

Complaint

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## DECISION OF THE COMMISSION AS TO RESPONDENT WILLIAM J. KRAUS

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 6th day of September 1961, become the decision of the Commission.

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IN THE MATTER OF

## CRAWFORD INDUSTRIES, INC., ET AL.

CONSENT AND DEFAULT ORDERS, ETC., IN REGARD TO THE ALLEGED VIOLATION  
OF THE FEDERAL TRADE COMMISSION ACT

*Docket 8423. Complaint, June 2, 1961—Decisions, Sept. 6, 1961, and Oct. 10, 1961*

Consent order dated Sept. 6, 1961, and the same order issued in default Oct. 10, 1961, requiring an individual and a corporation, respectively, in Pikesville, Md., to cease selling home repairs through bait advertising, false savings claims, and other misrepresentations, as in the orders 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 Crawford Industries, Inc., a corporation, and Joseph Silver, alias James Crawford, and Irving Zimmerman, 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. Respondent Crawford Industries, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Maryland. Its office and principal place of business is located at 5107 Baltimore Avenue, Hyattsville, Maryland.

Respondents Joseph Silver, alias James Crawford, whose address is 5385 West Montgomery Avenue, Philadelphia, Pennsylvania, and Irving Zimmerman, whose address is 21 Randall Street, Pikesville, Maryland, are officers of the respondent corporation. They formulate, direct and control the acts and practices of the respondent corporation, including those hereinafter set forth.

PAR. 2. Respondents are now, and for some time last past have been, engaged in advertising, offering for sale, and sale of home repairs, including the furnishing and installation of aluminum siding, jalousies and awnings, recreation rooms and porch enclosures.

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

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the sale of their services and various materials, respondents have made certain statements and representations with respect thereto in newspapers of general distribution and through oral statements made by the individual respondents or their salesmen. By and through the use of said statements, respondents have represented, directly or by implication, that:

1. They offer to install porches and other improvements at certain advertised prices.

2. No building permits are necessary in order to make the home improvements.

3. After completion of the improvements, the homes or buildings of the purchasers would be used to demonstrate the work done by respondents and the purchasers would receive a commission for work done on other homes as a result of the demonstration.

4. Crawford Industries, Inc., offers substantial savings (as much as 50% on special offers) to its customers and that special financing (as low as \$1.25 per week and up to five years to pay) is provided if desired.

5. Crawford Industries, Inc., performs all work to be done without the employment of subcontractors.

6. Crawford Industries, Inc., is the manufacturer of the materials sold by it.

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

1. The offer to install porches and other improvements at certain advertised prices was not a bona fide offer but was made for the purpose of obtaining leads as to persons interested in purchasing home improvements.

2. In many instances building permits were necessary in order to make the home improvements and it was necessary, in several instances, to remove or substantially change the home improvements made, pursuant to contract made by the home owner and respondents, because of the lack of a building permit, to the injury and damage of the home owner.

3. Respondents do not use the homes or buildings of their purchasers for demonstration purposes and do not pay commissions to such purchasers for work done by respondents on other homes or buildings.

4. No savings of any kind are afforded by Crawford Industries, Inc., to customers who deal with respondents instead of competing contractors, and no financing or terms are provided by respondents over and beyond referral to the usual sources of credit available to the general public.

5. Crawford Industries, Inc., relies entirely upon the services of subcontractors.

6. Crawford Industries, Inc., does not manufacture any of the materials sold by it.

PAR. 6. 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 such statements and representations were, and are, true and into the purchase of substantial quantities of respondents' materials and services by reason of said erroneous and mistaken belief.

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

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

*Mr. Miles R. Eisenstein*, Baltimore, Md., for the respondent.

INITIAL DECISION AS TO RESPONDENT IRVING ZIMMERMAN  
BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated June 2, 1961, respondent Irving Zimmerman, individually and as an officer of Crawford Industries, Inc., a corporation, is charged with violating the provisions of the Federal Trade Commission Act.

On July 6, 1961, respondent Irving Zimmerman and his attorney entered into an agreement with counsel in support of the complaint for a consent order.

The respondents Crawford Industries, Inc., a corporation, and Joseph Silver, alias James Crawford, individually and as an officer of said corporation, are not parties to the aforementioned agreement and are subject to further proceedings.

Under the foregoing agreement, the respondent admits the juris-

dictional 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 respondent of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by the respondent that he has violated the law as alleged in the complaint.

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 said respondent, 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. Individual respondent, Irving Zimmerman, 21 Randall Street, Pikesville, Maryland, is an officer of the corporate respondent.

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

## ORDER

*It is ordered*, That respondent Irving Zimmerman, individually and as an officer of Crawford Industries, Inc., a corporation, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale or sale of any services or materials, or both, in connection with the repair, remodeling, construction or renovating of homes or other buildings, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

1. Respondent offers to sell any services or materials when such offer is not a bona fide offer to sell such services or materials.

2. A building permit is not required to make additions or improvements to buildings, unless such is the fact.

3. The homes or other buildings of respondent's purchasers will be used for demonstration purposes, or that such purchasers will be paid a commission for work done by respondent on other homes or buildings, as a result of such demonstrations.

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4. Purchasers realize savings in dealing with respondent from prices charged by others, or that any financing is available to purchasers other than the usual sources of credit available to the general public.

5. Any work done pursuant to respondent's contract with purchasers is done by respondent.

6. Respondent manufactures any of the materials sold by him.

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 6th day of September 1961, become the decision of the Commission; and accordingly:

*It is ordered*, That Irving Zimmerman, individually and as an officer of Crawford Industries, Inc., a corporation, 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.

*Mr. Ames W. Williams* and *Mr. Herbert L. Blume* for the Commission.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

The Federal Trade Commission on June 2, 1961, issued its complaint herein charging that Crawford Industries, Inc., a corporation, and Joseph Silver, alias James Crawford, and Irving Zimmerman, individually and as officers of said corporation, had violated the provisions of the Federal Trade Commission Act in certain particulars.

The said respondents, with the exception of Joseph Silver, alias James Crawford, were duly served with a copy of the complaint, wherein the 16th day of August 1961, at 10 o'clock was fixed as the time and Federal Trade Commission Building, Washington, D.C., as the place when and where a hearing would be had, before a hearing examiner of said Commission, on the charges set forth in the complaint, at which time and place respondents would have the right under said Act to appear and show cause why an order should not be entered requiring respondents to cease and desist from the violation of law charged in the complaint.

This decision does not dispose of the matter as to the respondent Irving Zimmerman, individually and as an officer of the named corporation, and in respect to said respondent the charges of the complaint remain pending.

Respondent Joseph Silver, alias James Crawford, was not individually served with copy of the complaint and the complaint should therefore be dismissed without prejudice as to him.

Hearing was had at the time and place fixed in the complaint and the respondent Crawford Industries, Inc., a corporation, failed to file answer and failed to appear at said hearing. Pursuant to the Commission's Rules of Practice for Adjudicative Proceedings, the hearing examiner, without further notice to said respondent, found the facts, as they pertain to said respondent, to be as alleged in the complaint, and at said time and place hearing was had to determine the form of order.

The hearing examiner finds the following facts as set forth in the complaint are true:

Respondent Crawford Industries, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Maryland. Its office and principal place of business is located at 5107 Baltimore Avenue, Hyattsville, Maryland.

Respondent Crawford Industries, Inc., is now, and for some time last past has been, engaged in advertising, offering for sale, and sale of home repairs, including the furnishings and installation of aluminum siding, jalousies and awnings, recreation rooms and porch enclosures.

In the course and conduct of its business, respondent Crawford Industries, Inc., now causes, and for some time last past has caused, materials used in home repairs, when sold, to be shipped from its place of business in the State of Maryland and elsewhere, to purchasers thereof located in other States of the United States and in the District of Columbia, and maintains and at all times mentioned herein, has maintained, a substantial course of trade in said products, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

In the course and conduct of its business, and for the purpose of inducing the sale of its services and various materials, respondent Crawford Industries, Inc., has made certain statements and representations with respect thereto in newspapers of general distribution and through oral statements made by the individual respondents or their salesmen. By and through the use of said statements, respondent Crawford Industries, Inc., has represented, directly or by implication, that:

1. It offers to install porches and other improvements at certain advertised prices.
2. No building permits are necessary in order to make the home improvements.
3. After completion of the improvements, the homes or buildings of the purchasers would be used to demonstrate the work done by re-

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spondent Crawford Industries, Inc., and the purchasers would receive a commission for work done on other homes as a result of the demonstration.

4. Crawford Industries, Inc., offers substantial savings (as much as 50% on special offers) to its customers and that special financing (as low as \$1.25 per week and up to five years to pay) is provided if desired.

5. Crawford Industries, Inc., performs all work to be done without the employment of subcontractors.

6. Crawford Industries, Inc., is the manufacturer of the materials sold by it.

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

1. The offer to install porches and other improvements at certain advertised prices was not a bona fide offer but was made for the purpose of obtaining leads as to persons interested in purchasing home improvements.

2. In many instances building permits were necessary in order to make the home improvements and it was necessary, in several instances, to remove or substantially change the home improvements made, pursuant to contract made by the home owner and respondent Crawford Industries, Inc., because of the lack of a building permit, to the injury and damage of the home owner.

3. Respondent Crawford Industries, Inc., does not use the homes or buildings of its purchasers for demonstration purposes and does not pay commissions to such purchasers for work done by said respondent on other homes or buildings.

4. No savings of any kind are afforded by Crawford Industries, Inc., to customers who deal with respondent instead of competing contractors, and no financing or terms are provided by respondent over and beyond referral to the usual sources of credit available to the general public.

5. Crawford Industries, Inc., relies entirely upon the services of subcontractors.

6. Crawford Industries, Inc., does not manufacture any of the materials sold by it.

The use by respondent Crawford Industries, Inc., 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 such statements and representations were, and are, true and into the purchase of substantial quantities of respondent's materials and services by reason of said erroneous and mistaken belief.

## CONCLUSIONS

The aforesaid acts and practices of respondent Crawford Industries, Inc., as herein-above found, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices within the intent and meaning of the Federal Trade Commission Act.

## ORDER

*It is ordered,* That the respondent Crawford Industries, Inc., a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device in connection with offering for sale or sale of any services or materials, or both, in connection with the repair, remodeling, construction or renovating of homes or other buildings, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

1. Respondent offers to sell any services or materials when such offer is not a bona fide offer to sell such services or materials.
2. A building permit is not required to make additions or improvements to buildings, unless such is the fact.
3. The homes or other buildings of respondent's purchasers will be used for demonstration purposes, or that such purchasers will be paid a commission for work done by respondent on other homes or buildings, as a result of such demonstrations.
4. Purchasers realize savings in dealing with respondent from prices charged by others, or that any financing is available to purchasers other than the usual sources of credit available to the general public.
5. Any work done pursuant to respondent's contract with purchasers is done by respondent.
6. Respondent manufactures any of the materials sold by it.

*It is further ordered,* That complaint be dismissed, without prejudice, as to Joseph Silver, alias James Crawford.

## DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

This matter having come on to be heard by the Commission upon its review of the hearing examiner's initial decision filed on August 17, 1961, and the Commission having determined that said initial decision is appropriate in all respects to dispose of this proceeding:

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

*It is further ordered,* That respondent, Crawford Industries, Inc., shall, within sixty (60) days after service upon it of this order, file

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with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist.

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IN THE MATTER OF  
ROYAL TILE CO. OF NORTH PHILADELPHIA ET AL.  
CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION ACT

*Docket 8286. Complaint, Feb. 8, 1961—Decision, Sept. 7, 1961*

Consent order requiring 17 associated companies engaged in the retail sale of rubber and asphalt tile and other floor coverings in several States, to cease falsely representing excessive prices as the usual prices for their merchandise and the difference between such amounts and the sale prices, as savings for purchasers, through use of such typical statements in newspaper advertisements as "Flexitone Tile 12¢ each Reg. 17¢", "Congo-Wall, original 59¢, Run ft. 5 Run Foot for \$1", etc.

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 respondents described in the caption hereof 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 Royal Tile Co. of North Philadelphia, Royal Tile Co. of South Philadelphia, and Royal Tile Co. of Suburban Philadelphia are corporations organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania with their main offices and principal place of business located at 424 Central Avenue, Cheltenham, Pennsylvania.

Respondent Royal Tile Co. of Eastern Maryland is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland with its main office and principal place of business located at 424 Central Avenue, Cheltenham, Pennsylvania.

Respondents Royal Tile Co. of Central New Jersey and Royal Tile Co. of Southern New Jersey are corporations organized, existing and doing business under and by virtue of the laws of the State of New

Jersey with their main office and principal place of business located at 424 Central Avenue, Cheltenham, Pennsylvania.

Individual respondents Jack Tizer and Vivian Tizer are officers of all the corporate respondents named in Paragraph One. They formulate, direct and control the acts and practices of the corporate respondents, including the acts and practices herein set forth. Their address is the same as that of the corporate respondents named in Paragraph One hereof.

PAR. 2. Respondents Royal Tile Co. of Eastern Pennsylvania, Royal Tile Co. of Delaware Valley, Royal Tile Co. of West Philadelphia, Royal Tile Co. of Central Pennsylvania, Royal Tile Co. of Beaver Valley, Royal Tile Co. of Greater Pittsburgh, Royal Tile Co. of Suburban Pittsburgh, and Royal Tile Co. of Western Pennsylvania are corporations organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania with their principal office and place of business located at 296 Keswick Avenue, Glenside, Pennsylvania.

Respondents Royal Tile Co. of Northern Massachusetts, Royal Tile Co. of Southeast Massachusetts, and Royal Tile Co. of Mid-Massachusetts are corporations organized, existing and doing business under and by virtue of the laws of the State of Massachusetts with their main office and principal place of business located at 296 Keswick Avenue, Glenside, Pennsylvania.

Individual respondents William Tizer and Frank Ochman are officers of all of the corporate respondents named in Paragraph Two herein. They formulate, direct and control the acts and practices of said corporate respondents, including the acts and practices herein set forth. Their address is the same as that of the corporate respondents named in Paragraph Two hereof.

PAR. 3. Respondent Jack Tizer owns and controls individual proprietorships which do business under the name of Royal Carpet and Linoleum Company in Long Island, New York, Cleveland, Ohio, Los Angeles, California, and Richmond, Virginia.

Respondent William Tizer owns and controls individual proprietorships which do business under the names of Royal Tile Co. of Coatsville, Pennsylvania, Royal Tile Co. of Eastern Pennsylvania, and Royal Tile Co. of Wilkes-Barre, Pennsylvania.

PAR. 4. All respondents are engaged in the sale of rubber and asphalt tile and other floor coverings at retail direct to the consuming public.

PAR. 5. In the course and conduct of their business, respondents have been and are engaged in disseminating and causing to be dissemi-

nated in newspapers of interstate circulation, advertisements designed and intended to induce sales of their merchandise.

In the further course and conduct of their business, respondents are now, and for some time last past have been, transmitting and receiving, by the United States mails and by other means, newspaper advertising mats, checks, sales memoranda and other written documents to and from respondents' various places of business in the United States and all respondents have been and are engaged in extensive commercial intercourse in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 6. Among and typical but not all inclusive of the statements appearing in the advertisements described in Paragraph Five are the following:

Flextone Tile 12¢ each Reg. 17¢  
Congo-Wall, original 59¢, Run ft.  
5 Run Foot for \$1.  
Genuine Sandran, Reg. 1.79, 93¢ lin. ft.  
Rubber Tile 16¢ ea. Reg. 24¢

PAR. 7. Through the use of the higher amounts in connection with the words "Reg." and "original" 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 the 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. 8. The aforesaid representations were and are false, misleading and deceptive. In truth and in fact the amounts set out in connection with the words "Reg." and "original" were in excess of the prices at which the merchandise referred to had been sold by 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. 9. At all times mentioned herein, respondents have been and are in substantial competition, in commerce, with corporations, firms and individuals in the sale of rubber and asphalt tile and other types of floor covering of the same general kind and nature as those sold by respondents.

PAR. 10. The use by respondents of the aforesaid false, misleading and deceptive statements and representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the mistaken and erroneous 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. As a consequence thereof, substantial trade in commerce has been and is being unfairly diverted to respondents from their competitors and substantial injury has thereby been and is being done to competition in commerce.

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

*Mr. Frederick McManus* for the Commission.

*Mr. Samuel Kagle*, Philadelphia, Pa., for respondents.

INITIAL DECISION BY RAYMOND J. LYNCH, HEARING EXAMINER

The complaint in this proceeding, issued February 8, 1961, charges the above-named respondents with violation of the provisions of the Federal Trade Commission Act.

On June 21, 1961, there was submitted to the undersigned hearing examiner an agreement between respondents and counsel supporting the complaint providing for the entry of a consent order.

