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

2. Failing to securely affix to or place on each product, a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner, each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

3. Failing to identify each of the fibers contained in such products by its common generic name.

It is further ordered, That respondents Einiger Mills, Inc., a corporation and its officers, and Jack H. Einiger, 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 fabric or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the character or amount of constituent fibers contained in such products on invoices or shipping memoranda applicable thereto or in any other manner.

It is further 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 this order.

IN THE MATTER OF

CHEMICAL COMPOUNDS, INC., ET AL.

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

Docket 8339. Complaint, Mar. 16, 1961—Decision, Dec. 21, 1961

Consent order requiring three individuals, formerly officers of a company liquidated before complaint issued, to cease representing falsely in advertising that their "STP" oil additive was "German developed", that they were its sole distributors, and that they had been selling it for 17 years.

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 Chemical Compounds, Inc., a corporation, and Ralph D. Ligett, Robert P. DeHart and James C. Hill, 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 Chemical Compounds, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal place of business located at 801 South 9th Street, St. Joseph, Missouri. Individual respondents Ralph D. Ligett, Robert P. DeHart and James C. Hill are officers of said corporate respondent; have the same address as that of the corporate respondent; and control, direct and formulate the acts, practices and policies of said corporate respondent, including those hereinafter set forth.

PAR. 2. Respondents are now, and for more than three years last past have been, engaged in the advertising, offering for sale, sale and distribution of an oil additive under the trade name of STP. Respondents ship, and cause to be shipped, their oil additive, when sold, from the State of Missouri to purchasers thereof 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 products 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 sales of their product, respondents have made certain statements and representations in magazines of national circulation, newspapers, brochures, circulars, radio, television and other media, some of which are furnished to retail dealers. Among and typical, but not all inclusive, of the statements and representations so made are the following:

German Developed
STP
ADD TO YOUR OIL

* * *

Add STP to your crankcase oil—and the genius of German science goes right to work. * * *

Miracle Product of German Science STP—product of German research genius.

Imported German Hydro-Carbons Magic STP.

MAGIC of German Science by STP.

* * *

New German developed super-lubricant. * * * Distributed in U.S.A. by Chemical Compounds, Inc., St. Joseph, Mo.

Millions of satisfied Users for 17 years.

Insist on these genuine German formulas at your service station. Distributors: Chemical Compounds, Inc. St. Joseph, Mo.

German developed—100% pure petroleum concentrate.

PAR. 4. Respondents, through the use of the aforesaid statements and representations, and others similar thereto, represent, directly and by implication, that:

1. Their product is a formula developed by a German scientist.

2. Their product is compounded in and imported from Germany.

3. They are the sole distributor of the oil additive, which they sell as STP, in the United States.

4. They have been in business for a period of at least 17 years, and they have been selling said product as STP during that period.

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

1. Respondents' product is compounded from a formula developed by United States companies.

2. Respondents' product is produced by companies in the United States.

3. Respondents are not the sole United States distributor of the oil additive they sell as STP; on the contrary, said oil additive is distributed by other corporations, firms and persons in the United States.

4. Respondents have not been in business for 17 years, nor have they been selling for 17 years the oil additive they now sell.

PAR. 6. By the aforesaid practices, respondents place in the hands of retailers means and instrumentalities by and through which they may mislead the public as to the above said representations of said oil additives.

PAR. 7. Respondents, at all times mentioned herein, have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of oil additives.

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. William A. Somers supporting the complaint.

Cravath, Swaine & Moore by *Mr. John R. Hupper*, of New York, N.Y., for C. D. Ligett (named in the complaint as Ralph D. Ligett), Robert P. DeHart and James C. Hill, individually.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

On March 16, 1961, the Federal Trade Commission issued a complaint charging that the above-named respondents in the course and conduct of their business and for the purpose of inducing the sale of their product had made certain statements and representations which are false, misleading and deceptive, in violation of the Federal Trade Commission Act.

On April 13, 1961, Counsel for Studebaker-Packard Corporation, informed the undersigned Hearing Examiner that on March 1, 1961, Studebaker-Packard acquired the entire Common Stock of Chemical Compounds, Inc. and requested additional time to, and including, May 15, 1961, in which to file an answer to the complaint.

On September 14, 1961, respondent C. D. Ligett (named in the complaint as Ralph D. Ligett and hereinafter referred to as Ralph D. Ligett), Robert P. DeHart and James C. Hill, as individuals, their attorneys and counsel supporting the complaint entered into an agreement for a consent order. The agreement states, among other things, that prior to the issuance of the complaint Studebaker-Packard Corporation purchased all outstanding stock of Chemical Compounds, Inc., the corporate respondent named in the complaint, and immediately thereafter caused the liquidation of the said corporate respondent. On the date of the acquisition of the said corporate respondent, the individual respondents Ralph D. Ligett, Robert P. DeHart and James C. Hill resigned as officers of said Chemical Compounds, Inc., and none of the above said individual respondents have since become officers of Studebaker-Packard Corporation as shown in the affidavit (attached to and made a part of the agreement) of Stanley B. Feur, Assistant Secretary of Studebaker-Packard Corporation.

The agreement recommends that the complaint be dismissed without prejudice as to corporate respondent Chemical Compounds, Inc., and respondents Ralph D. Ligett, Robert P. DeHart and James C. Hill as officers of the said corporate respondent, but not as individuals. Accordingly, the term "respondents" as hereinafter used refers to the above-named respondents in their capacity as individuals and not as officers. The agreement also recommends that Subparagraphs 1 of Paragraphs 4 and 5 of the complaint be dismissed as to all respondents.

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

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

JURISDICTIONAL FINDINGS

1. Respondents Ralph D. Ligett, Robert P. DeHart and James C. Hill are individuals with their offices located at 601 South 9th Street, St. Joseph, Missouri.

2. 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 C. D. Liggett (erroneously named in the complaint as Ralph D. Ligett), Robert P. DeHart and James C. Hill, individually, and their representatives, agents and employees, directly or through any corporate or other device, in connection with offering for sale, sale or distribution of oil additives, or any other related product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Misrepresenting, directly or by implication:

(a) The country of origin of their product.

(b) That they are the only distributor of the product in the United States; or in any other manner misrepresent their status as distributor of the product.

(c) The number of years in which they have been conducting their business.

(d) The time during which they have been selling their product.

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2. Placing any means or instrumentalities in the hands of others by and through which the public may be misled as to the inhibitions set forth in paragraph 1 of this order.

It is further ordered, That subparagraphs 1 of Paragraphs 4 and 5 of the complaint issued herein be, and they are hereby, dismissed as to all respondents.

Also, it is further ordered, That the complaint be, and it is hereby, dismissed as to respondent Chemical Compounds, Inc., and as to respondents Ralph D. Ligett, Robert P. DeHart, and James C. Hill as officers of respondent Chemical Compounds, Inc.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, published May 6, 1955, as amended, the initial decision of the hearing examiner shall, on the 21st day of December, 1961, become the decision of the Commission; and, accordingly:

It is ordered, That respondents C. D. Ligett (erroneously named in the complaint as Ralph D. Ligett), Robert P. DeHart and James C. Hill, individually, shall within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

ROBIN ROUSSEAU TRADING AS ALASKA SEW & FUR SHOP, ETC.

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

Docket C-49. Complaint, Dec. 21, 1961—Decision, Dec. 21, 1961

Consent order requiring a furrier in Spenard, Alaska, to cease violating the Fur Products Labeling Act by failing to show on labels the true animal name of the fur in fur products and to disclose when fur was dyed; and by failing to comply with 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 Robin Rousseau, hereinafter referred to as respondent, has violated the provisions of said Acts and the Rules and Regulation promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a preceeding 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. Robin Rousseau is an individual trading as Alaska Sew & Fur Shop and Bobbie's Fur Shop with their office and principal place of business located at 2905 Arctic Boulevard (Box 4626), Spenard, Alaska.

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, or 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 products" 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 the 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.

Among such falsely and deceptively invoiced fur products, but not limited thereto, were invoices which failed:

1. To show the true animal name of the fur used in the fur product.
2. To disclose that the fur contained in the fur products was dyed when such was the fact.

PAR. 5. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in that required item numbers were not set forth on invoices in violation of Rule 40 of said Rules and Regulations.

PAR. 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.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging violations of the Federal Trade Commission Act and the Fur Products Labeling Act, and the respondent named in the caption hereof having received notice of said determination and a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order an admission by the respondent of all the jurisdictional facts set forth in the complaint contemplated by such agreement, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Robin Rousseau is an individual trading as Alaska Sew & Fur Shop and Bobbie's Fur Shop with her office and principal place of business located at 2905 Arctic Boulevard, Spenard, Alaska.

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

ORDER

It is ordered, That Robin Rousseau, an individual trading as Alaska Sew & Fur Shop and Bobbie's Fur Shop, 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, 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. Failing to set forth the item number or mark assigned to a fur product.

It is further ordered, That the respondent 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 this order.

IN THE MATTER OF

BELL IMPORTING COMPANY ET AL.

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

Docket C-50. Complaint, Dec. 21, 1961—Decision, Dec. 21, 1961

Consent order requiring two associated sellers of men's and women's clothes, with headquarters in Mississippi City, Miss., and two branch stores in Biloxi—taking measurements of customers who made a selection from samples or swatches, and placing the filled-in orders with a tailor in the Crown Colony of Hong Kong, China, who shipped the completed garments to respondents—to cease violating the Wool Products Labeling Act by tagging as "Super Cashmere," "Cashmere," and "Mohair," men's coats and samples which contained a substantial quantity of other fibers, and failing to disclose on the labels the true generic names of the fibers present, the percentage thereof, and the registered identification number of the manufacturer; falsely representing various men's coats as entirely composed of vicuna, on invoices, shipping memoranda, etc.; and representing falsely that they manufactured their products and had a place of business in Hong Kong.

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 Bell Importing Company, a corporation, Crown Colony Shops, Inc., a corporation, and John E. Bell, Sr., Mary Canon Bell and John E. Bell, Jr., individually and as officers of said corporations, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Bell Importing Company and Crown Colony Shops, Inc., are each a corporation organized, existing and doing business under and by virtue of the laws of the State of Mississippi. Individual respondents John E. Bell, Sr., Mary Canon Bell, and John E. Bell, Jr., are President and Treasurer, Vice President, and Secretary, respectively, of each of the corporate respondents. Said individual respondents cooperate in formulating, directing and controlling the acts, policies and practices of the said corporate respondents, including the acts and practices hereinafter referred to. All respondents have their office and principal place of business at Texas Street and U.S. Highway 90, in Mississippi City, Mississippi. Respondents operate branch stores at the Buena Vista Beach Hotel and the Sun-n-Sand Hotel Court in Biloxi, Mississippi.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, and more especially since January, 1959, respondents have introduced into commerce, sold, transported, distributed, delivered for shipment, shipped, and offer for sale in commerce wool products, as the terms "commerce" and "wool product" are defined in the said Act.

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

Among such misbranded wool products, but not limited thereto, were men's coats and selling samples labeled and tagged by respondents as "Super Cashmere", "Cashmere" and "Mohair", whereas, in truth and in fact, said products contained a substantial quantity of fibers other than cashmere and mohair, respectively.

PAR. 4. 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 and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded wool products, but not limited thereto, were wool products with labels which failed: (1) to show the true generic names of the fibers present; (2) to show the percentage of such fibers; and (3) to show the name or registered identification number of the manufacturer or a person subject to Section 3 of the Wool Products Labeling Act.

PAR. 5. Certain of said wool products were misbranded in violation of the Wool Products Labeling Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Specimens or samples of wool products which were used to promote or effect sales of such wool products in commerce were not labeled or marked to show the information required under Section 4(a)(2) of the Wool Products Labeling Act and the Rules and Regulations thereunder, in violation of Rule 22 of the aforesaid Rules and Regulations.

(b) Labels attached to the wool products showed the content as "cashmere" or "mohair" without setting forth the actual percentages of the cashmere or mohair contained therein, in violation of Rule 19 of the aforesaid Rules and Regulations.

PAR. 6. The acts and practices of respondents as above set forth were in violation of the 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. 7. Respondents are now, and for some time last past, have been engaged in advertising, offering for sale, selling, and distributing men's and women's clothes, and other merchandise to the public. Respondents' said business, in the main, is that of taking orders from customers who call at their said place of business and make a selection from samples or swatches of the wool products desired and, after measurements are taken, the filled in order is then placed with a tailor in the Crown Colony of Hong Kong, China. Upon completion of the garment or garments by the aforesaid tailor, the same are shipped from the Crown Colony of Hong Kong, China, to respondents at their place of business in the State of Mississippi.

PAR. 8. In the course and conduct of their business, respondents have imported certain products into the United States, have caused said products to be delivered to respondents' place of business in the State of Mississippi, and have shipped said products from their place of business in the State of Mississippi to purchasers thereof 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 products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 9. Respondents in the course and conduct of their business, as aforesaid, have made statements on invoices, shipping memoranda, orders and other documents misrepresenting the fiber content of certain of their said products. Among and typical but not inclusive of such misrepresentations were statements representing certain articles of wearing apparel, namely men's coats, to be "vicuna", thus implying that the said products were composed entirely of the hair of the vicuna whereas in truth and in fact the fabric contained a predominant amount of fiber other than the hair of the vicuna.

PAR. 10. In the course and conduct of their business, and for the purpose of inducing the sale of their said products, respondents have made certain statements with respect to the nature, size and stature of their business in advertisements, in magazines of national circulation, and in circulars sent through the United States mails. Typical, but not all inclusive, of said statements and representations are those which portray the picture of a large three story building with the words "BELL IMPORTING CO., HONG KONG" appearing in large letters on two sides of the building above the second story, as well as over the main doorway entrance. The legend appearing above said picture is as follows:

> The Hong Kong establishment of the Bell Importing Company, where the imported fabrics are collected and the fine custom tailored clothes described in this article are created. All they need is your size, your selection and your mailing address.

PAR. 11. Through the use of the aforesaid statements and pictures, respondents thereby represent that they own, operate and control the factory in which their said clothing products are tailored and manufactured and that the same is located in the Crown Colony of Hong Kong.

PAR. 12. Said statements and representations are false, misleading and deceptive. In truth and in fact, respondents do not own, operate or control the factory in which their said clothing products are tailored and manufactured, nor do they have such a place of business in the Crown Colony of Hong Kong.

PAR. 13. There is a preference on the part of many members of the public to deal directly with a manufacturer, including the manufacturer of clothing, in the belief that by doing so, certain advantages accrue, including better prices.

PAR. 14. 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 wearing apparel of the same general kind and nature as that sold by respondents.

PAR. 15. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices as set out in Paragraphs Seven through Twelve 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 quanties of respondents' products 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. 16. The aforesaid acts and practices of respondents, as alleged in Paragraphs Seven through Twelve 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.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in the complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Bell Importing Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Mississippi, with its office and principal place of business located at Texas Street and U. S. Highway 90, in the city of Mississippi City, State of Mississippi.

Respondent Crown Colony Shops, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Mississippi, with its office and principal place of business located at Texas Street and U. S. Highway 90, in the city of Mississippi City, State of Mississippi.

Respondents John E. Bell, Sr., Mary Canon Bell, and John E. Bell, Jr. are officers of the said corporations and their address is the same as that of the said corporations.

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 Bell Importing Company, a corporation, Crown Colony Shops, Inc., a corporation, and John E. Bell, Sr., Mary Canon Bell, and John E. Bell, Jr., individually and as officers of said corporations, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce or the offering for sale, sale, transportation, distribution, delivery for shipment, or shipment in commerce, of wool products, as the terms "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding wool 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.

3. Falsely or deceptively stamping, tagging, labeling or otherwise identifying such products as "cashmere" or "mohair" without setting forth the actual percentages of the cashmere or mohair contained therein.

4. Failing to affix labels to samples, swatches or specimens of wool products used to promote or effect sales of wool 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 respondents Bell Importing Company, a corporation, Crown Colony Shops, Inc., a corporation, and John E. Bell, Sr., Mary Canon Bell, and John E. Bell, Jr., 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 articles of wearing apparel or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Misrepresenting the character and amount of constituent fibers contained in such products on invoices or shipping memoranda applicable thereto or in any other manner.

B. Representing in any manner, contrary to fact, that respondents own, operate, or control the factory in which such products are tailored or manufactured, or that respondents, have a place of business in the Crown Colony of Hong Kong.

It is further 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 this order.

IN THE MATTER OF

WHITE STAG MANUFACTURING CO.

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

Docket C-51. Complaint, Dec. 21, 1961—Decision, Dec. 21, 1961

Consent order requiring a manufacturer in Portland, Ore., to cease misrepresenting the usual prices and size of its sleeping bags by printing on attached labels and in catalogs a fictitious figure, in excess of the regular retail price, and stating on labels the "cut size" which was larger than the finished size of the bags.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the White Stag Manufacturing Co., a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent White Stag Manufacturing Co. is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Oregon, with its principal office and place of business located at 7 N.W. Front Avenue, in the City of Portland, State of Oregon.

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 sleeping bags to retailers for resale to the public.

PAR. 3. In the course and conduct of its business, respondent now causes, and for some time last past has caused, the said product, when sold, to be shipped from its place of business in the State of Oregon to retailers 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 said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondent, for the purpose of inducing the purchase of its product, has engaged in the practice of using fictitious prices in connection therewith, and misrepresenting the size thereof, by the following methods and means:

A. By attaching, or causing to be attached, tickets to its said sleeping bags upon which a certain amount is printed, and by distributing, or causing to be distributed, to retailers, catalogs describing, among other things, respondent's sleeping bags and containing a stated price for each, thereby representing, directly, or by implication, that the amounts so stated are the regular and usual retail price of said sleeping bags. Among and typical of the statements on the price tickets are the following:

PRICE $22.95
PRICE $31.95

Among and typical of the statements contained in respondent's 1960 catalog are the following:

LIST PRICE $22.95
LIST PRICE $31.95

In truth and in fact, said amounts appearing on the price tickets attached to said sleeping bags and appearing in said catalog, are fictitious and in excess of the usual and regular retail price of said sleeping bags.

