaners that they are being offered or granted a special advertising allowance, or special trade-in allowance, or the like, not made available generally to prospective purchasers, and that the usual and regular price of the "Kirby" is being reduced by the amount of such special allowance, when such is not the fact.

15. Representing that participation in the "Kirby Advertisers Club" is not offered to every prospective purchaser of a "Kirby" but is limited only to those prospects who have a "wide circle of friends" among whom to advertise the "Kirby", when such is not the fact.

16. Representing to prospective purchasers that they are being granted a special price lower than the usual and regular price of a "Kirby" because of an unusual impending circumstance such as the

participation of the "Kirby" salesman in a contest, or the like, when such is not the fact.

17. Representing that the "Sani-Em-Tor" attachment, as such, of the "Kirby" vacuum cleaner is patented.

18. Representing, by means of advertisements in newspapers, or other advertising media, or otherwise, that salaries, positions or jobs, or jobs with a guarantee of minimum earnings or compensation are available for qualified applicants with distributors and subdistributors in truth and in fact qualified applicants for such jobs or positions are offered a salary, or a guarantee of minimum earnings or compensation.

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 25th 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

HERNIA CONTROL, INC., ET AL.

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

Docket 8261. Complaint, Dec. 30, 1960—Decision, July 25, 1961

Consent order requiring Boston, Mass., distributors to cease misrepresenting the effectiveness of their "Muscle-Spension" devices in the control of ruptures and hernias, and their time in business, in advertisements in newspapers and by means of brochures, circulars, match covers, and other media.

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 Hernia Control, Inc., a corporation, and Robert A. Sykes and Ann H. Sykes, 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 Hernia Control, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Massachusetts with its principal office and place of business located at 145 Tremont Street, Boston, Massachusetts. Said corporation does business under the name of Sykes Center.

Respondents Robert A. Sykes and Ann H. Sykes 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 years last past have been, engaged in the business of selling and distributing devices as "device" is defined in the Federal Trade Commission Act. Said devices are designated as "Muscle-Spension" and are offered for sale to persons having ruptures or hernias.

PAR. 3. Respondents have caused and now cause, their said devices, when sold, to be transported from their place of business in the State of Massachusetts to purchasers thereof located in various other states of the United States, and at all times mentioned herein have 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 commerce is and has been substantial.

PAR. 4. In the course and conduct of their business, respondents have disseminated, and caused the dissemination of, advertisements concerning said devices 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, advertisements inserted in various newspapers, and by means of brochures, circulars and match covers and other advertising media for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said devices, and respondents have disseminated, and caused the dissemination of, advertisements concerning said devices, including but not limited to, the media referred to above, for the purpose of inducing, and which were 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 contained in said advertisements, disseminated, and caused to be disseminated, by the respondents are the following:

To those who have endured the torment of trusses. To those who fear to work and play normally because of the threat of hernia, to those who have found surgery unsuccessful Muscle-Spension offers a whole new world.

Much as the dentist might fill the cavity in a tooth, the Muscle-Spension technician measures and fits the length, depth and width of this area. The resulting prosthesis or muscular substitute suspends the weakened muscles to prevent their sagging and so prevents the development of the hernia.

But the most important fact of all is that whether or not the muscular tone is revived, the control with Muscle-Spension can free its wearer of the problems of reducible hernia promptly and permanently, through its proper use.

Those victims of hernia who have had the experience of the results of Muscle-Spension as developed at Sykes Center know that it proved a practical answer to the age old problem of finding an orthotic remedy for them.

The future of Muscle-Spension then must lay largely in the hands of its present owners. These people had the experience needed to tear down the stone wall of skepticism built by disillusioned truss wearers and by the medical profession against the possibility that an acceptable remedy without surgery is available.

Serving since 1916.

PAR. 6. Through the use of the statements and representations contained in the advertisements set out in Paragraph Five, and others of similar import not specifically set out herein, respondents represented, directly and by implication that:

(a) Their said devices are not trusses.

(b) The use of their said devices will cure ruptures or hernias.

(c) That the use of their said devices will prevent the development, that is, the enlargement of ruptures or hernias.

(d) Said devices will retain or hold all ruptures or hernias.

(e) The use of their said devices will free the wearer of the problems of reducible ruptures or hernia.

(f) Their said devices will retain ruptures or hernias under all conditions of activity or strain.

(g) Their said devices provide a remedy for ruptures or hernia without surgery.

(h) The respondents have been in the business of rupture control since 1916.

PAR. 7. The aforesaid statements were and are misleading in material respects and constitute false advertisements as that term is defined in the Federal Trade Commission Act.

In truth and in fact:

(a) Respondents devices are trusses.

(b) The use of said devices will not cure ruptures or hernias.

(c) The use of said devices will not prevent the development or enlargement of ruptures or hernias.

(d) Said devices will not be of value in retaining or holding ruptures or hernias except those that are reducible.

(e) The use of said devices will not free the wearer of the problems of reducible rupture or hernia.

(f) Said devices will not retain ruptures or hernia under all conditions of activity or strain.

(g) The use of said devices will not provide a remedy for ruptures or hernia without surgery.

(h) Respondents have not been in the business of rupture control since 1916 but for a considerably lesser period of time.

PAR. 8. 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.

Mr. Frederick McManus 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 December 30, 1960, charging them with violation of the Federal Trade Commission Act in connection with the sale and distribution of their devices, designated as "Muscle-Spension".

On April 20, 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, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing and the document includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint.

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

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

1. Respondent Hernia Control, Inc., is a Massachusetts corporation with its principal office and place of business located at 145 Tremont Street, Boston, Massachusetts. Said corporation does business under the name of Sykes Center.

Individual respondents Robert A. Sykes and Ann H. Sykes are officers of the corporate respondent and formulate, direct and control the acts and practices of said corporate respondent. Their address is the same as that of the corporate respondent.

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

ORDER

It is ordered, That the respondents Hernia Control, Inc., a corporation, and its officers, and Robert A. Sykes and Ann H. Sykes, 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 devices known as "Muscle-Spension", or any device of substantially similar construction or design, whether sold under said name or any other name, 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 that:

(a) Said devices are not trusses;

(b) Said devices will cure ruptures or hernias;

(c) Said devices will prevent the development or enlargement of ruptures or hernias;

(d) Said devices will be of value in holding or retaining a rupture or hernia unless limited to reducible ruptures or hernias;

(e) Said devices will free the wearer thereof of the problems of reducible rupture or hernia;

(f) Said devices will retain ruptures under all conditions of activity or strain;

(g) The use of said devices will provide an adequate remedy for ruptures or hernia without surgery;

(h) Respondents, or any of them, have been in the business of rupture control since 1916, or misrepresenting the period of time that they, or any of them, have been in such business.

2. Disseminating, or causing to be disseminated, any advertisement by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of said devices in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the representations prohibited by Paragraph 1 of this order.

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 25th 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

PRESSING SUPPLY COMPANY ET AL.

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

Docket 8337. Complaint, Mar. 16, 1961—Decision, July 25, 1961

Consent order requiring Philadelphia distributors to cease falsely representing excessive amounts as the usual retail prices for ironing board covers, by such practices as imprinting fictitious prices on containers of the products before shipment to distributors, jobbers, and retail purchasers.

By a similar consent order on Jan. 3, 1962, the matter was disposed of as to the sales representative.

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 Pressing Supply Company, a corporation, and Ironfast Products Company, a corporation, and Jerome Silk and Sidney Cozen, individually and as officers of said corporations, and Sanford A. Specht and Annette

Specht, doing business as S. A. Specht Associates, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commisson 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 Pressing Supply Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its main office and principal place of business located at 1807 E. Huntington Street in Philadelphia, Pennsylvania.

Respondent Ironfast Products Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania with its main office and principal place of business located at 1807 E. Huntington Avenue, Philadelphia, Pennsylvania.

Individual respondents Jerome Silk and Sidney Cozen are officers of said corporations. They formulate, direct and control the acts and practices of the said corporate respondents, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondents.

PAR. 2. S. A. Sprecht Associates is a copartnership consisting of Sanford A. Specht and Annette Specht. S. A. Specht Associates is the sales representative of the corporate respondents. Its address is 1140 Broadway, New York, New York.

PAR. 3. Respondents are now, and for some time last past, have been, engaged in the advertising, offering for sale, sale and distribution of ironing board covers and other merchandise to distributors, jobbers and retailers for resale to the purchasing public.

PAR. 4. 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 the State of Pennsylvania 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. 5. Respondents, before shipping said ironing board covers, imprint on the containers thereof various prices.

By means of the prices appearing on said containers, respondents represent that such are the usual and regular retail prices for said ironing board covers. Such representations are false, misleading and deceptive. In truth and in fact such amounts are fictitious and

greatly in excess of the prices at which the ironing board covers are usually and regularly sold at retail.

PAR. 6. By the practice aforesaid respondents place in the hands of retailers a means and instrumentality whereby such retailers may mislead and deceive members of the purchasing public as to the usual and regular retail prices of their ironing board covers.