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

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

The agreement further provides that the complaint insofar as it concerns respondents Vivian Tizer and Frank Ochman, in their individual capacities but not as officers of the corporate respondents, should be dismissed for the reasons set forth in affidavits attached thereto to the effect that said respondents have not participated in the formulation, direction or control of the advertising of the said corporate respondents.

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

#### JURISDICTIONAL FINDINGS

1. Respondents Royal Tile Co. of North Philadelphia, Royal Tile Co. of South Philadelphia, and Royal Tile Co. of Suburban Philadelphia, are corporations organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania with their main offices and principal place of business located at 424 Central Avenue, Cheltenham, Pennsylvania.

Respondent Royal Tile Co. of Eastern Maryland is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland with its main office and principal place of business located at 424 Central Avenue, Cheltenham, Pennsylvania.

Respondents Royal Tile Co. of Central New Jersey and Royal Tile Co. of Southern New Jersey are corporations organized, existing and doing business under and by virtue of the laws of the State of New Jersey with their main office and principal place of business located at 424 Central Avenue, Cheltenham, Pennsylvania.

Individual respondents Jack Tizer and Vivian Tizer are officers of all the corporate respondents named in paragraph 1 hereof. They formulate, direct and control the acts and practices of the corporate respondents. Their address is the same as that of the corporate respondents named in paragraph 1 hereof.

2. Respondents Royal Tile Co. of Eastern Pennsylvania, Royal Tile Co. of Delaware Valley, Royal Tile Co. of West Philadelphia, Royal Tile Co. of Central Pennsylvania, Royal Tile Co. of Beaver Valley, Royal Tile Co. of Greater Pittsburgh, Royal Tile Co. of Suburban Pittsburgh, and Royal Tile Co. of Western Pennsylvania are corporations organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania with their principal office and place of business located at 296 Keswick Avenue, Glenside, Pennsylvania.

Respondents Royal Tile Co. of Northern Massachusetts, Royal Tile Co. of Southeast Massachusetts, and Royal Tile Co. of Mid-Massachusetts are corporations organized, existing and doing business under and by virtue of the laws of the State of Massachusetts with their main office and principal place of business located at 296 Keswick Avenue, Glenside, Pennsylvania.

Individual respondents William Tizer and Frank Ochman are officers of all of the corporate respondents named in paragraph 2 hereof. They formulate, direct and control the acts and practices of said corporate respondents except as hereinafter set forth. Their address is the same as that of the corporate respondents named in paragraph 2 hereof.

3. Respondent Jack Tizer owns and controls individual proprietorships which do business under the name of Royal Carpet and Linoleum Company, in Long Island, New York, Cleveland, Ohio, Los Angeles, California, and Richmond, Virginia.

Respondent William Tizer owns and controls individual proprietorships which do business under the names of Royal Tile Co. of Coatsville, Pennsylvania, Royal Tile Co. of Eastern Pennsylvania, and Royal Tile Co. of Wilkes-Barre, Pennsylvania.

4. 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 Royal Tile Co. of North Philadelphia, Royal Tile Co. of South Philadelphia, Royal Tile Co. of Suburban Philadelphia, Royal Tile Co. of Eastern Maryland, Royal Tile Co. of Central New Jersey, Royal Tile Co. of Southern New Jersey, corporations, and their officers, and Jack Tizer, individually and as an officer of said corporations, and doing business under the name of Royal Carpet and Linoleum Company, or under any other name or names, and Vivian Tizer, as an officer of said corporations; and Royal Tile Co. of Eastern Pennsylvania, Royal Tile Co. of Delaware Valley, Royal Tile Co. of West Philadelphia, Royal Tile Co. of Central Pennsylvania, Royal Tile Co. of Beaver Valley, Royal Tile Co. of Greater Pittsburgh, Royal Tile Co. of Suburban Pittsburgh, Royal Tile Co. of Western Pennsylvania, Royal Tile Co. of Northern Massachusetts, Royal Tile Co. of Southeast Massachusetts, Royal Tile Co. of Mid-Massachusetts, corporations, and their officers, and William Tizer, individually and as an officer of said corporations, and Frank Ochman, as an officer of said corporations, and William Tizer, doing business under the name of Royal Tile Co. of Coatsville, Pennsylvania, Royal Tile Co. of Eastern Pennsylvania, and Royal Tile Co. of Wilkes-Barre, Pennsylvania, or under any other name or names; and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of rubber and asphalt tile or other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that any amount is respondents' usual and customary retail price of merchandise when such amount is in excess of the price at which such merchandise has been usually and customarily sold at retail by respondents in the recent regular course of business.

2. Representing, directly or by implication, that any saving is afforded in the purchase of merchandise from respondents' usual and customary retail price unless the price at which it is offered constitutes a reduction from the price at which such merchandise has been usually and customarily sold by respondents in the recent regular course of business.

3. Using the words "Reg." or "original" or any other word or term of the same import to describe or refer to prices of merchandise unless respondents have sold said merchandise at such prices in the recent regular course of business.

4. 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 regularly sold by respondents in the recent regular course of their business.

*It is further ordered*, That the complaint be, and it hereby is, dismissed as to Vivian Tizer as an individual.

*It is further ordered*, That the complaint be, and it hereby is, dismissed as to Frank Ochman as an individual.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF  
COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 7th day of September 1961, become the decision of the Commission; and, accordingly:

*It is ordered*, That respondents Royal Tile Co. of North Philadelphia, Royal Tile Co. of South Philadelphia, Royal Tile Co. of Suburban Philadelphia, Royal Tile Co. of Eastern Maryland, Royal Tile Co. of Central New Jersey, and Royal Tile Co. of Southern New Jersey, corporations, and Jack Tizer, individually and as an officer of said corporations, and doing business under the name of Royal Carpet and Linoleum Company, and Vivian Tizer, as an officer of said corporations; and Royal Tile Co. of Eastern Pennsylvania, Royal Tile Co. of Delaware Valley, Royal Tile Co. of West Philadelphia, Royal Tile Co. of Central Pennsylvania, Royal Tile Co. of Beaver Valley, Royal Tile Co. of Greater Pittsburgh, Royal Tile Co. of Suburban Pittsburgh, Royal Tile Co. of Western Pennsylvania,

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## Complaint

Royal Tile Co. of Northern Massachusetts, Royal Tile Co. of Southeast Massachusetts, Royal Tile Co. of Mid-Massachusetts, corporations, and William Tizer, individually and as an officer of said corporations, and Frank Ochman, as an officer of said corporations, and William Tizer, doing business under the name of Royal Tile Co. of Coatsville, Pennsylvania, Royal Tile Co. of Eastern Pennsylvania, and Royal Tile Co. of Wilkes-Barre, Pennsylvania, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

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 IN THE MATTER OF

## A. E. NELSON AND COMPANY, INC., ET AL.

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

*Docket 8376. Complaint, Apr. 25, 1961—Decision, Sept. 7, 1961*

Consent order requiring a Wilkes-Barre, Pa., clothing manufacturer to cease violating the Wool Products Labeling Act by tagging as "95% wool, 5% Nylon", boys' trousers which contained substantially less wool than thus represented, and by failing to label wool products as required; and to cease making the same false statement as to fiber content in catalogs, and stating also that the domestically manufactured trousers were "Manufactured and Styled in Italy \* \* \*", "Imported from Italy", etc.

## 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 A. E. Nelson and Company, Inc., a corporation, and Alfred E. Nelson, 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 Wool Products Labeling Act of 1939, 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 A. E. Nelson and Company, Inc. is a corporation organized and existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania.

Individual respondent Alfred E. Nelson is President and Treasurer of the corporate respondent. Said individual respondent formulates,

directs and controls the acts, practices and policies of said corporate respondent. Respondents' office and place of business is located at 38 Baltimore Street, Wilkes-Barre, Pennsylvania.

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

PAR. 3. Certain of said wool products were misbranded 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 were men's and/or boys' trousers labeled or tagged as 95% wool, 5% Nylon, whereas, in truth and in fact, said products contained substantially less woolen fibers than represented.

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

PAR. 5. The respondents, in the course and conduct of their business, as aforesaid, were and are in substantial competition in commerce with corporations, firms, and individuals likewise engaged in the sale of wool products, including men's and/or boys' trousers.

PAR. 6. The acts and practices of the respondents, as set forth above, were and are in violation of the Wool Products Labeling 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. 7. In the course and conduct of their business, and for the purpose of inducing the sale of their trousers, respondents set forth a depiction of a label which indicates the garments have been imported, and have made certain statements with respect to the wool content, the place of manufacture, and the styling of their trousers in catalogs mailed to the retail trade in the United States.

Among and typical of the statements contained in said catalogs are the following:

95% wool—5% Nylon

Depicted is the reproduction of a label that states:

Manufactured and Styled  
in Italy by  
Lanisa  
Imported from Italy

Under the depicted label is the following:

Each pair in No. 3670 Range  
carries this Imported Label

PAR. 8. Such statements and depictions are false, misleading and deceptive. In truth and in fact, the garments contain substantially less wool than indicated; the garments were not manufactured or styled in Italy or imported from Italy, but, in truth and in fact, were manufactured by the respondents in the United States.

PAR. 9. The use by the respondents of the aforesaid false, misleading and deceptive statements and depictions has had, and now has, the capacity and tendency to lead prospective purchasers into the erroneous and mistaken belief that said statements and depictions were and are true and thus to induce prospective purchasers to buy substantial quantities of respondents' product 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 been, and is being, done to competition in commerce.

PAR. 10. The acts and practices of said respondents, as hereinabove 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* supporting the complaint.

*Mr. Thomas E. Roberts* and *Mr. Nathan Hyman* of Wilkes-Barre, Pa., for respondent.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

On April 25, 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 certain woolen products, had violated the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder and the Federal Trade Commission Act.

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After issuance and service of the complaint, A. E. Nelson and Company, Inc., a corporation, its attorneys, and counsel supporting the complaint entered into an agreement for a consent order. The agreement has been approved by the [Acting] Director and the [Assistant] Director of the Bureau of Litigation and disposes of the matters complained about as to all parties except as to Alfred E. Nelson. Reliable information has been presented to the Commission which discloses the fact that the individual respondent Alfred E. Nelson is deceased and the complaint insofar as it concerns Alfred E. Nelson is hereby dismissed.

The pertinent provisions of said agreement are as follows: Respondent admits 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; respondent waives the requirement that the decision must contain a statement of findings of fact and conclusions of law; respondent waives 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; respondent waives 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 respondent that it has violated the law as alleged in the complaint.

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

## JURISDICTIONAL FINDINGS

1. Respondent A. E. Nelson and Company, Inc. 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 38 S. Baltimore Street, in the City of Wilkes-Barre, State of Pennsylvania.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of respondent A. E. Nelson and Company, Inc., a corporation, and the proceeding is in the public interest.

## ORDER

*It is ordered*, That respondent A. E. Nelson and Company, Inc., a corporation, and its officers, and respondent's representatives, agents

and employees, directly or through any corporate or other device, in connection with the introduction 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 trousers or other wool products, as such products are defined in and subject to the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

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

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

*It is further ordered,* That respondent A. E. Nelson and Company, Inc., a corporation, and its officers, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of trousers, or any other product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, directly or by implication, in any manner, the fiber content, place of manufacture and styling of their garments or of any other products.

*It is further ordered,* That the complaint insofar as it concerns Alfred E. Nelson, be dismissed and the same is hereby dismissed.

#### DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission having considered the initial decision of the hearing examiner filed July 21, 1961, wherein he accepted an agreement containing a consent order to cease and desist executed by the respondent, A. E. Nelson and Company, Inc., and counsel in support of the complaint; and

It appearing that the initial decision erroneously states that the consent agreement was approved by the "Director and the Acting Director of the Bureau of Litigation" when, in fact, the agreement was approved by the Acting Director and Assistant Director of that Bureau; and

The Commission being of the opinion that this error should be corrected:

*It is ordered,* That the initial decision be, and hereby is, modified by striking the words "Director and the Acting Director" from line five of the second paragraph thereof and substituting therefor the words "Acting Director and Assistant Director".

*It is further ordered,* That the initial decision, as so modified, shall,

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on the 7th day of September 1961, become the decision of the Commission.

*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 the order to cease and desist.

## DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

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

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

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 IN THE MATTER OF

## JAMES LEES AND SONS COMPANY

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

*Docket 7640. Complaint, Oct. 28, 1959—Decision, Sept. 8, 1961*

Consent order requiring a substantial factor in the carpet industry—with headquarters in Bridgeport, Pa., and several manufacturing plants in other States—to cease discriminating in price between purchasers of its rugs and carpets by (1) use of such devices as an annual cumulative quantity discount system with graduated discounts ranging from 1 to 5% of annual net purchases and under which, while purchasers of up to \$5,001 received no volume discounts, those purchasing over \$90,001 received 5% and thus had a significant price advantage over their smaller competitors; and (2) allowing chain customers to combine the purchase volume of their various stores so as to qualify for the higher discount allowed on the larger aggregate total, so that in many instances an individual non-chain customer which purchased in considerably greater volume than a chain unit competitor received no discount or a lower one than the individual chain store.

## COMPLAINT

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

PARAGRAPH 1. Respondent James Lees and Sons Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office located in the City of Bridgeport, State of Pennsylvania.

PAR. 2. Respondent is engaged in the manufacture, sale and distribution of rugs and carpets. Respondent is a substantial factor in the carpet industry with a sales volume in 1958 in excess of \$68,120,000 and manufacturing plants located in Glasgow, Virginia, Dahlenega and Rabun Gap, Georgia, and Robbinsville, North Carolina.

PAR. 3. In the course and conduct of its business respondent now causes, and for some time last past has caused, its rugs and carpets, when sold for use or resale, to be shipped from its manufacturing plants in the aforesaid States to purchasers thereof located in various other States of the United States and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said rugs and carpets in commerce as "commerce" is defined in the aforesaid Clayton Act.

PAR. 4. Respondent, in the course and conduct of its business, has discriminated in price between different purchasers of its rugs and carpets of like grade and quality, by selling said products at higher and less favorable net purchase prices to some purchasers than the same are sold to other purchasers who have been and are in competition with the purchasers paying the higher prices.

PAR. 5. The following example is illustrative of respondent's discriminatory pricing practices among and between the retailer purchases of its rugs and carpets.

Respondent now has, and for the past several years has had in effect, an annual cumulative quantity discount system ranging from one to five percent, based on the total annual net purchases of its rugs and carpets as follows:

<i>Annual Purchases</i>	<i>Discount (Percent)</i>
Under \$5,000.....	0
\$5,001 to \$7,500.....	1
\$7,501 to \$10,000.....	1¼
\$10,001 to \$13,750.....	1½
\$13,751 to \$17,500.....	1¾
\$17,501 to \$21,250.....	2
\$21,251 to \$25,000.....	2¼
\$25,501 to \$30,000.....	2½
\$30,001 to \$35,000.....	2¾
\$35,001 to \$40,000.....	3
\$40,001 to \$45,000.....	3¼
\$45,001 to \$52,500.....	3½
\$52,501 to \$60,000.....	3¾
\$60,001 to \$67,500.....	4
\$67,501 to \$75,000.....	4¼
\$75,001 to \$82,500.....	4½
\$82,501 to \$90,000.....	4¾
Over \$90,001.....	5

Respondent's aforescribed annual cumulative quantity discount system results in discriminatory net sales prices as between competitive purchasers in the different volume and discount brackets of said schedule. Purchasers of respondent's products for competitive resale unable to reach an annual purchase volume of \$5,001, for example, receive no volume discounts on their purchases and thus have a significant buying price disadvantage.

Moreover, the competitive effect of the resulting net price differences becomes even more apparent in connection with respondent's application of the above discount schedule to chain stores.

Respondent allows said chain purchasers to combine the purchase volume of their various stores so as to qualify for the higher discount allowed on the larger aggregate total of such purchase volume. In many instances the purchase volumes of the different individual stores of the chain are not sufficient to warrant such higher discount, but because of the policy of the respondent in granting the rate of discount on the combined purchase volumes of all the chain stores, each individual store is allowed the higher discount.

In many instances respondent's non-chain customers are purchasing individually from respondent in considerably greater volume than the individual chain store with whom they compete, and in so doing receive either no discount, or at best a low bracket discount corresponding with their actual volume of purchases, while the competitive individual chain store is allowed the aforescribed higher discount. The products sold under respondent's various product lines are of like grade and quality in their respective lines, and these independent non-chain customers purchase the same grade and quality of merchandise from respondent as do its chain store customers. In many instances the individual chain stores and the independently owned stores are located in the same city or metropolitan area and both the chain and non-chain stores are in active and constant competition with and among and between each other for the consumer trade.