B. By attaching, or causing to be attached, labels to its said sleeping bags stating the "cut size" of the sleeping bags, which is almost invariably larger than the actual size of the bag in question. The term "cut size", when used in the manner as alleged above, is confusing and tends to indicate that such a description is the actual size of the finished product. In truth and in fact, this is almost never the case, as the actual size of the finished product is smaller than the sizes set out on the labels.

PAR. 5. By the aforesaid acts and practices, respondent places in the hands of the uninformed or unscrupulous retailers means and instrumentalities by and through which they may mislead the public as to the size, and usual and regular price of said sleeping bag.

PAR. 6. In the course and conduct of its business, and at all times mentioned herein, respondent has been engaged in substantial competition, in commerce, with corporations, firms, and individuals in the sale of products of the same general kind and nature as that sold by respondent.

PAR. 7. The use by respondent 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 respondent's products by reason of said erroneous and mistaken belief.

PAR. 8. 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 methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5(a)(1) of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of the Federal Trade Commission Act, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent, White Stag Manufacturing Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oregon, with its office and principal place of business located at 7 N.W. Front Avenue, in the city of Portland, State of Oregon.

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

ORDER

It is ordered, That respondent White Stag Manufacturing Co., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the manufacture, offering for sale, sale or distribution of sleeping bags or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Advertising, labeling, representing in a catalog or otherwise representing the "cut size" or dimensions of material used in their construction, unless such representation is accompanied by a description of the finished or actual size, with the latter description being given at least equal prominence;

2. Misrepresenting the size of such products on labels or in any other manner;

3. Representing, directly or by implication, by means of pre-ticketing or by stating in a catalog, 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;

4. Furnishing to others any means or instrumentality by or through which the public may be misled as to the usual and regular retail price of respondent's merchandise;

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

6. Using the word "Price" or any other word or expression of the same import to describe or refer to the retail price of respondent's merchandise unless such price is the usual and regular retail price of said merchandise.

It is further 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 this order.

IN THE MATTER OF

RAPHAEL'S, INC., ET AL.

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

Docket C-52. Complaint, Dec. 21, 1961—Decision, Dec. 21, 1961

Consent order requiring a furrier in Mobile, Ala., to cease violating the Fur Products Labeling Act by failing to show on invoices the true animal name of the fur used in fur products and the country of origin of imported furs, and failing to maintain adequate records disclosing the facts upon which advertised price and value claims were based.

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 Raphael's, Inc., a corporation, and S. M. Bauer, 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 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. Raphael's, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its office and principal place of business located at 30 North Royal Street, Mobile, Alabama.

S. M. Bauer is an officer of the said corporate respondent and controls, formulates and directs the acts, practices and policies of the said corporate respondents. His 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, 1962, respondents have been and are now engaged in the introduction into commerce and in the sale, advertising, and offering for sale, in commerce, and in the transportation and distribution, in commerce, of fur products; and have sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act.

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

Among such falsely and deceptively invoiced fur products, but not limited thereto, were invoices pertaining to such fur products which failed:

1. To show the true animal name of the fur used in the fur product.

2. To show the country of origin of the imported furs used in the fur product.

PAR. 4. Respondents advertised fur products in the Mobile Press Register, a newspaper published in the city of Mobile, State of Alabama, and having a wide circulation in the said State and in various other states of the United States.

Respondents, in advertising fur products for sale as aforesaid, made claims and representations respecting prices and values of fur products. Said representations were of the types covered by Subsections (a), (b), (c) and (d) of Rule 44 of the Rules and Regulations promulgated under the Fur Products Labeling Act. Respondents, in making such claims and representations, failed to maintain full and adequate records disclosing the facts upon which such claims and representations were based in violation of Rule 44(e) of said Rules and Regulations.

PAR. 5. 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 and unfair methods of competition in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and the Fur Products Labeling Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in the complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Raphael's, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its office and principal place of business located at 30 North Royal Street, Mobile, Alabama.

Respondent S. M. Bauer is an officer of said corporation and his address is the same as that of said corporation.

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 Raphael's, Inc., a corporation, and its officers, and S. M. Bauer, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce of fur products; or in connection with the sale, advertising, offering for sale, transportation, or distribution of fur products which are made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Falsely or deceptively invoicing fur products by:

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

2. Making claims and representations of the types covered by Subsections (a), (b), (c) and (d) of Rule 44 of the Rules and Regulations promulgated under the Fur Products Labeling Act unless there are maintained by respondents full and adequate records disclosing the facts upon which such claims and representations are based.

It is further ordered, That 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 this order.

IN THE MATTER OF

HELBROS WATCH COMPANY, INC., ET AL.

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

Docket 6807. Complaint, May 21, 1957—Decision, Dec. 26, 1961

Order requiring New York City distributors of watches to many classes of customers including jobbers, premium users, industrial firms, wholesalers, mail order firms, credit jewelers, and house-to-house canvassers, to cease making such false statements concerning their watches—by means of tags and labels, promotional material, circulars, display sheets, advertising mats supplied to dealers, and otherwise—as "With Lifetime Ruby Jewels", "Water resistant", "Shock protected", and "Each watch is guaranteed to give you a lifetime of true time"; and to cease affixing to each watch or to the plastic container, price tags, and placing in the hands of dealers price lists, bearing fictitious amounts, represented thus as usual retail selling 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 the corporation and individuals named in the caption hereof and 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 Helbros Watch Company, 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 at 6 West 48th Street, New York, New York. Individual respondents William Helbein, Jack Diamond, Nat Prigozen, Larry Prigozen, Carl Avner, and Jack Nadel are president, vice president, vice president, vice president, treasurer, and secretary, respectively, of the respondent corporation, and have exercised and still exercise a substantial degree of authority and control over the policies, affairs, and activities of respondent corporation. Their offices and principal places of business are also located at 6 West 48th Street, New York, New York.

Par. 2. Respondents are now, and for more than two years last past have been, engaged in the sale and distribution of watches to many classes of customers, including jobbers, premium users, industrials for give-aways, wholesalers, mail order firms, credit jewelers and house to house canvassers.

Par. 3. In the course and conduct of their business, respondents cause, and have caused, their watches when sold to be transported from their place of business in the State of New York to purchasers located in various other states of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said watches in commerce between and among the various other states of the United States and District of Columbia.

Par. 4. In the course and conduct of their business respondents, for the purpose of inducing the sale of their watches, have made and have caused to be made certain statements with respect to said watches by means of labels, promotional material, circulars, display sheets, advertising mats supplied to dealers, and by other means, all of which were widely circulated and displayed throughout the United States to customers, prospective customers, and the purchasing public. Among and typical of such statements are the following:

With Lifetime Ruby Jewels
Water resistant
Shock protected
Each watch is guaranteed to give you a lifetime of true time

PAR. 5. Through the use of the foregoing statements and others of similar import and meaning not specifically set out herein, respondents represented, directly and by implication, that their watches contained ruby jewels, were shock proof, shock protected, water resistant, and guaranteed for life.

PAR. 6. The foregoing statements were and are false, misleading and deceptive. In truth and in fact, said watches do not contain ruby jewels but contain jewels composed of a synthetic material, not natural rubies; are not shock proof, shock protected, or water resistant; and are not actually guaranteed for life in every respect. The so-called guarantee provides for the payment of a charge for servicing after one year. The terms, conditions, and extent to which such guarantee applies and the manner in which the guarantor will perform thereunder are not disclosed in the advertising material.

PAR. 7. Respondents, before shipping their watches to purchasers thereof affix price tags to each watch. Respondents also place price lists in the hands of their dealers. By means of these tags and price lists, respondents represent that the amounts appearing thereon are the usual and regular retail prices for said watches. 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 said watches are usually and regularly sold at retail.

PAR. 8. By means of the acts and practices set out in Paragraph Seven, respondents place a means and instrumentality in the hands of retailers and others by and through which the purchasing public may be misled as to the prices at which their watches are usually and regularly sold at retail.

PAR. 9. In the course and conduct of their business respondents were and are now in direct and substantial competition with other corporations, and with firms and individuals engaged in the sale of watches in commerce.

PAR. 10. The use by respondents of the foregoing false and misleading statements and representations had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were true and to induce the purchasing public to purchase substantial quantities of said watches because 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. 11. The aforesaid acts and practices of the 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. Kent P. Kratz supporting the complaint.

Mr. George J. Feldman [1] and *Silver, Saperstein & Barnett*, by *Mr. Isaac M. Barnett*, of New York, N.Y., for respondents.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

STATEMENT OF PROCEEDINGS

The Federal Trade Commission issued its complaint against the above-named respondents on May 21, 1957, charging them with having engaged in unfair and deceptive acts and practices and unfair methods of competition, in commerce, in violation of the Federal Trade Commission Act by, (a) representing, contrary to fact, that their watches contained ruby jewels, were shock proof, shock protected, water resistant, and guaranteed for life, and (b) representing, contrary to fact, that the amounts appearing on price tags and in price lists were the usual and regular retail prices for said watches. After being served with said complaint respondents appeared by counsel and subsequently filed their answers thereto denying, in substance, that they had misrepresented the qualities, guarantee or prices of their watches, but alleged that the representations that their watches contained ruby jewels and were shock protected had been discontinued long prior to the issuance of the complaint herein.

Pursuant to notice duly given, hearings were thereafter held before the undersigned hearing examiner, theretofore duly designated by the Commission to hear this proceeding, on various dates between February 25, 1958, and February 25, 1959, in New York, New York; Detroit, Michigan; Louisville, Kentucky; Washington, D.C.; and Cleveland, Ohio. At such hearings testimony and other evidence were offered in support of and in opposition to the allegations of the com-

[1] Attorney Feldman filed answer on behalf of respondents and appeared as co-counsel during the initial hearing, but later withdrew from active participation.

plaint, which testimony and other evidence were duly recorded and filed in the office of the Commission. The record herein consists of 1,028 pages of testimony and 141 exhibits. Both sides were represented by counsel, participated in the hearings, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. At the close of the evidence in support of the complaint counsel for respondents moved to dismiss the complaint for insufficiency of evidence and, pursuant to leave granted, memoranda were filed in support of and in opposition to said motion. Said motion was denied by order of the undersigned dated October 21, 1958, except as to the individual respondent Jack Nadel, as to whom said order provided that appropriate provision for dismissal would be made in the initial decision to be issued at the conclusion of this proceeding.

Proposed findings of fact, conclusions of law and order, together with supporting briefs or memoranda were filed at the conclusion of all the evidence by counsel supporting the complaint and counsel for respondents, on July 27, 1959. Due to the examiner's engagement in other proceedings, final disposition of this proceeding was unavoidably delayed.

After having carefully reviewed the entire record in this proceeding, and the proposed findings, conclusions and order,[2] and the supporting briefs and memoranda filed by the parties, the hearing examiner finds that this proceeding is in the interest of the public and, based on the entire record and his observation of the witnesses, makes the following:

FINDINGS OF FACT

I. The Business of Respondents, Interstate Commerce and Competition

1. Respondent Helbros Watch Company, Inc., is a corporation organized, existing and going business under and by virtue of the laws of the State of New York with its office and principal place of business located at 6 West 48th Street, New York, New York. The individual respondents, William Helbein, Jack Diamond, Nat Prigozen, Larry Prigozen, Carl Avner and Jack Nadel are president, executive vice president, vice president, vice president, treasurer and secretary, respectively, of the corporate respondent. Their offices and principal places of business are also located at 6 West 48th Street, New York, New York. The individual respondent Helbein, together with his wife, owns almost all of the stock of the corporate respondent. Respondents Nat Prigozen and Diamond each own approximately one percent of the stock of the corporate respondent. The other individ-

[2] Proposed findings not herein adopted, either in the form proposed or in substance, are rejected as not supported by the evidence or as involving immaterial matters.

uals named in the complaint own no stock in the corporate respondent. All of the individual respondents, except for respondent Jack Nadel, are members of an executive committee which formulates and controls the policies of the company concerning the matters covered by the complaint. Respondent Helbein, the principal owner and president, travels a great deal in connection with the business and while he is away his functions are assumed by respondent Diamond.

2. Respondents [3] are now, and for more than two years prior to the issuance of the complaint herein were, engaged in the sale and distribution of watches to many classes of customers, including jobbers, premium users, industrial firms, wholesalers, mail order firms, credit jewelers and house-to-house canvassers. In the course and conduct of such business, respondents cause, and have caused their watches, when sold, to be transported from their place of business in the State of New York to purchasers located in various other states of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein, have maintained a substantial course of trade in said watches, in commerce, between and among the various states of the United States and in the District of Columbia.

3. In the course and conduct of their business respondents were, and are now, in direct and substantial competition with other corporations and with firms and individuals engaged in the sale of watches in commerce.

II. The Alleged Illegal Practices

1. In the course and conduct of their business respondents, for the purpose of inducing the sale of their watches, have made, and have caused to be made, certain statements with respect to said watches by means of labels, tags, promotional material, circulars, display sheets, advertising mats supplied to dealers, and by other means, all of which were widely circulated and displayed throughout the United States to customers, prospective customers and the purchasing public. Among and typical of such statements are the following:

With Lifetime Ruby Jewels
Water Resistant
Shock Protected
Each watch is guaranteed to give you a lifetime of true time.

2. Through the use of the above statements and others of similar import respondents represented, directly and by implication, that their watches contained ruby jewels, were shock proof, shock protected and water resistant, and were guaranteed for life. While not conceding the falsity of the representations that their watches contained ruby

[3] The term "respondents" as hereafter used in this decision does not include the individual respondent, Jack Nadel.

jewels and were shock protected, respondents asserted in their answer that these representations had been discontinued prior to the issuance of the complaint herein, and that they had no intention of resuming them. With respect to the representations that their watches are water resistant and are guaranteed for life, respondents contend that such representations are truthful, and are not false and deceptive. Evidence was offered by counsel supporting the complaint purporting to show that all of the above representations made by respondents concerning their watches were false, misleading and deceptive, and that the statements that such watches contained ruby jewels and were shock protected had not been discontinued. The evidence with respect to the issues raised concerning the qualities of respondents' watches and the nature of the guarantee will be hereafter discussed.

3. Respondents, before shipping their watches to purchasers thereof, affix price tags to each watch or to the plastic box or case in which such watches are enclosed for display and sale purposes. Such price tags remain affixed to the watches or to the boxes in which they are enclosed when they are displayed by respondents' customers, for resale purposes, and at the time of such resale. Respondents also place price lists and other descriptive material in the hands of their dealers which contain the word "Retail" in referring to the prices of said watches. The prices identified as "Retail" correspond to the prices specified on the tags affixed to the watches or to the boxes in which they are enclosed. The price lists and descriptive material, or copies thereof prepared by respondents' customers from mats supplied by respondents, are exhibited or supplied to potential and actual purchasers by respondents' customers.

4. The complaint alleges, and respondents admit in their answer, that by means of the price tags and price lists respondents represent that the amounts appearing thereon are the usual and regular retail prices for their said watches. The issue raised concerning the price tags and price lists is whether the amounts appearing thereon were the amounts at which such watches usually and reguarly are sold at retail, or whether they were fictitious. Most of the evidence offered in support of and in opposition to the allegations of the complaint involved the charge that the preticketed prices were fictitious. The examiner turns first to a consideration of this issue, and then to the remaining issues in the proceeding.

A. Preticketing

1. While the primary issue raised with respect to the preticketing of respondents' watches is whether the prices appearing on the tags and price lists are fictitious, respondents in their brief have also raised

a subsidiary issue as to whether their practice in placing price tags on watches or watch cases, and in supplying price lists and other descriptive material, constitutes a representation that the prices appearing thereon are the usual and regular retail prices of their watches. As noted above, respondents admitted in their answer the allegation of the complaint that, by means of the price tags and price lists, respondents represented that the amount appearing thereon are the usual and regular retail prices of their watches. Outside of the price tags and price lists, counsel supporting the complaint offered no evidence as to the public understanding or impression concerning the significance of the information appearing on the price tags and price lists. Despite the admission in their answer, respondents now apparently contend that in the absence of evidence as to what the public understands such price tags and price lists to mean, no finding can be made that they constitute a respresentation as to the usual and regular retail sale prices of their watches. It is further asserted, based on the testimony of several dealer witnesses, that the indicated prices are merely a respresentation as to the "suggested retail" or "list" price of the watches.

2. In view of the admission contained in respondents' answer there was no necessity for counsel supporting the complaint to introduce consumer testimony concerning the understanding by the public of the terms used, and the practices followed, by respondents. Aside from this, however, there is no merit to respondents' position. The meaning and significance of the price tags affixed to the watches and of the price lists identifying the "Retail" prices of the watches are so plainly and unmistakable that it would be sheer redundancy to encumber the record with testimony of consumer or so-called public witnesses. The Commission is sufficiently expert in such matters to determine the tendency and capacity of these terms and practices to deceive the public without conducting a "public opinion" poll.[4] The Commission has already specifically determined that the affixing of a price tag to a product for use in connection with its sale or offer for sale to the public, without more, constitutes a representation as to the regular and usual retail price of the product.[5] It has never been seriously urged that the word "Retail", used as a prefix to the price of a product offered to the public, means anything other than what the plain meaning of the word says. In fact, even such references to price as "regular" or "usually" without the word "retail", have been held to constitute a representation

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[4] *Drew* v. *FTC*, 235 F. 2d 1735, 741 (CA 2, 1956).

