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

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

MUTUAL DISTRIBUTORS, INC., ET AL.

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

Docket 7803. Complaint, Mar. 2, 1960—Decision, Aug. 23, 1961

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

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Mutual Distributors, Inc., a corporation, and George D. Hartstone, Leon C. Hartstone, and Robert S. Hartstone, 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. Mutual Distributors, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its principal office and place of business located at 1241 Columbus Avenue, Boston, Massachusetts.

Respondents George D. Hartstone, Leon C. Hartstone and Robert S. Hartstone are, respectively, president, treasurer and clerk of the corporate respondent. Said individual respondents formulate, direct and control the acts and practices of said corporate respondent, including the acts and practices herein set out. The address of the individual respondents is the same as that of said corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the offering for sale, sale and distribution of phonograph records as an independent distributor for several record manufacturers to retail outlets and jukebox operators in various States of the United States.

In the course and conduct of their business, respondents now cause, and for some time last past have caused, the records they distribute, when sold, to be shipped from their place of business in the State of Massachusetts, 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 phonograph records in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their business, at all times mentioned herein, respondents have been, and are now, in substantial competition, in commerce, with corporations, firms and individuals in the sale and distribution of phonograph records.

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

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

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

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

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

The respondents alone, or with certain unnamed record manufacturers, negotiated for and disbursed "payola" to disk jockeys broadcasting musical programs over radio or television stations broadcasting across state lines, or to other personnel who influence the selection of the records "exposed" by the disk jockeys on such programs, or to the radio station itself.

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

The respondents, by participating individually or in a joint effort with certain collaborating record manufacturers, have aided and abetted the deception of the public by various disk jockeys by controlling or unduly influencing the "exposure" of records by disk jockeys with the payment of money or other consideration to them, or to other personnel which select or participate in the selection of the records used on such broadcasts, or to the radio station itself.

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

PAR. 6. The aforesaid acts, practices and methods have the capacity and tendency to mislead and deceive the public, and to hinder, restrain and suppress competition in the offering for sale, sale and distribution of phonograph records, and to divert trade unfairly to the respondents from their competitors, and substantial injury has thereby been done and may continue to be done to competition in commerce.

PAR. 7. The aforesaid acts and practices of respondents, as alleged herein, were and are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

Mr. Arthur Wolter, Jr., for the Commission.

Peabody, Koufman & Brewer, by *Mr. Joseph M. Koufman*, of Boston, Mass., for respondents.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

On March 2, 1960, the Federal Trade Commission issued its complaint against the above-named respondents charging them with the disbursement of "payola." Counsel supporting the complaint now moves to dismiss the complaint without prejudice, which motion is unopposed, for the following stated reason:

Since the disclosure requirements with respect to furnishing consideration to persons connected with broadcast licensees and the receipt thereof by the latter have been modified as a result of specific Congressional action, counsel supporting the complaint considers the continued prosecution of this matter as unnecessary expenditure of time, effort and funds in determining the legality of the alleged practice since the protection of the public interest is now fully assured by specific statute.

Now, therefore, upon said motion:

It is ordered, That the complaint be and hereby is dismissed without prejudice.

DECISION OF THE COMMISSION

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 23d day of August 1961, become the decision of the Commission.

IN THE MATTER OF

BERNARD W. COATES DOING BUSINESS AS NATIONAL MAIL MERCHANDISERS

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

Docket 8193. Complaint, Nov. 28, 1960—Decision, Aug. 23, 1961

Consent order requiring a Dorchester, Mass., concern to cease selling mail order dealerships through deceptive claims in advertising, as in the order below specified.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Bernard W. Coates, an individual trading and doing business as National

Mail Merchandisers, 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 Bernard W. Coates is an individual trading and doing business as National Mail Merchandisers, with his office and principal place of business located at 35 Pleasant Street, Dorchester, Massachusetts. Respondent uses various mailing addresses for National Mail Merchandisers, among such addresses is 618 Washington Street, Boston, Massachusetts.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the sale of mail order dealerships. In connection with the same he sells and distributes to his purchasers catalogs and sales literature, and various supplies and equipment.

Respondent causes, and has caused, said products when sold to be shipped from his place of business in Massachusetts to purchasers thereof at their respective residences and places of business located in various other states of the United States.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said dealerships, and catalogs, sales literature and supplies in commerce as "commerce" is defined in the Federal Trade Commission Act. Respondent's volume of business in such commerce is, and has been, substantial.

PAR. 3. Respondent in the course and conduct of his business is, and has been, engaged in substantial competition with other persons, firms and corporations engaged in the sale of dealerships, supplies and equipment used in, and necessary for, the operation of a mail order merchandising business.