Specific illustrations of representative net price differences occasioned between and among various but not all of the said favored and non-favored competing customers on commodities of like grade and quality sold by respondent in commerce during 1958, are as follows in but three sample trade areas:

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Akron, Ohio, Trade Area

Customer	Purchase volume <sup>1</sup>	Rebate (percent)
The M. O'Neill Company (chain store) .....	\$34,364.65	-----
Affiliated chain stores outside trading area .....	32,725.82	-----
	67,090.47	4.00
A. Polsky Co. (chain store) .....	55,509.75	3.75
The Ohio Furniture Co. ....	14,274.04	1.75
Long & Co., Inc. ....	8,749.71	1.25
M. Holub Furniture Co., Inc. ....	5,452.37	1.00
Gene Kistler, Inc. ....	2,054.04	0

<sup>1</sup> Purchase volume determines rebate percentage. Rebate percentage is then applied to dollar amount of purchase volume remaining after deduction of cash discounts for payment within specified time periods.

Cleveland, Ohio, Trade Area

Customer	Purchase volume <sup>1</sup>	Rebate (percent)
The Higbee Company .....	\$118,701.07	5.00
The Fries & Schuele Co. ....	59,304.33	3.75
J. L. Goodman Furniture Co. ....	48,686.26	3.50
Carlisle Allen Co.:		
Ashtabula, Ohio .....	21,717.90	-----
Painesville, Ohio .....	8,989.27	-----
Warren, Ohio .....	11,054.44	-----
	41,761.61	3.25
Irwin & Co. ....	39,902.37	3.00
Banks Furniture & Equipment Co. ....	18,970.84	2.00
Marshall Smith, Inc. ....	17,205.35	1.75
Glyn & Boker .....	11,207.41	1.50
Gail G. Grant Co. ....	8,564.23	1.25
Willard T. Parker .....	5,030.29	1.00
Interior Craft, Inc. ....	4,103.90	0

<sup>1</sup> Purchase volume determines rebate percentage. Rebate percentage is then applied to dollar amount of purchase volume remaining after deduction of cash discounts for payment within specified time periods.

Washington, D.C., Trade Area

Customer	Purchase volume <sup>1</sup>	Rebate (percent)
E. P. Hinkel & Co., Inc. ....	\$105,343.79	5.00
The W. D. Campbell Co. ....	89,783.40	5.00
R. Mars Contract Co., Inc. (chain store) .....	36,083.54	-----
Affiliated chain stores outside trading area .....	31,230.74	-----
	67,314.28	4.00
Reliable Stores Corp., Balt., Md.:		
National Furniture, Wash., D.C. (chain store) .....	948.92	-----
House & Herrmann, Wash., D.C. (chain store) .....	6,395.06	-----
Julius Lansburg Furniture Co., Inc., Wash., D.C. (chain store) .....	7,637.89	-----
Hub Furniture Co., Wash., D.C. (chain store) .....	20,609.47	-----
Affiliated chain stores outside trading area .....	20,425.30	-----
	55,506.64	3.75
Kens Carpet Corner .....	36,112.73	3.00
S. Kann Sons Co. ....	24,979.19	2.25
Wm. E. Miller Furniture Co. ....	24,233.32	2.25
Carpet Center .....	16,873.98	1.75
Owens Furniture Mart .....	14,841.91	1.75
Hampshire House Furniture Co. ....	12,374.89	1.50
Curtis Bros., Inc. ....	10,053.19	1.50
Stratford Carpet Shop, Inc. ....	9,579.27	1.25
C. L. Barnes & Sons .....	8,992.43	1.25
Nazarian Bros. ....	6,092.01	1.00
Mazor Masterpieces Furniture Co. ....	5,391.66	1.00
Office Furniture, Inc. ....	4,475.40	0
Schneider Furniture .....	4,501.22	0

<sup>1</sup> Purchase volume determines rebate percentage. Rebate percentage is then applied to dollar amount of purchase volume remaining after deduction of cash discounts for payment within specified time periods.

PAR. 6. The effect of respondent's aforesaid discriminations in price between the said different purchasers of its said products of like grade and quality sold in manner and method and for purposes as aforesaid, may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondent and the aforesaid favored purchasers are engaged, or to injure, destroy or prevent competition with said respondent or said favored purchasers.

PAR. 7. The aforesaid discriminations in price by respondent as hereinabove alleged and described constitute violations of subsection (a) of Section 2 of the aforesaid Clayton Act as amended.

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

*Montgomery, McCracken, Walker & Rhoads*, by *Mr. John F. Headley*, Philadelphia, Pa., for respondent.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated October 28, 1959, amended June 7, 1961, the respondent is charged with violating the provisions of subsection (a) of Section 2 of the Clayton Act, as amended.

On June 29, 1961, respondent, by its duly authorized officer and counsel, entered into an agreement with counsel in support of the complaint for a consent order, which was submitted to the hearing examiner for his consideration on July 26, 1961.

Under the foregoing agreement the respondent admits the jurisdictional facts alleged in the amended 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 respondent of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by the respondent that it has violated the law as alleged in the amended complaint, and that said amended complaint may be used in construing the terms of the order.

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

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

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 this 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. James Lees and Sons Company, prior to March 25, 1960, was 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 in the City of Bridgeport, State of Pennsylvania.

2. Pursuant to the order of the hearing examiner, the complaint in this proceeding was amended on June 6, 1961, to substitute James Lees and Sons Company, a Delaware corporation, as the respondent herein for reasons as therein set forth.

3. Respondent James Lees and Sons Company, a Delaware corporation, with its office and principal place of business located in the City of Bridgeport, State of Pennsylvania, has accepted service of a true copy of the amended complaint.

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

#### ORDER

*It is ordered,* That respondent James Lees and Sons Company, a Delaware corporation, its officers, agents, representatives, employees, successors and assigns, directly or through any corporate or other device, in connection with the sale of rugs and carpets in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Discriminating, directly or indirectly, by cumulative volume discount or otherwise, in the price of rugs and carpets of like grade and quality, by selling to any purchaser at net prices lower than the net price charged any other purchaser competing in fact with such favored purchaser in the resale and distribution of such rugs and carpets.

For the purpose of determining "net price" under the terms of this order, there shall be taken into account discounts, rebates, allowances, deductions or other terms and conditions of sale by which net prices are effected.

#### 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

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examiner did, on the 8th day of September 1961, become the decision of the Commission; and accordingly:

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

## IN THE MATTER OF

## CROTON WATCH CO., INC., ET AL.

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

*Docket 8352. Complaint, Apr. 13, 1961—Decision, Sept. 8, 1961*

Consent order requiring New York City distributors of watches to retailers to cease advertising falsely in newspapers and magazines that their watches had been tested and approved by an agency of the U. S. Government and contained a particle of atomic matter which enabled them to run endlessly, through such statements as "Proved by the U. S. Navy", "Miracle of the Nuclear Age", "A Unique Self Charger Endlessly Pours Out The Power To Make It Run", etc.

## 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 Croton Watch Co., Inc., a corporation, and William C. Horowitz, Harold I. Horton and Oscar Berlan, 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 Croton Watch Co., Inc., is a corporation organized 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 404 Fourth Avenue, New York, New York.

Respondents William C. Horowitz, Harold I. Horton and Oscar Berlan are officers of the corporate respondent. Their address is the same as the corporate respondent.

The individual respondents formulate, direct and control the policies, acts and practices 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 watches to retailers for resale to the public.

PAR. 3. Respondents in the course and conduct of their business 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 the 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 inducing the purchase of their products, have advertised their said products in newspapers and nationally circulated magazines. Among and typical, but not all inclusive of the statements appearing in such advertising material have been the following:

Proved by the U.S. Navy

A Major Breakthrough in Watchmaking

Miracle of the Nuclear Age

The U.S. Navy proved its dependable 17-jewel accuracy during months of grueling tests on Operation Deepfreeze

A Unique Self Charger Endlessly Pours Out The Power To Make It Run

PAR. 5. By means of the above-quoted statements, and others of similar import but not specifically set out herein, respondents have represented that their watches have been tested and approved by an agency of the United States Government and that the said watches contain a particle of atomic matter which enables them to run endlessly.

PAR. 6. The aforesaid statements were and are false, misleading and deceptive. In truth and in fact their said watches have not been tested and proved or approved by the United States Navy, nor do their watches contain or include a particle of atomic matter.

PAR. 7. By the acts and practices aforesaid, respondents have placed in the hands of retailers a means and instrumentality whereby such retailers may mislead and deceive members of the purchasing public into believing that respondents' watches have been tested and proved or approved by an agency of the United States government and that their watches are powered by atomic energy.

PAR. 8. Respondents, in the course and conduct of the sale of their watches, have been in substantial competition in commerce with other corporations, firms and individuals engaged in the manufacture, sale and distribution of watches.

PAR. 9. The use by respondents of the aforesaid false, misleading and deceptive statements and representations has had the capacity and tendency to induce members of the purchasing public into the erroneous and mistaken belief that all of said statements and representations are true, and into the purchase of a substantial number of their watches as a result of such erroneous and mistaken belief. As a con-

sequence thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has been done to competition in commerce.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, have been 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. Harry E. Middleton, Jr.*, for the Commission.

*Paul, Weiss, Rifkind, Wheaton & Garrison*, New York City, by *Mr. H. Russell Winokur*, for respondents.

INITIAL DECISION BY HERMAN TOCKER, HEARING EXAMINER

In a complaint issued April 13, 1961, Croton Watch Co., Inc., a corporation organized and existing under the laws of the State of New York, and William C. Horowitz, Harold I. Horton and Oscar Berlan, in their capacity as officers of the corporation and as individuals, were charged by the Federal Trade Commission with having violated the Federal Trade Commission Act by misrepresenting that watches sold and distributed by them in commerce had been tested or "proved" by the United States Navy and were powered by atomic matter. The business of the said corporation and individuals (the respondents herein) is conducted at 404 Fourth Avenue (sometimes known as 404 Park Avenue South) in the City and State of New York.

By and with the advice and consent of their attorney, respondents have entered into an agreement with counsel supporting the complaint, which agreement contains a proposed consent order to cease and desist, and disposes of all the issues involved 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 respondents that they have violated the law as in the complaint alleged.

By the terms of the agreement, the respondents admit all the jurisdictional facts alleged in the complaint and agree 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 respondents expressly waive any further procedural steps before the Hearing Examiner and the Commission, the making of findings of fact or conclusions of law, and all rights they may have to challenge or contest the validity of the order to cease and desist to be entered in accordance therewith.

Respondents further agree 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.

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 respondents named herein, and that this proceeding is in the interest of the public, and issues the following order:

## ORDER

*It is ordered*, That respondents, Croton Watch Co., Inc., a corporation, and its officers and William C. Horowitz, Harold I. Horton, and Oscar Berlan, individually and as officers of said corporation, and respondent's agents, representatives and employees, directly or through any corporate or other device in connection with the advertising, offering for sale, sale or distribution of their watches 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 their watches have been tested and approved by the United States Navy or any other branch of the United States Government.

2. Representing in any manner that their watches have been purchased, tested or approved by any branch of the United States Government.

3. Representing, directly or by implication, that their watches are powered by atomic energy.

4. Placing in the hands of retailers and others a means and instrumentality whereby they may mislead and deceive the purchasing public into believing that their watches have been tested and proved or approved by an agency of the United States Government and that their watches are powered by atomic energy.

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IN THE MATTER OF

E. R. WAGNER MANUFACTURING COMPANY ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION ACT*Docket 8087. Complaint, Aug. 24, 1960—Decision, Sept. 9, 1961*

Consent order requiring a Milwaukee distributor and its subsidiary in Syracuse, N.Y., to cease misrepresenting, in advertising in newspapers and magazines, the effectiveness and comparative merits of their rug cleaning devices known as "Wagner Carpeteer" and "Easy Glamur Shampoo King", and their "Easy Glamur Shampoo".

## 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 E. R. Wagner Manufacturing Company, a corporation, and Glamur Products, Inc., a 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:

PAR. 1. Respondent E. R. Wagner Manufacturing Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business located at 4611 N. 32nd Street in the City of Milwaukee, State of Wisconsin.

Respondent Glamur Products, 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 1024 Montgomery Street in the City of Syracuse, State of New York. Respondent Glamur Products, Inc. is a subsidiary of respondent E. R. Wagner Manufacturing Company.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of rug cleaning devices and rug and upholstery cleaning shampoos, to distributors and jobbers and to retailers for resale to the public.

PAR. 3. In the course and conduct of their businesses, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their places of business in the States of Wisconsin and 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 herein mentioned have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their businesses, and for the purpose of inducing the sale of their products, respondents have made certain statements with respect to the cleaning abilities and qualities of their products, in advertisements in magazines of national circulation, on television and in newspapers, of which the following are typical:

WAGNER CARPETEER WITH EASY GLAMUR CLEANER \* \* \* Get professional results \* \* \*

NEW WAGNER CARPETEER WITH EASY-GLAMUR RUG SHAMPOOER \* \* \* Just apply and let dry, no rinsing or vacuuming!

FABULOUS NEW APPLICATOR Easy Glamur Shampoo King.

JUST APPLY, LET DRY! RUG & UPHOLSTERY CLEANER New Easy Glamur For Hand & Shampoo Applicators.

PAR. 5. Through the use of the aforesaid statements, respondents represented that their rug cleaning devices, known as "Wagner Carpeteers" and "Easy Glamur Shampoo Kings", when used with Easy Glamur Shampoo, are as effective in cleaning rugs and carpets as professional rug or carpet cleaning, and will clean a rug or carpet merely by spreading the Easy Glamur Shampoo over a rug or carpet. They also represented that Easy Glamur Shampoo will clean upholstery merely by wiping it on upholstery and letting it dry.

PAR. 6. Said statements and representations are false, misleading and deceptive. In truth and in fact said "Wagner Carpeteer" and "Easy Glamur Shampoo King" when used with Easy Glamur Shampoo are not as effective in cleaning rugs and carpets as professional rug or carpet cleaning, and they will not clean a rug or carpet merely by spreading the Easy Glamur Shampoo over a rug or carpet. Also, Easy Glamur Shampoo will not clean upholstery merely by spreading the Easy Glamur Shampoo over the upholstery and letting it dry.

PAR. 7. In the course and conduct of their businesses, 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. 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' products by reason of said

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

PAR. 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. Frederick McManus* supporting the complaint.

*Foley, Sammond & Lardner*, of Milwaukee, Wis., for respondents.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on August 24, 1960, charging them with the use of unfair and deceptive acts and practices and unfair methods of competition, in commerce, in violation of the Federal Trade Commission Act, by the use of false, misleading and deceptive statements and representations concerning the cleaning abilities and qualities of their rug cleaning devices and rug and upholstery cleaning shampoos. After being served with said complaint, respondents appeared by counsel and entered into an agreement dated July 5, 1961, containing a consent order to cease and desist purporting to dispose of all of this proceeding as to all parties. Said agreement, which has been signed by all respondents, by counsel for said respondents and by counsel supporting the complaint, and approved by the Director of the Bureau of Deceptive Practices and the Chief of the Division of Food & Drug Advertising, has been submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Respondents, pursuant to the aforesaid agreement, have admitted all the jurisdictional facts alleged in the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that respondents waive any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has been agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full hearing and that the complaint may be used in construing the terms of said order. It

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has also been agreed that the record herein shall consist solely of the complaint and said agreement, and that said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

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

1. Respondent E. R. Wagner Manufacturing Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business located at 4611 N. 32nd Street, in the city of Milwaukee, State of Wisconsin.

Respondent Glamur Products, 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 1024 Montgomery Street, in the city of Syracuse, State of New York. Respondent Glamur Products, Inc. is a subsidiary of respondent E. R. Wagner Manufacturing Company.

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

## ORDER

*It is ordered*, That E. R. Wagner Manufacturing Company, a corporation, and Glamur Products, Inc., a corporation, and their officers, employees, agents and representatives, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of "Wagner Carpeteer" and "Easy Glamur Shampoo King" or any other device of similar nature and rug and upholstery shampoos, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That respondents' "Wagner Carpeteer" and "Easy Glamur King" and rug shampoos:

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(a) are as effective in cleaning rugs and carpets as professional rug or carpet cleaning;

(b) will clean a rug or carpet without sweeping or vacuuming.

2. That respondents' shampoo will clean upholstery without brushing or vacuuming.

## 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 9th day of September 1961, become the decision of the Commission; and, accordingly:

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

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 IN THE MATTER OF

## MERRIMACK TEXTILE FIBRES, INC., ET AL.

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

*Docket 8218. Complaint, Dec. 9, 1960—Decision, Sept. 9, 1961*

Consent order requiring manufacturers in Lowell, Mass., to cease violating the Wool Products Labeling Act and the Federal Trade Commission Act by labeling and invoicing as "95% All Wool, 5% Other Fibers," picked wool stock which consisted substantially of reprocessed wool; and to stamp or label their products as required by the Wool Products Labeling Act.

## 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 Merrimack Textile Fibres, Inc., a corporation, and Selby B. Groff, Joseph G. Duffy and William Ben Cooper, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Merrimack Textile Fibres, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its office and principal place of business located at 256 Market Street, Lowell, Massachusetts.