[5] *The Orloff Company, Inc.*, 52 FTC 709; *Mo-Ro Hosiery Co.*, 53 FTC 862; *Neuville, Inc.*, 53 FTC 436; *Kay Jewelry Stores, Inc.*, 54 FTC 548; *The Berger Watch Co.*, Docket 6894, March 7, 1960; *Sun Gold Industries*, Docket 7414, May 10, 1960; *Branton Watch Co.*, Docket 7617, June 10, 1960; *Clinton Watch Co.*, Docket 7434, July 19, 1960; and *The Baltimore Luggage Company*, Docket 7683, March 15, 1961.

as to the regular and usual retail price of the product being offered for sale.[6] The testimony referred to by respondents as to the understanding of several dealer customers, who themselves did not resell respondents' watches at the preticketed prices, is valueless since the question at issue is not whether those who are experts or are sophisticated in the practices of the industry will be deceived, but whether "the public—that vast multitude which includes the ignorant, the unthinking, and the credulous who in making purchases, did not stop to analyze"—will be misled.[7]

3. It is concluded and found that by affixing price tags to their watches and watch cases, and supplying tags and price lists to their customers, respondents have represented and continue to represent that the amounts appearing thereon were and are the usual and regular retail prices of said watches.

4. The principal issue raised by respondents concerns the prices at which their watches are usually and regularly sold at retail. The allegation of the complaint is that the amounts appearing on the tags and price lists are fictitious and greatly in excess of the prices at which the watches are usually and regularly sold at retail. In the opinion of the examiner such allegation is clearly established by the overwhelming weight of the evidence. This conclusion is based on admissions made by respondent officials, as well as on the testimony of dealers in several different trade areas. The evidence offered by respondents fails to disprove the evidence offered in support of the complaint. A summary of the evidence offered in support of, and in opposition to, the complaint is set forth below.

5. As previously indicated, respondents' watches are distributed through various trade channels. A substantial percentage (estimated by respondent Avner at 40%) is distributed through so-called wholesale distributors, who sell watches, jewelry and a wide variety of other items through the medium of catalogs. A large part of the sales of these catalog houses is made to industrial concerns, who purchase the watches for use as prizes or awards to employees and others. In some instances the employees are permitted to purchase the watches for themselves through the catalogs. Some of the catalog houses make sales to non-industrial customers who purchase for personal use. In addition to the catalog distributors, respondents sell watches to so-called jobbers who resell to retailers and others. Some of the jobbers also sell to the public on a discount basis. These jobbers, it was estimated by respondent Avner, account for approximately 25% of respondents' sales. Another large class of respondents' customers

[6] *The Fair* v. *FTC,* 272 F. 2d 609 (CA 7, 1959) ; *Bankers Securities Corp.,* Docket 7039, December 1, 1960 ; and *Main Street Furniture, Inc.,* Docket 7786, November 16, 1960.

[7] *Positive Products Co., Inc.* v. *FTC,* 137 F. 2d 165, 167 (CA 7, 1942).

(estimated by the same respondent as accounting for 30% of respondents' sales) are persons or firms who engage in the house-to-house sale of watches and other items on a long-term credit basis to consumers. The balance of respondents' sales (estimated at about 5%) are made to retail jewelers.

6. Respondents sell different lines of watches, at different prices, to their catalog distributors, to house-to-house canvassers, and to jewelers. The watches all bear the Helbros trade name, but some of them contain additional name designations such as Carla, Aida, Lord Philip, Barnett, etc. Not only are the prices different for each of the lines, but there are different prices within each line.

7. In fixing the retail prices of their products, respondents admittedly have no ideas as to the prices at which the watches actually sell in a particular trade area. The price tags for a particular watch are identical in amount, irrespective of area, although the record does reveal one instance in which a watch with the same name bore two different price tags in the same area, viz, Washington, D.C. The amounts on the price tabs and in the price lists are based on a formula, in which the indicated retail price is computed as a multiple of the cost of the watch to respondents' customer. The prices are determined by a committee of respondents' employees. According to respondent Carl Avner, who is a member of the committee, the price formula used for watches sold to catalog houses is 2½ to 3 times the wholesale cost of the watch, and a similar formula is used for retail jewelers. For house-to-house canvassers the formula is four to five times the cost of the watch.

8. When interviewed by a Commission investigator prior to the issuance of the complaint in this proceeding, respondent Avner admitted on several occasions that in the overwhelming majority of instances the actual retail prices of his company's watches were considerably lower than the prices appearing on the price tags.[8] Respondent Larry Prigozen, who also participated in the interviews with the Commission investigator, likewise admitted that the prices at which respondents' watches were preticketed were substantially higher than the actual retail prices of the watches. Prigozen's justification for respondents' use of the price tags containing such prices was that the industry generally was engaging in a similar practice.

9. In addition to evidence in the nature of admissions made by various respondents (ante litem motam), counsel supporting the complaint offered the testimony of various of respondents' customers in

[8] While not purporting to quote Avner's exact words, the investigator's report of the interviews, made within a matter of days thereafter from notes taken during the interviews, stated that while Avner claimed that "in some instances the watches were actually sold at the suggested retail prices", he "conceded that in the overwhelming majority of instances the actual retail prices were considerably lower than the marked price" (R. 203).

several different trade areas as to the actual retail prices of respondents' watches. One of these was the operator of a jewelry and watch repair business in Newark, New Jersey, who sold at both retail and wholesale. The witness resold respondents' watches at a retail price which was double his cost, and approximately one-half of the price appearing on the price tag. Thus a watch cost him $17.50 was resold by him at $35.00 The retail price tag placed on the watch by respondents contained the price figure $62.50. While this witness considered his markup of 100% somewhat lower than that of some of his competitors in the area, he testified that competitive conditions were such that there would not be many who could get more than a 100% markup.

Counsel supporting the complaint also produced three of respondents' customers in the Detroit, Michigan area. Two of the witnesses were so-called catalog distributors, who resold Helbros watches to industrial accounts through catalogs. A number of their industrial accounts used the watches as prizes and incentive awards. However, the two catalog houses also made sales at retail to employees of their industrial accounts and to other persons. One of these estimated his firm's retail sales as representing at least 50% of its business. Both firms resold their Helbros watches at a markup ranging from 5% to 40% above their cost. The third Detroit witness was a so-called wholesale jeweler, who actually resold 75% of respondents' watches at retail on a discount basis. His company's markup was generally 15% above his cost. None of the three Detroit witnesses sold Helbros watches at anything approaching the amounts appearing on the price tags. So far as appears from the record, respondents' watches are sold in the Detroit area at retail prices substantially below those appearing on the price tags.

A third area from which counsel supporting the complaint called customer witnesses was Louisville, Kentucky, where he adduced testimony from (1) a so-called wholesale catalog distributor purchasing directly from Helbros, (2) a discount store in nearby New Albany, Indiana, who purchased watches from the first witness, and (3) a small jeweler and pawnshop in Louisville. Approximately half of the business of the catalog distributor was with industrial accounts, which used the watches and other products carried by the witness' firm as prizes and gifts. However, the so-called wholesaler also made substantial retail sales to employees of his industrial accounts and to other consumers. His usual price for Helbros watches was 33⅓% above his cost, plus $1.00, with some allowance for larger quantity purchases. His firm never resold the watches at the preticketed price. The discount store in nearby New Albany, Indiana, likewise never sold respondents' watches at the tag price, its markup generally being between 33% and 50% above its cost (which was about 12½% above the price its supplier paid Helbros). So far as appears from the record, none of respondents' watches sold at the preticketed prices in Louisville or nearby New Albany.

10. The testimony offered by respondents involved mainly house-to-house canvassers and credit jewelers in Washington, D.C. and Cleveland, Ohio, through which respondents established that some of their watches actually were resold at the tagged prices. These witnesses conduct a unique type of retail operation. They generally sell to a low-income clientele. They require little or no downpayment, and accept payment on an installment basis over a relatively long time-period, varying from 12 to 24 months or longer. No additional carrying charge is made for credit, and the retail price frequently includes the 10% Federal excise and state sales taxes, and repair of the watches without charge during the period of repayment. Losses on this type of operation due to bad debts or otherwise are extremely high, running as much as 25%. Operating overhead is likewise high due to collection costs, legal fees and repair costs. In order to be able to absorb all these added costs and operate at a profit, it was claimed to be necessary in this type of operation to sell at a markup of between 400% to 500%. One of the witnesses called in Cleveland was a jeweler who sold for cash, rather than on credit. However, while this witness generally resold respondents' watches at the preticketed prices, his retail prices included the Federal excise and state sales taxes.

11. In the opinion of the examiner the testimony adduced by respondents fails to establish that the prices appearing on the price tags and price lists are the usual and regular retail prices of their watches. The operations of the two groups of witnesses called by respondents in Cleveland and Washington, consisting mainly of house-to-house canvassers and credit jewelers, can hardly be called typical of retail operations generally. Several of the witnesses recognized that their type of operation differed from the ordinary department and jewelry stores which sell for cash or on 30-60-90-days credit terms. One of them acknowledged that watch companies sell a different line of watches, with a much higher price tag, for distribution through such long-term credit outlets, than those sold through the usual retail stores. Thus, according to this witness, the price tag markup on the regular retail line of watches of one watch company from which he bought was twice the cost of the watch, as against three times cost in the case of watches sold through credit jewelers. According to respondent Avner, the corporate respondent's own price tags on watches sold to retail jewelers provide for a 2½ time to three time markup, as compared to four-time markup on watches sold to house-to-house can-

vassers selling on credit. There is evidence in the record that even in the case of house-to-house canvassers, respondents' watches are sold below the ticketed price in somes areas.[9]

12. Respondents argue that the trend in the jewelery business is away from sales through ordinary retail stores selling for cash or on 30-60-90-day credit terms, and in the direction of long-term credit stores and the house-to-house type of operation. The evidence in the record fails to support any such finding. According to the testimony of respondent Avner, only 30% of respondents' sales are to house-to-house canvassers. The greatest portion of respondents' sales are to catalog distributors and discount houses who sell for cash, either to industrial accounts or directly to consumers. In any event, in the mind of the average consumer a price tag appearing on a watch would conjure up an image that this is the price at which the watch sells in a department store or ordinary retail jewelery store. It would hardly occur to him that the amount appearing thereon represents the price charged by long-term credit jewelers or house-to-house canvassers, operating on a 400% to 500% markup.

13. Respondents also argue that the evidence adduced by counsel supporting the complaint is not representative of retail establishments, in that it consists mainly of testimony by catalog house distributors and discount houses. Aside from the fact that a number of the witnesses did make a substantial part of their sales at retail, the witnesses called by counsel supporting the complaint were actually typical of respondents' own customers and of the type of establishment carrying respondents' watches. According to respondent Avner, 40% of the company's sales are made through catalog houses and an additional percentage is made through so-called wholesalers, a number of whom actually are discount houses. Approximately one-third of its sales are made to house-to-house canvassers, and only 5% to retail jewelers. Thus, the largest part of respondents' watches are sold to a type of operator who resells them to industrial accounts which give them away, or who resells the watches to the ultimate consumer at so-called discount prices.

14. Respondents, in effect, are seeking to justify a representation as to an unusually high and unrealistic retail price because a portion of their sales (the smaller portion) is made through a typical retail outlets whose unusual operating costs require them to use an unusually high markup. However, as previously indicated, respondents sell a different line of watches through credit establishments than they do through catalog distributors, retail jewelers and other cash establish-

[9] The jeweler called by counsel supporting the complaint from Northern New Jersey resold some of his watches to house-to-house canvassers, who in turn resold the watches at below the ticketed prices.

ments. Consequently, even if credit-type establishments do generally sell respondents' watches at the preticketed prices, this does not establish that the price tags used on watches distributed through cash-type outlets contain genuine retail prices. The evidence offered by counsel supporting the complaint clearly establishes that they do not.

15. Aside from all other considerations, respondents' argument must fail because it overlooks the fact that a price tag appearing on a watch constitutes a representation as to the retail price at which the watch usually and regularly sells in the market area where it is offered for sale. Even if it were to appear, contrary to the facts in the record, that the greater part of respondents' watches were resold nationally at the preticketed prices, this would not justify the use of such price tags in areas where they do not usually sell at the prices appearing on the tags.[10] The uncontroverted evidence adduced by counsel supporting the complaint establishes that in at least three areas, Northern New Jersey, Detroit, and Louisville, Kentucky and the adjacent New Albany, Indiana area, respondents' watches do not usually and regularly sell at retail at the prices appearing on the price tags or in the price lists supplied by respondents.

As previously indicated, respondent Avner conceded that the company had no idea of the prevailing prices in any area when it fixed the amounts appearing on the price tags. Respondents do not enter into any resale price maintenance agreements with their distributors or otherwise attempt to control the prices charged at retail. One of respondents' customers in Cleveland testified that he did not advise respondents what prices he resold the watches for, and that they made no inquiry from him as to the prices he charged. Respondents frequently furnish additional price tags to their dealers and have no idea whether such tags will be used on the watches for which they are intended, or on watches having a so-called higher list price. It seems clear, therefore, that it is pure happenstance that some dealers do in fact resell respondents' watches at the ticketed prices.

16. It is concluded and found that the representations made by respondents on the price tags and in the price lists supplied by them to customers in connection with the sale of their watches were and are false, misleading and deceptive. In truth and in fact the amounts set forth on such price tags and in such price lists were and are greatly

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[10] See *The Baltimore Luggage Company,* Docket 7683, March 15, 1961. In *The Baltimore Luggage* case it was pointed out by respondents that approximately 70% of their retail customers, located in 34 states and representing about 62.5% of their dollar volume of sales, sold their luggage at the preticketed prices. However, this was not considered controlling in view of the fact that respondents' customers in New York, Philadelphia and Washington usually and regularly sold their luggage in those trade areas for less than the price printed on the tags attached to the articles.

in excess of the prices at which respondents' watches are usually and regularly sold at retail in a number of trade areas.

B. Water Resistant

1. The complaint alleges, respondents admit in their answer, and the evidence establishes, that by means of labels, circulars, display and promotional material and other means respondents represent that their watches are "water resistant". The issue raised with respect to this representation is whether it is true. Counsel supporting the complaint offered evidence, through a testing engineer employed by an independent firm of metallurgical chemists which had tested four of respondents' watches, to show that the watches were not water resistant. Respondents offered evidence, through a representative of an independent testing laboratory which had tested seven of their watches, to show that such watches are water resistant. Each side questions the validity of some aspects of the tests conducted for the other. In the opinion of the examiner the allegations of the complaint with respect to lack of water resistancy have been adequately established by the evidence, for the reasons hereafter appearing.

2. Both tests were purportedly conducted in accordance with Rule 2(c) of the Commission's Trade Practice Rules, promulgated April 24, 1947, which provides for two different tests for the testing of watches or watch cases for water resistancy or water repellency. The first of the tests is the so-called "pressure" test, which provides for immersion in water of the watch or watch case for at least three minutes, at a pressure equivalent to a depth of 26 feet of water under normal atmospheric pressure of 15 pounds per square inch. The rule does not describe how the test is to be conducted to achieve this amount of pressure, but states that a watch or case will be deemed to have passed the test if it is subject to the indicated pressure "without admitting, or showing any evidence of capacity to admit, any moisture or water." The second test provided for in the rule is the so-called "vacuum" test. The specification for this test is that the watch or watch case be completely immersed in water "under a vacuum sufficient to be productive of conditions of equivalent or greater severity" than that involved in the pressure test. As in the case of the pressure test, the rule does not describe how the test shall be conducted to achieve the appropriate vacuum conditions.

3. The testing engineer who conducted the test at the instance of counsel supporting the complaint used the so-called vacuum test. He was supplied with four of respondents' watches bearing the names, respectively, Ludlow, Dempsey, Regency, and Sentinel. Each watch had been marked or otherwise labeled by respondents as "water resist-

ant". The watches had previously been purchased by a Commission investigator from a distributor of respondents' watches in Philadelphia. Each of the watches was taken off the shelf by the distributor and was represented as having been purchased from respondents a year and a half to two years prior thereto.[11]

4. Each of the watches was immersed by the tester in water in a beaker within a bell jar, and a vacuum equivalent to a mercury column of 22.95 inches high was drawn in the jar. This created an excess of air pressure within the watch case of 11.26 pounds per square inch, which is equivalent to the pressure caused by being subject to a depth of 26 feet of water under normal atmospheric pressure of 15 pounds per square inch. Although the test provided that the watches should remain immersed for at least three minutes without showing evidence of admitting water, each of the four watches began showing evidence of water leaking within less than a minute. The evidence took the form of air bubbles within the vaccum jar. So far as appears from the record, the tests were properly conducted by a person competent to conduct such tests, and established that the watches tested were not water resistant.

5. Respondents suggest in the brief filed on their behalf that there was some possible infirmity in the test due to the lack of prior experience in testing watches by the testing laboratory used by counsel supporting the complaint. Respondents' counsel also suggested, during the course of cross-examination of the witness, that the vacuum test was less accurate than the pressure test, and that the watches should have been opened up subsequent to the test to determine whether they contained any moisture. It is not clear whether these latter contentions have now been abandoned, since they are not referred to in the proposed findings or brief filed on behalf of respondents. In any event, none of the contentions advanced has any merit.

The person who conducted the test on behalf of counsel supporting the complaint had a B.S. degree in Metallurgy and had had 25 years experience in the testing of metals. While he had not previously tested watches, he had performed similar tests on vacuum tubes and other products to determine their water resistancy. He impressed the examiner as being highly competent and knowledgeable in the field. As far as comparative experience of the two experts is concerned, it may be noted that the sole prior experience in testing watches by respondents' expert involved a single occasion some six years prior to the tests in question. On that occasion he too had used the vacuum test, the tests conducted for respondents involving his

[11] The investigator had been instructed to obtain, for testing, watches which had been sold by respondents prior to the issuance of the complaint herein.

first use of the pressure test. With respect to the suggestion that the pressure test is more reliable than the vacuum test, it may be noted that respondents' expert conceded that, if properly conducted, the vacuum test was as accurate as the pressure test. While Rule 2 does not contain any specifications or details as to how the vacuum test should be conducted, a fact also adverted to by counsel for respondents during his cross-examination of the Government's expert, the same thing is true of the pressure test. In either case, the proper conducting of the test depends on the scientific knowhow and competency of the tester.