PAR. 7. 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 ironing board covers of the same kind and general nature of those sold by respondents.

PAR. 8. The aforesaid acts and practices of respondents had, and now have, the tendency and capacity to mislead and deceive members of the purchasing public as to the usual and regular retail selling price of said ironing board covers and into the purchase of substantial quantities thereof because of such erroneous and mistaken belief. As a result thereof, substantial trade in commerce has been, and is being, unfairly diverted to the respondents from their competitors and substantial injury has been and is being done to competition in commerce.

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

Mr. Frederick McManus for the Commission.

Newman & Master, by *Mr. Reuben Miller*, Philadelphia, Pa., for respondents Pressing Supply Co., Ironfast Products Co., Jerome Silk and Sidney Cozen.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on March 16, 1961, charging Respondents with violation of the Federal Trade Commission Act by imprinting on the containers of their ironing board covers false, misleading and deceptive representations of the regular retail prices for said ironing board covers.

Thereafter, on April 25, 1961, Respondents Pressing Supply Company, Ironfast Products Company, Jerome Silk (who signed as Jerome R. Silk) and Sidney Cozen, their counsel, and counsel supporting the complaint herein entered into an Agreement Containing Consent Order To Cease And Desist, which was approved by the Director and Assistant Director of the Commission's Bureau

of Litigation, and thereafter, on May 18, 1961, submitted to the Hearing Examiner for consideration.

The agreement identifies Respondents Pressing Supply Company and Ironfast Products Company as Pennsylvania corporations, with their main office and principal place of business located at 1807 E. Huntington Street, Philadelphia, Pennsylvania, and Jerome Silk and Sidney Cozen as officers of said corporations, their address being the same as that of the corporate respondents. Attached to and made a part of the agreement is a document executed by counsel for the above-named Respondents, certifying that "Jerome Silk" and "Jerome R. Silk" are one and the same person.

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.

Respondents waive any further procedure before the Hearing Examiner and the Commission: the making of findings of fact and 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. All parties agree 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 order to cease and desist, as contained in the agreement, when it shall have become a part of the decision of the Commission, 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; that the complaint herein may be used in construing the terms of said order; and that the agreement is for settlement purposes only and does not constitute an admission by Respondents that they have violated the law as alleged in the complaint.

After consideration of the allegations of the complaint and the provisions of the agreement and the proposed order, the Hearing Examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding as to Respondents Pressing Supply Company, Ironfast Products Company, Jerome Silk and Sidney Cozen. Accordingly, in consonance with the terms of the aforesaid agreement, the Hearing Examiner accepts the Agreement Containing Consent Order To Cease And Desist entered into by the above-named Respondents; finds that the Commission has jurisdiction over those Respondents and over their acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. As provided in said agreement, this proceed-

ing as to Respondents Sanford A. Specht and Annette Specht will be otherwise disposed of. Therefore,

It is ordered, That Respondents Pressing Supply Company, a corporation, and Ironfast Products Company, a corporation, and their officers, and Jerome Silk and Sidney Cozen, individually and as officers of said corporations, and Respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of ironing board covers or other merchandise, in commerce, as "commerce" is defined in the Federal trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, in any manner, that any amount is the usual and regular retail price of merchandise when such amount is in excess of the price at which said merchandise is usually and regularly sold at retail in the trade area or areas where the representation is made;

2. Putting any plan into operation whereby retailers or others may misrepresent the usual and regular retail price of merchandise.

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 25th day of July 1961, become the decision of the Commission; and, accordingly:

It is ordered, That Respondents Pressing Supply Company and Ironfast Products Company, corporations, and Jerome Silk and Sidney Cozen, individually and as officers of said corporations, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

STANLEY JEDRYSIK ET AL., TRADING AS HUMBOLDT FURRIERS

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

Docket 8326. Complaint, Mar. 15, 1961—Decision, July 27, 1961

Consent order requiring Batavia, N.Y., furriers to cease violating the Fur Products Labeling Act by failing to set forth the term "Persian-broadtail Lamb" on labels and invoices as required, and by failing in other respects to comply with labeling and invoicing requirements.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Stanley Jedrysik and Eunice Jedrysik, individuals and copartners trading as Humboldt Furriers, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Stanley Jedrysik and Eunice Jedrysik are individuals and copartners trading as Humboldt Furriers, with their office and principal place of business located at 202 East Main Street, Batavia, New York.

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

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

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

(a) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in abbreviated form in violation of Rule 4 of said Rules and Regulations.

(b) The term "Persian-broadtail Lamb" was not set forth in the manner required, in violation of Rule 8 of the Rules and Regulations.

(c) 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.

(d) 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 Section 29(b) of said Rules and Regulations.

(e) 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.

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

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

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

(a) 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 term "Dyed Mouton-processed Lamb" was not set forth in the manner required in violation of Rule 9 of said Rules and Regulations.

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

PAR. 7. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices under the Federal Trade Commission Act.

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

Darch & Noonan, by *Mr. Millard J. Noonan*, Batavia, New York, for the respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on March 15, 1961, charging Respondents with violation of the Federal Trade Commission Act, and of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, by misbranding and falsely and deceptively invoicing certain of their fur products.

Thereafter, on May 17, 1961, Respondents, their counsel, and counsel supporting the complaint herein entered into an Agreement Containing Consent Order To Cease And Desist, which was approved by the Director and Assistant Director of the Commission's Bureau of Litigation, and thereafter, on May 31, 1961, submitted to the Hearing Examiner for consideration.

The agreement identifies Respondents Stanley Jedrysik and Eunice Jedrysik, who signed said agreement as Stanley J. Jedrysik, Jr., and Eunice M. Jedrysik, respectively, as copartners trading as Humboldt Furriers, with their office and principal place of business located at 202 East Main Street, Batavia, New York. A certificate executed by counsel for Respondents, and attached to and made a part of the agreement, attests the fact that the Respondents as named in the complaint, and as signatory to the agreement, are the same persons.

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.

Respondents waive any further procedure before the Hearing Examiner and the Commission; the making of findings of fact and 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. All parties agree 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 order to cease and desist, as contained in the agreement, when it shall have become a part of the decision of the Commission, 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; that the complaint herein may be used in construing the terms of said order; and that the agreement is for settlement purposes only and does not constitute an admission by Respondents that they have violated the law as alleged in the complaint.

After consideration of the allegations of the complaint, and the provisions of the agreement and the proposed order, the Hearing Examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the Hearing Examiner accepts the Agreement Containing Consent Order To Cease And Desist; finds that the Commission has jurisdiction over the Respondents and over their acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

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

1. Misbranding fur products by:

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

B. Setting forth on labels affixed to fur products:

(1) Information required under § 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form;

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

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

C. Failing to set forth the information required under § 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder separately with respect to each section of fur products composed of two or more sections containing different animal furs;

D. Failing to set forth the term "Persian Broadtail Lamb" where an election is made to use that term instead of Lamb;

E. Failing to set forth the item number assigned to a fur product;

2. Falsely or deceptively invoicing fur products by:

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

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

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

D. Setting forth required information in abbreviated form.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

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

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

IN THE MATTER OF

BROWNING KING & COMPANY, INC., ET AL.

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

Docket 7060. Complaint, Feb. 7, 1958—Decision, Aug. 2, 1961

Order requiring Philadelphia men's and boys' clothing manufacturers, operating a chain of retail stores in various States, to cease violating the Wool Products Labeling Act by labeling as "All Wool", men's sport coats which contained a substantial percentage of non-woolen fibers; by tagging sport coats with a high and a low price, thereby representing falsely that the low price was a reduction from the usual retail price which was, in fact, wholly fictitious; and by failing in other respects to comply with labeling requirements.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the

authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Browning King & Company, Inc., a corporation, and A. Benjamin Wilkes and Jack Hirsh, individually and as officers of said corporation, and Joseph Wilkes and same said A. Benjamin Wilkes, individually and as co-partners, trading as Ben Wilks Co., hereinafter referred to as respondents, have violated the provisions of said Acts, and the Rules and Regulations promulgated under said 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, Browning King & Company, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Pennsylvania, with its principal place of business located at 227 North Broad Street, Philadelphia, Pennsylvania.

The individual respondents, A. Benjamin Wilkes and Jack Hirsh are president and secretary-treasurer, respectively, of the corporate respondent, and have business offices at the same address as the corporate respondent. These individual respondents, formulate, direct and control the acts, policies and practices of the corporate respondent, Browning King & Company, Inc.

The individual respondents, Joseph Wilkes, and the same said A. Benjamin Wilkes, are co-partners doing business as Ben Wilks Co. with their address at the same address as the corporate respondent.

PAR. 2. Respondents are now, and for several years last past have been, engaged in the manufacture and sale, at retail. of men's and boy's clothing. Said clothing is retailed to the public through a chain of stores owned and operated by corporate respondent, Browning King & Company, Inc., who maintain retail stores in various states throughout the United States.