The individual respondents, Selby B. Groff, Joseph G. Duffy and William Ben Cooper, are president, treasurer and secretary, respectively, of the corporate respondent and cooperate in formulating, directing and controlling the acts, policies and practices of the corporate respondent, including the acts and practices hereinafter referred to in the complaint. Said individual respondents maintain a business address at the same address as the corporate respondent.

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

PAR. 3. Certain of said wool products were misbranded by respondents within the intent and meaning of Section 4(a)(1) of said 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 was picked wool stock invoiced and labeled as "95% All Wool, 5% Other Fibers" whereas, in truth and in fact, said stock did not contain 95% wool, as the term "wool" is defined in the Wool Products Labeling Act, but substantially consisted of "reprocessed wool".

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. The respondents in the course and conduct of their business as aforesaid were and are in substantial competition in commerce with other corporations, firms and individuals likewise engaged in the manufacture and sale of wool products, including picked wool stock.

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

PAR. 7. Respondents, in the course and conduct of their business, as aforesaid, invoiced their picked wool stock as "95% Wool, 5% Other Fibers" whereas in truth and in fact, said stock did not contain 95% wool, as the term "wool" is defined in the Wool Products Labeling Act, but substantially consisted of "reprocessed wool".

PAR. 8. The acts and practices of respondents set out in Paragraph Seven have the capacity and tendency to mislead and deceive purchasers of said picked wool stock as to the true fiber content thereof and to result in the misbranding of products manufactured by such purchasers in which said wool stock was used.

PAR. 9. The acts and practices set out in Paragraph Seven were 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* supporting the complaint.

*Flood, Valentine & Foisy*, Lowell, Mass., by *Mr. Robert P. Sullivan*, for respondents.

#### INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on December 9, 1960, charging them with violation of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939 in connection with the manufacture and sale of wool products, including picked wool stock.

On July 19, 1961, there was submitted to the hearing examiner an agreement between respondents, their counsel, and counsel supporting the complaint providing for the entry of a consent order.

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

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

The hearing examiner having considered the agreement and proposed order, and being of the opinion that they provide an appro-

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private basis for settlement and disposition of this proceeding, hereby accepts the agreement, and it is ordered that said agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission. The following jurisdictional findings are made and the following order issued:

1. Respondent Merrimack Textile Fibres, Inc., is a Massachusetts corporation with its office and principal place of business located at 256 Market Street, Lowell, Massachusetts.

Selby B. Groff, Joseph G. Duffy, and William Ben Cooper are individuals and officers of the corporate respondent and formulate, direct and control the acts, policies and practices of the corporate respondent. Said individual respondents have the same office and principal place of business as said corporate respondent.

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

## ORDER

*It is ordered.* That the respondents, Merrimack Textile Fibres, Inc., a corporation, and its officers, and Selby B. Groff, Joseph G. Duffy, and William Ben Cooper, 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 picked wool stock or other "wool products", as such products are defined in and subject to the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

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

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

*It is further ordered.* That the respondents, Merrimack Textile Fibres, Inc., a corporation, and its officers, and Selby B. Groff, Joseph G. Duffy, and William Ben Cooper, 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 picked wool stock, or any other materials, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from mispre-

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senting the character or amount of the constituent fibers contained in such products or invoices or shipping memoranda applicable thereto, or in any other manner.

## DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 9th day of September 1961, become the decision of the Commission; and, accordingly:

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

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 IN THE MATTER OF

 THOMAS M. LEOUS, JR., ET AL. TRADING AS LEOUS  
 FURRIERS

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

*Docket 8404. Complaint, May 19, 1961—Decision, Sept. 9, 1961*

Consent order requiring Buffalo, N.Y., furriers to cease violating the Fur Products Labeling Act by labeling fur products falsely with respect to the animal producing the fur; by failing to show on labels and invoices and in advertising the true animal name of the fur used in the fur product and to disclose when the fur was dyed; by failing to show on invoices and in advertising the country of origin of imported furs, stating falsely that furs were domestic, and using the term "blended" improperly; by failing to disclose in advertising when fur products contained artificially colored fur or were composed of flanks; and by failing in other respects to comply with requirements of the Act.

## 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 Thomas M. Leous, Jr. and Alfred T. Leous, individually and as copartners trading as Leous Furriers, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding

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

PARAGRAPH 1. Respondents Thomas M. Leous, Jr. and Alfred T. Leous are individuals and copartners trading as Leous Furriers, with their office and principal place of business located at 650 Main Street, Buffalo, New York.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents have been, and are now, engaged in the introduction into commerce and in the 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 misbranded in that they were falsely and deceptively labeled or otherwise falsely and deceptively identified with respect to the name or names of the animal or animals that produced the fur from which said fur products had been manufactured, in violation of Section 4(1) of the Fur Products Labeling Act.

PAR. 4. Certain of said fur products were misbranded in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder. Among such misbranded fur products, but not limited thereto, were fur products with labels 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 product was dyed, when such was the fact.

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

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

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

PAR. 6. Certain of said fur products were falsely and deceptively invoiced by respondents in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act, and in the manner and form prescribed by the Rules and Regulations promul-

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gated thereunder. Among such falsely and deceptively invoiced fur products, but not limited thereto, were invoices pertaining to 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 product was dyed, when such was the fact;

(3) to show the country of origin of imported furs used in the fur product.

PAR. 7. Certain of said fur products were falsely and deceptively invoiced in violation of Section 5(b)(2) of the Fur Products Labeling Act in that such invoices contained statements to the effect that the furs contained in the fur products were domestic, when in fact such furs were imported.

PAR. 8. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in abbreviated form, in violation of Rule 4 of said Rules and Regulations.

(b) The term "blended" was used as part of the information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder to describe the pointing, bleaching, dyeing or tip-dyeing of furs, in violation of Rule 19(e) of said Rules and Regulations.

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

PAR. 9. 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 radio broadcasts concerning said products which were not in accordance with the provisions of Section 5(a) of the Act and the Rules and Regulations promulgated thereunder and which advertisements were intended to aid, promote or assist, directly or indirectly, in the sale or offering for sale, of said fur products.

PAR. 10. Among and included in the advertisements as aforesaid, but not limited thereto, were advertisements of respondents which were broadcast over Station WBEN, a radio station located in the City of Buffalo, State of New York, and having a wide coverage in said State and various other States of the United States, as well as Canada.

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) Failed to disclose the name or names of the animal or animals that produced the fur contained in the fur products as set forth in the Fur Products Name Guide, in violation of Section 5(a)(1) of the Fur Products Labeling Act.

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

(c) Failed to disclose the name of the country of origin of the imported furs contained in the fur products, in violation of Section 5(a)(6) of the Fur Products Labeling Act.

(d) Failed to disclose that fur products were composed in whole or in substantial part of flanks when such was the fact, in violation of Rule 20 of the said Rules and Regulations.

PAR. 11. 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. Robert W. Lowthian* for the Commission.

*Brennan and Brennan*, Buffalo, N.Y., for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondents with certain violations of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, and the Federal Trade Commission Act. An agreement has now been entered into by respondents and counsel supporting the complaint which provides, among other things, that respondents admit all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the

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

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

1. Respondents Thomas M. Leous, Jr., and Alfred T. Leous are individuals and copartners trading as Leous Furriers with their office and principal place of business located at 650 Main Street, Buffalo, New York.

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 Thomas M. Leous, Jr., and Alfred T. Leous, individually and as copartners trading as Leous Furriers or under any other trade name and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the 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. Misbranding fur products by:

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

B. Falsely or deceptively labeling or otherwise identifying any such product as to the name or names of the animal or animals that produced the fur from which such product was manufactured.

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

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

2. Falsely or deceptively invoicing fur products by:

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

B. Falsely or deceptively invoicing fur products by representing directly or by implication on invoices that fur products were domestic when such is not the fact.

C. 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.

D. Setting forth the term "blended" as part of the information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder to describe the pointing, bleaching, dyeing or tip-dyeing of furs.

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

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

A. Fails to disclose:

1. The name or names of the animal or animals producing the fur or furs contained in the fur product, as set forth in the Fur Products Name Guide, and as prescribed by the Rules and Regulations.

2. That the fur product contains or is composed of bleached, dyed or otherwise artificially colored fur when such is the fact.

3. The name of the country of origin of any imported furs contained in fur products.

4. That the fur product is composed in whole or in substantial part of flanks when such is the fact.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF  
COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 9th day of September 1961, become the decision of the Commission; and, accordingly:

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

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IN THE MATTER OF

## LUXURY INDUSTRIES, INC., ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE  
COMMISSION ACT*Docket 7728. Complaint, Jan. 6, 1960—Decision, Sept. 12, 1961*

Order requiring sellers of carports, patios, storm doors and windows in Washington, D.C., to cease advertising special prices which were not bona fide offers for sale but were made to obtain leads to prospective purchasers who were then pressured to buy higher priced products; and representing falsely that purchasers who allowed the products installed to be used for model home demonstrations would receive a price reduction, that their products were unconditionally guaranteed, and that carports or patios were "all aluminum" and included a supporting foundation wall and a completed floor.

## 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 Luxury Industries, Inc., a corporation, and Arthur Hankin, individually and as an officer of said corporation, and Arthur Hankin, trading and doing business as Patilum Co. and Patalum Luxury Industries, 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 Luxury Industries, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with an office and place of business located at 3002 12th Street, N.E., Washington, D.C.

Respondent Arthur Hankin is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is 1118 Brighton Street, Philadelphia, Pennsylvania.

Respondent Arthur Hankin trades and does business as Patilum Co. and Patalum Luxury Industries, with an office and place of business located at 3002 12th Street, N.E., Washington, D.C.

The aforementioned respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

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, carports, patios, storm doors and windows 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 District of Columbia to purchasers thereof located in various States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the sale of their products, respondents have made certain statements with respect thereto on television, in newspapers of general circulation and through other advertising media. By and through the use of such statements, and through oral statements made by their salesmen, respondents have represented:

(1) That they are making a bona fide offer to sell carports or patios, storm windows and doors for the full price of \$77.00, \$6.49 and \$16.50, respectively.

(2) That persons who allowed the products installed by respondents to be used for model home demonstration purposes in selling to others, will receive a reduction in price;

(3) Through the use of the word "Lifetime Guarantee" and "Fully Guaranteed" that said products were unconditionally guaranteed;

(4) That the carport or patio referred to in subparagraph (1) above was "all aluminum";

(5) Through the use of pictures in advertisements, that the carport or patio referred to in subparagraph (1) includes a supporting foundation wall and a completed floor.

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

(1) The offer set forth in subparagraph (1) of Paragraph Four above was not a genuine or bona fide offer but was made for the purpose of obtaining leads and information as to persons interested in the purchase of said products. After obtaining such leads through response to such advertisements and calling upon such persons, respondents and their salesmen made no effort to sell the advertised products at the advertised price, but, instead, disparaged such products in such a manner as to discourage their purchase and attempted to, and frequently did, sell much higher priced products.

(2) Respondents did not intend to use, nor did they use, the home of any of their purchasers for demonstration purposes, this statement being used only as a means to induce resistant purchasers into the buying of said products under the mistaken impression that they

were receiving some sort of a special price because of their willingness to allow their homes to be used for this purpose.

(3) Respondents' guarantee is not unconditional. The guarantee, if any is given, is limited in certain respects and such limitations and the manner and form in which the guarantor will perform are not disclosed to the purchaser.

(4) The carport and patio referred to in subparagraph (4) of Paragraph Four above is not "all aluminum" but instead has wooden supporting rafters and wooden supporting posts.

(5) The carport or patio depicted in the advertisement and offered for sale at \$77.00 does not include a supporting foundation wall or a floor.

PAR. 6. In the course and conduct of their business at all times mentioned herein, the 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 such 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. 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. 8. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

*Mr. Michael J. Vitale* for the Commission.

*Mr. Mark B. Sandground* of *Amram, Hahn & Sundbun*, Washington, D.C., and *Mr. Samuel Packman*, Philadelphia, Pa., for respondents.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

This proceeding is before the undersigned hearing examiner for final consideration on the complaint, answer thereto, testimony and other evidence. The filing of proposed findings as to the facts and conclusions were waived by the parties and the matter submitted to the

hearing examiner upon the record. The hearing examiner having considered the record herein, and being now fully advised in the premises, now makes the following findings as to the facts, conclusions drawn therefrom and order :

## FINDINGS AS TO THE FACTS

1. Respondent Luxury Industries, Inc., is a corporation organized under the laws of the State of Pennsylvania. The individual respondent Arthur Hankin is an officer of the corporate respondent, and formulates, directs and controls the acts and practices of the corporate respondent. In addition, said respondent Arthur Hankin also does business as Luxury Industries, Inc., Luxury Industries, Patalum Luxury Industries, and Patilum Co., all located at 3002 12th Street, N.E., Washington, D.C.

2. For several years last past the respondents have been engaged in the sale and distribution of carports, patios, storm doors and windows in interstate commerce and in the District of Columbia in competition with corporations, firms and individuals engaged in the sale and distribution of similar products in interstate commerce.

3. The corporate respondent and the individual respondent Arthur Hankin, doing business under his various trade names hereinabove described, have adopted a sales plan, or method of sale, which was designed to mislead and deceive prospective purchasers and to induce them to purchase higher priced merchandise than that offered for sale in their various advertisements.

4. In the course and conduct of their business, and for the purpose of inducing the sale of their products, it was the practice of the respondents to place advertisements in local newspapers and other periodicals, offering for sale an all aluminum patio or carport for the price of \$77.00 installed, storm windows for the price of \$6.49, and storm doors at the price of \$16.50. Such representations were also made by means of statements contained in television broadcasts. Such advertisements contained a pictorial representation of a patio including supporting foundation walls and completed floor.

5. Such representations were not in fact genuine or bona fide offers for sale of the advertised products, but were made for the purpose of obtaining leads and information as to persons interested in the purchase of such products. The carports and patios offered for sale at the special price of \$77.00 were not all aluminum as advertised, but instead were made of very flimsy light-weight aluminum with wooden posts and wooden supporting rafters. The special price did not include supporting foundation wall or a floor as represented by the pictorial depiction of the patio in said advertisements.

6. When a member of the purchasing public answered such advertisements, salesmen of the respondents called upon him, and either made no effort to sell the advertised products, or if the customer agreed to purchase the item advertised the salesmen belittled and disparaged the product to discourage the purchaser from going through with his purchase, and attempted to, and frequently did, sell higher priced products.

7. Seven customers who answered respondents' advertisement for a carport or patio, fully installed, for \$77.00 were called as witnesses to show the results obtained through the use of the sales methods adopted by the respondents. Each of these witnesses was induced to purchase more expensive carports or patios at the following varying prices depending on allowances granted: \$797.00, \$621.00, \$500.00, \$500.00, \$471.00, \$461.00 and \$320.00. In like manner four customers who answered respondents' advertisement for storm doors at \$16.50 and storm windows at \$6.50 were induced to purchase these products in the following quantities and for the following prices: 15 storm windows and one storm door for \$355.00; 11 storm windows and one picture storm window for \$316.00; 19 storm windows and one storm door for \$700.00 and 10 storm windows and two storm doors for \$350.00.

8. When the prospective purchaser objected to the price, the respondents represented that a special discount would be allowed if the purchaser permitted his home to be used for demonstration purposes in selling to others. While a number of the carports and patios were sold at an alleged reduction on the condition of using the purchaser's home for demonstration purposes, there is no evidence that the respondents ever brought prospective purchasers for any such demonstration, but instead such representation was a subterfuge to induce purchaser to believe he was getting a special reduction off the price for this purpose.

9. Respondents also advised prospective purchasers that their products carried a lifetime guarantee, and that said products were guaranteed unconditionally. While the respondents did a substantial amount of business during the time that they were operating, neither Luxury Industries, Inc., or Arthur Hankin doing business under his various trade names, were financially equipped to give performance on any guarantee so made, but instead were engaged only in advertising the products, purchasing them from others, and erecting them when purchased. Respondents' guarantee is not unconditional but is a limited guarantee only and such limitations in many cases are not disclosed to the purchaser.

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10. Through the use of the aforesaid false, deceptive and misleading statements and representations in advertising as part of and in conjunction with respondents' sales plan, hereinabove described, the respondents have induced a substantial portion of the purchasing public to purchase substantial quantities of respondents' more expensive carports, patios, storm windows and other products as is indicated by the fact that respondents' gross volume of sales for the year 1959 amounted to \$301,783.75.

## CONCLUSION

The aforesaid acts and practices as herein found 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.