Counsel for respondents have also suggested that possibly there was something wrong with the watches tested because they were a year-and-a-half or two-years old at the time. However, there is nothing in the record to justify any inference that the watches had been subjected to any abuse or rough handling while they were in the establishment of the dealer from whom they were purchased by a Commission investigator, so as to cause an impairment of any water resistant qualities which they may otherwise have had when they were sold by respondents to the dealer. Certainly there is nothing to suggest that the watches were given any rougher treatment than they would have been subjected to if they had been given a year-and-a-half or two-years normal wear by a consumer who had purchased and worn them. Respondents' representation as to the water resistancy of their watches contains no limitation as to the time period within which they will retain this quality.[12]

6. The test conducted by respondents' expert was just the reverse of that conducted by the laboratory which had done the testing on behalf of counsel supporting the complaint. The watches were immersed in a sealed cylinder, but instead of the tester creating a vacuum by removing air pressure within the cylinder and allowing the normal pressure inside the watch to exert an outward flow, he built up an equivalent amount of pressure in the cylinder so as to force water into the watch case if there were any apertures in it. After being subjected to the appropriate pressure for three minutes, the watches were removed and placed in a refrigerated box under a temperature of minus 65 degrees. They were then placed in a laboratory oven under a temperature of 115 degrees. After being removed from the oven they were placed face upwards to see if there was any condensation of moisture on the watch crystals. According to respondents' expert he concluded the watches were water resistant because there was no moisture condensation on the crystals. Like the expert who conducted the test

[12] Under Rule 2(b) of the rules referred to above, if the water-resistant quality of a watch is likely to be impaired by being opened for repairs or by "customary use or wear of the watch", these facts are required to be revealed.

for counsel supporting the complaint, respondents' expert did not open the watches to examine them for moisture on the inside.

7. In evaluating the relative competence of the two experts and the manner in which the tests were conducted, it may be noted that respondents' expert has a B.S. degree in Chemical Engineering, while the expert used by counsel supporting the complaint has a B.S. degree in Metallurgy. The latter has had considerably longer experience in testing than the former (25 as compared to 10 years), and his experience has been concentrated in the field of metallurgy, whereas the expert used by respondents has had more generalized experience in the testing of products. While the expert used by counsel supporting the complaint had never previously tested watches for water resistancy, he had tested similar products and seemed thoroughly familiar with the techniques to be used and the scientific principles on which they were based. Respondents' expert, on the other hand, while he had previously conducted a test on watches, had actually used the vacuum test on the prior occasion, and did not appear to be too certain of all of the techniques used in the pressure test, nor as to the scientific basis of some of them. He himself had not actually conducted the test, but it had been performed under his general supervision. He was uncertain, for example, why the watches had to be placed in a cold box prior to being placed in the laboratory oven. While claiming that this was a "standard procedure which we have picked up from knowing the trade", it appears that this technique was suggested to him by the technician who actually conducted the test. The testimony of one of respondents' own officials indicates that the industry itself does not use this technique in testing watches for water resistancy, but merely places the watches in a hot oven after water immersion.

Respondents' expert conceded that validity of his tests depended on the assumption that the crystal of the watch cooled faster than the rest of the watch, so as cause condensation on it of any water which may have seeped into the watch. If there were no such difference in the rate of cooling, condensation would not occur on the crystal and it would not be possible to determine whether there was any moisture in the watch, except by opening it and examining the case and watch movements. While suggesting that condensation would be assured by the prior cold-box treatment, the witness was uncertain of the scientific basis for this assertion.[13] The test used by the expert called by counsel supporting the complaint, on the other hand, if properly

[13] When asked how the placing of the watches in a cold box prior to putting them in the oven would, as he claimed, "accentuate the action of the condensation in the oven", the witness gave the following illuminating explanation: "Well, you have got a good point there when you saw 'How.' The theory behind that, I believe, is to—by golly, you have got me there, now" [R. 684].

conducted, would give visible evidence of the lack of water resistancy in the watch by the emergence of air bubbles from the watch as it lay submerged under vacuum conditions.

Another element of doubt with respect to respondents' tests is the fact that all of the watches tested had been assembled only 24 to 48 hours prior thereto. They were thus in an optimum condition, insofar as water repellancy is concerned, having never been subjected to normal wear and tear, or movement of any kind. Some, at least, of the watches had previously been pretested for water resistancy in respondents' own place of business. Furthermore, most of the watches tested did not bear the same names as those that had previously been tested on behalf of counsel supporting the complaint.

8. As indicated above, there are a number of questions raised with respect to the tests conducted on behalf of respondents which create some doubt in the mind of the examiner whether the watches were properly tested for water resistancy, and whether the tests were conducted on watches which were similar to those tested by counsel supporting the complaint. The examiner finds it unnecessary, however, to reach any final conclusions in this regard. In order to sustain the allegations of the complaint that respondents have falsely represented their watches to be water resistant, it is not necessary to find that all or even a majority of their watches are not water resistant. If a group of watches selected at random are tested and are found not to be water resistant, the charge in the complaint has been established, even though other groups of watches may be found to be water resistant. Respondents have undertaken to make an affirmative representation concerning their watches and must bear the responsibility if this representation is not true with respect to "some" portion of the watches.[34]

9. Respondents argue that they have taken reasonable measures to insure that their watches are water resistant. Thus respondent Jack Diamond testified that the company spot-tested between 25% to 33⅓% of the watch cases for water resistancy after they were received, and that it was their practice to reject an entire lot of cases if any portion of those tested leaked. The same witness also testified that about 10% of the watches were tested for water resistancy after they had been assembled. In the opinion of the examiner, respondents cannot escape their responsibility to the public under the Federal Trade Commission Act merely because they have spot-tested a portion of their watches before they were offered for sale. If respondents wish to make an affirmative representation concerning the water-resistant qualities of their watches, they must test whatever percentage, or take whatever

[34] Compare *Prima Products Inc.* v. *FTC*, 209 F. 2d 405, 409 (C.A. 2, 1954).

other steps are necessary, to assure that they are making a truthful representation to the purchaser of their watches. It may be noted, in this connection, that the Trade Practice Rules under which respondents purported to test their watches contain no provision for so-called spot testing. They permit the use of the terms "Water Resistant" and "Water Repellant" in connection with a watch or watchcase "when, before being placed upon the market * * *, *the watch and the case have undergone such test*" (emphasis supplied).

10. It is concluded and found that the statements made by respondents on certain of their watches that said watches are water resistant are false, deceptive and misleading. In truth and in fact, some of said watches sold in the regular course of business are not water resistant.

11. It may be further noted that while the complaint charges misrepresentation only with respect to water resistancy, respondents have also represented their watches to be "waterproof". This representation appears on the back of some of the watches, and on tags and advertising literature used by respondents. Under the Trade Practice Rules previously discussed, "waterproof" implies a higher degree of imperviousness to water than does "water resistant". A watch marked as "waterproof" must be able to withstand a pressure of at least 35 pounds per square inch for at least 5 minutes, after complete immersion for a prior period of 5 minutes under atmospheric pressure of 15 pounds per square inch. Presumably respondents' watches which were unable to pass the test for water resistancy would be unable to pass the waterproof test.

C. Shock Proof and Shock Protected

1. The complaint alleges that respondents represented their watches to be "shock proof" and "shock protected". Respondents, in their answer, admit having used the term "shock protected" in connection with their watches, but allege that they discontinued use of the term "long prior" to the isuance of the complaint in this proceeding. It is not clear whether this admission also applies to the term "shock proof". In any event, the record discloses that the terms "shock proof" and "shock protected" have both been imprinted on the back of a number of respondents' watches, and also that the term "shock resistant" appears on tags which accompany many of respondents' watches. Contrary to the contention of respondents, all of these terms have continued to be used subsequent to the issuance of the complaint herein. For example, the record discloses that watches so marked were being sold by respondents' customers subsequent to May 21, 1957, the date of the issuance of the complaint in this proceeding, and that as late as November 1958 respondents were assembling watches for sale which

were marked as "shock proof" or "shock protected".[15] It is clear, therefore, that respondents have represented and continue to represent their watches to be shock proof, shock protected and shock resistant.

2. Aside from their claim of discontinuance, respondents also contend that their watches are, in fact, "shock protected" because they meet the requirements of Rule 3(c) of the Commission's Trade Practice Rules of April 24, 1947, previously referred to. The rule, it should be noted, does not authorize use of the term "shock protected". It does, however, permit the use of the terms "shock resistant" and "shock absorbing", in connection with watches containing a mechanical or other device or type of construction by reason of which "both balance pivots in such watch or watch movement are protected from shocks, concussions, jolts, or accidental blows of at least that degree of damaging potentialities as would be sustained by the balance pivots in the watch or watch movement when falling in an unprotected condition upon a level solid hardwood floor in any position from a height of three feet". Many of respondents' watches do contain a device for protecting the balance pivots, as provided in Rule 3(c). There is no evidence in the record that this device will not protect the balance pivots from such damage as is provided for in the rule.

3. In support of his contention that respondents falsely represented their watches to be "shock proof" and "shock protected", counsel supporting the complaint relies on the testimony of a jeweler who repairs watches and who purported to be familiar with the public's undersetanding of such terms. According to this witness, some of his customers believe that such terms mean the entire watch (not merely the balance pivots) is protected from shock, and that the watch will be able to withstand any type or amount of shock. The witness did indicate, however, that the average consumer would not expect a watch to withstand unusual or abnormal shocks or pressure.

4. Respondents characterize as "fantastic" the testimony of the witness called by counsel supporting the complaint, to the effect that some members of the purchasing public expect a watch represented as "shock proof" or "shock protected" to be able to withstand any shock, no matter how violent. Since there is no evidence that the watches will not withstand the type of shock specified under Rule 3(c) of the Commission's Trade Practice Rules, it is contended by respondents that the allegation of misrepresentation with respect to this charge has not been established.

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[15] Respondents' Exhibits 2, 3, 5, 6, 7 and 8, which were furnished to the New York Laboratory by respondents for testing for water resistancy, contain these representations. According to respondent Diamond, these watches had been selected at random from watches assembled during the preceding 24–48-hour period, prior to their being offered for sale.

5. In the opinion of the examiner, to the extent that the representations made by respondents are permissible under the Commission's Trade Practice Rules, it would not be in the public interest to hold that respondents have engaged in a practice in violation of the Federal Trade Commission Act. The examiner is aware that the Commission has held the trade practice rules "were not intended to be regarded and recognized as substantive rules of law, or as factual conclusions which might be cited or accepted in an adjudicative proceeding as a substitute for evidence", and that such rules were merely "designed to be helpful guides to the various industries for which they have been promulgated".[16] However, while the rules are not substantive rules of law and cannot be used as a substitute for evidence, they certainly were not intended to ensnare members of the industry for which they were promulgated and which have relied thereon. To the extent that respondents' representations concerning the ability of their watches to withstand shock comply with the rules, the examiner does not consider them to involve a misrepresentation, even though the witness called by counsel supporting the complaint testified that there are members of the public which expect watches labeled as having shock-resistant qualities to be able to withstand any amount of shock.

6. However, as previously indicated, the representations made by respondents extend beyond those which are permissible under the Trade Practice Rules. Rule 3(c) permits only the use of the terms "Shock Resistant" and "Shock Absorbing", to the extent the watches contain a device or are constructed to protect the balance pivots from a shock equivalent to that involved in dropping the watch on a hardwood floor from a height of three feet. Respondents' watches are labeled and branded not merely as "shock resistant", which is permissible under Rule 3(c), but also as "shock proof" and "shock protected". Under Rule 3(a) of the same Trade Practice Rules, the latter terms are specified as constituting an unfair trade practice and are not authorized under any circumstances.

7. Since respondents' watches are constructed or contain devices only to protect the balance pivots, and such construction or devices will not protect other portions of the watch, and since the watches are not able to withstand unlimited shocks, it is concluded and found that the representations that the watches are "shock proof" or "shock protected" are false, misleading and deceptive inasmuch as such watches are not, in truth and in fact, shock proof or shock protected. While respondents may regard as "fantastic" the testimony that some members of the purchasing public expect watches so labeled to withstand any type of shock, the testimony of the witness who so testified is not inherently incredible and there is no countervailing evidence in

[16] *Lifetime Cutlery Corp.*, Doc. 7292, October 30, 1959.

the record to justify disregarding such testimony. It is no more fantastic to believe that there are some persons who regard a watch labeled as "shock proof" to be able to withstand any type of shock, than it is to believe that there are some persons who might expect a masonry structure treated by a product labeled as "waterproof" will "remain absolutely dry under any and all conditions of water pressure from without." [17]

8. In connection with respondents' contention that they abandoned the term "shock protected" long prior to the issuance of the complaint, it may be noted that both in 1952 and 1955, respondents were advised in writing by the Commission that the use of the terms "shock protenced" and "shock proof" was in violation of the Trade Practice Rules. On both occasions respondents assured the Commission that these terms had been or would be discontinued. Despite these assurances, respondents continued to use them. It seems evident, therefore, that only a cease and desist order will assure effective discontinuance of these terms.

D. Ruby Jewels

1. The complaint alleges, and the answer admits, that respondents represent their watches as containing "Lifetime Ruby Jewels". However, in their answer respondents aver that this representation was discontinued "long prior" to the issuance of the complaint and that they have no intention of resuming it. The evidence establishes that the representation was not abandoned "long prior" to the issuance of the complaint, but that it continued to be made at least until July 1957 (the complaint herein having been issued May 21, 1957).

2. The matter of respondents' use of the term "Ruby Jewels" in connection with their watches was first called to respondents' attention by the Commission in a letter dated July 22, 1955, advising respondents, among other things, of the Commission's understanding that "genuine ruby jewels are not currently being used in [your] watches, but that instead jewels are composed of synthetic rubies" (CX 35-A). By letter dated August 1, 1955, respondent Avner replying on behalf of the corporate respondent, stated that "immediate steps" would be taken to remedy this practice, among the others referred to in the Commission's letter. A letter from the Commission dated August 11, 1955, requesting copies of respondents' revised advertising material was met with the response by respondent Avner that, "the word 'ruby' has been deleted from all of our advertising material" (CX 40-A). Despite these assurances, respondents continued using the term "ruby jewels" in their advertising material until at least July 1, 1957.

[17] See *Prima Products, Inc. v. FTC*, supra.

Advertising material which was placed in the plastic cases containing respondents' watches, until at least July 1, 1957, contained the statement: "The ruby jewels in each Helbros movement are guaranteed, without qualification for the life of the watch."

3. It is not disputed that respondents' watches do not contain genuine ruby jewels. It is therefore concluded and found that respondents' representations that their watches contain ruby jewels are false, misleading and deceptive since in truth and in fact they do not contain ruby jewels, but contain jewels composed of synthetic material. Respondents contend that since the term was abandoned around July 1, 1957, no order to cease and desist with respect to this practice should issue. In view of the prior assurances given and not fulfilled by respondents in this and other respects, it is clear that only by placing respondents under an express prohibition in a cease and desist order will compliance with their reponsibility to the public be assured.

E. Guarantee

1. It is not disputed that in catalog pages, circulars and other advertising literature respondents use the phrase: "Each watch is fully guaranteed to give you a lifetime of true time". In addition to this statement appearing in their advertising literature, respondents also insert a purported form of guarantee in each watch box entitled "Helbros Watch Guarantee". The form used up to about July 1, 1957, read as follows:

This Helbros watch is fully guaranteed as to original material and workmanship. It has been timed, tested and adjusted by the Helbros Watch Co., Inc.

The form of guarantee which has been used since July 1957 is as follows:

The Helbros Watch Company certifies that this watch has been carefully tested and regulated and is fully guaranteed against original mechanical defects.

2. Counsel supporting the complaint contends that respondents' statement in advertising material that their watches are "fully guaranteed to give a lifetime of true time" is a representation that the watches are unconditionally guaranteed for life. Respondents contend that such representation should be interpreted as being coextensive with the more recent written guarantee contained in the watch box, that the watch is guaranteed "against original mechanical defects". It is argued that a guarantee of a "lifetime of true time" does not necessarily mean that the watch is guaranteed to give good time no matter how it is abused.

3. Respondents do not, in practice, guarantee their watches unconditionally. Watches which do not work are repaired by respondents without cost only for a period of one year, and then only for

defects considered to be the result of original mechanical defects. After a year, respondents usually charge a fee for repairing a watch since they consider that any defect occurring after that time is due to "ordinary wear and tear * * * which we can't control". The charge varies with the work involved. While characterizing such charges as "nominal", respondent Avner indicated that a charge of $4.85 or $5.85 would customarily be made for cleaning and oiling a watch.

4. It is the conclusion and finding of the examiner that the representation made by respondents that their watches are "fully guaranteed" is false, misleading and deceptive. The statement appearing in respondents' advertising material that the watches are "fully guaranteed" to give a "lifetime of true time" would undoubtedly lead some members of the public to believe that the watches are unconditionally guaranteed, and will be repaired without charge for their lifetime. This does not necessarily mean that the public would understand or expect the watches to be repaired free of charge, without regard to the amount of abuse to which they were subjected, as respondents suggest, but at least there would be an expectation that the watch would be repaired free for failures resulting from ordinary wear and tear.

5. Having created the original impression that their watches are unconditionally guaranteed, respondents cannot seek refuge in the wording of the form of guarantee which accompanies the watch.[18] Furthermore, even the forms of guarantee themselves are misleading. The earlier form, stating that the watch is "fully guaranteed as to original material and workmanship", is certainly subject to the interpretation that the watch will be repaired without charge for some indefinite period of time. There is nothing in the guarantee form to suggest that there is only a one-year time period within which the guarantee operates. The same is true of the present form which states that the watch is "fully guaranteed against original mechanical defects". Both of the guarantees are vague as to the nature and extent of the guarantee, and the manner in which they will be performed.