In the regular and usual course of their business respondents cause, and for the past several years have caused, their products, when sold, to be transported from their place of business in the State of Pennsylvania to purchasers thereof located in various other states, and the District of Columbia.

Respondents 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. Repondents' volume of business in said products in commerce has been and is substantial.

PAR. 3. In the course and conduct of their business respondents have been and are now engaged in substantial competition in com-

merce, with corporations, firms, partnerships and individuals likewise engaged in the manufacture, distribution and sale, of mens' and boys' clothing.

PAR. 4. Subsequent to the effective date of the Wool Products Labeling Act of 1939, and more especially since January of 1955, 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 the Wool Products Labeling Act of 1939, wool products, as "wool products" are defined therein.

PAR. 5. Certain of said wool products were misbranded by respondents within the intent and meaning of Section 4(a)(1) of said Wool Products Labeling Act and the Rules and Regulations promulgated under said Act, in that they were falsely and deceptively labeled or tagged with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products were men's sport coats labeled or tagged by respondents as consisting of "All Wool", whereas, in truth and in fact, said men's sport coats did not consist of all wool, but contained a substantial percentage of non-woolen fibers.

PAR. 6. Respondent further misbranded certain of said wool products within the intent and meaning of Section 4(a)(1) of said Wool Products Labeling Act by placing on tags attached to said wool products two prices, a high price and a low price, thereby representing that the high price was their usual and regular retail price and that the low price was a reduction from their usual and regular retail price. In truth and in fact, the higher prices listed by respondents were wholly fictitious as respondents had not sold said goods at the higher prices appearing on said tags.

Among such misbranded wool products were sport coats to which tags were attached stating the following:

1. Conqueror $60
   19.85
2. Conqueror $60
   19.70

PAR. 7. Certain of said wool products were further misbranded by respondents in that they were not stamped, tagged or labeled as required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act of 1939, and in the manner and form prescribed therein.

PAR. 8. The acts and practices of respondents as set out in Paragraphs Five through Seven were in violation of Wool Products

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

PAR. 9. In the course and conduct of their business and for the purpose of inducing the purchase and aiding and promoting the sale of their products in commerce, respondents have caused certain advertisements to be placed in newspapers of general circulation. By the use of these advertisements respondents have represented, directly or by implication, that they were offering products for sale at prices which were less than the prices at which said products were usually or regularly sold by them in the normal course of their business.

In addition, and likewise for the purpose of inducing the purchase of their products in commerce, respondents have placed two prices on tags attached to certain of their products, a high price and a low price. Respondents thus represented, by the prices set out on the tags, that they were offering products for sale at prices which were less than the prices at which said products were usually and regularly sold by them in the normal course of their business.

In both instances, in newspaper advertising and on the tags attached to their products, the higher prices represented by the respondents to be their regular or usual retail prices are fictitious prices, as respondents had not sold said certain goods in the regular or usual course of their business at said higher prices. Typical and among, but nowise limited thereto, of the statements made in the advertising and on the tags are the following:

A. Newspaper advertisements:

CONQUEROR imported fabric All Wool Sport Coats	our regular Price	$60	Reduced to only $30
SCOT-TEX Ivy Classic suits	our regular Price	$105	
	Reduced to only	$52.50	

B. Tickets

CONQUEROR $60
19.85
CONQUEROR $60
19.70

PAR. 10. The use by the respondents of the aforementioned false, misleading and deceptive statements and representations as alleged in Paragraph Nine has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the public into the erroneous and mistaken belief that such statements and representations were, and are true, and into the purchase of a substantial amount of respondents' products because of said erroneous and mistaken belief. As a result thereof trade has been unfairly diverted to respondents from their said competitors and injury has thereby been done to competition in commerce.

PAR. 11. The 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.

FINDINGS AS TO THE FACTS, CONCLUSIONS AND ORDER

The Federal Trade Commission issued its complaint against the above-named respondents on February 7, 1958, charging them with misbranding wool products in violation of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder and with engaging in unfair and deceptive acts and practices in violation of the Federal Trade Commission Act. The respondents' answer to the complaint was filed on April 17, 1958. Hearings were thereafter held before duly designated hearing examiners of the Commission and testimony and other evidence in support of and in opposition to certain allegations of the complaint were received into the record. In an initial decision filed January 27, 1961, the hearing examiner ordered that the complaint be dismissed.

The Commission having considered the appeal of counsel supporting the complaint from the initial decision and the entire record in this proceeding and having determined that the appeal should be granted in part and denied in part and that the initial decision should be vacated and set aside, now makes its findings as to the facts, conclusions drawn therefrom and order which, together with the accompanying opinion, shall be in lieu of the findings, conclusions and order contained in the initial decision.

FINDINGS AS TO THE FACTS

1. Respondent Browning King & Company, Inc., is a corporation organized and existing under and by virtue of the laws of

the State of Pennsylvania, with its office and principal place of business located at 227 North Broad Street, Philadelphia, Pennsylvania.

Said corporation operates men's retail clothing stores in Philadelphia, Florida and the District of Columbia. Respondent A. Benjamin Wilkes is president of the corporation and actively participated in the formulation, direction and control of its acts, policies and practices. Respondent Jack Hirsh was an officer and director of the corporation until March 4, 1960, but did not, as an individual, formulate, direct or control its practices or policies. The proceeding will be dismissed as to Jack Hirsh individually and as an officer of the corporation and as hereinafter used the term "respondents" will refer to the remaining respondents.

Respondent Joseph Wilkes and the same A. Benjamin Wilkes are co-partners doing business as Ben Wilks Co. with their address at the same address as the corporate respondent. Ben Wilks Co. is a manufacturer and jobber of men's clothing.

2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, respondents have introduced into commerce, sold, transported, distributed, delivered for shipment and offered for sale wool products in commerce, as "commerce" and "wool products" are defined in the Wool Products Labeling Act.

3. Certain of said wool products were misbranded in violation of Section 4(a)(1) of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder in that they were falsely or deceptively identified on labels or tags as consisting of "All Wool" when in fact said wool products did not consist of all wool, but contained a substantial percentage of non-woolen fibers.

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

5. In the course and conduct of their business, respondents are in competition, in commerce, with firms and individuals likewise engaged in the sale of wool products.

6. The charges in the complaint that respondents misbranded wool products in violation of Section 4(a)(1) of the Wool Products Labeling Act by placing fictitious prices on tags attached to said wool products and that respondents used fictitious prices in the advertising and tagging of their products in violation of the Federal Trade Commission Act are not sustained by the record and provision for the dismissal of said charges accordingly is included in the order appearing hereafter.

CONCLUSIONS

The aforesaid acts and practices of respondents, herein found, constitute misbranding of wool products and were in violation of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder, and constituted unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondents, Browning King & Company, Inc., a corporation, and its officers, and A. Benjamin Wilkes, individually and as an officer of said corporation, and Joseph Wilkes and A. Benjamin Wilkes, individually and as co-partners trading as Ben Wilks Co., or under any other name, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the offering for sale, or the sale, transportation, distribution or delivery for shipment in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of "wool products", as such products are defined in and subject to said Wool Products Labeling Act, do forthwith cease and desist from misbranding such products by:

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

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

It is further ordered, That the charges of Paragraph Six, Paragraph Nine and Paragraph Ten of the complaint be, and they hereby are, dismissed.

It is further ordered, That the complaint be, and it hereby is, dismissed as to respondent Jack Hirsh as an individual and as an officer of the respondent corporation.

It is further ordered, That the respondents named in the preamble of the order to cease and desist, 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.

OPINION OF THE COMMISSION

By KERN, *Commissioner:*

The complaint in this matter charges respondents with misbranding wool products as to fiber content and price in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder and with fictitious pricing in the advertising and labeling of their products in violation of the Federal Trade Commission Act. Counsel supporting the complaint has appealed from the hearing examiner's order dismissing the complaint and from the findings and conclusions on which the order is based.

The hearing examiner whose order is challenged did not hear the testimony of the witnesses in support of the complaint, having been designated to take the place of the original hearing examiner, who had retired, after counsel supporting the complaint had rested his case but prior to the reception of any evidence in defense of the charges. As a result of this substitution of hearing examiners, respondents filed a motion requesting a hearing *de novo* in this proceeding. In a somewhat unusual maneuver, the substitute examiner informed counsel by letter that he was of the opinion that the motion should not be granted subject to certain considerations. As stated in the letter, which is in evidence as Commission Exhibit 124 A and B, the substitute examiner was of the belief, after reviewing the record, that a question of credibility was raised with respect to the testimony of one of the Commission witnesses. He informed counsel that he proposed to resolve this problem by disregarding entirely the testimony of this witness and the exhibits which had been presented through him.

About five months after the date of the letter, one hearing was held before the substitute examiner to permit respondents to put in their defense. None of the witnesses who had previously testified were called as witnesses for any purpose at this last hearing. The substitute examiner formally ruled on the respondents' motion for a trial *de novo*, denying the same, in his initial decision.