## ORDER

*It is ordered.* That respondents, Luxury Industries, Inc., a corporation and its officers and respondent Arthur Hankin an individual trading as Luxury Industries Inc., Luxury Industries, Patilum Co., and Patalum Luxury Industries and as officers of Luxury Industries, Inc., and their respective representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of carports, patios, storm doors and windows or other similar 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 said merchandise is offered for sale when such offer is not a bona fide offer to sell the merchandise so offered;
2. The use of any sales plan or procedure involving the use of false, deceptive or misleading statements or representations in advertising which are designed to obtain leads or prospects for the sale of other or different merchandise;
3. Representing, directly or by implication, that their carports and patios are all aluminum construction when in fact the posts or other supports are made of materials other than aluminum;
4. Using pictorial representations in advertising to represent that respondent's patios or other products contain certain features or construction which are not in fact supplied by respondents for the price advertised;
5. Representing, directly or by implication, that any special price, allowance or discount is granted by respondents in return for the

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furnishing of any service or facility which is not in fact supplied such as permitting the premises on which respondents' products have been installed to be used for model home demonstration purposes in selling to others when in fact no such use is made or intended;

6. Representing, directly or by implication, that respondents' products are guaranteed unconditionally or carry a lifetime guarantee when in fact such guarantee is a limited guarantee only and is not an unconditional or lifetime guarantee;

7. Representing, directly or by implication, that respondents' products are guaranteed without disclosing to the purchaser the limitations applicable to such guarantee.

## OPINION OF THE COMMISSION

By KERN, Commissioner:

The complaint charges respondents with various unfair trade practices in connection with the advertising, offering for sale, sale and distribution of carports, patios, storm doors and windows. After hearing a number of witnesses in support of the complaint and waiver by respondents of their right to present evidence, the hearing examiner rendered his initial decision consisting of findings of fact, conclusions of law and an order intended to prohibit the unfair practices alleged in the complaint. Although neither side has appealed, we have carefully reviewed the initial decision on our own initiative and have determined that it should be corrected in two respects.

The first of these concerns the allegations of the complaint that respondents had falsely and deceptively represented that persons who allowed products installed by respondents to be used for model home demonstration purposes in selling to others would receive a reduction in price. The record discloses in this connection that this representation had been made to prospective purchasers by respondents' salesmen and the hearing examiner so found. The hearing examiner further found that such representation was deceptive since there was "no evidence that the respondents ever brought prospective purchasers for any such demonstration."

Absence of evidence or lack of evidence is hardly a proper basis upon which to support findings and conclusions. Indeed, it is fundamental that the proponent of a rule or order shall have the burden of proof and that findings and conclusions must be bottomed on "reliable, probative, and substantial evidence."<sup>1</sup> Thus, although we are in agreement with the hearing examiner's conclusion that the representation was deceptive, we believe that the initial decision

<sup>1</sup> Section 7(c), Administrative Procedure Act, 60 Stat. 241 (1946), as amended, 5 U.S.C. § 1006.

should be modified to state more accurately the factual basis for that conclusion. We do not think that the hearing examiner intended to rely upon an absence of evidence to support his finding since there is a clear showing in the record that respondents did not bring prospective purchasers to inspect the homes of the various witnesses who testified that representation in question had been made to them by respondents' salesmen. Nor do we think it necessary to determine whether this showing will support the inference, apparently drawn by the examiner, that respondents did not grant special discounts in consideration for services to be provided by the purchaser. There is ample evidence in the record that such discounts were not allowed by respondents. Illustrative of such evidence is the following testimony of the president of respondent corporation with respect to the company's policy concerning the granting of discounts in return for services to be furnished by purchasers:

Q. Well, do you ever reduce the price of any of the merchandise that you sell by virtue of certain of your customers allowing you to take photographs of the work that the company did for its model home photographs?

A. Not to my knowledge.

Q. Have you ever authorized your salesmen to make representations that if a person will allow their homes to be used as a model home that they would get a lower price?

A. Did I ever—

Q. Authorize your salesmen to make that representation?

A. Definitely not.

Q. And it is not a practice of yours to do that; is that correct?

A. No.

Such evidence, together with the showing that respondents' salesmen had made the representation in question, is adequate to support the aforementioned allegation.

The other matter which we are correcting relates to paragraph 5 of the order contained in the initial decision. This paragraph, as it is now written, would prohibit respondents from representing that they allow a special price or discount in return for the furnishing of a service or facility unless respondents actually make use of, or intend to make use of, such service or facility. The gravamen of the charge which this paragraph purports to cover, however, is that respondents had misled purchasers into believing that they were receiving a reduction in price or special discount, and not that respondents had misrepresented the reasons for giving a reduction or discount. The hearing examiner's order would not prohibit respondents from claiming that they will grant a special discount in return for certain services or facilities, when they do not in fact grant such discount, if they make use of, or intend to make use of, the services or facilities to be furnished by the purchaser. The order is clearly inadequate

to prohibit the deceptive representations found to have been made by respondents and will, therefore, be changed so as to accomplish that result.

The initial decision will be modified to conform with this opinion and, as modified, will be adopted as the decision of the Commission.

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

#### FINAL ORDER

This matter having been considered by the Commission upon its review of the hearing examiner's initial decision, filed May 23, 1961, and the Commission, for the reasons stated in the accompanying opinion, having determined that said initial decision should be modified:

*It is ordered*, That Paragraph 8 of the initial decision be modified to read as follows:

8. When the prospective purchaser objected to the price, the respondents represented that a special discount would be allowed if the purchaser permitted his home to be used for demonstration purposes in selling to others. While a number of the carports and patios were sold at an alleged reduction on the condition of using the purchaser's home for demonstration purposes, respondents did not in fact grant a reduction in price or special discount in return for such services to be furnished by the purchaser. Such representation was a subterfuge to induce the purchaser to believe that he was receiving a reduction in price.

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

*It is ordered*, That respondents, Luxury Industries, Inc., a corporation, and its officers and respondent Arthur Hankin, an individual trading as Luxury Industries, Inc., Luxury Industries, Patilum Co., and Patalum Luxury Industries and as officer of Luxury Industries, Inc., and their respective representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of carports, patios, storm doors and windows or other similar 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 said merchandise is offered for sale when such offer is not a bona fide offer to sell the merchandise so offered;
2. The use of any sales plan or procedure involving the use of false, deceptive or misleading statements or representations in advertising

which are designed to obtain leads or prospects for the sale of other or different merchandise;

3. Representing, directly or by implication, that their carports and patios are all aluminum construction when in fact the posts or other supports are made of materials other than aluminum;

4. Using pictorial representations in advertising to represent that respondents' patios or other products contain certain features or construction which are not in fact supplied by respondents for the price advertised;

5. Representing, directly or by implication, that any special price, allowance or discount is granted by respondents in return for the furnishing of any service or facility by the purchaser such as permitting the premises on which respondents' products have been installed to be used for model home demonstration purposes in selling to others.

6. Representing, directly or by implication, that respondents' products are guaranteed unconditionally or carry a lifetime guarantee when in fact such guarantee is a limited guarantee only and is not an unconditional or lifetime guarantee;

7. Representing, directly or by implication, that respondents' products are guaranteed without disclosing to the purchaser the limitations applicable to such guarantee.

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

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

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IN THE MATTER OF

SPENCER GIFTS, INC., ET AL.

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

*Docket 8097. Complaint, Aug. 25, 1960—Decision, Sept. 12, 1961*

Order requiring mail order merchandisers in Atlantic City, N.J., to cease such unfair practices as advertising in their catalogs "Arpege by Lanvin or Chanel No. 5 by Chanel only 70¢ per bottle with anything you order . . .", representing thus that perfumes were offered at a special low price when the products offered were in fact colognes and the price provided a substantial profit to respondents.

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## 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 Spencer Gifts, Inc., a corporation, and Max Adler and Harry Adler, 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 Spencer Gifts, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 1601 Albany Avenue Boulevard, Atlantic City, New Jersey.

Respondents Max Adler and Harry Adler 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 miscellaneous merchandise to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, the said products, when sold, to be shipped from their place of business in the State of New Jersey to purchasers thereof located in various other states of the United States and in the District of Columbia, and maintain, and have maintained, at all times mentioned herein, 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 inducing the purchase of their products, have made the following statements in their catalogs:

Arpege by Lanvin or Chanel No. 5 by Chanel only 70¢ per bottle with anything you order from this catalog you get the generous one dram size in a dainty golden purse flacon. Exquisite, exclusive, truly elegant! Not for sale. Available at this special giveaway price only when you're ordering other items from this catalog. Shipped with your order. Limit 1 to a customer, plus 1 more if your order totals over \$10.00. This is our way of saying "thank you" for your valued patronage! Order ARPEGE (A31815) or CHANEL No. 5 (A-31823).

The foregoing language is accompanied with illustrations of the packaged articles. Printed on the reproduced illustrations is the following language: "Lanvin's Arpege purse size flaconet" and "Chanel No. 5 purse size flaconet."

[PAR. 5.]

PAR. 6. Through the use of the aforesaid statements, respondents represented that the advertised products were perfumes and were being offered to their customers at a special low price with little or no profit to them.

PAR. 7. Said statements and representations were false, misleading and deceptive. In truth and in fact, the products being offered and delivered to the purchasers were colognes and not perfumes and consequently the price at which the products were offered had no relationship to the price of perfume. The price at which the colognes were offered provided a substantial profit to respondents.

PAR. 8. In the conduct of their business respondents were, and are, in competition with corporations, firms and individuals engaged in the sale of colognes in commerce.

PAR. 9. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead 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. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has been, and is being, done to competition in commerce.

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

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

*Arkus & Cooper*, Atlantic City, N.J., by *Mr. Saul W. Arkus*, 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 of law 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, Spencer Gifts, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 1601 Albany Avenue Boulevard, Atlantic City, New Jersey.

2. Respondent Max Adler is an officer of the corporate respondent and he formulated, directed and controlled all of the acts and practices of the corporate respondent hereinafter found. Respondent, Harry Adler, is not now an officer of the corporate respondent. Although he was an officer of the corporate respondent until June 18, 1960, he did not formulate, direct or control the acts and practices of the corporate respondent.

3. Respondents are engaged in interstate commerce. Respondents are now and for some time last past have been engaged in the advertising, offering for sale, sale and distribution of miscellaneous merchandise to the public. Respondents were and are in competition with corporations, firms and individuals engaged in the sale of colognes in interstate commerce.

4. Respondents for the purpose of inducing the purchase of their products have made the following statements in their catalog:

“A  
F A B U L O U S  
Exclusive  
FOR SPENCER CUSTOMERS  
ONLY!

ARPEGE by Lanvin . . . or CHANEL NO. 5 by Chanel  
ONLY 70¢ per bottle

With anything you order from this catalog! You get a generous 1 dram size, in a dainty golden purse flacon! Exquisite, exclusive, truly elegant! Not for sale. Available at this special give-away price only when you're ordering other items from this catalog. Shipped with your order. Limit 1 to a customer, plus 1 more if your order totals over \$10.00. This is our way of saying "thank you" for your patronage! Order ARPEGE (A-31815) or CHANEL No. 5 (A-31823).

5. The manufacturers of Arpege cologne and Chanel No. 5 did not in 1959, and do not now, package and sell their cologne products at retail or otherwise in units of one dram.

Since August 1959, and up to the present time, Arpege and Chanel No. 5 colognes were and are packaged in the following non-spray size units and were and are sold at the respective retail prices as indicated, exclusive of tax:

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## Conclusions

<i>Arpege Cologne</i>	<i>Chanel No. 5 Cologne</i>
4 oz. \$ 6.00	2 oz. \$ 3.50
8 oz. \$10.00	4 oz. \$ 5.50
	8 oz. \$ 9.00
	16 oz. \$15.00

Since August 1959, up to and including the present time, Arpege perfume and Chanel No. 5 perfume have been and are packaged in the following non-spray size units and have been and are now sold at the respective retail prices set out below, exclusive of tax:

<i>Arpege Perfume</i>	<i>Chanel No. 5 Perfume</i>
1 dram \$ 4.00	¼ oz. \$ 7.50
½ oz. \$12.50	½ oz. \$12.50
1 oz. \$23.50	1 oz. \$20.00
	2 oz. \$35.00

6. Respondent sold Arpege and Chanel No. 5 colognes which had been rebottled by someone other than the manufacturers, and although they did not use the word "perfume" in their advertising they used the brand names which were brands of perfumes as well as brands of colognes without disclosing that the products offered were colognes. In one of respondents' catalogs a package of one of the products was shown with the phrase "EAU DE LANVIN" on the package, but this improvement over the earlier advertising does not appear to be adequate to disclose that the product was cologne.

## CONCLUSIONS

The respondents stressed that they offered an unusual value, and this fact, plus the fact that the manufacturers of these brands did not package and sell these brands of cologne in smaller than two ounces but did package and sell perfume in one- or two-dram sizes, leads to the conclusion that many buyers could easily be led into believing that the products offered were perfume.

The representations of respondents had the capacity and tendency to mislead members of the purchasing public into the erroneous belief that the colognes advertised were, in fact, perfumes, and the fact that the price at which the colognes were offered was substantially lower than the price at which these brands of perfumes were usually offered, was not sufficient to put prospective buyers on notice that the products were colognes.

The acts and practices hereinabove found were to the prejudice and injury of the public and of respondents' competitors, 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.

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## ORDER

*It is ordered,* That respondents, Spencer Gifts, Inc., a corporation, and its officers, and Max Adler, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of cologne 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 cologne is a perfume.
2. Using the name of any brand of perfume to describe cologne, unless in close connection with such brand name the product is clearly stated to be cologne.
3. Offering for sale or selling a cologne, in bottles or other containers of the same size and appearance as containers in which perfumes are customarily or usually packaged, without clearly disclosing that such product is cologne.

*It is further ordered,* That the complaint herein is dismissed as to respondent Harry Adler, individually and as an officer of corporate respondent.

## OPINION OF THE COMMISSION

By KERN, Commissioner:

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

Respondents are engaged in the sale of miscellaneous merchandise. The representations giving rise to the charge in this case appeared in respondents' catalog and read as follows:

A  
F A B U L O U S  
Exclusive  
FOR SPENCER CUSTOMERS  
ONLY!

ARPEGE by Lanvin . . . or CHANEL NO. 5 by Chanel ONLY 70¢ per bottle

With anything you order from this catalog! You get a generous 1 dram size, in a dainty golden purse flacon! Exquisite, exclusive, truly elegant! Not for sale. Available at this special give-away price only when you're ordering other items from this catalog. Shipped with your order. Limit 1 to a customer, plus

1 more if your order totals over \$10.00. This is our way of saying "thank you" for your valued patronage! Order ARPEGE (A-31815) or CHANEL NO. 5 (A-31823).

The products thus offered were colognes which had been rebottled in one dram units by someone other than respondents and which cost respondents forty-four cents per unit.

The undisputed facts show that Arpege and Chanel No. 5 are brand names of perfumes as well as colognes. However, neither of the manufacturers of these products packages and sells colognes in units of one dram. The smallest size non-spray unit of Arpege cologne available is four ounces which sells for \$6.00. The smallest such unit of Chanel No. 5 cologne is two ounces and sells for \$3.50. Arpege perfume is available in a one dram size (equivalent to one-eighth of an ounce) at \$4.00 and Chanel No. 5 perfume is available in a one-fourth ounce size for \$7.50.

The hearing examiner concluded that respondents' advertisement would lead buyers into believing that the products offered were perfumes. Several arguments are advanced by respondents as to why the hearing examiner erred in this conclusion. First, respondents argue, on the basis of testimony of respondent Max Adler to the effect that the products were sold at a loss, that the offer was an unusual value as represented. Also, they contend in substance that the size of the package is of no significance since one of the manufacturers does not package its perfume in the one dram unit. In our view, these arguments are wholly without substance. Regardless of respondents' profit or loss on the offer, we have no doubt that in reliance upon the fact that the brand names used were brands of well-known perfumes as well as colognes, together with the fact that the colognes were offered in small containers similar to those in which perfumes are sold, respondents' extravagant representations were calculated to, and would, convey the impression that expensive perfumes were being offered to customers as an inducement to purchase articles from their catalog. Also, since the products were offered to induce the sale of other goods, we agree with the hearing examiner that the price at which they were offered was not sufficient notice to prospective customers that the products were colognes.

About one month after distribution of the catalog in which the offer first appeared, respondents distributed a second edition containing the same offer. In the text of the second offer, respondents inserted the wording "the genuine product rebottled." This wording certainly does not inform prospective purchasers as to the nature of the product offered. Also, the words "Eau de Lanvin" and "Eau de Cologne" were inserted on the pictures of the packages shown in the

offer. However, the printing is so faint and small as to be practically indiscernible and thus cannot be considered adequate notice that the products were colognes. Accordingly, we find that this second offer is also deceptive.

Respondents next contend that an order to cease and desist should not issue since they have abandoned the practice. To resolve such questions we generally look to the timing and circumstances surrounding the alleged discontinuance. *Art National Manufacturers Distributing Co., Inc.*, Docket No. 7286 (May 10, 1961).

The facts disclose that the offer was initially published in the first edition of respondents' 1959 Christmas catalog, of which 956,000 copies were distributed at the end of August and the beginning of September of that year. During the first two weeks of October, respondents distributed 4,880,000 copies of the second edition of their Christmas catalog featuring the same offer. The third edition distributed at the end of October, and subsequent editions, did not contain the offer. Respondents discontinued the sale of the two products about the middle of December 1959.