F. Individual Liability

1. It is the contention of counsel for respondents that the individual respondents, other than Helbein, should not be held liable in their individual capacities under any order which may issue in this proceeding, since they do not have a substantial stock interest in the

[18] As stated in *Carter Products Inc.* v. *FTC*, 186 F. 2d 821 (CA 7, 1951), at 824: "The law is violated if the first contact or interview is secured by deception (*FTC* v. *Standard Education Society et al.*, 302 U.S. 112, 115), even though the true facts are made known to the buyer before he enters into the contract or purchase" (*Progressive Tailoring Co.* v. *FTC*, 7 Cir., 153 F. 2d 103, 104, 105).

company and are merely salaried employees. While it is true that the respondents other than Helbein do not have any substantial stock interest in the company, they are more than ordinary salaried employees. Each is an officer of the company and is in charge of a particular phase of the corporate respondent's operations. More importantly, each is a member of the policy committee which determines the general policies pursuant to which the company operates and, particularly, the policies which gave rise to the practices that are the subject of the complaint in this proceeding. The policy committee has an important role in conducting the affairs of the business, especially since President Helbein is frequently away on business. Each of the individual respondents appears to have an intimate knowledge of the company's operations and plays an active role insofar as the practices at issue are concerned. All were consulted by, and gave information with respect thereto to, the Commission's investigator. Respondents Avner and Diamond were present during substantial portions of the hearings in an advisory capacity to counsel for respondents. Respondent Avner undertook to speak on behalf of the company when its activities first came under investigation in 1952 and 1955, and gave assurances concerning the manner in which its practices would be changed. Such assurances, as above indicated, were in a number of respects not fulfilled.

2. It is the opinion and finding of the examiner that, in view of the active role played by the individual respondents in the formulation and direction of the company's operating policies, including the matters which are challenged by the complaint, and the past history of evasion of the undertakings made on behalf of the company, the order to be issued in this proceeding should run against the respondents in their individual, as well as their corporate, capacities in order to insure full compliance and prevent evasion.

G. Summary and Concluding Findings

On the record as a whole, including the evidence discussed above, it is concluded and found as follows:

1. In the course and conduct of their business, respondents, for the purpose of inducing the sale of their watches, have, through statements appearing in promotional materials, labels and by other means, all of which were circulated and displayed throughout the United States to customers, prospective customers and the purchasing public, represented, directly and by implication, that their watches contained ruby jewels, were shock proof, shock protected and water resistant, and were guaranteed for life.

2. Such statements were and are false, misleading and deceptive since in truth and in fact said watches do not contain ruby jewels

but contain jewels composed of synthetic materials; are not shock proof, shock protected or water resistant; and are not actually guaranteed for life, and the terms, conditions and extent to which such guarantee applies, and the manner in which the guarantor will perform, are not disclosed.

3. Respondents, before shipping their watches to purchasers, affix price tags thereto and also place in the hands of dealers price lists and other price material, by which respondents represent that the amounts appearing thereon are the usual and regular retail prices for said watches. Such representations are false, misleading and deceptive since in truth and in fact such amounts are fictitious and greatly in excess of the prices at which said watches are usually and regularly sold at retail.

4. By means of the acts and practices found in Paragraph 3 hereof respondents have placed a means and instrumentality in the hands of retailers and others by and through which the purchasing public may be misled as to the prices at which their watches are usually and regularly sold at retail.

III. The Effect of the Illegal Practices

The use by respondents of the false and misleading statements and representations hereinabove found had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were true and to induce the purchasing public to purchase substantial quantities of said watches because of such erroneous and mistaken belief. As a consequence thereof, it may reasonably be inferred that substantial trade in commerce has been unfairly diverted to respondents from their competitors and injury has thereby been done to competition in commerce.

CONCLUSION OF LAW

The acts and practices of respondents, as hereinabove found, 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.

ORDER

It is ordered, That respondent Helbros Watch Company, Inc., a corporation, and its officers, and individual respondents William Helbein, Jack Diamond, Nat Prigozen, Larry Prigozen and Carl Avner, individually and as officers of said corporation, their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of watches 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:

(a) That their watches contain ruby jewels;

(b) That their watches are water resistant or otherwise resistant or impervious to water, unless such is the fact, or are shockproof or shock protected;

(c) That their watches are guaranteed, unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder, are clearly and conspicuously disclosed;

(d) That their watches are guaranteed when a service charge is imposed, unless the fact that such service charge is imposed and the amount thereof is clearly and conspicuously disclosed;

(e) That certain amounts are the usual and regular retail prices of respondents' merchandise when such amounts are in excess of the prices at which such merchandise is usually and regularly sold at retail, by the class of retailers selling such merchandise, in the trade area or areas where the representation is made.

2. Engaging in any practice or plan which will provide retailers of their merchandise with the means of misrepresenting the usual and regular retail prices of such merchandise.

It is further ordered, That the complaint herein be, and the same hereby is dismissed as to respondent Jack Nadel, without prejudice.

Decision of the Commission as to Respondent William Helbein

It appearing from the certified copy of death certificate, which is hereby received and filed, that the respondent William Helbein departed this life on July 12, 1960, and the Commission having placed this case on its own docket to formally terminate this proceeding solely as to him:

It is ordered, That the allegations of the complaint be, and they hereby are, dismissed as to respondent William Helbein, deceased.

June 8, 1961

Opinion of the Commission

By Anderson, *Commissioner:*

The complaint in this matter charges respondents with violation of the Federal Trade Commission Act. The hearing examiner in his initial decision held that the allegations of the complaint were sustained by the evidence and ordered respondents (except for an individual respondent against whom the complaint was dismissed) to cease and desist from the practices found to be unlawful. Respondents have appealed from this decision.

In substance, the complaint charges respondents with misrepresenting the usual and regular retail prices of watches sold by them to retailers and other distributors and further alleges that respondents falsely represented that their watches contained ruby jewels, were shock proof, shock protected, water resistant and guaranteed for life.

Respondents argue on appeal that none of these allegations were sustained by the evidence and request that the complaint be dismissed. They further contend that certain of the practices have been abandoned and that the hearing examiner erred in failing to so find.

We will consider first the argument that the record does not support the holding in the initial decision that the amounts set forth on tickets affixed to respondents' watches and appearing in price lists supplied by respondents to their customers are in excess of the prices at which such watches are usually and regularly sold at retail. This holding is based in part upon a showing by counsel supporting the complaint that certain dealers or distributors in three market areas regularly sell respondents' watches at prices substantially below the amounts appearing on respondents' price tickets and price lists. Respondents point out that all but one of these dealers or distributors were catalog or discount houses. They then argue that sales by a discount house are made at a discount from retail prices; that such sales are therefore not retail sales and consequently do not tend to prove that the preticketed prices are not the usual and regular prices of respondents' watches. This argument is wholly without merit and must be rejected. The fact that a dealer sells at a lower markup than that used by his supplier in arriving at preticketed prices does not mean that the dealer is not selling at retail nor does it mean that the dealer is selling at a discount from an established price. The aforementioned catalog and discount houses were selling respondents' watches to the ultimate consumer and were, therefore, selling at retail. The evidence establishing that these concerns regularly sold respondents' watches at prices substantially less than the preticketed prices of such watches fully supports the hearing examiner's conclusion that the preticketed prices were not the usual and regular prices of respondents' watches in the trade areas under consideration.

Respondents further contend that the evidence adduced in their defense shows that certain distributors, accounting for approximately 30% of respondents' total sales, sell at the preticketed prices and that the inference should be drawn from this showing that most of respondents' watches are resold at such prices. The record discloses in this connection that certain firms engaged in the sale of merchandise on a long term credit basis, including house-to-house canvassers and credit jewelers, do, for the most part, sell at the preticketed prices. It appears, however, that the sale of merchandise by these distributors is an entirely different type of operation from that conducted by retailers selling for cash or on a short term credit basis. According to the testimony of respondents' witnesses, the operating costs of the house-to-house canvasser and credit jeweler are so much greater than that of the conventional retailer that it is necessary for such a distributor to sell at a higher markup in order to make a profit. It is respondents' practice, therefore, to apply a higher markup (400% to 500%) in computing the preticketed prices of watches sold through the house-to-house canvasser and credit jeweler than that (250% to 300%) used in arriving at the preticketed prices of watches sold through other distributors. The record also discloses that respondents sell a different line of watches through the house-to-house canvasser and credit jeweler than that sold through other dealers. Consequently, we are of the opinion that the evidence presented by respondents that house-to-house canvassers and credit jewelers adhere to preticketed prices does not indicate that a different class of retailers selling a different line of watches adhere to preticketed prices computed on the basis of a different markup.

Respondents also contend that the hearing examiner erred in finding that certain of their watches were not "water resistant". This finding is based upon the testimony of a witness who had tested several of respondents' watches and found that they did not meet the standards for water resistance specified in trade practice rules promulgated by the Commission.[1] Respondents do not question the reasonableness of the testing standards specified in the rules and, in fact, concede that they have been generally adopted by the industry. They have challenged the qualifications of the witness who conducted the tests, however, and also suggest that the watches had been damaged in some manner prior to testing. The hearing examiner carefully considered both of these points in his decision, and we find nothing in the evidence or in respondents' brief to indicate that the tests had not been properly conducted by a competent person or that the watches tested had been impaired in some manner prior to testing.

The principal objection to this finding is that the hearing examiner failed to give proper weight to the testimony of an expert who had

[1] Trade Practice Rules Respecting the Terms "Water-Proof," "Shockproof," "Nonmagnetic," and Related Designations, as Applied to Watches, Watchcases, and Watch Movements, promulgated April 24, 1947.

conducted tests of other watches made by respondent and found them to be water resistant. Respondents claim that this testimony completely rebuts the evidence adduced by counsel supporting the complaint. The hearing examiner deemed it unnecessary, however, to determine whether respondents' expert had properly tested respondents' watches for water resistancy, holding that the showing that several watches selected at random were not water resistant was sufficient to sustain the charge even though another group of watches might be found to be water resistant. We find no error in this ruling and agree with the hearing examiner that since respondents have undertaken to make an affirmative representation concerning their watches they must bear the responsibility if this representation is not true with respect to a portion of the watches.

Other arguments presented in the appeal challenge the sufficiency of the evidence presented in support of the allegations concerning respondents' use of the terms "ruby jewels"; "shockproof" and "shock protected" and the representation that respondents' watches are fully guaranteed. We are convinced from our examination of the record that these allegations have also been sustained and that the hearing examiner's findings with respect thereto are correct. The arguments on these points are therefore rejected. Respondents' further argument that the practices covered by the aforementioned allegations have been abandoned is without substance and is also rejected. The fact that on another occasion respondents had failed to discontinue certain practices, after having assured the Commission that they would do so, is sufficient reason in itself for rejecting the present plea of abandonment.

Subsequent to the filing of the initial decision in this proceeding, the Commission upon receiving notification of the death of respondent William Helbein, by order of June 8, 1961, dismissed the complaint as to that individual. The order to cease and desist contained in the initial decision will, therefore, be modified in conformity with such order.

Respondents' appeal is denied and the initial decision, modified to conform with this opinion, will be adopted as the decision of the Commission.

FINAL ORDER

This matter having been heard by the Commission upon respondents' 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 directing modification of the initial decision:

It is ordered, That the initial decision be modified by deleting from the preamble of the order to cease and desist contained therein the name William Helbein, and by striking the last paragraph of the initial decision and substituting therefor the following:

"*It is further ordered*, That the complaint be, and the same hereby is, dismissed as to respondent William Helbein." [deceased]

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

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

By the Commission, Chairman Dixon and Commissioner MacIntyre not participating in the issuance of the order at this time.

IN THE MATTER OF

OXWALL TOOL COMPANY, LTD., ET AL.

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

Docket 7491. Complaint, May 15, 1959—Decision, Dec. 26, 1961

Order requiring New York City distributors of hand tools imported from Japan and Germany—some packaged for sale in kits, some in kits containing other tools of domestic manufacture, and some sold separately—to cease selling such imported tools with markings of their country of origin so small and indistinct as not to constitute adequate notice of their foreign source to buyers, or with no such markings at all, or packaged or assembled so as to conceal the markings.

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 Oxwall Tool Company, Ltd., a corporation, and Harry Greenberg, Max J. Blum, and Sidney Blum, 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 Oxwall Tool Company, Ltd. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 928 Broadway in the City of New York, State of New York.

Respondents Harry Greenberg, Max J. Blum and Sidney Blum are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the sale and distribution of hand tools, including wrenches, pliers and tape measures and allied products, primarily to distributors and jobbers and to retailers for resale to the public.

Par. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their products, when sold, to be shipped from their place of business in the State of New York to purchasers thereof located in various other States of the United States and 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. Some of the hand tools sold and distributed by respondents are manufactured in and imported from foreign countries, including Japan and Germany. Certain of such foreign tools are assembled and packaged together for sale and distribution in form of kits; certain of such foreign tools are also assembled and packaged in kits containing other tools manufactured in the United States; and certain of such foreign tools are sold and distributed separately without being assembled or packaged as part of a kit. While certain of respondents' said foreign tools bear markings indicating their manufacture in and importation from Germany or Japan, in some instances the markings are so small and indistinct that they do not constitute adequate notice to the public that such tools are not made in the United States. In other instances said foreign tools bear no markings as to origin or are packaged or otherwise assembled so as to conceal or obscure the mark of foreign origin in which case there is not adequate notice to the public that such tools are not made in the United States.

PAR. 5. There is among the members of the purchasing public a decided preference for products of domestic manufacture, including hand tools, and when merchandise, including hand tools, is not marked so as to disclose foreign origin, or if marked and the markings are concealed, indistinct or otherwise not clearly legible, the purchasing public understands and believes such products to be of domestic origin.

PAR. 6. Respondents, by placing in the hands of others imported products which do not bear clear and distinct marks of foreign origin, provide means and instrumentalities whereby the purchasing public is misled as to the place of origin of such products.

PAR. 7. Respondents were and are in substantial competition in commerce with corporation, firms and individuals in the sale of hand tools.

PAR. 8. The use by respondents of the aforesaid misleading and deceptive practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that their said tools are of domestic origin and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief. As a result thereof, trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has thereby been 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. Harold A. Kennedy, supporting the complaint.
Mr. Samuel Slaff, New York N.Y., for respondents.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

This proceeding is before the hearing examiner for final consideration upon the complaint, answer, testimony and other evidence and proposed findings of fact and conclusions filed by counsel for respondents and by counsel supporting the complaint. The hearing examiner has given consideration to the proposed findings of fact and conclusions submitted by both parties, and all findings of fact and conclusions proposed by the parties not hereinafter specifically found or concluded are herewith rejected, and the hearing examiner, having considered the entire record herein, makes the following findings as to the facts, conclusions drawn therefrom and order:

FINDINGS AS TO THE FACTS

1. Respondent Oxwall Tool Company, Ltd., is a New York corporation with its principal office and place of business located at 928 Broadway, New York, New York.

2. Respondents Max J. Blum and Sidney Blum are officers of the corporate respondent. They formulate, direct and control the acts

and practices of the corporate respondent. Their address is the same as that of the corporate respondent.

3. Respondent Harry Greenberg was an officer and director of corporate respondent, but has not been either since he severed all connection with it in July 1958. For at least a year prior to that time he had only a formal and not an active, policy making connection with the corporate respondent.

4. Corporate respondent is now, and for some time last past has been, engaged in the sale and distribution of hand tools, including wrenches, pliers, tape measures and allied products, primarily to distributors and jobbers and to retailers for resale to the public.

5. In the course and conduct of its business, corporate respondent now causes, and for some time last past has caused, its products, when sold, to be shipped from its place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintains, and has maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

6. Some of the hand tools sold and distributed by corporate respondent are manufactured in, and imported from, foreign countries, including Japan, Germany and Italy. Certain of such foreign tools are assembled and packaged together for sale and distribution in the form of kits. Certain of them are also assembled and packaged in kits containing other tools manufactured in the United States, and certain of such foreign tools are sold and distributed separately without being assembled or packaged as part of a kit.

7. Except for oversights or accidents which obliterate markings, respondent's foreign tools bear markings indicating their manufacture in Japan, Germany or Italy, but in some instances the markings are so small and indistinct that they do not constitute adequate notice to the public of the country of origin of such tools. In other instances, said foreign tools are packaged or otherwise assembled so as to conceal or obscure the mark of foreign origin, in which case there is not adequate notice to the public of the country of origin of such tools.

8. There is a preference on the part of some buyers for domestic hand tools. Some have seen or used foreign tools of inferior quality, some have prejudices against products of certain nations, and some have pride and confidence in the quality of domestic workmanship. This preference has diminished as the last war period recedes and as the quality of the cheaper foreign tools improves, but it remains a substantial factor. Foreign hand tools sell in increasing volume, but this is due in large part to the fact that they are substantially lower in price than most domestic tools.

9. Section 304 of the Tariff Act of 1930 provides that, with exceptions not germane to this case, every article of foreign origin (or its container, as provided in subsection (b)) imported into the United States shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or container) will permit in such manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin of the article. As a result of this requirement, and perhaps for other reasons as well, most products are marked with the country of origin and many consumers expect them to be so marked. Thus, when merchandise, including hand tools, is not marked so as to disclose foreign origin, or if marked and the markings are concealed, indistinct or otherwise not clearly legible, many members of the purchasing public understand and believe such products to be of domestic origin.