It is clear from the substitute examiner's letter that he found it necessary to make a credibility evaluation with respect to one of the witnesses testifying in support of the complaint. It is equally obvious from the initial decision that the substitute examiner also made a credibility evaluation with respect to two other Commission witnesses who had conducted the investigation of the Browning King & Company, Inc., retail stores in Florida. In view of the conflict in the testimony of these two witnesses with that of the

individual respondent A. Benjamin Wilkes concerning pricing practices in the Florida stores, it was indeed incumbent upon the examiner to make such an evaluation. Moreover, it is clear that this evaluation constituted a material factor in the recommended decision of the substitute examiner. On the basis of the court's ruling in the *Gamble-Skogmo* case,[1] the substitute examiner, at some stage in this proceeding, should have seen and heard these three witnesses testify and his failure to do so was error. Accordingly, we can give no weight to the evidence adduced through these three witnesses in arriving at our decision.

The first issue presented by the appeal of counsel supporting the complaint is whether the hearing examiner erred in dismissing the misbranding charges. In substance, the complaint alleges that respondents deceptively labeled their wool products with respect to the character and amount of the constituent fibers therein in violation of Section 4(a)(1) of the Wool Products Labeling Act, and that said products were not labeled as required under Section 4(a)(2) which provides in part that the label must show the percentage of the total fiber weight of the wool products of wool and other fibers contained therein.

Both charges are fully sustained on this record. Three labels taken from a sport coat in the Browning King store in Washington, D.C., are in evidence as Commission Exhibits 67 a, b and c. One label with the Browning King name printed thereon bears the wording "All Wool." Another label, described as a fiber label, contains the wording "This garment contains ORLON 'The Miracle Fiber' Dupont-Virgin Yarn." The third label on the same garment, bearing the identification WPL 8576, gives the content of the garment as "65% Wool 35% Orlon." The Commission investigator, through whom these labels were introduced and whose credibility is not in question, testified that he noted approximately 166 coats so labeled. We agree with the hearing examiner that the fact that on said garments there was one label which correctly stated the wool and fiber content does not absolve the seller from responsibility for the other incorrect or incomplete labels. The Browning King label clearly violates both Sections 4(a)(1) and 4(a)(2).

The record also contains another label, Commission Exhibit 68, obtained by the same investigator from a coat in the Washington, D.C., store. This was the only label on the garment and the fiber content is stated thereon as "All Wool & Dacron." This label is

[1] *Gamble-Skogmo, Inc.* v. *Federal Trade Commission*, 211 F. 2d 106 (8th Cir. 1954).

deficient as it does not show the percentage of wool and Dacron in said garment as required by Section 4(a)(2). The investigator testified that he observed about 133 coats so labeled.

Although the hearing examiner concluded that respondent Browning King & Company, Inc., had misbranded wool products, he found in effect that the company had discontinued the practice. This is evidenced by his ruling in January, 1961, that since all of the evidence as to misbranding related to October, 1956, it would be an act of futility to require respondents to stop doing that which is not shown on the record to have been done since that time. Obviously, this is not a proper basis for a finding of abandonment which, as a defense, must be established by respondents.

The record is devoid of any evidence upon which to base a conclusion that the practices have been surely stopped with no likelihood of resumption. We have no express assurance from respondents that they will not resume such practices and there is no indication of any unusual circumstances which would support that conclusion. On the contrary, respondents' principal business remains that of selling those products the labeling of which was the occasion for the violations shown to exist. In view thereof and considering the nature of the violations, we cannot assume, as did the hearing examiner, that respondents have not engaged in the illegal practices since the date they were initially observed. In our opinion, an order to cease and desist is necessary to regulate respondents' present and future labeling practices.

Throughout this proceeding, respondents have contended that Joseph Wilkes and A. Benjamin Wilkes cannot be held responsible for any misbranding violations in their capacities as co-partners trading as Ben Wilks Co. The evidence discloses that the corporate respondent, Browning King & Company, Inc., which operates men's retail clothing stores in Pennsylvania, Florida and Washington, D.C., has its principal office at 227 N. Broad Street in Philadelphia, Pennsylvania. Ben Wilks Co. is engaged in manufacturing and jobbing men's clothing and is located at the same address. Joseph Wilkes is the sole stockholder and A. Benjamin Wilkes is the president of the corporate respondent. These two formulate, direct and control the acts, policies and practices of the corporation.

The clothing sold by Browning King retail stores is procured on consignment from Ben Wilks Co. As disclosed by the testimony of A. Benjamin Wilkes, the Browning King store in Washington, D.C., orders garments directly from Ben Wilks Co. After the garments are selected, the Browning King labels are placed thereon by

a Browning King employee while the garments are in the Ben Wilks warehouse. The garments are then shipped to the Washington store by Ben Wilks Co. Moreover, garments bearing the labels in question are interchanged between the Browning King stores in Philadelphia, Florida and Washington, D.C., with all shipments being handled by Ben Wilks Co. It is obvious, therefore, that Ben Wilks Co. has transported and distributed misbranded wool products in commerce within the intent and meaning of Section 3 of the Wool Products Labeling Act. Accordingly, the co-partners will be included in our order to cease and desist.

Counsel supporting the complaint has also appealed from the hearing examiner's ruling that the evidence fails to sustain the charge that respondents have used fictitious prices in the labeling and advertising of their products. As shown on the record, Browning King engaged in comparative two-price advertising in Florida and Philadelphia. Since we cannot consider the testimony of the three witnesses whose credibility was put in issue by the hearing examiner, the only evidence in support of the advertising charge consists of copies of the advertisements themselves, which are largely seasonal, together with copies of eleven invoices showing sales at the lower prices. We cannot base a finding of fictitious pricing on such evidence.

Browning King did not use comparative pricing in the advertising for its Washington, D.C., store. However, it did stamp in green ink on the Browning King label on all garments in the Washington store, a price which was considerably lower than the original price printed on said label. These garments had been brought into the Washington, D.C., store from its other stores by Browning King expressly for the purpose of selling said garments at a reduced price. Respondents admitted that they did not sell any garment at the higher of the two labeled prices in Washington, D.C.

Although the evidence does not support a finding that the advertising used by the Washington store is deceptive, it does not follow that the two price-labels used in that store do not have a capacity to induce customers to purchase garments so labeled in the mistaken belief that the higher prices are the Browning King usual and regular retail prices of the garments in the Washington area. However, in view of the state of the record, we are constrained not to make the latter finding here. There may be a question as to whether the complaint was drawn with sufficient particularity to justify consideration of the fictitious labeling charge within so narrow a compass. At all events, we do not deem it appropriate at this stage of the proceedings, everything here considered, to ap-

proach the case from that standpoint. Accordingly, we find that the charge of fictitious price labeling, as pleaded, has not been sustained.

The only issue remaining for our consideration is whether our order to cease and desist should include Jack Hirsh individually and as an officer of the corporate respondent. The record discloses that Hirsh was secretary-treasurer and one of the directors of the corporation at the time of the investigation and hearing in this matter, but was not a stockholder. His job was principally that of supervising the alteration department and inspecting the physical plant of the various retail stores. There is no evidence that Hirsh was responsible for or participated in the formulation, direction or control of the acts or practices of the corporation. Moreover, at the final hearing in this matter in November 1960, respondents' counsel introduced evidence showing that Hirsh had resigned as an officer and director of the corporation in March 1960, and it appears that he is no longer in the clothing business. Under the circumstances, the complaint will be dismissed as to respondent Jack Hirsh in his individual capacity and as an officer of the corporation.

To the extent set forth herein, the appeal of counsel supporting the complaint is granted but in all other respects it is denied. The initial decision is set aside and we are entering our own findings as to the facts, conclusions and order in conformity with this opinion.

IN THE MATTER OF

DECCA DISTRIBUTING CORPORATION

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

Docket 7830. Complaint, Mar. 18, 1960—Decision, Aug. 2, 1961

Order—following enactment of specific statutes which afford adequate protection to the public against the challenged practices—dismissing complaint charging New York City distributors of phonograph records with giving illegal "payola" to radio and television disc jockeys.

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 Decca Distributing Corporation, a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the

Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Decca Distributing Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its headquarters located at 445 Park Avenue, New York, New York.

PAR. 2. Respondent is a wholly owned subsidiary of Decca Records, Inc. The respondent is now, and for some time last past has been, engaged in the offering for sale, sale and distribution of phonograph records and other products manufactured by its parent corporation, Decca Records, Inc. and by other subsidiaries of Decca Records, Inc. including Coral Records, Inc. and Brunswick Radio Corporation. Respondent sells and distributes said phonograph records and other products through some five divisions and thirty-one branch offices located throughout the United States, to retail outlets and jukebox operators in various States of the United States.