PAR. 4. Respondent in the course and conduct of his said business, and for the purpose of inducing the sale of his said dealerships and accompanying material, advertises the same by mailings sent through the United States mails to prospective customers, and by advertisements placed in specialty magazines. Among and typical but not inclusive of the statements appearing in said advertisements are the following:

NOW THE OPPORTUNITY OF A LIFETIME IS YOURS!
WE SET YOU UP IN A MAIL-ORDER BUSINESS
OF YOUR OWN . . . RIGHT IN YOUR OWN HOME.

. . . .

YOU NEED NO INVENTORY
YOU DO NO SHIPPING

Our plan is simple. We supply you with attractively printed catalogue folders with your name and address on them. These catalogue folders are

"self-mailers". That means that all you have to do is fold them, paste a label on them that has the name and address of a mail order customer, stamp and drop them in the mail. Soon the mail man will be bringing you envelopes containing orders with checks, cash and money orders. Then, all you do is take out your generous profit, send us the name and address of the customer and WE SHIP THE ITEMS DIRECT TO YOUR CUSTOMER FOR YOU under your own label so that you get all the re-orders. That's all there is to it.

One of the most exciting features of our dealership plan is our amazing $25.00 DEALER'S ALL PROFIT PLAN. This exclusive feature has been known to bring letters with $25.00 in every mail. The best part about this plan is that you keep every cent . . . and we ship the orders for you FREE. If you are really interested in making money at home, you can't afford to overlook this amazing money maker.

What does a dealership cost? Well you'll agree it is worth a fortune but actually it can cost you nothing because as explained in the folder, the $25.00 you send is actually nothing more than a "good faith" DEPOSIT WHICH IS REBATED TO YOU WITH YOUR FIRST ORDER OF SUPPLIES.

WAIT . . . that's not all, we also have an AMAZING MONEY BACK GUARANTEE. If your mailings are not successful, we'll refund your Dealership DEPOSIT WITHOUT ANY QUESTION. That's how sure we are that you will make a profit.

DON'T BE SORRY LATER. THIS COULD BE YOUR BIG CHANCE. TAKE YOUR FIRST STEP FORWARD TO A SECURE FUTURE BY MAILING THE $25.00 DEPOSIT.

YOURS FOR MAIL ORDER SUCCESS
B. W. COATES
DIRECTOR.

X X X

THIS MAY BE YOUR CHANCE OF A LIFETIME!

JUST THINK of trying to get started in any other business. Even the smallest retail store means an investment of $10,000 to $25,000 for rent, fixtures, stock, printing etc. Then you sit and wait for customers to come in . . . BUT NOT IN MAIL ORDER. You can start small as you want.

Without investing one cent for merchandise. No inventory. No shipping. After you've mailed the catalog, and the orders start coming, you forward the orders to us and we ship direct to your customer with YOUR SHIPPING LABEL. You keep the profit of 100 per cent or more. You get the re-orders. You have no money invested in stock, you have no wrapping, shipping or storage problems because we do it all for you. ALL you do is keep the profit! ADVICE AND CONSULTATION SERVICE FOR a full year. Your dealership entitles you to help and advice through correspondence. If you have any questions our experts are ready to help you.

REBATE COUPON. We send you a valid REBATE COUPON—This entitles you to a $25.00 rebate on your very first order for supplies. This means that actually you are getting the entire mail order dealership, offers and all absolutely FREE!

OUR GUARANTEE—You take no risk in accepting this offer as it is made through the United States Mails by the National Mail Merchandisers, an affiliate of a firm with over 20 years faithful service to MAIL ORDER DEALERS AND MAIL ORDER Beginners . . . We guarantee you profitable

results as an authorized dealer and operator of one or more of our complete Ready to Go Offers, or your dealership deposit will be refunded without further question.

RUSH THIS ORDER FORM TODAY—We need a limited number of reliable persons to participate in our unique Dealership Plan.

X X X X

MAIL ORDER EXPERTS SHOW HOW TO REACH THOUSANDS OF PROVEN MAIL ORDER BUYERS.

NATURALLY, in order for this to be successful to you, we must limit the number of men and women we allow to participate in this operation.

PAR. 5. Persons who write respondents in regard to the advertising appearing in magazines are sent sales literature, similar to the advertising sent directly through the mails to prospective customers, and are sent, similar application forms. The said application forms contain the following statements:

APPLICATION
FOR MAIL ORDER DEALERSHIP

NATIONAL MAIL MERCHANDISERS
618 WASHINGTON STREET
BOSTON 24, MASSACHUSETTS

Dear Sirs,

I certainly want to get your wonderful Mail Order Dealership. Here's my full payment of $25.00 for which you are to send me EVERYTHING as offered —your complete 7 Point Program including the $25 rebate coupon and the sensational $25 ALL PROFIT OFFER—ALL BY RETURN FIRST CLASS MAIL.