The circumstances surrounding respondents' discontinuance of the offer do not lend support to their argument that the practice has been abandoned. The discontinuance was neither voluntary nor was it brought about by a desire to eliminate a practice which respondents considered to be deceptive. Briefly, the evidence disclosed that soon after the offer appeared, the manufacturer of the Arpege product complained to respondents about underpricing and the manufacturer of Chanel No. 5 challenged respondents' right to sell the product in a rebottled unit. As a result, respondents entered into written obligations with these manufacturers whereby respondents agreed to terminate the sale of the products. These agreements contain a specific denial by respondents of any misconduct on their part. We think it obvious that respondents did not abandon the practices but merely discontinued the specific offer under threat of litigation. While it appears that they are precluded from engaging in the same practice with respect to Arpege and Chanel No. 5 products, we have no reason to believe that, as a Christmas promotion or on any other occasion, respondents will not repeat the practice with the products of other perfume and cologne manufacturers. Therefore, as this record does not warrant a finding that the practice has been surely stopped with no likelihood of resumption, we believe that an order to cease and desist is required in the public interest.

The appeal of respondents is denied and the initial decision will be adopted as the decision of the Commission.

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## 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 adopting the initial decision:

*It is ordered.* That respondents, Spencer Gifts, Inc., a corporation, and Max Adler, individually and as an officer of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist contained in the aforesaid initial decision.

By the Commission, Commissioner Secrest not participating.

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 IN THE MATTER OF

## PACKARD MILLS, INC., ET AL.

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

*Docket 8297. Complaint, Mar. 2, 1961—Decision, Sept. 12, 1961*

Consent order requiring proprietors of woolen mills in Webster and Caryville, Mass., to cease violating the Wool Products Labeling Act by labeling or tagging as "75% Wool, 15% Nylon and 10% Cashmere" and "85% Wool, 15% Nylon," woolen fabrics which contained substantially less wool than was thus indicated, and by failing to label certain wool products as required.

## 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 Packard Mills, Inc., a corporation, and Ralph K. Hubbard and Edwin L. Hubbard, individually and as officers of said corporation, and Alan W. Manter, individually, hereinafter referred to as respondents, have violated the provisions of said Acts, and the Rules and Regulations promulgated under the Wool Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Packard Mills, Inc. is a corporation organized, existing and doing business under and by virtue of the laws

of the State of Massachusetts. Said corporation has woolen mills located in Webster, Massachusetts and Caryville, Massachusetts.

Individual respondents Ralph K. Hubbard and Edwin L. Hubbard are officers of the corporate respondent. Individual respondent Alan W. Manter is the resident manager of the Caryville mill. Said individual respondents formulate, direct and control the acts, practices and policies of said corporate respondent, including the acts and practices hereinafter referred to. The business address of individual respondents Ralph K. Hubbard and Edwin L. Hubbard is the same as the corporate respondent, Webster, Massachusetts. The business address of individual respondent Alan W. Manter is Packard Mills, Inc., Caryville, Massachusetts.

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

PAR. 3. Certain of said wool products were misbranded by respondents within the intent and meaning of Section 4(a)(1) of said 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 were woolen fabrics labeled or tagged by respondents as—

75% Wool, 15% Nylon and 10% Cashmere  
85% Wool, 15% Nylon

whereas in truth and in fact said products contained substantially less wool than was indicated by the foregoing labels or tags affixed thereto.

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 thereunder.

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

PAR. 6. The aforesaid acts and practices of the respondents 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 methods of competition and unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

*Mr. Michael P. Hughes* for the Commission.

*Bingham, Dana & Gould*, by *Mr. Joseph Ford*, Boston, Mass., for respondents.

INITIAL DECISION BY RAYMOND J. LYNCH, HEARING EXAMINER

The complaint in this proceeding, issued March 2, 1961, charges the above-named respondents with violation of the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act and the Rules and Regulations issued thereunder.

On June 20, 1961, there was submitted to the undersigned hearing examiner an agreement between respondents and counsel supporting the complaint providing for the entry of a consent order.

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

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

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

1. Respondent Packard Mills, Inc. is a corporation existing and doing business under and by virtue of the laws of the State of Massachusetts, with its office and place of business located in Webster, Massachusetts.

Individual respondents Ralph K. Hubbard and Edwin L. Hubbard are officers of said corporate respondent. Individual respondent Allen W. Manter (named in the complaint as Alan W. Manter) is the

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resident manager of the Caryville mill. The individual respondents control, direct and formulate the acts and practices of said corporate respondent. The address of the individual respondents Ralph K. Hubbard and Edwin L. Hubbard is the same as that of the corporate respondent. The address of individual respondent Allen W. Manter is Packard Mills, Inc., Caryville, Massachusetts.

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 respondent Packard Mills, Inc., a corporation, and its officers, and Ralph K. Hubbard and Edwin L. Hubbard, individually and as officers of said corporation, and Allen W. Manter (named in the complaint as Alan W. Manter), individually, 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 woolen fabrics or other "wool products," as such products are defined in and subject to the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

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

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

## DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

This matter having come on to be heard by the Commission upon its review of the initial decision filed by the hearing examiner on July 20, 1961, and the Commission having determined that said initial decision is adequate and appropriate in all respects to dispose of this proceeding:

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

*It is further ordered*. That the respondents, Packard Mills, Inc., a corporation, and Ralph K. Hubbard and Edwin L. Hubbard, individually and as officers of said corporation, and Allen W. Manter (named in the complaint as Alan W. Manter), individually, shall,

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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

## BAKER MERCHANDISING CORPORATION ET AL.

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

*Docket 8355. Complaint, Apr. 14, 1961—Decision, Sept. 12, 1961*

Consent order requiring New York City furriers to cease violating the Fur Products Labeling Act by advertising in newspapers which failed to disclose names of animals producing the fur contained in fur products or that some products contained artificially colored fur, and failed to use the term "Dyed Broadtail-processed Lamb" as required, and which represented prices of fur products as reduced from so-called regular prices which were in fact fictitious; and by failing to keep adequate records as a basis for pricing 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 Baker Merchandising Corporation, a corporation, and Samuel B. Baker, Robert C. Baker and Lawrence Rawlings, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

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

Respondents Samuel B. Baker, Robert C. Baker and Lawrence Rawlings are president-treasurer, vice president, and secretary, respectively, of the said corporate respondent. These individuals control, formulate and direct the acts, practices and policies of the said corporate respondent. Their offices and principal place of business are the same as that of the said corporate respondent.

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

PAR. 3. Certain of said fur products were 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 product.

PAR. 4. Among and included in the advertisements as aforesaid, but not limited thereto, were advertisements of respondents which appeared in issues of The Salt Lake Tribune, a newspaper published in the City of Salt Lake City, State of Utah, 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) Failed to disclose the name or names of the animal or animals that produced the fur contained in the fur product as set forth in the Fur Products Name Guide, in violation of Section 5(a)(1) of the Fur Products Labeling Act.

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

(c) Failed to use the term "Dyed Broadtail-processed Lamb" as required, in violation of Rule 10 of said Rules and Regulations.

(d) Represented prices of fur products has 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.

PAR. 5. In making the pricing claims and representations set forth in subparagraph (d) of Paragraph Four hereof, respondents 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. Harry E. Middleton, Jr.*, for the Commission.  
Respondents, *pro se*.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

On April 14, 1961, the Federal Trade Commission issued its complaint against the above-named respondents charging them with violation of the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and the Rules and Regulations promulgated under said Fur Products Labeling Act in connection with the introduction into commerce, and the sale, advertising and offering for sale, transportation and distribution of fur products. On June 18, 1961, the respondents and counsel supporting the complaint entered into an agreement containing a consent order to cease and desist in accordance with Section 3.25 (a) of the Rules of Practice and Procedure of the Commission.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint and agree among other things, that the cease and desist order there set forth may be entered without further notice and shall have the same force and effect as if entered after a full hearing. The agreement includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith; and recites that the said agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, and that it is for settlement purposes only, does not constitute an admission by the respondents that they have violated the law as alleged in the complaint, and that said complaint may be used in construing the terms of the order. The hearing examiner finds that the content of the said agreement meets all the requirements of Section 3.25 (b) of the Rules of Practice.

This proceeding having now come on for final consideration by the hearing examiner on the complaint and the aforesaid agreement for consent order, and it appearing that said agreement provides for an

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appropriate disposition of this proceeding, the aforesaid agreement is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with Section 3.21 of the Rules of Practice; and in consonance with the terms of said agreement, the hearing examiner makes the following jurisdictional findings and order:

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

Respondents Samuel B. Baker, Robert C. Baker and Lawrence Rawlings are individuals and officers of said corporate respondent. They formulate, direct and control the policies, acts and practices of the corporate respondent. Their address is the same as that of the corporate respondent.

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

## ORDER

*It is ordered*, That Baker Merchandising Corporation, a corporation, and its officers and Samuel B. Baker, Robert C. Baker and Lawrence Rawlings 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 manufacture for introduction into commerce, or the sale, advertising, offering for sale, transportation or distribution in commerce of fur products, or in connection with the sale, manufacture for sale, advertising, offering for sale, transportation or distribution of fur products which have been made in whole or in part of fur which has been shipped and received in commerce as "commerce", "fur" and "fur products" are defined in the Fur Products Labeling Act do forthwith cease and desist from:

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

A. Fails to disclose:

(1) The name or names of the animal or animals producing the fur or furs contained in the fur products as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations.

(2) That the fur product contains or is composed of bleached, dyed or otherwise artificially colored fur when such is the fact.

B. Fails to set forth the terms "Dyed Broadtail Processed Lamb" in the manner required.

C. 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.

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

2. Making price claims and representations of the types referred to in paragraphs C and D above unless respondents maintain full and adequate records disclosing the facts upon which such claims and representations are based.

#### DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

This matter having come on to be heard by the Commission upon its review of the initial decision filed by the hearing examiner on July 21, 1961, and the Commission having determined that said initial decision is adequate and appropriate in all respects to dispose of this proceeding:

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

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

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#### IN THE MATTER OF

L. W. FOSTER SPORTSWEAR CO., INC., ET AL.

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

*Docket 8390. Complaint, May 5, 1961—Decision, Sept. 13, 1961*

Consent order requiring Philadelphia manufacturers to cease violating the Wool Products Labeling Act by such practices as labeling men's jackets as "Shell 50% Wool, 40% Rep. Wool, 10% Nylon", when the jackets contained substantially less wool than so indicated; failing to set forth the ratio between the respective percentages of fibers in the face and back of pile fabrics; describing a portion of the fiber content on labels as "orlon" instead of using the common generic name; failing to label specimens or samples of wool products with required information; and failing in other respects to comply with requirements.

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## 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 L. W. Foster Sportswear Co., Inc., a corporation, and Louis W. Foster and Howard S. Foster, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent L. W. Foster Sportswear Co., Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania.

Respondents Louis W. Foster and Howard S. Foster are officers of the corporate respondent. They cooperate in formulating, directing and controlling the acts, policies and practices of the corporate respondent including the acts and practices hereinafter referred to. All respondents have their offices and principal place of business at Hancock & Westmoreland Streets, Philadelphia 40, Pennsylvania.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, and more especially since January 1, 1959, respondents have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, and offered for sale in commerce, as "commerce" is defined in said Act, wool products as "wool products" are defined therein.

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

Among such misbranded wool products were men's jackets labeled or tagged by respondents as "Shell 50% Wool, 40% Rep. Wool, 10% Nylon," whereas in truth and in fact such section of said products contained substantially less wool than represented. Among other of such misbranded wool products were men's jackets labeled or tagged by respondents as "Shell 85% Wool, 5% Rayon, 10% Nylon," whereas in truth and in fact said section of said product contained reprocessed wool.

PAR. 4. Certain of said wool products were further misbranded by respondents in that they were not stamped, tagged or labeled as re-

quired under the provisions of Section 4(a) (2) of the Wool Products Labeling Act, and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

PAR. 5. 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) In that required information descriptive of the fiber content was set out on labels in abbreviated form in violation of Rule 9 of said Rules and Regulations.

(b) In that the ratio between the respective percentages of fibers in the face and back of pile fabrics was not set forth, in violation of Rule 26 of said Rules and Regulations.

(c) In that the labels or tags attached to the wool products described a portion of the fiber content as "orlon" instead of using the common generic name of said fiber, in violation of Rule 8 of the aforesaid Rules and Regulations.

(d) In that 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.

PAR. 6. The respondents, in the course and conduct of their business, as aforesaid, were and are in substantial competition in commerce with other corporations, firms and individuals likewise engaged in the manufacture and sale of wool products, including pile lined coats.

PAR. 7. The acts and practices of the respondents, as set forth above, were and are in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

*Mr. Charles W. O'Connell* for the commission;

*Lodge and Goldman*, by *Mr. Erwin Lodge*, Philadelphia, Pa., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on May 5, 1961, issued its complaint herein, charging the above-named respondents with having violated the provisions of the Federal Trade Commission Act, and of the Wool

Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, in certain particulars, and respondents were duly served with process.

On July 10, 1961, there was submitted to the undersigned hearing examiner of the Commission, for his consideration and approval, an "Agreement Containing Consent Order To Cease And Desist," which had been entered into by and between respondents and counsel for both parties, under date of July 5, 1961, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

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

1. Respondent L. W. Foster Sportswear Co., Inc., 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 Hancock and Westmoreland Street, in the city of Philadelphia, State of Pennsylvania. Respondents Louis W. Foster and Howard S. Foster are officers of the corporate respondent. Their address is the same as that of the corporate respondent.

2. Respondents admit all the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

3. This agreement disposes of all of this proceeding as to all parties.

4. Respondents waive:

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

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

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

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

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

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

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

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

Upon due consideration of the complaint filed herein and the said "Agreement Containing Consent Order To Cease and Desist," the hearing examiner approves and accepts this agreement, and finds that the Commission has jurisdiction of the subject matter of this proceeding and of the respondents herein; that the complaint states a legal cause for complaint under the Federal Trade Commission Act, and under the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, against the respondents, both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; that the order proposed in said agreement is appropriate for the just disposition of all the issues in this proceeding as to all of the parties hereto; and that said order therefore should be, and hereby is, entered as follows:

*It is ordered,* That respondents L. W. Foster Sportswear Co., Inc., a corporation, and its officers, and Louis W. Foster and Howard S. Foster, 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 manufacture for introduction or the introduction into commerce, or the offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of jackets or other "wool products", as such products are defined in and subject to the Wool Products Labeling Act, do forthwith cease and desist from misbranding 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;
3. Using abbreviated words or terms descriptive of fiber content on stamps, tags, labels or other means of identification attached to said wool products;
4. Failing to set forth on tags, labels or other means of identification attached to pile fabrics or products made thereof the ratio between the respective percentages of fibers in the face and in the back of said fabric;
5. Failing to set forth the common generic name of fibers in the

required information on labels, tags, or other means of identification attached to wool products;

6. Failing to label or mark samples of wool products used to promote or effect sales of such wool products in commerce with the information required under the Wool Products Labeling Act and the Rules and Regulations thereunder.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

This matter having come on to be heard by the Commission upon its review of the initial decision filed by the hearing examiner on July 14, 1961, and the Commission having determined that said initial decision is adequate and appropriate in all respects to dispose of this proceeding:

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

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

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IN THE MATTER OF

THOMPSON MEDICAL CO., INC., ET AL.

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

*Docket 8399. Complaint, May 16, 1961—Decision, Sept. 13, 1961*

Order dismissing without prejudice as to individual officer of respondent corp., complaint charging false advertising of a drug preparation designated "Tranquil Aid."

As to the other respondents, the matter was settled by consent on Aug. 22, 1961, p. 287 herein.

*Mr. Edward F. Downs* for the Commission;  
No appearance for respondent William Jackson.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on May 16, 1961, charging Respondents with violation of the Federal Trade Commission Act by the dissemination of false advertisements with respect to their drug preparation designated "Tranquil-Aid."<sup>1</sup>

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<sup>1</sup> See p. 287 herein.

On July 12, 1961, prior to the offering of any evidence herein, counsel supporting the complaint submitted a motion requesting dismissal of the complaint without prejudice as to Respondent William Jackson, individually and as an officer of the corporate Respondent, for the reasons that the complaint was never served on Respondent Jackson, but was returned marked "Moved Left No Address"; and, according to counsel for the other Respondents, William Jackson is no longer connected with the corporate Respondent as an officer or otherwise.

After due consideration, the Hearing Examiner accepts the reasons offered in support of the motion, and concurs in the opinion of counsel supporting the complaint that the dismissal without prejudice of the complaint herein, without prejudice, as to Respondent William Jackson will be in the public interest. Therefore,

*It is ordered,* That the complaint herein, insofar as it relates to Respondent William Jackson, be, and the same hereby is, dismissed without prejudice to the right of the Commission to initiate further proceedings against said Respondent, should future events so warrant.