In the course and conduct of its business, respondent now causes, and for some time last past has caused, the records its distributes to be shipped from one of its division headquarters or branch offices to purchasers thereof located in various other states of the United States, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in phonograph records in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of its business, at all times mentioned herein, respondent has been, and is now, in substanial competition, in commerce, with corporations, firms and individuals in the sale and distribution of phonograph records.

PAR. 4. After World War II, when television and radio stations shifted from "live" to recorded performances for much of their programming, the production, distribution and sale of phonograph records emerged as an important factor in the musical industry with a sales volume of approximately $400,000,000 in 1958.

Record manufacturing companies and distributors ascertained that popular disk jockeys could, by "exposure" or the playing of a record day after day, sometimes as high as six to ten times a day, substantially increase the sales of those records so "exposed". Some record manufacturers and distributors obtained and insured the "exposure" of certain records in which they were financially interested by disbursing "payola" to individuals authorized to select and "expose" records for both radio and television programs.

"Payola", among other things, is the payment of money or other valuable consideration to disk jockeys of musical programs on radio and television stations to induce, stimulate or motivate the disk jockey to select, broadcast, "expose" and promote certain records in which the payer has a financial interest.

Disk jockeys, in consideration of their receiving the payments heretofore described, either directly or by implication represent to their listening public that the records "exposed" on their broadcasts have been selected on their personal evaluation of each record's merits or its general popularity with the public, whereas, in truth and in fact, one of the principal reasons or motivations guaranteeing the record's "exposure" is the "payola" payoff.

PAR. 5. In the course and conduct of its business in commerce during the last several years, the respondent has engaged in unfair and deceptive acts and practices and unfair methods of competition in the following respects:

The respondent has negotiated for and disbursed "payola" to disk jockeys broadcasting musical programs over radio or television stations broadcasting across state lines, or to other personnel who influence the selection of the records "exposed" by the disk jockeys on such programs.

Deception is inherent in "payola" inasmuch as it involves the payment of a consideration on the express or implied understanding that the disk jockey will conceal, withhold or camouflage such fact from the listening public.

The respondent has aided and abetted the deception of the public by various disk jockeys by controlling or unduly influencing the "exposure" of records by disk jockeys with the payment of money or other consideration to them, or to other personnel which select or participate in the selection of the records used on such broadcasts.

Thus, "payola" is used by the respondent to mislead the public into believing that the records "exposed" were the independent and unbiased selections of the disk jockeys based either on each record's merit or public popularity. This deception of the public has the capacity and tendency to cause the public to purchase the "exposed" records which they otherwise might not have purchased and, also, to enhance the popularity of the "exposed" records in various popularity polls, which in turn has the capacity and tendency to substantially increase the sales of the "exposed" records.

PAR. 6. The aforesaid acts, practices and methods have the capacity and tendency to mislead and deceive the public and to hinder, restrain and suppress competition in the offering for sale, sale and distribution of phonograph records, and to divert trade unfairly to

the respondent from its competitors and substantial injury has thereby been done and may continue to be done to competition in commerce.

PAR. 7. The aforesaid acts and practices of respondent, as alleged herein, 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.

Mr. Arthur Wolter, Jr., and *Mr. John T. Walker* for the Commission.

Mr. Robert J. Feldman, New York, N.Y., for the respondent.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

On March 18, 1960, the Commission issued its complaint herein, charging the Respondent, which is a wholly-owned subsidiary of Decca Records, Inc., and is engaged in the offering for sale, sale and distribution of phonograph records and other products manufactured by its parent corporation and by other subsidiaries thereof, with violation of the Federal Trade Commission Act, in that Respondent has negotiated for and disbursed "payola", which consists of the payment of money or other valuable consideration to disk jockeys of musical programs on radio and TV stations, to induce the disk jockeys to select, broadcast, "expose" and promote certain records, in which the Respondent is financially interested, on the express or implied understanding that the disk jockeys will conceal the fact of such payment from the listening public.

On June 5, 1961, prior to the offering of any evidence herein, counsel supporting the complaint submitted a motion requesting that the complaint be dismissed without prejudice. In support of his request counsel supporting the complaint states that the Communications Act of 1934 has been amended in several particulars, and that, as a result of those amendments, he considers "the continued prosecution of this matter an unnecessary expenditure of time, effort and funds in determining the legality of the alleged practice, since the protection of the public interest is now fully assured by specific statute". Counsel for the Respondent offers no objection to the granting of this motion.

After considering the motion to dismiss, the law and amendments referred to herein, and the oral reply thereto of counsel for the Respondent, the Hearing Examiner accepts the reasons offered in support of the motion, and concurs in the opinion of counsel supporting

the complaint that the dismissal without prejudice of the complaint herein will be in the public interest. Therefore,

It is ordered, That the complaint herein be, and the same hereby is, dismissed without prejudice to the right of the Commission to initiate further proceedings against the Respondent, should future events so warrant.

DECISION OF THE COMMISSION

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 2d day of August 1961, become the decision of the Commission.

IN THE MATTER OF

NATIONAL DRUG PLAN, INC., ET AL.

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

Docket 8099. Complaint, Aug. 25, 1960—Decision, Aug. 2, 1961

Consent order requiring Washington, D.C., mail order sellers of drugs, prescriptions, and pharmaceuticals, to cease making false representations in advertising their comparative prices and savings for customers, and their services and operations, as in the order below specified.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that National Drug Plan, Inc., a corporation, and Aaron Abranson, 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 National Drug Plan, Inc., is a corporation duly organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 731 North Capitol Street, Washington 2, D.C. Respondent Aaron Abranson is President of the corporate respondent and Chairman of its Board of Directors. He dominates, controls and directs the policies, acts and practices of the respondent corporation, including the acts and practices hereinafter set out.

The address of the above individual respondent is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for several months have been, engaged in the advertising, offering for sale, sale and distribution of drugs, prescriptions and pharmaceuticals to the public usually by mail.

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 District of Columbia 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. In the course and conduct of their business, and for the purpose of inducing the sale of their products, respondents have made certain statements in their advertisements concerning their products. Among and typical of such statements are the following:

Save 25% to 50% on all your prescriptions and vitamins through membership in National Drug Plan.

* * * * * * *

You save because we operate on a volume basis.

* * * * * * *

Our registered pharmacists compound your prescriptions in ultra-modern regularly inspected pharmacies.

* * * * * * *

Only select Occupation Groups are Eligible.

* * * * * * *

No matter how great your needs for vitamins and prescriptions may become through the years we will fill your requests.

* * * * * * *

PAR. 5. By and through the aforesaid statements respondents represented, directly and by implication:

1. That they offer prescriptions and vitamin products at savings of 25% to 50% from the price which those participating in their plan would be required to pay if bought by them in their respective communities.

2. That such savings are possible because they operate on a volume basis.

3. That their prescriptions are compounded by their own pharmacists in inspected pharmacies.

4. That they sell only to select groups.

5. That they can and will fill all prescriptions.

PAR. 6. Said statements and representations were and are false, misleading and deceptive. In truth and in fact:

1. Purchasers cannot save any stated amount on prescriptions as costs of prescriptions differ in different localities depending upon the brand of drugs used and the amount added for professional services in compounding the prescriptions.

Purported savings claimed by respondents on vitamins are based upon fair trade prices. There are many localities where fair trade prices do not prevail and vitamins can be purchased for amounts substantially less than fair trade prices in such localities.

2. Proposed respondents do not operate on a volume basis.

3. Many of the prescriptions sold by proposed respondents are not compounded by them but are purchased from others. The District of Columbia does not inspect pharmacies.

4. Proposed respondents sell to everyone.

5. Respondents cannot fill prescriptions containing narcotics as these cannot be transported through the mails.

PAR. 7. 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 drugs, prescriptions and pharmaceuticals of the same general kind and nature as that sold by respondents.

PAR. 8. 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' product by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

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

Mr. Morton Nesmith for the Commission.

Respondents for themselves.

INTIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued August 25, 1960, charging the Respondents with using, in advertisements concerning their products, false, misleading and deceptive statements and representations which constitute unfair and deceptive acts and practices and unfair methods of competition in commerce, in violation of the Federal Trade Commission Act.

Thereafter, on June 9, 1961, Respondents and counsel supporting the complaint herein entered into an Agreement Containing Consent Order To Cease And Desist, which was approved by the Director and Assistant Director of the Commission's Bureau of Litigation, and thereafter, on June 14, 1961, submitted to the Hearing Examiner for consideration.

The agreement identifies Respondent National Drug Plan, Inc. as a Delaware corporation, with its office and principal place of business located at 731 North Capitol Street, Washington, D.C., and Respondent Aaron Abramson (erroneously named in the complaint as Aaron Abranson) as an officer of the corporate respondent, who formulates, directs and controls the policies, acts and practices thereof, his address being the same as that of the corporate respondent.

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.