Date _____

Name _____

Address _____

City _____ Zone _____ State _____

Signed _____

Age _____

PAR. 6. By the use of the aforesaid advertisements, sales literature and application forms, and by other advertisements of the same import not herein set forth, respondent has represented and now represents directly or by implication:

1. That to become an active participating mail order dealer it will cost the purchaser of the dealership as little as $25.00 and can cost him nothing.

2. That the $25.00 "good faith deposit" is returned to the purchaser of the dealership with his first order of supplies.

3. That one wishing to withdraw as a dealer will get his $25.00 deposit back with no questions asked.

4. That respondent's offer of mail order dealerships is restricted to a limited number of people.

5. That National Mail Merchandisers is a large organization composed of more than one person.

6. That the "$25.00 ALL PROFIT PLAN" is all profit to the subscriber and that it can readily bring in $25.00 orders in every mail.

7. That National Mail Merchandisers is an affiliate of a mail order firm with over twenty years experience in the mail order business.

8. That National Mail Merchandisers guarantees successful operation of a mail order dealership to a purchaser or will refund the $25.00 dealership deposit without question.

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

1. $25.00 is not the sole cost to open a mail order business as the dealer must purchase at least one mailing offer or promotion from respondent at a cost of $80.00 and pay the cost of stamps for mailing.

2. The $25.00 "good faith deposit" is not returned to the dealer but is credited against his first order to respondent for sales literature of $80.00 or more.

3. The $25.00 deposit is not returned to the prospective dealer if he decides not to become a mail order dealer unless he actually orders respondent's sales literature, mails the same and can show the respondent that he has been unsuccessful.

4. Respondent's offers of mail order dealerships are not limited to any definite number of people but are open to all who will send respondent a $25.00 "good faith deposit."

5. National Mail Merchandisers is not a large organization as it is composed solely of the respondent.

6. The $25.00 "ALL PROFIT PLAN" is not all profit as it involves an outlay of money on the part of the dealers for mailing lists, self-mailing folders, and "sales-making folders" from respondent. All of such costs reflect on any money made by a dealer in undertaking such plan. Dealers undertaking such plan have little or no chance of realizing $25.00 orders in every mail.

7. National Mail Merchandisers is not an affiliate of any firm.

8. There are numerous conditions under respondent's guarantee of the refund of the $25.00 deposit which are not set forth in connection with the guarantee.

PAR. 8. The use by the respondent of the aforementioned false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and the tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representa-

tions were and are true and into the purchase of substantial quantities of aforesaid products because of said mistaken and erroneous belief. As a result thereof, trade in commerce has been unfairly diverted to respondent from his competitors and injury thereby has been done to competition in commerce.

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

Mr. *Garland S. Ferguson* supporting the complaint.
Mr. Milton M. Mokotoff, of New York, N.Y., for respondent.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on November 28, 1960, charging him with the use of unfair and deceptive acts and practices and unfair methods of competition, in commerce, in violation of the Federal Trade Commission Act, by the use of false, deceptive and misleading statements in connection with the sale of mail order dealerships. After being served with said complaint, respondent appeared by counsel and entered into an agreement dated June 9, 1961, containing a consent order to cease and desist purporting to dispose of all this proceeding as to all parties. Said agreement, which has been signed by the respondent, and by counsel supporting the complaint, and approved by the Director and Assistant Director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Respondent, pursuant to the aforesaid agreement, has 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 respondent waives 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 he may have to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has been agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as

if entered after a full hearing and that the complaint may be used in construing the terms of said order. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, and that said agreement is for settlement purposes only and does not constitute an admission by respondent that he has violated the law as alleged in the complaint.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing consent order, and it appearing that the order provided for in said agreement covers all of the allegations of the complaint and provides for an appropriate disposition of this proceeding as to all parties, said agreement is hereby accepted and is ordered filed upon this decision's becoming the decision of the Commission pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and the hearing examiner, accordingly, makes the following jurisdictional findings and order:

1. Bernard W. Coates is an individual trading and doing business as National Mail Merchandisers, with his office and principal place of business located at 35 Pleasant Street, Dorchester, Massachusetts. Respondent uses various mailing addresses for National Mail Merchandisers and among such addresses is 618 Washington Street, Boston, Massachusetts.