10. At different times corporate respondent packaged its imported tools in various ways, but in a manner that permitted the tools to be visible, and sold them in packages and in bulk. It sometimes stamped the word "imported" on the background card or package, and sometimes added to the package a tape sticker bearing the word "imported". In the instances of stamping and taping, deception was not entirely avoided because the tape, and indeed the entire package, was removable by retailers. The only way to insure that the tools are offered to the ultimate purchaser properly marked is for the mark to be on the tool. Any method of marking a package or attachment without marking the tool provides a means for others to mislead purchasers. Corporate respondent, by placing in the hands of others imported products which do not bear clear and distinct marks of foreign origin, provides a means and instrumentality whereby the purchasing public is misled as to the place of origin of such products.

11. Corporate respondent was and is in substantial competition in commerce with corporations, firms and individuals in the sale of hand tools.

CONCLUSIONS

The use by respondents of the aforesaid misleading and deceptive practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that their said tools are of domestic origin and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

The aforesaid acts and practices of respondents 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.

ORDER

It is ordered, That respondents Oxwall Tool Company, Ltd., a corporation, and its officers, and respondents Max J. Blum and Sidney Blum, 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 imported merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale, selling or distributing said products without affirmatively and clearly disclosing in a conspicuous place on the products themselves the country of origin thereof.

2. Offering for sale, selling or distributing said products in containers or with attachments in a manner which causes the mark on the products identifying the country of origin to be hidden or obscured without clearly disclosing the country of origin of the products in a conspicuous place on the container or attachment.

It is further ordered, That the complaint against Harry Greenberg, individually and as an officer of said corporate respondent, be dismissed without prejudice to the right of the Commission to take such further action as future circumstances may warrant.

OPINION OF THE COMMISSION

By MACINTYRE, *Commissioner*.

This matter is before the Commission on appeal of respondents from an initial decision and order to cease and desist filed by the hearing examiner on March 17, 1961. After a full hearing, the hearing examiner found that most of the allegations made in the complaint had been sustained and that respondents had engaged in unfair and deceptive acts and practices and unfair methods of competition in commerce in violation of Section 5 of the Federal Trade Commission Act.

In general terms the respondents are charged with having failed to properly and adequately disclose to the public that certain hand tools imported and resold by them were of foreign origin. The complaint charges that this deception was accomplished in three separate and distinct manners:

(1) By markings on tools which ". . . are so small and indistinct that they do not constitute adequate notice to the public that such tools are not made in the United States";

(2) By distributing tools which ". . . are packaged or otherwise assembled so as to conceal or obscure the mark of foreign origin"; and

(3) By distributing tools which ". . . bear no markings as to origin".

Respondents first take exception to the hearing examiner's finding that the foreign origin markings on certain of the tools in evidence are "so small and indistinct that they do not constitute adequate notice to the public of the country of origin". Respondents concede that the markings on two of the tools in evidence[1] represent examples of indistinct marking but argue that the vagueness of the markings is due to manufacturing faults or accidents. Further, it is urged that this particular model tool had not been imported for more than a year prior to the issuance of the complaint on May 15, 1959.

We are of the view that the cause of the indistinct marking is of no consequence since the public is no less deceived by an indistinct mark occasioned by poor workmanship than one produced negligently or intentionally. But conceding for the purpose of argument that infrequent accidental indistinctness would not violate the Federal Trade Commission Act, we would nonetheless be obliged to affirm the examiner's finding for the markings on other tools in evidence for which no claim of faulty manufacture or accident is made are so vague as to afford insufficient notice of their origin.[2]

As for the contention that respondents did not import four-inch Japanese wrenches between 1958 and 1960, we fail to see how this has any weight as a defense. This matter was investigated during 1958, and the record clearly establishes that the wrenches in question were then available on the shelves of retailers. It is the period of sale, not import, which matters for items of this type may be stored and sold many years after import.

Respondents also aver as error the hearing examiner's finding that in some instances respondents' tools are ". . . packaged or otherwise assembled so as to conceal or obscure the mark of foreign origin . . .". There is absolutely no question concerning the literal truth of this finding since tools packaged in this fashion are in evidence. Respondents base their attack on this finding principally upon an alleged failure of the record to show that such improper packaging was typical or representative of respondents' practices. As we view it, the record adequately establishes respondents' use of deceptive packaging to an extent requiring public protection by means of an order to cease and desist.

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[1] Four-inch wrenches of Japanese origin, identified as Commission Exhibits 5 and 11(e).

[2] E.g., Commission Exhibit 10, Respondents' Exhibits 14 and 114.

The retractable steel measuring tapes sold by respondents bear a mark of origin only on the tape itself. The tape must be pulled from its housing for a distance of some seven inches before the foreign origin mark is visible. Respondents' package for this tape consists of a card to which is affixed a sealed, transparent bubble or skin which completely enclosed the product. The package must be broken before the tape can be pulled out to disclose the origin mark. Since 1958, respondents have affixed labels or stickers bearing the words "imported tools" to the cards holding measuring tapes, but this is not a sufficient disclosure of foreign origin to satisfy the requirements of the Act. The disclosure must be of the particular country or place of origin where consumer prejudice or preference is directed toward the goods of particular countries rather than toward all foreign goods in general.

Respondents sold a diagonal cutting pliers packaged in a transparent bubble affixed to a card. A Commission investigator purchased one of these tools placed with the foreign origin mark down against the card and hence concealed. When respondents' counsel objected that the package had been broken so that the manner of the tool's original placement was supported by only the investigator's testimony, counsel supporting the complaint apparently had no difficulty in purchasing, in another city, the same tool packaged with the mark of origin down.

The record reveals that a certain plier-wrench set was always packaged with the wrench positioned with the movable jaw to the left. The Japanese wrenches packed in this set were indiscriminately marked on either the right or left side and thus operation of the law of chance would indicate that approximately half of these wrenches were packaged with the foreign origin markings down and concealed.

There is additional evidence to support a finding that the instances of non-disclosure revealed by the products in evidence were not isolated instances, but occurred with sufficient frequency to require remedial action. Respondents' duty to clearly disclose foreign origin is not satisfied by marking the majority or even 90 percent of their products. All of them must disclose their origin if they are not of domestic manufacture.

Respondents attack two of the examiner's findings (nine and ten) on the ground that they erroneously find that respondents sold or distributed imported tools which bore no marks of foreign origin. There is no question that this charge was not sustained; that is, there is no evidence in this record that respondents ever distributed imported tools which were completely unmarked as to foreign origin. But as we read the findings in question, they do not hold as respondents allege. Finding nine holds only that many members of the purchasing public would, if unable to discern a mark of foreign origin, understand and believe a product to be of domestic manufacture. Finding ten, read in its entirety as a cohesive whole, finds only that marking a package without marking the tool provides a means for retailers to mislead purchasers by removing the tool from the package and that under the circumstances of this case an adequate disclosure must be made on the tool itself.

Respondents contest the examiner's finding that the "Corporate respondent was and is in substantial competition in commerce with corporations, firms and individuals in the sale of hand tools." The respondents' answer to the complaint, by failing to deny this allegation, foreclosed any issue with respect to it.[3] Moreover, the vacating of this finding would avail respondents nothing since the Act does not require a showing of both deceptive acts and unfair methods of competition but is satisfied by the existence of either.

We turn now to respondents' contention that the complaint must be dismissed because of the failure of the record to support the complaint charge that "There is among the members of the purchasing public a decided preference for products of domestic manufacture, including hand tools. . .". Respondents argue that the tools they sell are do-it-yourself tools for home use; that this type of tool "... has a specialized market and a specialized appeal. . ."; that price, that is, low price, is the most important factor to buyers in this market; that no American-made tools are sold at retail prices as low as the retail prices of respondents' tools and, therefore, customers in this market have no preference for domestic tools. Counsel for respondents cites as controlling the Commission's opinion in *Manco Watch Strap Co., Inc.*, Docket 5854 (50 F.T.C. 553, 554 [1953]). In that matter, the Commission dismissed a complaint charging failure to disclose foreign origin because:

> The evidence in the record indicates that there are no domestic watch or wrist bands which are sold at prices comparable to the prices at which respondent's imported bands are sold. There is no evidence in the record showing a preference on the part of a substantial number of members of the purchasing public for the higher priced domestic bands over respondent's lower priced imported bands.

Our analysis of this record does not lead us to the factual conclusions urged by respondents. Although the tools sold by respondents are undoubtedly, for the most part, purchased by non-professional users such as home owners, it does not follow that such purchasers are interested only in the price of the tool to the exclusion of all other factors. There is reliable testimony in the record that certain members of the public will not buy foreign-made tools no matter how

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[3] *National Candy Co., et al. v. Federal Trade Commission*, 104 F. 2d 999, 1003 (7th Cir. 1939).

cheaply they are sold. There is evidence that a low price will not serve to identify a tool as foreign. The record also discloses that some domestic tools sell at about the same price level as respondents'. As a matter of fact, the respondents themselves mix domestic and non-domestic tools in "kits" and sell them as a single unit thereby seriously weakening their arguments that domestic tools are not sold in this low price class and that foreign tools can be identified by price alone.

To support their contention that purchasers of tools in respondents' price class have no preference for domestic tools, respondents in the main rely on the testimony of buyers or purchasing agents for large chain retailers such as Rexall Drug Company, G.C. Murphy Company, and Sun Ray Drug Company. It is urged that the testimony of these witnesses on this point outweighs that adduced from the Commission witnesses who were proprietors of small hardware stores. We are not persuaded by this argument, since knowledge of consumer preference is more likely to be found in witnesses who are in continuous daily contact with consumers. In situations of this type where testimony is in conflict, the hearing examiner who directly observed the witnesses is in the best position to evaluate their testimony, and we are not convinced that his finding on this point was other than correct.

As we have pointed out, the record evidence falls short of establishing that there are no domestic tools selling at prices as low as those charged for respondents' imported tools. Thus, there is lacking here the factual showing which would place this proceeding on all fours with the *Manco* matter. However, it should be pointed out that the fact that an imported article has no domestic competitors in its price class does not force the conclusion that consumers who purchase such an imported article unmarked as to foreign origin have no preference for domestic goods. To the extent that the holding in the *Manco* matter may be inconsistent with this statement, the *Manco* opinion does not reflect the present views of the Commission.

Respondents' appeal is denied. An order will issue adopting the initial decision as the decision of the Commission.

FINAL ORDER

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

It is ordered, That the initial decision of the hearing examiner as modified by the accompanying opinion of the Commission be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That respondents, Oxwall Tool Company, Ltd., Max J. Blum, and Sidney Blum, 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

STERN & COMPANY ET AL.

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

Docket 8277. Complaint, Jan. 18, 1961—Decision, Dec. 26, 1961

Consent order requiring a department store chain with its main office in Philadelphia and operating stores in Pennsylvania, New Jersey, and Delaware, to cease such fictitious pricing practices as advertising "Englander Inner-Spring Mattress and Box Spring" "2 for the Nationally Advertised Price of 1", "69.95 for both. Were 139.90"; and to cease using the words "guaranteed" and "10-year guarantee" in advertising certain merchandise when the guarantees were limited and conditional.

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 Stern & Company, a corporation, and Harris I. Stern, Joseph Shanis, David Solis, Jr., and Leonard Brecher, individually and as officers of the 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. Stern & Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 706–714 Market Street, Philadelphia, Pennsylvania.

Respondents Harris I. Stern, Joseph Shanis, David Solis, Jr., and Leonard Brecher are officers of the corporate respondent. They formulate, direct and control the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now and at all times material hereto have been engaged in the business of operating department stores selling merchandise to the public in competition with other corporations, firms and individuals also engaged in selling to the public merchandise of the same nature. Respondents own and operate department stores located in Pennsylvania, New Jersey and Delaware. Respondents' annual volume of business is approximately $8 million.

PAR. 3. In the course and conduct of their business respondents have been engaged and are engaged in disseminating and in causing to be disseminated in newspapers of interstate circulation advertisements designed and intended to induce sales of its merchandise. In the further course and conduct of their business respondents now cause their merchandise, when sold, to be transported from their places of business located in Pennsylvania to purchasers thereof located in various other States of the United States.

Respondents have maintained, and now maintain, a substantial course of trade of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Among and typical, but not all inclusive of the statements appearing in the advertisements described in paragraph Three, are the following:

2 for the Nationally Advertised Price of 1—Englander "Air-Conditioned" Tuftless Inner-Spring Set—Mattress *and* Box Spring 69.95 for both Were 139.90*

*Nationally Advertised in Look at 69.95 each.

Smooth, Button-Free Tuftless Top, Formally 139.50 Save almost ½ $78.00

Plus Hoover Vacuum Free— Hoover 'Speed' Upright Vacuum Cleaner included Free with your broadloom order. Completely rebuilt and guaranteed for long service in your home.

10-year guarantee—Workmanship and construction guaranteed 10 years. No other Hollywood carries this amazing "pro rata" guarantee.

PAR. 5. Through the use of the higher amounts in connection with the words and terms "were" and "formerly," the respondents represented that said amounts were the prices at which they had usually and customarily sold the merchandise referred to in the recent and regular course of business, and through the use of said amounts and the lesser amounts that the differences between said higher amounts and the lesser amounts represented savings from the prices at which the merchandise referred to had been sold by respondents in the recent regular course of their business.

PAR. 6. The aforesaid representations were false, misleading and deceptive. In truth and in fact, the amounts set out in connection with the words and phrases, "were" and "formerly", were in excess of the prices at which the articles of merchandise referred to had been sold by the respondents in the recent regular course of their business, and the differences between said amounts and the lesser amounts did not represent savings from the prices at which the merchandise had been sold by respondents in the recent regular course of their business.

PAR. 7. Respondents through the use of the words "guaranteed" and "10 year guarantee" in the advertising of certain of their products thereby represented that the said products are guaranteed by them in every respect. Said statements are false, misleading and deceptive. In truth and in fact, the guarantees were limited and conditional, which limitations and conditions were not set forth in the advertising.

PAR. 8. The use by respondents of the foregoing false, misleading and deceptive statements and representations had the tendency and capacity to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were true and into the purchase of substantial quantities of respondents' merchandise because of such mistaken and erroneous belief. As a result thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has thereby been done to competition in commerce.

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

DECISION AND ORDER

This matter having come on to be heard by the Commission upon a record consisting of the Commission's complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and an agreement by and between respondents Stern & Company, Harris I. Stern and Joseph Shanis and their counsel, and counsel supporting the complaint, which agreement contains an order to cease and desist, an admission by said respondents of all the jurisdictional facts alleged in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission that they have violated the law as alleged in the complaint, and waivers and provisions as required by the Commission's rules, and which agreement further provides for dismissal of this proceeding as to respondents David Solis, Jr. and Leonard Brecher: and

The Commisison having considered said agreement and the affidavits made a part thereof which state, among other things, that respondents David Solis, Jr. and Leonard Brecher have severed all connection with the corporate respondent and that they had no voice in formulating or directing the advertising and merchandising practices of the corporate respondents; and

The Commission having determined that the agreement provides an adequate basis for appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings are made, and the following order is entered:

1. Respondent Stern & Company is a corporation existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 706–714 Market Street, in the City of Philadelphia, State of Pennsylvania.

Respondents Harris I. Stern and Joseph Shanis are officers of the corporate respondent and they 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 herein and this proceeding is in the public interest.

ORDER

It is ordered, That respondents Stern & Company, a corporation, and its officers, and Harris I. Stern and Joseph Shanis, individually and as officers of said corporation, and respondents' representives, agents and employees, directly or through any corporate or other device, in conncetion with the offering for sale, sale or distribution of 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, that:

(a) Any amount is the usual and customary retail price of respondents' merchandise when such amount is in excess of the price at which said merchandise is usually and customarily sold at retail by respondents in the recent regular course of business.

(b) Any saving from respondents' usual and regular retail price is afforded to the purchasers of respondents' merchandise unless the price at which it is offered constitutes a reduction from the price at which said merchandise has been usually and customarily sold by respondents in the recent regular course of their business.

2. Using the words "were" and "formerly", or any other words or terms of the same import, to describe or refer to prices of merchandise unless respondents have sold said merchandise at such prices.

3. Misrepresenting in any manner the amount of savings available to purchasers of respondents' merchandise or the amounts by which the prices of said merchandise are reduced from the prices at which said merchandise is usually and customarily sold by respondents in the recent regular course of their business.

4. Representing, directly or by implication, that merchandise offered for sale or sold by respondents is guaranteed unless the terms and conditions and extent to which such guarantee applies and the

manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

It is further ordered, That the complaint be dismissed as to David Solis, Jr. and Leonard Brecher.

It is further 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 this order.

IN THE MATTER OF

HARRY'S LINOLEUM COMPANY ET AL.

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

Docket 8275. Complaint, Jan. 13, 1961—Decision, Dec. 27, 1961

Consent order requiring five affiliated concerns, all with the same Cincinnati address, and operating retail stores in Ohio and Kentucky, to cease representing falsely in newspaper advertising that fictitiously high amounts were regular prices for their carpeting, counter topping, paint, and other merchandise; that certain carpeting was guaranteed unconditionally for lifetime or five years; that purchasers of one gallon of paint would receive a second gallon "free"; that certain nylon carpet was "indestructible"; and that they were the only sellers of that carpeting in their trade area.

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 Harry's Linoleum Company, a corporation, Harry's Corner Inc., an Ohio corporation, Buckeye Linoleum and Wallpaper Headquarters Inc., a corporation, Harry's Corner Inc., a Kentucky corporation, and Harco Distributing Corp., a corporation, and Harry Goldstein, individually and as an officer of the said corporations, 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. Respondents Harry's Linoleum Company, a corporation, Harry's Corner Inc., an Ohio Corporation, Buckeye Linoleum and Wallpaper Headquarters Inc., a corporation, Harco Distributing Corp., a corporation, are corporations organized, existing and doing business under and by virtue of the laws of the State of Ohio, with their principal office and place of business at 2001 Vine Street, Cincinnati, Ohio.

Respondent Harry's Corner Inc., is a Kentucky corporation organized, existing and doing business under and by virtue of the laws of Kentucky with its principal office and place of business at 2001 Vine Street, Cincinnati, Ohio.