Respondents waive any further procedure before the Hearing Examiner and the Commission; the making of findings of fact and 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. All parties agree 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 order to cease and desist, as contained in the agreement, when it shall have become a part of the decision of the Commission, 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; that the complaint herein may be used in construing the terms of said order; and that the agreement is for settlement purposes only, and does not constitute an admission by Respondents that they have violated the law as alleged in the complaint.

After consideration of the allegations of the complaint and the provisions of the agreement and the proposed order, the Hearing Examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the Hearing Examiner accepts the Agreement Containing Consent Order To Cease And Desist, finds that the Commission has jurisdiction over the Respondents and over their acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That Respondents National Drug Plan, Inc., a corporation, and its officers, and Aaron Abramson, individually and as an officer of said corporation, and Respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of prescriptions, vitamins, pharmaceuticals and drugs or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, that:

1. Any savings are afforded in the purchase of said products unless the price at which they are offered constitutes a reduction from the price at which such products are usually and customarily sold in the trade area where the representation is made;

2. Respondents operate on a volume basis;

3. Respondents compound all of the prescriptions filled by them; or that they compound any number or proportion of prescriptions filled by them which is not in accordance with the facts;

4. Their prescriptions are compounded in inspected pharmacies, unless such is the fact;

5. Respondents sell only to selected persons or groups;

6. Respondents can fill all types of prescriptions and ship them through the United States mails;

B. Misrepresenting in any manner the amount of savings available to purchasers of Respondents' prescriptions, vitamins, pharmaceuticals, drugs, or other products, or the amount by which the price thereof is reduced from the price at which they are usually and customarily sold by Respondents or their competitors in the normal course of their business.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

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

It is ordered, That respondents National Drug Plan, Inc., a corporation, and Aaron Abramson, 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

DOMINION BRIQUETTES & CHEMICALS, LTD., ET AL.

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

Docket 7937. Complaint, June 10, 1960—Decision, Aug. 4, 1961

Consent order requiring distributors in Palo Alto, Calif., to cease selling as "charcoal", briquets received from a company in Canada which manufactured them from lignite.

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 Dominion Briquettes & Chemicals, Ltd., a corporation, and Crawford Associates, Inc., a corporation, and Chester C. Crawford, Edmond A. Mathis and Ethel R. Crawford, individually and as officers of the latter 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 Dominion Briquettes & Chemicals, Ltd., is a Canadian corporation, organized, existing and doing business under and by virtue of the laws of Canada and the Province of Manitoba, in particular. Its office and principal place of business is located at 510 Electric Railway Chambers, Winnipeg, Manitoba. Its United States office is located at 4123 Dake Avenue, Palo Alto, California.

Respondent Crawford Associates, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its office and place of business located at 4123 Dake Avenue, Palo Alto, California. This corporate re-

spondent is the sales agent in the United States for corporate respondent Dominion Briquettes & Chemicals, Ltd.

Respondents Chester C. Crawford, Edmond A. Mathis and Ethel R. Crawford are officers of the latter corporate respondent and as such they formulate, direct and control the acts and practices thereof, including the acts and practices hereinafter set forth. Their address is the same as Crawford Associates, Inc.

PAR. 2. Respondents are now and for some time last past have been engaged in the offering for sale, sale and distribution of briquets manufactured from lignite by respondent Dominion Briquettes & Chemicals, Ltd. Sales to distributors and retailers in the United States are made by respondents, Crawford Associates, Inc., and the individuals named above, who arrange for the direct shipment of the briquets by Dominion Briquettes & Chemicals, Ltd., from its factory in Canada to the respective purchasers in various states of the United States and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their businesses, respondents are in competition, in commerce, with corporations, firms and individuals in the sale of briquets.

PAR. 4. In the course and conduct of their businesses, and for the purpose of inducing the sale of their briquets, the respondents have described such product as "charcoal" briquets.

PAR. 5. The public generally understands and believes that an article described as "charcoal" is made from wood. Respondents, through the use of the word "charcoal" as descriptive of, or in connection with, their product lead the public into the erroneous and mistaken belief that their product is made from wood, and into the purchase of substantial quantities of their said product by reason of said erroneous and mistaken belief.

As a consequence thereof substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and injury has thereby been, and is being, done to competition in commerce.

PAR. 6. The aforesaid acts and practices of respondents, as herein alleged, 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. John J. McNally and *Mr. Ames W. Williams* for the Commission.

Steinhart, Goldberg, Feigenbaum & Ladar, by *Mr. Joseph J. Carter*, San Francisco, Calif., for the respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on June 10, 1960, issued its complaint herein, charging the above-named respondents with having violated the provisions of the Federal Trade Commission Act in certain particulars, and respondents were duly served with process.

On May 18, 1961, there was submitted to the undersigned hearing examiner of the Commission, for his consideration and approval, an "Agreement Containing Consent Order To Cease And Desist", which had been entered into by and between respondents and counsel for both parties, under date of May 5, 1961, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

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

1. Respondent Dominion Briquettes & Chemicals, Ltd., is a Canadian corporation, organized, existing and doing business under and by virtue of the laws of Canada and the Province of Manitoba, in particular. Its office and principal place of business is located at 510 Electric Railway Chambers, in the City of Winnipeg, Province of Manitoba, Canada.

Respondent Crawford Associates, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and place of business located since February 1, 1961, at 903 North San Antonio Road, in the City of Los Altos, State of California.

Respondents Chester C. Crawford, Edmond A. Mathis and Ethel R. Crawford are individuals and are officers of respondent Crawford Associates, Inc., and formulate, direct and control the acts and practices thereof. Their business address is the same as that of Crawford Associates, Inc.

2. True copies of the complaint were sent by means of registered mail to respondent Dominion Briquettes & Chemicals, Ltd., at the offices of Crawford Associates, Inc., and at the principal office of

Dominion Briquettes & Chemicals, Ltd. at 510 Electric Railway Chambers, Winnipeg, Manitoba, Canada. Receipt thereof was duly acknowledged, but respondent Dominion Briquettes & Chemicals, Ltd. has filed special appearance in this proceeding.

3. Respondents Crawford Associates, Inc., and Chester C. Crawford, Edmond A. Mathis and Ethel R. Crawford, individually and as officers of said corporation, 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.

Respondent Dominion Briquettes & Chemicals, Ltd. does not admit the jurisdictional facts alleged in the complaint. Counsel supporting complaints states he cannot prove that the relationship between respondents Crawford Associates, Inc., Chester C. Crawford, Edmond A. Mathis, and Ethel R. Crawford as individuals and as officers of said corporation, and the respondent Dominion Briquettes & Chemicals, Ltd., is other than that of buyers and seller, respectively; and states further his knowledge and belief that since Dominion Briquettes & Chemicals, Ltd. has no agent in, and is not otherwise engaged in doing business in the United States, the said corporate respondent is not subject to the jurisdiction of the Federal Trade Commission.

4. This agreement disposes of all of this proceeding as to all parties and provides for dismissal of complaint against the corporate respondent Dominion Briquettes & Chemicals, Ltd.

5. Respondents waive:

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

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

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

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

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

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

9. The following order to cease and desist may be entered in this proceeding by the Commission without further notice to re-

spondents. When so entered it shall have the same force and effect as if entered after a full hearing. It may be altered, modified or set aside in the manner provided for other orders. The complaint may be used in construing the terms of the order.

Upon due consideration of the complaint filed herein and the said "Agreement Containing Consent Order To Cease And Desist", the hearing examiner approves and accepts this agreement; finds that the Commission has jurisdiction of the subject-matter of this proceeding and of all respondents herein except Dominion Briquettes & Chemicals, Ltd.; that the complaint states a legal cause for complaint under the Federal Trade Commission Act, against all respondents except Dominion Briquettes & Chemicals, Ltd., both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; that the order proposed in said agreement is appropriate for the just disposition of all the issues in this proceeding as to all of the parties hereto; and that said order therefore should be, and hereby is, entered as follows:

It is ordered, That respondents Crawford Associates, Inc., a corporation, and its officers, and Chester C. Crawford, Edmond A. Mathis and Ethel R. Crawford, individually and as officers of said corporate respondent, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of briquets manufactured from lignite, do forthwith cease and desist from describing or representing, directly or indirectly, that such product is charcoal, unless there is also set forth in a clear and conspicuous manner and in conjunction therewith, a disclosure that such briquets are manufactured from lignite.

It is further ordered, That the complaint herein be dismissed as to respondent Dominion Briquettes & Chemicals, Ltd.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

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

It is ordered, That respondents Crawford Associates, Inc., a corporation, and Chester C. Crawford, Edmond A. Mathis, and Ethel R. Crawford, individually and as officers of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the

manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

THE SORRELLS BROS. PRODUCE COMPANY, INC.

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

Docket 8059. Complaint, July 29, 1960—Decision, Aug. 4, 1961

Consent order requiring a commission merchant in Forest Park, Ga., dealing in citrus fruits and other food products, to cease receiving and accepting from suppliers, commissions on substantial purchases of food products for its own account for resale—such as a discount of 10 cents per 1⅗ bushel box of citrus fruit or a lower price reflecting brokerage from Florida packers—thus violating Sec. 2(c) of the Clayton Act.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly described, has been and is 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 The Sorrells Bros. Produce Company, 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 19–21 Building G, State Farmers Market, Forest Park, Georgia.