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

ORDER

It is ordered, That respondent Bernard W. Coates, an individual trading and doing business as National Mail Merchandisers, or under any other name, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of mail order dealerships, and sales literature and other materials to be used in connection with said dealerships, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly that:

1. A mail order dealership can be acquired under respondent's dealership plan at no cost to the purchaser; or misrepresenting in any manner the actual amount of money required to be paid to obtain a dealership.

2. The $25.00 "good faith deposit", or any other sum of money, is refunded to the purchaser of one of respondent's dealerships with his first order of supplies from respondent.

3. The $25.00 deposit, or any other sum of money, paid to respondent will be returned in case the person making the payment decides not to become a dealer.

4. The offer of mail order dealerships is restricted to a limited number of people, or is restricted, or limited, in any manner which is not in accordance with the facts.

5. National Mail Merchandisers is a large organization or that it consists of persons other than respondent.

6. Respondent's $25.00 "ALL PROFIT PLAN" is all profit to the purchaser, or that dealers will receive $25.00 in every mail; or will receive any amount in excess of the amount that is usually received by such dealers.

7. National Mail Merchandisers is affiliated with any firm or person other than the respondent.

8. Successful operation of dealerships is guaranteed, or that a refund of any money paid to respondent is guaranteed unless the nature and extent of such guarantee and the manner in which the guarantor will perform are clearly disclosed.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 23d day of August 1961, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

KATTEN & MARENGO, INC., ET AL.

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

Docket 8374. Complaint, Apr. 21, 1961—Decision, Aug. 23, 1961

Consent order requiring furriers in Stockton, Calif., to cease violating the Fur Products Labeling Act by advertising in newspapers which represented prices of fur products as reduced from regular prices which were in fact

fictitious, and as reduced by stated percentages, without keeping adequate records as a basis for such claims.

COMPLAINT

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

PARAGRAPH 1. Katten & Marengo, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its office and principal place of business located at 500 East Main Street, Stockton, California.

Respondents Peter J. Marengo, Jr., Peter J. Marengo, III, and Mary Schenone control, direct and formulate the acts, practices and policies of said corporate respondent. Their office and principal place of business is the same as that of the said corporate respondent.

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

PAR. 4. Among and included in the advertisements as aforesaid, but not limited thereto, were advertisements of respondents which

appeared in issues of the Stockton Record, a newspaper published in the city of Stockton, State of California, and having a wide circulation in said State and various other States of the United States.

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

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

(b) Represented directly or by implication through the use of percentage savings claims such as "½ off" that the regular or usual prices charged by respondents for fur products were reduced in direct proportion to the percentage of savings stated when such was not the fact in violation of Section 5(a)(5) of the Fur Products Labeling Act.

PAR. 5. Respondents in advertising fur products for sale as aforesaid made claims and representations respecting the prices and values of fur products. 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 practices in commerce under the Federal Trade Commission Act.

Mr. Charles S. Cox for the Commission.

Kroloff, Brown, Belcher & Smart, by *Mr. William E. Tout*, Stockton, Calif., for the respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated April 21, 1961, the respondents are charged with violating the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder.

On June 20, 1961, the respondents and their attorneys entered into an agreement with counsel in support of the complaint for a consent order.

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

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

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

1. Respondent Katten Marengo, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 500 East Main Street, in the City of Stockton, State of California. Respondents Peter J. Marengo, Jr., Peter J. Marengo, III, and Mary Schenone are officers of said corporate respondent, and their address is the same as that of corporate respondent.

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

ORDER

It is ordered, That Katten & Marengo, Inc., a corporation and its officers, and Peter J. Marengo, Jr., Peter J. Marengo, III, and Mary Schenone, 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 into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce of fur products, or in connection with the sale, advertising, offering for sale, transportation, or distribution of fur products which are made

in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

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

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

B. Represents, directly or by implication, through the use of the words, symbols or figures "½ off", "regular", "reg.", or any other words or terms of the same import, that the regular or usual price of any fur product is any amount which is in excess of the price at which the respondents have usually and customarily sold such products in the recent regular course of business.

C. Represents, directly or by implication, that any savings from respondents' regular or usual retail price are afforded to the purchasers of respondents' fur products unless the price at which same are offered constitutes a reduction from the price at which said fur products have been usually and customarily sold by respondents in the recent regular course of their business.

D. Misrepresents, in any manner, the amount of savings available to purchasers of respondents' fur products or the amounts by which the prices of said fur products are reduced from the prices at which said products are usually and customarily sold by respondents in the recent regular course of their business.

2. Making price claims or representations respecting prices or values of fur products unless there are maintained by respondents full and adequate records disclosing the facts upon which such claims or representations are based.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 23d day of August 1961, become the decision of the Commission; and accordingly:

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