#### DECISION OF THE COMMISSION

This matter having come on to be heard by the Commission upon its review of the initial decision filed by the hearing examiner on July 14, 1961, and the Commission having determined that said initial decision is adequate and appropriate in all respects to dispose of this proceeding:

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

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#### IN THE MATTER OF

#### COMMERCE CONTRACTING COMPANY ET AL.

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

*Docket 8125. Complaint, Sept. 26, 1960—Decision, Sept. 14, 1961*

Consent order requiring affiliated concerns in Baltimore and Washington, D.C., to cease using deception in the sale of aluminum siding and storm windows and doors, including false statements by their salesmen that they represented the Kaiser Aluminum Company and the Reynolds Aluminum Company, and that the prospective customer's home had been selected as a "model home" and as a result, the purchaser would receive \$50 for each additional customer secured after viewing the installation.

Complaint

59 F.T.C.

## 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 Commerce Contracting Company, a corporation, Columbia Contracting Company, a corporation, and Bernard Caplan and Stanley Bergstein, individually and as officers of said corporation; Phillip Brouman, individually and as an officer of Commerce Contracting Company, and Tevis Margolis, individually and as an officer of Columbia Contracting Company, 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 Commerce Contracting Company and Columbia Contracting Company are corporations organized, existing and doing business under and by virtue of the laws of the State of Maryland. The principal office and place of business of Commerce Contracting Company is located at 1003 West North Avenue, in the City of Baltimore, State of Maryland, and the principal office and place of business of Columbia Contracting Company is located at 2009 Bunker Hill Road, N.E., in the City of Washington, D.C.

Respondents Bernard Caplan and Stanley Bergstein are officers of the corporate respondents. Respondent Phillip Brouman is an officer of Commerce Contracting Company and Tevis Margolis is an officer of Columbia Contracting Company. These individual respondents formulate, direct and control the acts and practices of the corporate respondents of which they are officers, including those set forth hereinafter in this complaint.

The address of respondents Bernard Caplan, Stanley Bergstein and Tevis Margolis is the same as that of the corporate respondent Commerce Contracting Company. The address of Phillip Brouman is 5910 Penn Avenue, Pittsburgh, Pennsylvania.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of aluminum siding, storm windows and doors, and installation thereof, to home owners.

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 places of business in the State of Maryland and in the District of Columbia to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintain, and at all times mentioned herein have

maintained, a substantial course of trade in said products, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the sale of their aluminum siding, storm windows and doors, respondents have made certain statements with respect to the companies they represent. Salesmen of the respondent Commerce Contracting Company state to prospective purchasers that they represent the Kaiser Aluminum Company, ask prospective purchasers if they have seen their television program "Maverick" and further state to prospective purchasers that their homes have been selected as a "model home" in the community, and that said prospective purchasers, as a result thereof, will receive \$50 for each additional customer secured by respondent after such additional customer views the installation on the prospective customers' homes.

Salesmen of the Columbia Contracting Company state to prospective purchasers that they represent the Reynolds Aluminum Company and that the prospective customers' homes have been selected as a "model home" in the community, and that said purchasers, as a result thereof, will receive \$50 for each additional customer secured by respondent after such additional customer views the installation on the prospective customers' homes.

PAR. 5. Said statements are false, misleading and deceptive. In truth and in fact, salesmen or representatives of the Commerce Contracting Company do not represent, and have never represented or been agents of, or connected with, the Kaiser Aluminum Company, and in fact, salesmen of or representatives of Columbia Contracting Company do not represent, and have never represented or been agents of or connected with the Reynolds Aluminum Company. In truth and in fact, no "model homes" were selected by either company nor did purchasers ever receive any premium or emolument for any similar installation on other homes in their community as a result of their own installation.

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 in the sale and installation of aluminum siding and storm windows and doors of the same general kind and nature as those sold by respondent.

PAR. 7. The use by the respondents of the above false, misleading and deceptive statements 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. 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. 8. 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. Morton Nesmith* for the Commission:

*Mr. Harry W. League, Jr.*, and *Mr. Maurice Cardin.* of Baltimore, Md., for respondents.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission on September 26, 1960, issued its complaint against the above-named respondents, charging them with having violated the Federal Trade Commission Act by misrepresentations in connection with the sale of their products. Respondents appeared and entered into an agreement dated June 15, 1961, containing a consent order to cease and desist, disposing of all the issues in this proceeding without further hearings, which agreement has been duly approved by the Bureau of Litigation. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with § 3.25 of the Rules of Practice of the Commission.

Respondents, pursuant to the aforesaid agreement, have admitted all of the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been made duly in accordance with such allegations. Said agreement further provides that respondents waive all further procedural steps before the hearing examiner 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 Commerce Contracting Company and Columbia Contracting Company are corporations organized, existing and doing business under and by virtue of the laws of the State of Maryland. The principal office and place of business of Commerce Contracting Company is located at 1003 West North Avenue, in the City of Baltimore, State of Maryland, and the principal office and place of business of Columbia Contracting Company is located at 2009 Bunker Hill Road, N.E., in the City of Washington, D.C.

Respondent Phillip Brouman, although an officer of respondent Commerce Contracting Company, did not formulate, direct or control the policies, acts and practices of said corporation, and is not bound hereby individually.

Respondents Bernard Caplan and Stanley Bergstein are officers of both corporate respondents. Respondent Tevis Margolis is an officer of respondent Columbia Contracting Company. These individual respondents formulate, direct and control the policies, acts and practices of said corporations.

The address of respondents Bernard Caplan and Stanley Bergstein is the same as that of the corporate respondent Commerce Contracting Company. The address of respondent Tevis Margolis is the same as that of the corporate respondent Columbia Contracting Company. The address of respondent Phillip Brouman is 5910 Penn Avenue, Pittsburgh, Pennsylvania.

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

*It is ordered*, That respondents Commerce Contracting Company, a corporation, Columbia Contracting Company, a corporation, and their officers, and Bernard Caplan and Stanley Bergstein, individually and as officers of said corporations, Phillip Brouman, as an officer of respondent Commerce Contracting Company and Tevis Margolis,

individually and as an officer of Columbia Contracting Company, 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 aluminum siding, storm windows and doors, and other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act do forthwith cease and desist from representing, directly or by implication:

1. That they are representatives or agents of, or connected in any manner with, the Kaiser Aluminum Company, the Reynolds Aluminum Company; or are representatives of or connected with any other firm or corporation unless such is the fact;

2. That prospective purchasers' homes have been selected as "model homes" or that the owners thereof will receive any amount of money or other thing of value predicated upon similar work being done on other homes in the community.

*It is further ordered*, That the allegations of the complaint be, and the same are hereby, dismissed as to the respondent Phillip Brouman individually.

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 did, on the 14th day of September 1961, become the decision of the Commission; and, accordingly:

*It is ordered*, That respondents Commerce Contracting Company, a corporation, Columbia Contracting Company, a corporation, and their officers, and Bernard Caplan and Stanley Bergstein, individually and as officers of said corporations; Phillip Brouman, as an officer of respondent Commerce Contracting Company and Tevis Margolis, individually and as an officer of Columbia Contracting Company, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

MURRAY LUBELL, INC., ET AL.

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

*Docket 8380. Complaint, May 2, 1961—Decision, Sept. 14, 1961*

Consent order requiring New York City furriers to cease violating the Fur Products Labeling Act by invoicing fur products falsely to show that the fur

contained therein was natural when, in fact, it was artificially colored, using the term "blended" to describe pointing, bleaching, dyeing or tip-dyeing, and failing to conform in other respects to invoicing requirements, and by furnishing false guaranties that their products were not misbranded, falsely invoiced, or falsely advertised.

#### 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 Murray Lubell, Inc., a corporation, and Murray Lubell and Harry Weiner, 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. Murray Lubell, 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 330 Seventh Avenue, New York 1, New York.

Murray Lubell and Harry Weiner are officers of the said corporation and control, direct and formulate the acts, practices and policies of the said corporate respondent. Their office and principal place of business is the same as that of the said corporate respondent.

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

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

PAR. 4. Certain of said fur products were falsely and deceptively invoiced in that said fur products were invoiced to show that the

fur contained therein was natural, when in fact such fur was bleached, dyed, or otherwise artificially colored, in violation of Section 5(b)(2) of the Fur Products Labeling Act.

PAR. 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 the term "blended" was used as part of the information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder to describe the pointing, bleaching, dyeing or tip-dyeing of furs in violation of Rule 19(e) of said Rules and Regulations.

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

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

*Mr. Michael P. Hughes* for the Commission.  
Respondents, *pro se*.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated May 2, 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 July 10, 1961, the respondents entered into an agreement with counsel in support of the complaint for a consent order.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing. 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 Murray Lubell, 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 330 Seventh Avenue, in the City of New York, State of New York.

Individual respondents Murray Lubell and Harry Weiner are officers of the corporate respondent, and control, direct and formulate the acts, practices and policies of the said corporate respondent. Their office and principal place of business is the same as that of the said corporate respondent.

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

1. Falsely or deceptively invoicing fur products by:

A. Representing directly or by implication on invoices that furs or fur products are natural when such is not the fact.

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

Complaint

59 F.T.C.

C. Using the term "blended" to describe the pointing, bleaching, dyeing or tip-dyeing of furs.

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

## DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 14th day of September 1961, become the decision of the Commission; and accordingly:

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

## IN THE MATTER OF

## DOEHLA GREETING CARDS, INC.

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

*Docket 7821. Complaint, Mar. 11, 1960—Decision, Sept. 15, 1961*

Consent order requiring a greeting card manufacturer, with plant in Nashua, N.H., and warehouse facilities in Philadelphia, Atlanta, and Palo Alto, also jobbing gift items and jewelry, with annual sales exceeding \$8,000,000, to cease discriminating in price in violation of Sec. 2(e) of the Clayton Act by furnishing a national program of joint advertising to eight of its franchise distributors—leasing to them names of participating agents, and referring inquiries to the member in whose allotted territory the inquirer was located—without offering comparable services to its other distributors upon proportionally equal terms.

## COMPLAINT

Pursuant to the provisions of the Clayton Act, as amended by the Robinson-Patman Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the party named in the caption hereof and more particularly described and referred to hereinafter as respondent, has violated the provisions of subsection (e) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C. Title 15, Sec. 13), hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondent Doehla Greeting Cards, Inc., hereinafter referred to as respondent Doehla, is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located in the City of Nashua, State of New Hampshire.

PAR. 2. Respondent Doehla is engaged in the business of the manufacture, sale and distribution of greeting cards and has been so engaged for more than five years. It maintains one plant located in Nashua, New Hampshire, and has warehouse facilities in Philadelphia, Pennsylvania; Atlanta, Georgia; and Palo Alto, California.

Said respondent conducts its business on a nationwide basis selling to wholesale distributors who resell to agents and retail establishments. It also maintains a mail order business, selling direct to consumers and to agents who resell to consumers.

In addition to its greeting cards business respondent Doehla also acts as a jobber in the sale and distribution of miscellaneous gift items and jewelry.

Respondent's annual volume of sales is in excess of \$8,000,000.

PAR. 3. Respondent in the course and conduct of its said business is engaged in commerce, as "commerce" is defined in the Clayton Act, in that it sells and distributes greeting cards, miscellaneous gift items and jewelry to purchasers thereof located in states other than the state of origin of shipment and causes such products to be shipped and transported from its place or places of business to purchasers located in other states and the District of Columbia. There is now and has been a constant course and flow of trade and commerce in such products between respondent and said purchasers.

PAR. 4. Among the wholesale distributor customers of respondent Doehla are distributors referred to as franchise distributors and non-franchise distributors. The franchise distributors operate under a franchise agreement which was established in or about 1947 and which provides, among other things, for a restricted area of operations for each such distributor, with Doehla agreeing not to set up direct competition in such area. Said franchise distributors also are required to purchase a substantial quantity of Doehla products.

PAR. 5. In about the year 1954 said respondent developed a plan or program referred to as "Associate Distributor Program" whereby a group of franchise distributors were to combine with respondent to form an unincorporated association, for the purpose of participating in, and sharing the expense of, a national advertising program.

Accordingly, a number of franchise distributors were contacted by respondent and eight of such distributors became members of a group known as "Harry Doehla and Associates." The plan provided in part that each member would have a definite territory or area in which

to operate and that Doehla would lease the names of agents, who had previously purchased from Doehla, to each of the participating members, allocating to each member the names of the agents located in each member's territory.

Each of the eight franchise distributors who became Associates entered into two agreements with respondent Doehla, one called a "Class A Distributor Franchise agreement", and the other a "lease agreement". Both agreements extended for a period of five years with provision to be extended for an additional five or ten year period.

PAR. 6. By virtue of said agreements as referred to in Paragraph Five, respondent and the member distributors have participated jointly in a national advertising program, the cost of which has been shared by each on the basis of the number of inquiries received by each member from the area covered by each. The name and address of each participant is shown on each advertisement and inquiries are received from prospective customers who answer the advertisements. Also, respondent leased to each member a number of names of agents, such names being leased to that member whose area of operations covered the location of the agent whose name was leased.

In addition each participating franchise distributor was allowed a 2% rebate on the total dollar volume of sales by Doehla to such distributor, as a sales promotional allowance, the 2% rebate being applicable to items produced by respondent Doehla and displayed in its catalogs.

Said respondent and the franchise distributors who are members of Harry Doehla and Associates meet together twice annually and exchange ideas in connection with the marketing of the various products sold by respondent Doehla to such members.

Agreements between respondent Doehla and the eight franchise distributors also provide that such distributors will handle Doehla products to the extent of a substantial volume of their business for the duration of the agreements.

PAR. 7. The Associate Distributor Program described in Paragraphs Five and Six herein, has been accepted by eight distributors of respondent Doehla. There are many distributors of respondent's products to whom the Associate Distributor Program has not been offered, and some of such distributors who have not been offered the program are in competition with those distributors who are participating in said Program and who are members of Harry Doehla and Associates.

The quantity of Doehla products purchased by each of the franchise distributors who have accepted the Associate Distributor Program has substantially increased since the program was first put into effect in 1954.

PAR. 8. In furnishing a program which includes joint advertising on a national scale, the leasing of names of agents to those who participate, and the referral of all inquiries from such national advertising to each participating member who has been allotted the area or territory in which the inquirer is located, to a few distributors, namely, eight in number and not to other distributors, said respondent has thus discriminated in favor of those purchasers who have accepted such a program and against other purchasers of its products to whom such program has not been offered, by contracting to furnish and furnishing said services and facilities connected with the handling, sale and offering for sale of such products purchased from respondent upon terms not accorded to all purchasers on proportionately equal terms.

PAR. 9. The aforesaid acts and practices of respondent as herein alleged are in violation of the provisions of Section 2(e) of the Clayton Act, as amended by the Robinson-Patman 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 respondent named in the caption hereof with violation of Section 2(e) of the Clayton Act, as amended by the Robinson-Patman Act, and an agreement by and between the respondent and its counsel and counsel supporting the complaint, which agreement contains an order to cease and desist, an admission by the respondent 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 by respondent that it has violated the law as alleged in the complaint, and waivers and provisions as required by the Commission's rules; and

The Commission having considered the agreement and order contained therein and being of the opinion 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, Doehla Greeting Cards, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business in the City of Nashua, State of New Hampshire.
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

59 F.T.C.

## ORDER

*It is ordered,* That respondent Doehla Greeting Cards, Inc., a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of greeting cards, miscellaneous gift items and jewelry, in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

1. Contracting to furnish or furnishing, or contributing to the furnishing of, any services or facilities, connected with the handling, sale, or offering for sale of any of said products, to any purchaser of such products, bought for resale, unless such services or facilities are accorded on proportionally equal terms to all purchasers competing with such favored purchasers in the sale of respondent's products.

2. Furnishing any advertising plan or program under the name of "Harry Doehla and Associates" or any other name, to any purchaser, or group of purchasers, unless such plan or program is accorded on proportionally equal terms to all purchasers competing with such favored purchasers in the sale of respondent's products.

3. Participating with any purchaser, or group of purchasers, in any advertising plan or program, unless such participation is accorded on proportionally equal terms to all purchasers competing with such favored purchasers in the sale of respondent's products.

4. Leasing, selling, furnishing or otherwise making available to any purchaser the name or address of any present or former agent or representative, or prospective agent or representative, of respondent, unless such leasing, selling, furnishing or otherwise making available is accorded on proportionally equal terms to all purchasers competing with such favored purchasers in the sale of respondent's products.

5. Furnishing catalogs to any purchaser, describing the various products sold and distributed by respondent, unless such assistance is accorded on proportionally equal terms to all purchasers competing with such favored purchasers in the sale of respondent's products.