PAR. 2. Respondent is now, and for the past several years has been, engaged in business primarily as a wholesale grocer or commission merchant purchasing, selling and distributing citrus fruit, such as oranges, tangerines and grapefruit, as well as other products, all of which are hereinafter sometimes referred to as food products. Respondent purchases its food products from a large number of suppliers located in many sections of the United States.

PAR. 3. In the course and conduct of its business for the past several years, respondent has purchased and distributed, and is 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 respondent is located. Respondent transports or causes such food products, when pur-

chased, to be transported from the places of business or packing plants of its suppliers located in various other States of the United States to respondent who is located in the State of Georgia, or to respondent's 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 respondent and its respective suppliers or sellers of such products.

PAR. 4. In the course and conduct of its business for the past several years, but more particularly since January 1, 1959, respondent has been and is now making substantial purchases of food products for its own account for resale from some, but not all, of its suppliers, and on a large number of these purchases respondent 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 makes substantial purchases of citrus fruit from a number of packers or suppliers located in the State of Florida, and receives from the packers 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 respondent receives a lower price from the supplier which reflects said commission or brokerage.

PAR. 5. The acts and practices of respondent in receiving and accepting a brokerage or a commission, or an allowance or discount in lieu thereof, on its own purchases, 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).

Mr. Cecil G. Miles and *Mr. Basil J. Mezines* supporting the complaint.

Mr. Warren E. Hall, Jr., Bartow, Fla., for respondent.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

On July 29, 1960, the Federal Trade Commission issued a complaint against the above-named respondent, in which it was charged with violating § 2(c) of the Clayton Act, as amended (U.S.C. Title 15, § 13), by, among other things, receiving and accepting a brokerage or commission or an allowance or discount in lieu thereof, on its own purchases of food products which are sold and transported 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 respondent, as required by law.

Thereafter respondent agreed to dispose of this proceeding without a formal hearing, pursuant to the terms of an agreement dated June 12, 1961, containing consent order to cease and desist. The agreement was submitted to the undersigned hearing examiner on June 14, 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 respondent and contains the form of a consent cease-and-desist order which the parties have represented is dispositive of the issues involved in this proceeding. The agreement has been signed by the president of respondent corporation, its attorney, and by counsel supporting the complaint, and has been approved by the Director of the Bureau of Litigation of the Federal Trade Commission. In said agreement respondent admits all of the jurisdictional facts alleged in the complaint and agrees that the record may be taken as if findings of jurisdictional facts had been made in accordance with such allegations. In the agreement the respondent waives: (a) any further procedural steps before the hearing examiner and the Commission; (b) the making of findings of fact or conclusions of law; and (c) all rights respondent 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 respondent, 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 respondent that it has violated the law as alleged in the complaint.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing consent order, and it appearing that the order 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 The Sorrells Bros. Produce Company, 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 19–21 Building G, State Farmers Market, Forest Park, Georgia.

3. Respondent is engaged in commerce as "commerce" is defined in the Clayton Act.

4. The complaint filed herein states a cause of action against the respondent 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 respondent The Sorrells Bros. Produce Company, Inc., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the purchase of citrus fruit or produce 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 produce for respondent's own account, or where respondent is the agent, representative, or other intermediary acting for or in behalf, or is subject to the direct or indirect control, of any buyer.

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 June 20, 1961, accepting an agreement containing a consent order theretofore executed by the respondent and counsel in support of the complaint; and

It appearing that the first sentence in the initial decision purporting to summarize the charge in the complaint is in error; and that the initial decision contains a finding which is not based on the

aforesaid agreement and is, to that extent, at variance with such agreement; and

The Commission being of the opinion that these errors should be corrected:

It is ordered, That the initial decision be, and it hereby is, amended by striking from the eighth line of the first paragraph on page 2 of said decision the words "Federal Trade Commission and Clayton Acts", and by substituting therefor the words "Clayton Act".

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

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

It is further ordered, That respondent, The Sorrells Bros. Produce Company, Inc., a corporation, shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with the order contained in the aforesaid initial decision, as amended.

IN THE MATTER OF

CLAY FURS, INC., ET AL.

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

Docket 8306. Complaint, Mar. 6, 1961—Decision, Aug. 4, 1961

Consent order requiring New York City furriers to cease violating the Fur Products Labeling Act by setting forth on invoices the name of an animal other than that producing the particular fur, by failing to set forth tne term "Dyed Mouton processed Lamb" on invoices where required, and by failing in other respects to comply with invoicing and labeling requirements.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Clay Furs, Inc., a corporation, and Max Kramer, George Schneider and Max Greenberg, individually and

as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Clay Furs, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 224 West 30th Street, New York, New York.

Max Kramer, George Schneider and Max Greenberg are officers of the said corporate respondent and control, formulate and direct the acts, practices and policies of the said corporate respondent. Their office and principal place of business is the same as that of the said corporate respondent.

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

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

PAR. 5. Certain of said fur products were falsely and deceptively invoiced in that respondents set forth on invoices pertaining to fur products the name of an animal other than the name of the animal that produced the fur, in violation of Section 5(b)(2) of the Fur Products Labeling Act.

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) The term "Dyed Mouton processed Lamb" was not set forth where an election was made to use that term instead of Lamb in violation of Rule 9 of said Rules and Regulations.

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

PAR. 7. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

Mr. DeWitt T. Puckett supporting the complaint.

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

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

On March 6, 1961 the Federal Trade Commission issued a complaint charging the above-named respondents with misbranding and falsely and deceptively invoicing certain of their fur products in violation of the Federal Trade Commission Act and the Fur Products Labeling Act.

After issuance and service of the complaint the respondents, their attorney, and counsel supporting the complaint entered into an agreement for a consent order. The agreement is signed, among other persons, by "George R. Schneider". An affidavit has been submitted by George Schneider, stating that he is the George Schneider named in the complaint and has used and signed his name "George Schneider" and "George R. Schneider" interchangeably. The agreement has been approved by the Director and the Acting Assistant Director of the Bureau of Litigation. The agreement disposes of the matters complained about.

The pertinent provisions of said agreement are as follows: Respondents admit all jurisdictional facts; the complaint may be used in construing the terms of the order; the order shall have the same force and effect as if entered after a full hearing and the said agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission; the record herein shall consist solely of the complaint and the agreement; respondents waive the requirement that the decision must contain a statement of findings of fact and conclusions of law; respondents waive further procedural steps before the hearing exami-

ner and the Commission, and the order may be altered, modified, or set aside in the manner provided by statute for other orders; respondents waive any right to challenge or contest the validity of the order entered in accordance with the agreement and the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

The undersigned hearing examiner having considered the agreement and proposed order, hereby accepts such agreement, makes the following jurisdictional findings, and issues the following order:

JURISDICTIONAL FINDINGS

1. Respondent Clay Furs, Inc. is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 224 West 30th Street, in the City of New York, State of New York.

2. Respondents Max Kramer, George Schneider and Max Greenberg, are officers of said corporation. They formulate, control and direct the policies, acts and practices 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 hereinabove named and the proceeding is in the public interest.

ORDER

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

1. Misbranding fur products by:

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

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

2. Falsely or deceptively invoicing fur products by:

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

B. Setting forth on invoices pertaining to fur products the name or names of any animal or animals other than the name or names provided for in Section 5(b)(1)(A) of the Fur Products Labeling Act.

C. Failing to set forth the term "Dyed Mouton processed Lamb" where an election is made to use that term instead of Lamb.

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

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

SON-CHIEF ELECTRICS, INC., ET AL.

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

Docket 8307. Complaint, Mar. 6, 1961—Decision, Aug. 4, 1961

Consent order requiring distributors in Winsted, Conn., to cease preticketing electric household appliances with fictitious prices and supplying customers with catalog insert sheets and price lists which showed exaggerated amounts as "Retail" or "Suggested List" prices for the appliances, thus representing the excessive prices to be the usual retail prices.

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 Son-Chief Electrics, Inc., a corporation, and Donal Fitzgerald, Maurice F. Fitzgerald and Martin Fitzgerald, 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 Son-Chief Electrics, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut. Its office and principal place of business is located on Meadow Street, Winsted, Connecticut.

Respondents Donal F. Fitzgerald, Maurice F. Fitzgerald and Martin Fitzgerald are officers of the corporate respondent. These individuals formulate, direct and control the policies, acts and practices of the corporate respondent and their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for more than one year last past have been, engaged in the sale and distribution of electric household appliances to others who either sell to retailers for resale to the consuming public or who sell directly to the consuming public.