Individual respondent, Harry Goldstein, is an officer of all of the aforesaid corporations. He formulates, directs and controls the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondents.

PAR. 2. Corporate respondents, under the name of "Harry's Corner", are now, and for some time last past have been, engaged in the advertising, offering for sale, and sale at retail, among other things, of floor covering, paints, and counter topping, to the public.

Harry's Linoleum Company and Harry's Corner Inc., an Ohio corporation, operate retail stores at 2001 Vine Street, Cincinnati, Ohio; Buckeye Linoleum and Wallpaper Headquarters, Inc., operate a retail store at Hamilton, Ohio; Harry's Corner Inc., a Kentucky corporation operates a retail store at Newport, Kentucky; and Harco Distributing Corp. operates a retail store at Erlanger, Kentucky.

A central warehouse is maintained in Cincinnati, Ohio and shipments are made from said warehouse to the store location at Hamilton, Ohio and to the stores in Kentucky, sometimes in bulk and sometimes to supply specific articles of merchandise purchased at said stores but which is not in stock.

The advertising for the several stores is performed by respondent Harry Goldstein and is published usually in Cincinnati newspapers in a single advertisement listing the locations of all the stores.

In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said merchandise, when sold, to be shipped from their place of business in the States of Ohio and Kentucky to purchasers thereof located in States other than the States in which the shipments originated and maintain and at all times mentioned herein have maintained, a substantial course of trade in said merchandise, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their business as aforesaid, respondents have made certain statements in advertisements published in newspapers of general circulation. Among and typical, but not all inclusive, of such statements so made are the following:

(1) Save $8.00 off advertised price on Luxury Broadloom at Harry's Corner $14.95 100% All Wool Wilton . . . on sale . . . only . . . $6.88 sq. yd. Thousands of yards sold at $14.95 sq. yd.

* * *

Now Counter Top At Lowest Prices Ever Save 63%
. . . 27" width Made to Sell for 79¢ running ft. 29¢ running ft.
36" width Made to Sell for 89¢ running ft. 39¢ running ft.
45" width Made to Sell for 98¢ running ft. 49¢ running ft.
501, 10 yr. Guaranteed Dupont Nylon Carpet . . . Extra-Heavy $10.95 Quality if perfect Smashed down to $7.77 sq. yd. ½ price. . . .
(2) Unconditional Carpet Lifetime Guarantee
Guaranteed to give at least five years wear
(3) 2 for 1 Paint Deal Buy One—Get One Free
(4) No 1 in sales, no store sells more, survey proved
(5) Indestructible: Only Harry has it . . . only DuPont makes it—501, 100% DuPont "501" Nylon

PAR. 4. Through the use of the aforesaid statements, and others similar thereto, not included herein, respondents represented, directly or by implication:

1. That the higher stated amounts described as "made to sell for" and others not described, were the prices at which the merchandise advertised had been usually and customarily sold at retail by the respondents in the recent regular course of business.

2. That the purchasers of the products advertised were afforded savings between the higher stated amounts and the lower advertised sales price.

3. That certain carpeting was guaranteed unconditionally for a lifetime or a period of years without any limitations other than those limitations indicated in the advertisement.

4. That the purchasers, by buying one gallon of paint at the sale price, would receive a second gallon of paint "Free".

5. That DuPont 501 Nylon Carpeting is indestructible.

6. That the respondents are the only sellers of DuPont 501 Nylon carpeting in the trade area where the representation was made.

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

1. The higher stated amounts were not the prices at which the merchandise was usually and customarily sold at retail by the respondents in the recent course of business.

2. Purchasers of the advertised products were not afforded savings of the difference between the higher stated amounts and the advertised sales prices.

3. The carpeting advertised as guaranteed with an "unconditional Carpet Lifetime Guarantee" or "Guaranteed to give at least five years wear" was limited in respects other than the limitations set out in the advertisements which other limitations were not disclosed in the advertisements.

4. The purchaser of a gallon of paint did not receive a second gallon "free" but was actually paying the regular and customary price at which respondents sold two gallons of paint in the regular course of business.

5. DuPont "501" carpeting is not indestructible.

6. Respondents are not the only sellers of DuPont 501 Nylon carpeting in the trade area where the representation was made.

PAR. 6. 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 merchandise of the same general kind and nature as that sold by respondents.

PAR. 7. The use by respondents of the false, misleading and deceptive statements, representations and practices, as aforesaid, 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 amounts of respondents' merchandise by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has thereby been and is being done to competition in commerce.

PAR. 8. The aforesaid acts and practices, 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. Anthony J. Kennedy, Jr., for the Commission;
Mr. Harry M. Wasserman, Cincinnati, O., for respondents.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission on January 13, 1961, issued its complaint against the above-named respondents, charging them with having violated the Federal Trade Commission Act, by misrepresenting the floor coverings and other products they sell. Respondents appeared and entered into an agreement dated November 1, 1961, containing a consent order to cease and desist, disposing of all the issues in this proceeding without further hearings, which agreement has been duly approved by the Director of the Bureau of Deceptive Practises and the Chief of the Division of General Advertising of that Bureau. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his

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consideration in accordance with § 3.25 of the Rules of Practice of the Commission.

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

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

1. Respondents Harry's Linoleum Company, a corporation, Harry's Corner, Inc., an Ohio corporation, Buckeye Linoleum and Wallpaper Headquarters, Inc., a corporation, and Harco Distributing Corp., a corporation, are corporations organized, existing and doing business under and by virtue of the laws of the State of Ohio, with their principal office and place of business at 2001 Vine Street, Cincinnati, Ohio.

2. Respondents Harry's Corner, Inc., a Kentucky corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Kentucky, with its principal office and place of business at 2001 Vine Street, Cincinnati, Ohio.

3. Individual respondent, Harry Goldstein, is an officer of all of the aforesaid corporations. He formulates, directs and controls the acts and practices of the corporate respondents. His address is the same as that of the corporate respondents.

4. 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.

It is ordered, That respondents Harry's Linoleum Company, a corporation, Harry's Corner Inc., an Ohio corporation, Buckeye Linoleum and Wallpaper Headquarters Inc., a corporation, Harry's Corner Inc., a Kentucky corporation and Harco Distributing Corp., a corporation, and their respective officers, and Harry Goldstein, individually and as an officer of the said corporations and respondents' agents, representatives and employees, directly or through any corporate device, in connection with the offering for sale, and sale and distribution of 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:

(a) that any amount is respondents' usual and customary retail price of merchandise unless such amount is the price at which the merchandise has been usually and customarily sold at retail by respondents in the recent regular course of business.

(b) that any saving is afforded in the purchase of merchandise from the respondents' retail price unless the price at which the merchandise is offered constitutes a reduction from the price at which said merchandise is usually and customarily sold at retail by the respondents in the recent regular course of business.

(c) that any merchandise, sold or offered for sale is guaranteed, unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

(d) that any merchandise is given away "free" with a purchase of other merchandise, or in any other manner, unless such is the fact.

(e) that carpeting made from DuPont 501 Nylon is indestructible.

(f) that respondents are the only sellers of DuPont 501 Nylon carpeting in a trade area where such a representation is made, unless such is the fact.

2. Using the words "made to sell for" or any other words or terms of similar import in connection with prices of merchandise unless such prices are those at which the merchandise has been sold by respondents in the recent regular course of business, or unless such prices are those at which the merchandise has usually and customarily been sold at retail in the trade area where the representations are made.

3. Misrepresenting in any manner, the amount of savings available to purchasers of respondents' merchandise, or the amount by which the price of merchandise has been reduced either from the price at which it has been usually and customarily sold by respondents in the recent regular course of business, or from the price at which it has been usually and customarily sold at retail in the trade area where the representation is made.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, published May 6, 1955, as amended, the initial decision of the hearing examiner shall, on the 27th day of December 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

KIMBRIEL & CO., INC.

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

Docket 8317. Complaint, Mar. 14, 1961—Decision, Dec. 27, 1961

Consent order requiring a packer of citrus fruit in Pharr, Tex., to cease violating Sec. 2(c) of the Clayton Act by granting commission or brokerage on a large number of sales to direct buyers purchasing for their own accounts for resale.

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 Kimbriel & Co., Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas with its offices and principal place of business located at 111 E. State Street, Pharr, Texas, with mailing address as Post Office Box 546, Pharr, Texas.

PAR. 2. Respondent is now and for the past several years has been engaged in the business of packing, selling and distributing citrus fruit, such as oranges, tangerines and grapefruit, all of which are hereinafter referred to as citrus fruit or fruit products. Respondent sells and distributes its citrus fruit through company salesmen, brokers and wholesalers, as well as direct, to customers located in many sections of the United States. When brokers are utilized in making sales for it, respondent pays them for their services a brokerage or commission, usually at the rate of 5 cents per carton or 10 cents per 1⅗ bushel box, or equivalent. Respondent's annual volume of business in the sale and distribution of citrus fruit is substantial.

PAR. 3. In the course and conduct of its business over the past several years, respondent has sold and distributed and is now selling and distributing its citrus fruit in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, to buyers located in the several states of the United States other than the State of Texas in which respondent is located. Respondent transports, or causes such citrus fruit, when sold, to be transported from its place of business or packing plant in the State of Texas, or from other places within the State, to such buyers or to the buyers' customers located in various other states of the United States. Thus there has been, at all times mentioned herein, a continuous course of trade in commerce in such citrus fruit across state lines between said respondent and the respective buyers of such fruit.

PAR. 4. In the course and conduct of its business as aforesaid, respondent has been and is now making substantial sales of citrus fruit to some, but not all, of its brokers and direct buyers purchasing for their own account for resale, and on a large number of these sales respondent paid, granted or allowed, and is now paying, granting or allowing to these brokers and other direct buyers on their purchases, a commission, brokerage, or other compensation, or an allowance or discount in lieu thereof, in connection therewith.

PAR. 5. The acts and practices of respondent in paying, granting or allowing to brokers and direct buyers a commission, brokerage or other compensation, or an allowance or discount in lieu thereof, on their 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).

Messrs. Cecil G. Miles and *Basil J. Mezines* for the Commission.

Ewers, Toothaker, Ewers, Elick, Jones and Abbott, by *Mr. Scott Toothaker* and *Mr. O. C. Hamilton, Jr.*, McAllen, Tex., for respondents.

INITIAL DECISION BY HERMAN TOCKER, HEARING EXAMINER

In a complaint issued March 14, 1961, the Federal Trade Commission charged respondent Kimbriel & Co., Inc. (a corporation organized and existing under the laws of the State of Texas and engaged in business in the City of Pharr, Texas), with having violated Section 2(c) of the Clayton Act, as amended, by paying, granting or allowing to some but not all brokers buying for their own account and direct buyers a commission, brokerage or other compensation, or an allowance or discount in lieu thereof, in the course of its sales and distribution of citrus fruits in commerce.

After the issuance of the complaint, respondent, by its president, with the advice and agreement of its attorneys, and counsel supporting the complaint entered into an agreement providing for the issuance of a consent order to cease and desist, thus disposing of all the issues in this proceeding.

In the agreement it is expressly provided that the signing thereof is for settlement purposes only and does not constitute an admission by the respondent that it has violated the law as in the complaint alleged.

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

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

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

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

The Hearing Examiner has considered the agreement and the order therein contained, and, it appearing that said agreement and order provide for an appropriate disposition of this proceeding, the same is hereby accepted and shall be filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice applicable to this case.

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

ORDER

It is ordered, That the respondent, Kimbriel & Co., Inc., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the sale of citrus fruit or fruit products in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, published May 6, 1955, as amended, the initial decision of the Hearing Examiner shall, on the 27th day of December, 1961, become the decision of the Commission; and, accordingly:

It is ordered, That 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

FOX KNAPP MANUFACTURING COMPANY ET AL.

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

Docket 8330. Complaint, Mar. 16, 1961—Decision, Dec. 27, 1961

Consent order requiring New York City manufacturers to cease violating the Wool Products Labeling Act by labeling and tagging cotton corduroy jackets with the name "Woolmaster" when the only wool content was reprocessed woolen fibers in the interlining, and failing to comply in other respects with requirements of said Act; to cease violating the Textile Fiber Products Identification Act by such practices as attaching to a knitted sweater of Orlon acrylic and cotton a label reading ". . . styled by Woolmaster Co.", thus implying falsely that it contained wool, and by placing the label showing the required information in an inconspicuous place on the garment; and to cease violating the Federal Trade Commission Act by advertisements of their sportswear in the New York Times which implied falsely, by the statement "DYNEL Woolmaster", that the garments depicted were made of wool.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act, the Wool Products Labeling Act of 1939 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 Fox Knapp Manufacturing Company, a corporation, and David B. Knapp and Joseph Knapp, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of such Acts and the Rules and Regulations promuglated under the Wool Products Labeling Act and the Textile Fiber Products Identification Act, and it appearing to the Commission that a proceeding by it in respect therof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

Paragraph 1. Respondent Fox Knapp Manufacturing Company is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its principal office and place of business located at 1 West 34th Street, New York, New York.

Individual respondents David B. Knapp is chairman and treasurer and Joseph Knapp is president of said corporate respondent. Said individual respondents formulate, direct and control the acts, practices and policies of the corporate respondent. The office and principal place of business of the individual respondents is the same as that of the corporate respondent.

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

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

Among such misbranded wool products were cotton corduroy jackets containing woolen interlinings, labeled or tagged "Shell 100% Cotton, Interlinings 90% Reprocessed Wool, 10% other fibers * * *". In the neck of these garments was a woven label which sets forth "Outerwear styled by Woolmaster Co." and a hang tag attached thereto that set forth "Woolmaster Division Fox Knapp" thereby implying that the garment was 100% wool, whereas in truth and in fact the only woolen fibers present were the reprocessed ones in the interlining.

PAR. 4. 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, and in the manner and form prescribed by the Rules and Regulations promulgated under said Act.

PAR. 5. Respondents, in the course and conduct of their business, as aforesaid, were and are in competition in commerce with other individuals, corporations and firms likewise engaged in the manufacture and sale of wool products.

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

PAR. 7. Subsequent to the effective date of the Textile Fiber Products Identification Act on March 3, 1960, respondents have been and are now engaged in the introduction, delivery for introduction, manufacture for introduction, sale, advertising and offering for sale, in commerce, and in the transportation or causing to be transported in commerce and in the importation into the United States of textile fiber products; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce, textile fiber products, either in their original state or which were made of other textile products so shipped in commerce, as the terms "commerce" and "textile fiber products" are defined in the Textile Fiber Products Identification Act.

PAR. 8. Certain of said textile fiber products were misbranded by respondents within the intent, and meaning of Section 4(a) of the Textile Fiber Products Identification Act, and Rule 18 of the Regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, invoiced, advertised or otherwise identified as to the name or amount of constituent fibers contained therein, and in implying the name of a fiber not present therein.

Among such misbranded textile fiber products was a knitted sweater bearing a neck label attached to the garment setting forth "Outerwear styled by Woolmaster Co." thus implying that it contained wool. In truth and in fact, such garment contained no wool, but was made of Orlon acrylic and cotton.

PAR. 9. Such textile fiber product was further misbranded in that the label showing the information required to be disclosed under the Textile Fiber Products Identification Act was placed in an inconspicuous place on the garment, being sewed in the inner seam or at the bottom thereof in violation of Rule 15 of the Rules and Regulations promulgated under the Textile Fiber Products Identification Act.

PAR. 10. 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, in commerce.

PAR. 11. The acts and practices of respondents, as set forth in Paragraphs Seven, Eight and Nine, were in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

PAR. 12. In the course and conduct of their business, the manufacture and sale of sportswear, respondents now cause, and for some time last past have caused, said garments to be shipped from their factories in Pennsylvania to retail trade and mail order houses throughout the United States.

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

PAR. 13. In the course and conduct of their business, and for the purpose of inducing the sale of their said products, respondents have made certain statements and representations with respect to the sale of sportswear in advertisements in the New York Times, a newspaper having a wide circulation in various States of the United States. Among and typical, but not all inclusive, of said statements is the following:

DYNEL Woolmaster
Division of
Fox Knapp

Under the trade mark "Woolmaster" is a picture depicting four models wearing coats and jackets and in small letters on the bottom of the advertisement is the names of the fibers contained in the depicted garments.

PAR. 14. Through the use of the trade mark woolmaster in conjunction with the depicted garments, respondents have represented, directly and by implication, that the garments depicted are made of wool.

PAR. 15. The said advertisements were false, misleading and deceptive. In truth and in fact, three of the depicted garments contained no woolen fiber.

PAR. 16. 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 in the sale of products of the same general kind and nature as those sold by respondents.