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

## Complaint

## IN THE MATTER OF

HAROLD HENRY KASTNER DOING BUSINESS AS  
H. H. KASTNER & CO.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF  
SEC. 2(c) OF THE CLAYTON ACT*Docket 8130. Complaint, Sept. 27, 1960—Decision, Sept. 15, 1961*

Consent order requiring a commission merchant and broker in Sanford, Fla., to cease violating Sec. 2(c) of the Clayton Act by receiving and accepting commissions from citrus fruit packers on his own purchases for resale, usually at the rate of 10 cents per 1 $\frac{3}{5}$  bushel box or equivalent, or a lower price reflecting brokerage.

## COMPLAINT

The Federal Trade Commission, having reason to believe that the party 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 Harold Henry Kastner is an individual trading and doing business as H. H. Kastner & Co., with office and principal place of business located at 501 West Thirteenth Street, Sanford, Florida, with mailing address as Post Office Box 742, Sanford, Florida.

PAR. 2. Respondent is now, and for the past several years has been, engaged in business as a commission merchant, wholesale distributor and broker, and in the course of this business he represents and has represented various packer-principals in the sale and distribution of citrus fruit, produce and other food products, hereinafter sometimes referred to as food products. In particular, respondent has represented, and now represents, a number of citrus fruit packers located in the State of Florida in the sale and distribution of citrus fruit, for which respondent was and is paid for his services in connection therewith a brokerage or commission, usually at the rate of 10 cents per 1 $\frac{3}{5}$  bushel box, or equivalent. A substantial part of respondent's business is acting in the capacity of a buying broker purchasing citrus fruit for his own account for resale.

PAR. 3. In the course and conduct of his business for the past several years, in representing packer-principals, as well as when purchasing for his own account, respondent has, directly or indirectly, caused such citrus fruit or produce, when sold or purchased, to be shipped and transported from various packers' packaging plants or

places of business located in the State of Florida to respondent's customers located in many states other than the State of Florida. Thus, for the past several years, respondent has been, and is now, engaged in a continuous course of trade in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended.

PAR. 4. In the course and conduct of his business in commerce, as aforesaid, during the past several years, but more particularly since January 1, 1959 to the present time, respondent has made, and is now making, numerous and substantial purchases of citrus fruit and produce for his own account for resale from various packers or sellers, on which purchases said respondent has received and accepted, and is now receiving and accepting, directly or indirectly, from said packers or sellers, something of value as a commission, brokerage, or other compensation, or an allowance or discount in lieu thereof, in connection therewith.

For example, respondent has made substantial purchases of citrus fruit for his own account from various packers or sellers located in the State of Florida and has received from these packers or sellers on said purchases, a brokerage or commission, or a discount in lieu thereof, usually at the rate of 10 cents per  $13\frac{1}{2}$  bushel box, or equivalent. In many instances, respondent receives a lower price from the packers which reflects said brokerage or commission.

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

This matter having come on to be heard by the Commission upon a record consisting of the Commission's complaint charging the respondent named in the caption hereof with violation of subsection (c) of Section 2 of the Clayton Act, as amended, and an agreement by and between respondent and counsel supporting the complaint, which agreement contains an order to cease and desist, an admission by the respondent 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 by respondent that he has violated the law as alleged in the complaint, and waivers and provisions as required by the Commission's rules; and

The Commission having considered the agreement and order contained therein and being of the opinion 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 Harold Henry Kastner is an individual doing business as H. H. Kastner & Co., under and by virtue of the laws of the State of Florida, with his office and principal place of business located at 501 West Thirteenth Street, Sanford, Florida, with mailing address as Post Office Box 742, Sanford, Florida.

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

ORDER

*It is ordered*, That respondent Harold Henry Kastner, individually and doing business as H. H. Kastner & Co., and respondent's agents, representatives and employees, directly or through any corporate, partnership, sole proprietorship, or other device, in connection with the purchase of citrus fruit or produce in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly, from any seller, anything of value as a commission brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase of citrus fruit or produce for respondent's own account, or where respondent is the agent, representative, or other intermediary acting for or in behalf, or is subject to the direct or indirect control, of any buyer.

*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.

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IN THE MATTER OF

TOWERS MARTS, INC., ET AL.

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

*Docket 8338. Complaint, Mar. 16, 1961—Decision, Sept. 15, 1961*

Consent order requiring a corporation with office in Rockville, Conn., operating five wholly-owned subsidiary retail stores which sold wearing apparel, hardware, and sports equipment, and licensing other concerns to operate departments in its stores to sell their own merchandise, to cease the practice of using fictitious comparative prices in newspaper advertisements, such as "Rotary Mower \$58.76 Compare at \$98" and "Fielders' Glove Compare at

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\$10 . . . 4.33", where the amounts set out under "compare at" were substantially in excess of usual retail prices in the area and afforded purchasers no savings, as implied.

## 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 Towers Marts, Inc., a corporation, and Samuel J. Rosenstein, David Segal, Jack L. Graber and David Portnoy, 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. Respondent Towers Marts, 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 210 East Main Street, Rockville, Connecticut.

Respondents Samuel J. Rosenstein, David Segal, Jack L. Graber and David Portnoy 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, through wholly-owned subsidiaries and licensees, are now and for some time last past have been engaged in the advertising, offering for sale and sale of many articles of merchandise, including wearing apparel, hardware and sports equipment to the public.

PAR. 3. In the course and conduct of their business, as aforesaid, respondents, from their principal office of business, located in Rockville, Connecticut, through five wholly-owned subsidiaries, operate five retail stores, some of which are located in States of the United States, other than the State of Connecticut. Through a sixth wholly-owned subsidiary, Mill Outlet Stores, Inc., respondents advertise, offer for sale and sell children's wear to the purchasing public at the aforesaid five retail stores.

In addition thereto, respondents enter into contracts with business corporations, firms and individuals, some of whose principal offices and places of business are located in States of the United States, other than the State of Connecticut. These contracts, called "License Agreements", provide that respondents, as licensors, permit such business corporations, firms and individuals, as licensees, to operate departments in respondents' retail stores for the purpose of offering for sale

and selling to the purchasing public the licensee's particular type of merchandise, e.g., hardware, sporting goods, shoes, etc.

In accordance with the provisions of the aforesaid "License Agreements", during the lifetime of said agreements, and at all times mentioned herein, respondents have maintained, and are now maintaining, control over the activities of their retail stores, such control being exercised over, among other matters, the quality and type of merchandise to be offered for sale, all advertising of such merchandise, the collection and disbursement of monies received from all sales, with the bookkeeping and auditing operations connected therewith. In connection with the control and operation of their wholly-owned retail stores and their licensing to others to maintain and operate departments in said stores at their locations in the various States of the United States, respondents are and have been transmitting and receiving through the United States mail, advertising matters, letters, contracts, checks, money orders and other written instruments which are sent and received between respondents' principal place of business in the State of Connecticut and respondents' wholly-owned stores located in States other than Connecticut, and persons, firms and corporations located in various other States of the United States; and thereby have engaged in extensive commercial intercourse in commerce and have maintained at all times mentioned herein a constant, substantial trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business as aforesaid and for the purpose of inducing the purchase of their merchandise in commerce, respondents have engaged in the practice of using fictitious comparative prices in advertisements in various newspapers. Among and typical of such practice, but not all inclusive thereof, are the following statements:

Rotary Mower
\$58.76
Compare at \$98
Fielders' Glove
Compare at \$10
. . . 4.33

PAR. 5. Through the use of the aforesaid statements and others similar thereto, but not included herein, respondents represented, directly or by implication:

1. That the amounts set out under "compare at" were the prices at which the merchandise advertised had been usually and customarily sold at retail in the recent course of business in the trade area wherein the representation was made.

2. That purchasers of the merchandise advertised were afforded savings of the difference between the higher "compare at" prices and the advertised sales price.

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

1. The amounts set out under "compare at" were substantially in excess of the prices at which the advertised merchandise had been usually and customarily sold at retail in the recent course of business in the trade area where the representations were made.

2. Purchasers of the advertised merchandise were not afforded savings of the difference between the "compare at" prices and the advertised sales prices.

PAR. 7. In the conduct of their business at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of the aforesaid merchandise.

PAR. 8. 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 its 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. Anthony J. Kennedy, Jr.*, for the Commission:

*Cohn, Elovich, Levin & Kaufman*, of New York, N.Y., for respondents.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission on March 16, 1961, issued its complaint against the above-named respondents, charging them with having violated the Federal Trade Commission Act, by making false statements concerning their products. Respondents appeared and entered into an agreement dated July 3, 1961, containing a consent order to cease and desist, disposing of all the issues in this proceeding without

further hearings, which agreement has been duly approved by the Bureau of Deceptive Practices. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with Section 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. Respondent Towers Marts, 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 210 East Main Street, Rockville, Connecticut.

2. Respondents Samuel J. Rosenstein, David Segal, Jack L. Graber and David Portnoy 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. 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 Towers Marts, Inc., a corporation, its officers and Samuel J. Rosenstein, David Segal, Jack L. Graber and David Portnoy, individually and as officers of the said corporation, and respondents' representatives, agents and employees, directly or through any corporate device, in connection with the advertising, offering for sale or sale of general merchandise or any product 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) Through the use of the term "compare at" or any other term of the same import, or representing in any other manner, that any amount is the usual and customary price of merchandise in respondents' trade area when it is in excess of the price at which merchandise is usually and customarily sold at retail in the trade area where the representation is made;

(b) That purchasers of the advertised merchandise are afforded savings of the difference between the "compare at" prices or prices in the trade area or areas where the representations are made and the advertised prices of the respondents, unless the price at which the merchandise is advertised and offered for sale by the respondents constitutes a reduction from the price at which said merchandise is usually and customarily sold at retail in the trade area or areas where the representation is made;

2. Misrepresenting, in any manner, the amount of savings available to purchasers of respondents' merchandise or the amount by which the price of said merchandise has been reduced from the price at which it is usually and customarily sold at retail in the trade area or areas 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, the initial decision of the hearing examiner shall, on the 15th day of September 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.

## Complaint

IN THE MATTER OF

## EGELBERG &amp; SEIDMAN, INC., ET AL.

CONSENT ORDER., ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS*Docket 8354. Complaint, Apr. 14, 1961—Decision, Sept. 15, 1961*

Consent order requiring New York City furriers to cease violating the Fur Products Labeling Act by labeling and invoicing artificially colored fur products as "natural" and failing to comply in other respects with labeling requirements.

## COMPLAINT

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

PARAGRAPH 1. Respondent Egelberg & Seidman, 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 150 West 28th Street, New York, New York.

Morris Egelberg and Hyman Seidman are officers of the said corporate respondent and control, direct and formulate the acts, practices and policies of the said corporate respondent. Their office and principal place of business is the same as that of the said corporate respondent.

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

PAR. 3. Certain of said fur products were misbranded or otherwise falsely and deceptively identified in that said fur products were labeled to show that the fur contained therein was natural when in fact such fur was bleached, dyed or otherwise artificially colored, in violation of Section 4(1) of the Fur Products Labeling Act.

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

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

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

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

*Mr. DeWitt T. Puckett* supporting the the complaint.  
Respondents, *pro se*.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on April 14, 1961, charging them with having violated the Fur Products Labeling Act and the rules and regulations promulgated thereunder.

On July 28, 1961, there was submitted to the hearing examiner an agreement between respondents and counsel supporting the complaint providing for the entry of a consent order.

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

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

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

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

1. Respondent Egelberg & Seidman, Inc., is a New York corporation with its office and principal place of business located at 150 West 28th Street, New York, New York.

Respondents Morris Egelberg and Hyman Seidman are officers of said corporation. They formulate, direct and control the policies, acts and practices of the corporate respondent. Their address is the same as that of the corporate respondent.

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

ORDER

*It is ordered,* That Egelberg & Seidman, Inc., a corporation, and its officers, and Morris Egelberg and Hyman Seidman, individually and as officers of the 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 products" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misbranding fur products by:

A. Representing, directly or by implication, on labels, that the fur in such products is natural, when such is not the fact.

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

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2. Falsely or deceptively invoicing fur products by:

A. Representing, directly or by implication, on invoices, that the fur in such products is natural, when such is not the fact.

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 15th day of September 1961, become the decision of the Commission; and, accordingly:

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

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IN THE MATTER OF

W. B. STEVENS ET AL. DOING BUSINESS AS EASTERN  
MARKETING SERVICE

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

*Docket 8360. Complaint, Apr. 17, 1961—Decision, Sept. 15, 1961*

Consent order requiring a broker-distributor of citrus fruit and produce in Bartow, Fla., to cease violating Sec. 2(c) of the Clayton Act by accepting unlawful brokerage payments from packers or sellers on purchases for its own account for resale, such as a discount usually at the rate of 10 cents per 1% bushel box, or equivalent, or a lower price reflecting brokerage.

COMPLAINT

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

PARAGRAPH 1. Respondents W. B. Stevens and H. Palmer Eastwood are individuals and are copartners trading and doing business as Eastern Marketing Service, with their office and principal place of business located at 120 East Davidson Street, Bartow, Florida, with

mailing address as Post Office Box 29, Bartow, Florida. Each of these respondents, individually and as copartners, are hereinafter referred to collectively as respondents.

PAR. 2. Respondents are now, and since January 1959 have been, engaged in business as brokers, selling agents, and distributors, buying, selling and distributing citrus fruit and produce. In the course and conduct of their business, as aforesaid, respondents have represented, and now represent, a number of citrus fruit packers located in the State of Florida in the sale and distribution of citrus fruit, for which respondents were and are paid for their services in connection therewith a brokerage or commission, usually at the rate of ten (10) cents per  $1\frac{3}{5}$  bushel box, or equivalent. Respondents, on numerous occasions, act as buying brokers representing buyers in the purchase of citrus fruit and produce for said buyers. Also a substantial part of respondents' business is acting in the capacity of a buyer or distributor purchasing citrus fruit and produce for their own account for resale.

PAR. 3. In the course and conduct of their business in representing packer-principals and buyers as well as when purchasing for their own account, respondents have, directly or indirectly, caused citrus fruit and produce, when sold or purchased, to be shipped and transported from various packers' packing plants or places of business located in the State of Florida to purchasers thereof located in many States other than the State of Florida. Thus respondents have been, and now are, engaged in a continuous course of trade in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended.

PAR. 4. In the course and conduct of their business in commerce, as aforesaid, since January 1959, to the present time, respondents have made, and now are making, numerous and substantial purchases of citrus fruit and produce for their own account for resale from various packers or sellers on which purchases said respondents have received and accepted, and are now receiving and accepting, directly or indirectly, from said packers or sellers, something of value as a commission, brokerage, or other compensation, or an allowance or discount in lieu thereof, in connection therewith.

For example, respondents have made numerous and substantial purchases of citrus fruit for their own account from various packers or sellers located in the State of Florida and have received from said packers or sellers on such purchases, a brokerage or commission, or a discount in lieu thereof, usually at the rate of ten (10) cents per  $1\frac{3}{5}$  bushel box, or equivalent. In many instances respondents receive a lower price from said packers or sellers which reflects said brokerage or commission.

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

## 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 subsection (c) of Section 2 of the Clayton Act, as amended, and an agreement by and between respondents and counsel supporting the complaint, which agreement contains an order to cease and desist, an admission by the 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 by respondents that they have violated the law as alleged in the complaint, and waivers and provisions as required by the Commission's rules; and

The Commission having considered the agreement and order contained therein and being of the opinion 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. Respondents W. B. Stevens and H. Palmer Eastwood are individuals and are copartners doing business as Eastern Marketing Service under and by virtue of the laws of the State of Florida, with their office and principal place of business located at 120 East Davidson Street, in the City of Bartow, State of Florida, with mailing address as Post Office Box 29, Bartow, Florida.

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

## ORDER

*It is ordered*, That respondents W. B. Stevens and H. Palmer Eastwood, individually and as copartners doing business as Eastern Marketing Service, and respondents' agents, representatives and employees, directly or through any corporate, partnership, sole proprietorship, or other device, in connection with the purchase of citrus fruit or produce in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly, from any seller, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with

any purchase of citrus fruit or produce for respondents' own account, or where respondents are the agents, representatives, or other intermediaries acting for or in behalf, or are subject to the direct or indirect control, of any buyer.

*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.

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IN THE MATTER OF

HYPO SURGICAL SUPPLY CORP. ET AL.

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

*Docket 8382. Complaint, May 4, 1961—Decision, Sept. 15, 1961*

Consent order requiring New York City distributors to cease selling without clear disclosure of foreign origin, hypodermic needles manufactured in Japan which, when imported, bore the word "JAPAN" but in many cases in too small and indistinct letters to constitute adequate notice, and in others concealed or obscured in the packaging or assembling.

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 Hypo Surgical Supply Corp., a corporation, and Augustus Hament, Alfred E. Rosenhirsch, Max Zisson and Melvin Wallick, individually and as officers of the said corporation, hereinafter referred to as respondents, have violated the provisions of the 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 Hypo Surgical Supply Corp. 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 11 Mercer Street, New York, New York.

Respondents, Augustus Hament, Alfred E. Rosenhirsch, Max Zisson and Melvin Wallick 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.