PAR. 3. Respondents cause and have caused their said electric household appliances when sold to be shipped from their place of business in the State of Connecticut to purchasers thereof, many of whom are located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained a substantial course of trade in said appliances in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. At all times mentioned herein, respondents have been, and are now, in direct and substantial competition with other corporations, firms and individuals engaged in the sale and distribution of similar electric household appliances in commerce.

PAR. 5. In the course and conduct of their business, and for the purpose of inducing the purchase of their electric appliances respondents have engaged in the practice of preticketing such appliances with the purported retail prices thereof. Respondents have also supplied their customers with catalog insert sheets and price lists which show the purported "Retail" or "Suggested List" prices of respondents said appliances.

PAR. 6. By means of the aforesaid preticketed prices, their catalog insert sheets and price lists, respondents have represented directly or by implication that the prices appearing thereon are the usual and regular retail prices of their appliances.

PAR. 7. The aforesaid statements and representations are false, misleading and deceptive. In truth and in fact the aforesaid preticketed prices and the "Retail" and "Suggested List" prices appearing on the said catalog insert sheets and price lists are fictitious and in excess of the usual and regular retail prices of said appliances.

PAR. 8. By the aforesaid practices respondents place and have placed in the hands of retailers the means and instrumentalies by and through which they may mislead and deceive the purchasing public as to the usual and regular retail prices of their said electric appliances.

PAR. 9. 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 and deceive 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' appliances by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitutes, 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. Edward F. Downs for the Commission.
Respondents for themselves.

INITIAL DECISION BY HERMAN TOCKER, HEARING EXAMINER

The complaint in this proceeding, issued March 6, 1961, charged the respondents, Son-Chief Electrics, Inc. (a corporation organized, existing and doing business under the laws of the State of Connecticut), and Donal F. Fitzgerald, Maurice F. Fitzgerald and Martin Fitzgerald (whose correct name is Martin D. Fitzgerald), individually and as officers of said corporation, all located on Meadow Street, Winsted, Connecticut, with violating the Federal Trade Commission Act by the use of false, misleading and deceptive pricing practices in connection with the offering for sale, sale and distribution of electric household appliances in commerce.

After the issuance of the complaint, respondents and counsel supporting the complaint entered into an agreement, containing consent

order to cease and desist, disposing of all the issues as to all parties to this proceeding. Martin D. Fitzgerald has certified that he is the Martin Fitzgerald named in the complaint and he has consented that such certification be made a part of the consent agreement. It is for this reason that the Hearing Examiner has included the "D." as part of the name of said Fitzgerald at the place where it appears in the consent order.

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

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

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

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

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

The Hearing Examiner has considered such agreement and the order therein contained, and, it appearing that said agreement and order provide for an appropriate disposition of this proceeding, the same is hereby accepted and, upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice, shall be filed; and, 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 respondents named herein, and that this proceeding is in the interest of the public, and issues the following order:

ORDER

It is ordered, That respondents, Son-Chief Electrics, Inc., a corporation, and its officers and Donal F. Fitzgerald, Maurice F. Fitz-

gerald and Martin D. Fitzgerald, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of electric household appliances or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, by means of preticketing, through the use of catalog insert sheets or price lists, or in any other manner, that any amount is the usual and regular retail price of merchandise when such amount is in excess of the price at which said merchandise is usually and regularly sold at retail in the trade area or areas where the representations are made.

2. Furnishing to others any means or instrumentality by or through which the public may be misled as to the usual and regular prices of respondents' merchandise.

3. Putting any plan into operation through the use of which retailers or others may misrepresent the usual and regular retail price of merchandise.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the Hearing Examiner shall, on the 4th day of August 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

SOPHIA MANDELBAUM TRADING AS MANDELBAUM'S FURS

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

Docket 8331. Complaint, Mar. 16, 1961—Decision, Aug. 4, 1961

Consent order requiring Buffalo, N.Y., furriers to cease violating the Fur Products Labeling Act by failing to comply with labeling and invoicing requirements.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Sophia Mandelbaum, an individual trading as Mandelbaum's 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. Respondent Sophia Mandelbaum is an individual trading as Mandelbaum's Furs with her office and principal place of business located at 1418 Hertel Avenue, 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 manufacture for introduction into commerce and in the sale, advertising, and offering for sale, in commerce, and in the transportation and distribution, in commerce, of fur products and has manufactured for sale, sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce, as the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act.

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

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

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

(b) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not set forth in the required sequence, in violation of Rule 30 of said Rules and Regulations.

693-490—64——14

(c) 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.

(d) 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. The aforesaid acts and practices of respondent, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

Mr. Michael P. Hughes for the Commission.

Silverberg and Silverberg, Buffalo, N.Y., by *Mr. Nathan Silverberg*, for respondent.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

The complaint in this proceeding issued March 16, 1961, pursuant to the provisions of the Federal Trade Commission Act charged the respondent Sophia Mandelbaum, an individual trading as Mandelbaum's Furs located at 1418 Hertel Avenue, Buffalo, New York, with violating the Fur Products Labeling Act and the Rules and Regulations issued thereunder by misbranding and falsely invoicing their fur products.

An agreement dated May 16, 1961, was presented to the hearing examiner on June 6, 1961, for the purpose of disposing of this proceeding without a formal hearing pursuant to Rules 3.21 and 3.25 of this Commission's Rules of Practice for Adjudicative Proceedings. The agreement has been signed by the parties and their counsel, and has been approved by the Bureau of Litigation of the Federal Trade Commission.

In and by said agreement the parties agree as follows:

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

2. The agreement disposes of all of this proceeding as to all parties.

3. Respondent waives:

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

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

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

4. 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.

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

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

7. The order to cease and desist approved and set forth in said agreement may be entered by the Commission without further notice to the respondent. When so entered such order shall have the same force and effect as if entered after a full hearing. The order may be altered, modified or set aside in the same manner provided for other orders. 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 of May 16, 1961, containing consent order, and it appearing that the order which is approved in and by said agreement disposes of all the issues presented by the complaint as to all of the parties involved, said agreement is hereby accepted and approved as complying with Sections 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 party and the subject matter of this proceeding, and this proceeding is in the public interest;

2. Respondent Sophia Mandelbaum is an individual trading as Mandelbaum's Furs with her office and principal place of business

located at 1418 Hertel Avenue, in the City of Buffalo, State of New York.

3. Respondent is engaged in commerce as "commerce" is defined in the pertinent statutes which are invoked by the complaint filed herein.

ORDER

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

1. Misbranding fur products by:

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

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

C. Failing to set forth the information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in the required sequence.

D. Failing to set forth separately on labels affixed 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.

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

2. Falsely or deceptively invoicing fur products by:

A. Failing to furnish invoices to purchasers of fur products showing in words and figures plainly legible all the information

required to be disclosed by each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

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

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

IN THE MATTER OF

GRAND GASLIGHT, INC., TRADING AS GRAND HANDKERCHIEF 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 8336. Complaint, Mar. 16, 1961—Decision, Aug. 4, 1961

Consent order requiring New York City distributors of textile fiber products to cease violating the Textile Fiber Products Identification Act by selling handkerchiefs which were not labeled with required information, and by furnishing false guaranties that their textile fiber 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 Grand Gaslight, Inc., a corporation, trading as Grand Handkerchief Company, and Samuel Ruderfer, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said 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:

PAR. 1. Grand Gaslight, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 123 Fifth Avenue, New York, New York. Said corporation employs the trade name Grand Handkerchief Company in its business operations.

Samuel Ruderfer is an officer of the said corporate respondent and formulates, controls and directs the acts, practices and policies of said respondent. His office and principal place of business 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, 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, textile fiber products, which had been advertised or offered for sale in commerce; 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 to wit: handkerchiefs 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. 4. The respondents have furnished false guarantees that their textile fiber products were not misbranded in violation of Section 10 of the Textile Fiber Products Identification Act.

PAR. 5. 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 handkerchiefs in commerce.

PAR. 6. 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 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. DeWitt T. Puckett for the Commission.
No appearance for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondents with certain violations of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, and the Federal Trade Commission Act. An agreement has now been entered into by respondents and counsel supporting the complaint which provides, among other things, that respondents admit all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

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

1. Respondent Grand Gaslight, Inc., is a New York corporation with its office and principal place of business located at 123 Fifth Avenue, New York, New York. Said corporation employs the trade name Grand Handkerchief Company in its business operations.

Respondent Samuel Ruderfer is an officer of said corporation. He formulates, controls and directs the acts, practices and policies of

said corporate respondent. His address is the same as that of the corporate respondent.

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

ORDER

It is ordered, That Grand Gaslight, Inc., a corporation, and its officers, and Samuel Ruderfer, 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, delivery for introduction, manufacture for introduction, sale, advertising or offering for sale, in commerce, or the transportation or causing to be transported, in commerce, or the importation into the United States of textile fiber products; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of textile fiber products which have been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of textile fiber products, whether in their original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber products" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by 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 guarantees that textile fiber products are not misbranded under the provisions of the Textile Fiber Products Identification Act.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

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