PAR. 17. 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. 18. 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 P. Hughes for the Commission;
Mr. Jules Goldstein, New York, N.Y., for respondents.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

The complaint issued by the Federal Trade Commission in this proceeding on March 16, 1961, charges respondents with violating the Federal Trade Commission Act, the Wool Products Labeling Act of 1939, the Textile Fiber Products Identification Act and the Rules and Regulations promulgated under said Acts. Respondents are charged with misbranding their products sold by them in commerce, as "commerce" is defined in each of said Acts. A copy of the complaint was served upon respondents as required by law. Thereafter respondents filed their answer to the complaint, and a prehearing conference was convened on May 31, 1961, pursuant to § 3.10 of the Commission's Rules of Practice for Adjudicative Proceedings. On November 14, 1961, the parties submitted to the undersigned an agreement dated November 8, 1961, which purports to dispose of all the issues of this proceeding as to all parties involved. Said agreement has been signed by the respondents, their counsel, and by counsel supporting the complaint, and has been approved by the Chief of Division and the Director, Bureau of Deceptive Practices of this Commission. The said agreement was submitted to the above-named hearing examiner for his consideration, in accordance with § 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Respondents, pursuant to the aforesaid agreement, have admitted all the jurisdictional facts alleged in the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that respondents waive any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law, and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. The parties have, *inter alia*, by such agreement agreed: (1) the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full hearing; (2) the complaint may be used in construing the terms of said order; (3) the record herein shall consist solely of the complaint and said agreement; and (4) that said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement of November 8, 1961, containing consent order, and it appearing that the order provided for in said agreement covers all of the allegations of the complaint and provides for an appropriate disposition of this proceeding as to all parties, the agreement of November 8, 1961, is hereby accepted, pursuant to § 3.21 and § 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings; and

The undersigned hearing examiner having considered the complaint herein and the agreement and proposed order, and being of the opinion that the disposition of this proceeding by means of said agreement will be in the public interest, makes the following jurisdictional findings, and issues the following order:

JURISDICTIONAL FINDINGS

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

2. Respondent Fox Knapp Manufacturing Company is a corporation existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its office and principal place of business located at 1 West 34th Street, in the City of New York, State of New York. Individual respondents David B. Knapp and Joseph Knapp are, respectively, chairman and treasurer, and president, of the said corporate respondent. The office and principal place of businesses of the individual respondents is the same as that of the corporate respondent;

3. Respondents are engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act, the Wool Products Labeling Act of 1939, and the Textile Fiber Products Identification Act;

4. The complaint herein states a cause of action against said respondents under the Acts hereinabove named, and this proceeding is in the public interest.

ORDER

It is ordered, That respondents Fox Knapp Manufacturing Company, a corporation, and its officers, and David B. Knapp and Joseph Knapp, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, of wool products as "wool products" are defined in and subject to said Wool Products Labeling Act, do forthwith cease and desist from misbranding such products by:

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

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

It is further ordered, That respondents Fox Knapp Manufacturing Company, a coproration, and its officers, and David B. Knapp and Joseph Knapp 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, delivery for introduction, manufacture for introduction, sale, advertising or offering for sale, in commerce, or in 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 selling, offering for sale, advertising, delivering, transporting or causing to be transported, after shipment in commerce, of textile fiber products, either in their original state or which were contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from misbranding textile fiber products by:

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

2. Using any word or term on a label which constitutes or implies the name or designation of fiber not present in the product to which the label or tag is attached;

3. Failing to attach a label showing the information required to be disclosed under § 4(b) of the Textile Fiber Products Identification Act in a conspicuous place on the product to which it relates.

It is further ordered, That respondents Fox Knapp Manufacturing Company, a corporation, and its officers, and David B. Knapp and Joseph Knapp, individually and as officers of said corporation, and their representatives, agents and employees, directly or through any corporate or other device in connection with the advertising, offering for sale, sale, or distribution of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using in advertisements the words "wool" or "Woolmaster" or any other word indicative of wool, to designate or describe any product which is not composed entirely of wool, provided, however, in the case of a product composed in part of wool and in part of other fibers or materials, such words may be used as descriptive of the wool content if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words designating such other constituent fibers or materials.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, published May 6, 1955, as amended, the initial decision of the hearing examiner shall, on the 27th day of December, 1961, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Fox Knapp Manufacturing Company, a corporation, and David B. Knapp and Joseph Knapp, 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

PRIDE O'TEXAS CITRUS ASSOCIATION, INC.

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

Docket 8359. Complaint, Apr. 17, 1961—Decision, Dec. 27, 1961

Consent order requiring packers of citrus fruit in Mission, Tex., selling its products both through brokers and direct to customers, to cease paying brokerage or discounts in lieu thereof to direct buyers purchasing for their own accounts for resale.

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 Pride O'Texas Citrus Association, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at Mission, Texas, with mailing address as Post Office Box 273, Mission, Texas.

PAR. 2. Respondent is now and since October 1, 1959 has been engaged in the business of packing, selling and distributing citrus fruit, such as oranges, tangerines and grapefruit, all of which are hereinafter sometimes referred to as citrus fruit or fruit products. Respondent sells and distributes its citrus fruit through brokers, as well as direct, to customers located in many sections of the United States. When brokers are utilized in making sales for it, respondent pays them for their services, a brokerage or commission, usually at the rate of 10 cents per 1⅗ bushel box, or equivalent. Respondent's annual volume of business in the sale and distribution of citrus fruit is substantial.

PAR. 3. In the course and conduct of its business over the past several years, respondent has sold and distributed, and is now selling and distributing, its citrus fruit in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, to buyers located in the several States of the United States other than the State of Texas in which respondent is located. Respondent transports or causes such citrus fruit, when sold, to be transported from its place of business or packing plant in the State of Texas, or from other places within the State, to such buyers or to the buyers' customers located in various other States of the United States. Thus, there has been at all times mentioned herein a continuous course of trade in commerce in said citrus fruit across state lines between said respondent and the respective buyers of such fruit.

PAR. 4. In the course and conduct of its business as aforesaid, respondent has been, and is now, making substantial sales of citrus fruit to some, but not all, of its brokers and other direct buyers purchasing for their own account for resale, and on a large number of these sales respondent paid, granted, or allowed, and is now paying, granting or allowing to these brokers and direct buyers on their own purchases, a commission, brokerage, or other compensation, or an allowance or discount in lieu thereof, in connection therewith.

PAR. 5. The acts and practices of respondent, as hereinabove 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).

Messrs. Cecil G. Miles and *Basil J. Mezines* for the Commission.

Ewers, Toothaker, Ewers, Elick, Jones and *Abbott*, by *Mr. Scott Toothaker* and *Mr. O. C. Hamilton, Jr.*, McAllen, Tex., for respondents.

INITIAL DECISION BY HERMAN TOCKER, HEARING EXAMINER

In a complaint issued April 17, 1961, the Federal Trade Commission charged respondent Pride O'Texas Citrus Association, Inc. (a corporation organized and existing under the laws of the State of Texas and engaged in business in the City of Mission, Texas), with having violated Section 2(c) of the Clayton Act, as amended, by paying, granting or allowing to some but not all brokers buying for their own account and direct buyers a commission, brokerage or other compensation, or an allowance or discount in lieu thereof, in the course of its sales and distribution of citrus fruits in commerce.

After the issuance of the complaint, respondent, by its president, with the advice and agreement of its attorneys, and counsel supporting the complaint entered into an agreement providing for the issuance of a consent order to cease and desist, thus disposing of all the issues in this proceeding.

In the agreement it is expressly provided that the signing thereof is for settlement purposes only and does not constitute an admission by the respondent that it has violated the law as in the complaint alleged.

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

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

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

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

The Hearing Examiner has considered the agreement and the order therein contained, and, it appearing that said agreement and order provide for an appropriate disposition of this proceeding, the same is hereby accepted and shall be filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice applicable to this case.

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

ORDER

It is ordered, That the respondent, Pride O'Texas Citrus Association, Inc., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the sale of citrus fruit or fruit products in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from;

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, published May 6, 1955, as amended, the initial decision of the Hearing Examiner shall, on the 27th day of December, 1961 become the decision of the Commission; and, accordingly:

It is ordered, That 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

UTRECHT LINENS, INC., ET AL.

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

Docket C-53. Complaint, Dec. 27, 1961—Decision, Dec. 27, 1961

Consent order requiring a Brooklyn seller of water and oil colors, art linens, brushes, etc., to some retailers but mainly to consumers, to cease representing falsely that "list prices" higher than their sale prices were the usual retail prices and that purchasers could save the difference between the two; and that they were wholesalers selling at wholesale 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 Utrecht Linens, Inc., a corporation, and Harold E. Gulamerian and Norman S. Gulamerian, individually and as officers of said corporation, hereinafter referred to as respondents, having 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 Utrecht Linens, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 32—33rd Street, in the City of Brooklyn, State of New York.

Respondents Harold E. Gulamerian and Norman S. Gulamerian are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of, among other things, water colors, art linens, brushes and oil colors to retailers for resale to the public and directly 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 York to purchasers thereof located in various other states of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents, for the purpose of inducting the purchase of their water colors and oil colors, have engaged in the practice of using the words "list price" in connection with stated amounts higher than those at which they have offered merchandise for sale thereby representing, directly or by implication, that such stated higher amounts are the usual and customary retail price of said merchandise in the trade area or areas where the representations were made and that the difference between such stated higher amounts and the price at which respondents offered said merchandise for sale represents savings from the usual and customary retail price of the merchandise. In truth and in fact, such "list prices" are fictitious and are in excess of the usual and customary retail prices for said merchandise in the trade area or areas where the representations are made and the difference between such stated higher amounts and the prices at which respondents offer said merchandise does not represent savings from the usual and customary retail prices.

PAR. 5. Respondents, in the course and conduct of their aforesaid business, have represented that they were wholesalers selling at "wholesale prices." In truth and in fact, respondents are not actually wholesalers. While they may sell to some retailers, the great majority of their sales are not for resale but are made directly to consumer-users. Respondents' so-called "wholesale price" is a fictitious designation used by them to make prospective purchasers think they are saving money.

PAR. 6. 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 products of the same general kind and nature as that sold by respondents.

PAR. 7. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

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 methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5(a)(1) of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the above-named respondents with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint contemplated by said agreement, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent, Utrecht Linens, 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 32 – 33rd Street, Brooklyn, in the city of New York, State of New York.

Respondents Harold E. Gulamerian and Norman S. Gulamerian are officers of said corporation, and their address is the same as that of said corporation.

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, Utrecht Linens, Inc., a corporation, and its officers, and Harold E. Gulamerian and Norman S. Gulamerian, 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 water colors, art linens, brushes and oil colors, or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "list price" or any other words of similar import or meaning in connection with a stated amount higher than that at which merchandise is offered for sale by respondents when such stated higher amount is in excess of the usual and customary retail price of said merchandise in the trade area or areas where the representation is made; or representing in any other manner that any amount is the usual and customary retail price of merchandise when it is in excess of the price at which the merchandise is usually and customarily sold at retail in the trade area or areas where the representation is made;

2. Representing in any manner that savings are afforded in the purchase of merchandise from respondents from the usual and customary retail price in a trade area unless the price at which such merchandise is offered constitutes a reduction from the price at which the merchandise is usually and customarily sold at retail in the trade area or areas where the representation is made; or misrepresenting in any manner the amount of savings available to purchasers of respondents' merchandise;

3. Using the word "wholesale", or representing in any other manner that they sell at wholesale or wholesale prices, in connection with sales made at the retail level.

It is further 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 this order.

IN THE MATTER OF

THOMAS F. LANNIN DOING BUSINESS AS LANNIN SALES COMPANY, ETC.

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

Docket C-54. Complaint, Dec. 27, 1961—Decision, Dec. 27, 1961

Consent order requiring a Chicago selling agent for a number of manufacturers of automotive parts, supplies, and related products, doing business also as a wholesale distributor of such products, to cease accepting brokerage on purchases for his own account for resale, such as a commission of 7½ per cent of the sales price of oil measures, oil can spouts, and can crushers he bought for the account of his wholesale firm from the Swingspout Measure Co. for which he was a direct factory representative.

COMPLAINT

The Federal Trade Commission, having reason to believe that the respondent named in the caption hereof 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, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Thomas F. Lannin is an individual doing business as Lannin Sales Company, a sole proprietorship. He is engaged in business as a manufacturer's representative, located at 55 East 23rd Street, Chicago, Illinois. Respondent, in such capacity, acts as the selling agent or broker for a number of manufacturer sellers of automotive parts, supplies and related products, located in various States of the United States other than and including the state of Illinois. When acting as a selling agent or broker, respondent receives a brokerage or commission in varying amounts from the manufacturers so represented.

Respondent Thomas F. Lannin also does business as a wholesale distributor of automotive parts, supplies and related products as a sole proprietorship under the name Trell Company, which business is located at 2300 South Michigan Avenue, Chicago, Illinois. Respondent, in such capacity, purchases for resale substantial quantities of automotive parts, supplies and related products from many of the seller principals represented by respondent. A substantial part of these purchases are made through his brokerage concern, the Lannin Sales Company, on which purchases he receives the usual commission or brokerage.

PAR. 2. In the course and conduct of his businesses, respondent acting as a selling agent or broker for various manufacturer sellers under the name Lannin Sales Company, and as a wholesale distributor under the name Trell Company, is engaged in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended. Respondent as a selling agent or broker for various manufacturer sellers located in several states of the United States other than and including the State of Illinois, negotiates the sale of automotive parts, supplies and related products, and causes said products, when sold, to be transported from the place of business of these sellers to buyers located elsewhere. Respondent as a wholesale distributor purchases automotive parts, supplies and related products, from suppliers located in several states of the United States other than and including the State of Illinois and causes said products to be transported from the place of business of its suppliers to respondent or to respondent's customers located elsewhere. Thus, there has been at all times mentioned herein a continuous course of trade in commerce in the negotiation for sale, the sale, and the transportation of automotive parts, supplies and related products, across state lines, between respondent, the various manufacturer sellers and the respective customers of each.

PAR. 3. In the course and conduct of his business operated under the names, Lannin Sales Company and Trell Company, respondent has been and is now making substantial purchases of automotive parts, supplies and related products, for his own account for resale, from suppliers who utilize the services of respondent as a selling agent or broker, and on such purchases respondent has received and accepted, and is now receiving and accepting, a commission, brokerage, or other compensation, or an allowance or discount in lieu thereof. For example, respondent doing business as Lannin Sales Company is a direct factory representative of Swingspout Measure Company of Los Angeles, California, in the States of Ohio and Michigan. His compensation on sales negotiated on behalf of this supplier vary between 7½ to 10 percent. At the same time, respondent purchases oil measures, oil can spouts, and can crushers from the Swingspout Measure Company for the account of his wholesale firm, the Trell Company, and on such purchases the respondent through his brokerage firm, Lannin Sales Company, receives a commission at the rate of 7½ percent of the sales price.

PAR. 4. The acts and practices of respondent in receiving and accepting a brokerage or a commission, or an allowance or discount in lieu thereof, on his 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).

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of subsection (c) of Section 2 of the Clayton Act, as amended, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form or order; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as set forth in the complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent, Thomas F. Lannin, is an individual doing business as Lannin Sales Company, located at 55 East 23rd Street, Chicago, Illinois, and Trell Company, located at 2300 South Michigan Avenue, Chicago, Illinois.

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

ORDER

It is ordered, That respondent Thomas F. Lannin, individually and doing busines as the Lannin Sales Company and the Trell Company, and respondent's agents, representatives and employees, directly or through any corporate, partnership, sole proprietorship, or other device, in connection with the purchase of automotive parts, supplies and related products in commerce, as "commerce" is defined in the 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 automotive parts, supplies and related products 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.

It is further 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 this order.

IN THE MATTER OF

TUCKER 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 C-55.—Complaint, Dec. 27, 1961—Decision, Dec. 27, 1961

Consent order requiring Chicago furriers to cease violating the Fur Products Labeling Act by failing to show on invoices the true animal name of the fur in a fur product and the country of origin of imported furs, and to disclose when fur was artificially colored; and failing to maintain adequate records as a basis for price and value claims made in connection with their Incentive Award Programs whereby they advertised certain fur products for use by business firms as incentive awards to employees.

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 Tucker Furs, Inc., a corporation, and Morris Tucker, 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 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. Tucker Furs, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois and its office and principal place of business located at 108 North State Street, Chicago, Illinois.

Morris Tucker is President of the said corporate respondent and controls, directs and formulates the acts, practices and policies of the said corporate respondent. His 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 has been shipped and received in commerce as the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act.

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

Among such falsely and deceptively invoiced fur products, but not limited thereto, were invoices pertaining to such fur products which failed:

1. To show the true animal name of the fur used in the fur product.

2. To disclose that the fur contained in the fur products was bleached, dyed, or otherwise artificially colored when such was the fact.

3. To show the country of origin of the imported furs used in the fur product.

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

PAR. 5. Respondents' advertised fur products in connection with Incentive Award Programs whereby respondents advertised and offered for sale certain fur products for use by business concerns as Incentive Awards to employees. Among and included in the advertisements, as aforesaid, but not limited thereto, were letters and brochures which were circulated in the State of Illinois and various other States of the United States.

Respondents in advertising fur products for sale as aforesaid, made claims and representations respecting prices and values of fur products. Said representations were of the types covered by subsections (a), (b), (c) and (d) of Rule 44 of the Rules and Regulations promulgated under the Fur Products Labeling Act. Respondents in making such claims and representations failed to maintain full and adequate records disclosing the facts upon which such claims and representations were based in violation of Rule 44(e) of said Rules and Regulations.

PAR. 6. The aforesaid acts and practices of 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 practives and unfair methods of competition in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and the Fur Products Labeling Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Tucker Furs, Inc. is a corporation organized, 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 108 North State Street, Chicago, Illinois.

Respondent Morris Tucker is president of said corporation and his address is the same as that of said corporation.

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 Tucker Furs, Inc., a corporation, and Morris Tucker, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the 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. 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 information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form.

2. Making claims and representations of the types covered by subsections (a), (b), (c) and (d) of Rule 44 of the Rules and Regulations promulgated under the Fur Products Labeling Act unless there are maintained by respondents full and adequate records disclosing the facts upon which such claims and representations are based.

It is further ordered, That 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 this order.

IN THE MATTER OF

COLGATE-PALMOLIVE COMPANY ET AL.

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

Docket 7736. Complaint, Jan. 8, 1960—Decision, Dec. 29, 1961

Order requiring a well-known manufacturer of shaving cream, among other products, and its advertising agency, to cease representing falsely in television advertising of its "Palmolive Rapid Shave"—by use of a "mock up" composed of glass or plexiglass to which sand had been applied so as to simulate sandpaper—that the "moisturizing" action of its said shaving cream was such as to make it possible to apply it to coarse sandpaper and forthwith shave off the rough surface, and that such demonstration proved the "moisturizing" properties of the product.

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 Colgate-Palmolive Company, a corporation, and Ted Bates & Company, Inc., a corporation, hereinafter referred to as respondents, have violated the provi-