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Complaint

respondents' agents, representatives and employees, directly or through any corporate, partnership, sole proprietorship, or other device in connection with the sale of citrus fruit or fruit products in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

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

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

IN THE MATTER OF
RU-EX, INC., ET AL.

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

Docket C-1. Complaint, Oct. 17, 1961—Decision, Oct. 17, 1961

Consent order requiring St. Paul, Minn., distributors of their "Ru-Ex Compound" to cease falsely representing in advertising the therapeutic effect of lemon juice used with the preparation in the treatment of arthritis and related diseases.

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 Ru-Ex, Inc., a corporation and William H. Fraser and Reggie L. Fraser, 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 Ru-Ex, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its principal office and place of business located at 2457 University Avenue, St. Paul, Minnesota.

Respondents William H. Fraser and Reggie L. Fraser are officers of the corporate respondent. They formulate, direct and control the

policies, 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 have been for more than one year last past, engaged in the sale and distribution of a preparation containing ingredients which come within the classification of drugs as the term "drug" is defined in the Federal Trade Commission Act.

The designation used by respondents for said preparation, the formula thereof and directions for use are as follows:

Designation: Ru-Ex Compound

Quantitative formula for a can of Ru-Ex Compound:

Cerelose Dextrose, 2.063 oz.

Sodium Salicylate, 1.212 oz.

Sodium Citrate, 0.851 oz.

Citric Acid, 0.117 oz.

Bulyl Parasept, 0.007 oz.

Methyl Salicylate

Thiamin Chloride, Tablets, 26 mgm.

Directions:

1. Squeeze the juice of four fresh juicy lemons, strain them through a strainer or a clean porous cloth into a clean quart milk bottle or mason jar, adding warm water (not boiling) to make a full quart.

2. Pour this mixture into a clean container that will hold more than a quart. (This is for mixing purposes only.) Add the entire contents of the Ru-Ex package and stir the mixture well.

3. Pour the entire mixture back into a quart bottle or jar. Keep covered and in a cool place. To secure the best results take according to directions.

Take three tablespoonfuls in half glass of water after breakfast and three tablespoonfuls in half glass of water after your evening meal.

Stir the medicine each time before using, but do not heat or warm it. Keep jar well covered and in a cool place. This package will make a quantity of medicine that lasts approximately two weeks' time.

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

PAR. 4. In the course and conduct of their said business, respondents have disseminated, and caused the dissemination of, certain advertisements concerning the said preparation by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to advertisements inserted in newspapers, magazines and other advertising media, for the purpose of inducing and which were likely to

induce, directly or indirectly, the purchase of said preparation, and have disseminated and caused the dissemination of, advertisements concerning said preparation by various means, including but not limited to the aforesaid media for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act.

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

LEMON JUICE RECIPE CHECKS RHEUMATIC AND ARTHRITIS PAINS

If you suffer rheumatic, arthritis or neuritis pain, try this simple inexpensive home recipe that thousands are using. Get a can of RU-EX Compound, a 2 weeks supply, today. Mix it with a quart of water, add the juice of 4 lemons. It's easy! No trouble at all and pleasant. You need only 3 tablespoonfuls 2 times a day. Often within 48 hours—sometimes overnight—splendid results are obtained. If the pains do not quickly leave and if you do not feel better, return the empty can and RU-EX will cost you nothing. You are the sole judge as RU-EX is sold by your druggist on a money back guarantee. Over 7 million cans used. Proof of wonderful results.

PAR. 6. Through the use of said advertisements respondents have represented and are now representing, directly or by implication:

1. That lemon juice used in conjunction with the preparation RU-EX Compound exerts a therapeutic effect on all kinds of arthritis, rheumatism and neuritis or on the symptoms or manifestations of all kinds of arthritis, rheumatism and neuritis.

2. That RU-EX Compound taken as directed will afford quick, complete and permanent relief of the pains and aches of all kinds of arthritis, rheumatism and neuritis.

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

1. Lemon juice used alone or in conjunction with RU-EX Compound exerts no therapeutic effect on any kind of arthritis, rheumatism or neuritis or on any of the symptoms or manifestations of any kind of arthritis, rheumatism, neuritis.

2. RU-EX Compound, however, taken will not afford quick, complete or permanent relief of the pains or aches of any kind of arthritis, rheumatism or neuritis, or have any therapeutic effect upon any of the symptoms or manifestations of any such diseases or disorders in excess of affording temporary relief of the minor aches and pains thereof.

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

DECISION AND ORDER

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

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

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

1. Respondent Ru-Ex, Inc., is a corporation organized existing and doing business under and by virtue of the laws of the State of Minnesota, with its principal office and place of business located at 2457 University Avenue, St. Paul, Minnesota.

Respondents William H. Fraser and Reggie L. Fraser are officers of the corporate respondent and 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 respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Ru-Ex, Inc., a corporation, and its officers, and William H. Fraser and Reggie L. Fraser, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the preparation "Ru-Ex Compound", or any other medicinal or drug preparation of substantially the same formula, whether sold under this name or any other names, do forthwith cease and desist from:

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

(a) Represents that lemon juice, however used, exerts any therapeutic effect on any kind of arthritis, rheumatism or neuritis or on the symptoms or manifestations thereof.

(b) Represents that any ingredient of, or substance to be used in conjunction with, said preparation exerts any therapeutic effect on any disease or ailment or on the symptoms or manifestations of any disease or ailment, when in fact such ingredient or substance exerts no such therapeutic effect.

(c) Represents that the therapeutic value of such preparation is other than that of temporary relief of the minor aches and pains of arthritis, rheumatism or neuritis.

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

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

IN THE MATTER OF

FRANK P. BECKER, INC., ET AL.

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

Docket C-2. Complaint, Oct. 17, 1961—Decision, Oct. 17, 1961

Consent order requiring New York City distributors of perfumes and toilet waters, along with other kinds of merchandise, to cease representing falsely in advertising and labeling that their perfumes had been "Nationally advertised since 1940 Vogue, Mademoiselle, Harper's Bazaar"; that excessive amounts were usual retail selling prices; that products labeled with the corresponding initials were the same as those sold under the well-known brand names "Chanel", "Arpege", "Crepe de Chine", "White Shoulders", and "My Sin"; and through use of the picture of the Eiffel Tower, the words "Paris Inspired", "Ellyn Deleith, Inc. . . . Distributor", etc., that its "Blue Flame" perfume was manufactured in France.

Complaint

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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 Frank P. Becker, Inc., a corporation, and Frank P. Becker, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Frank P. Becker, 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 209 West 38th Street, in the City of New York, State of New York.

Respondent Frank P. Becker is an individual and an officer of said corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent. His address is the same as that of the corporate respondent.

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

In addition respondents act as sales representatives and distributors for manufacturers and dealers in various kinds of merchandise including sporting goods. Respondents also design and prepare packaging, advertising and other kinds of sales promotional material for said firms.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of New York to purchasers thereof located in various other states of the United States and 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 said products, respondents have made certain statements in advertising and in labeling with respect to the public acceptance, extent of advertising, price, origin, quality and other characteristics of said products. Typical and illustrative of the foregoing are the following:

On an advertising flyer or circular which features a picture of the Eiffel Tower appear the words: "Paris Inspired Ellyn Deleith Golden Ensemble Magnificent BLUE FLAME fragrance inspired in France . . . Complete 4 pc. set \$25.00 . . . ED Ellyn Deleith, Inc. Eau de toilette Distributor New York . . . Nationally advertised since 1940 Vogue, Mademoiselle, Harper's Bazaar . . . ED Ellyn Deleith Parfum".

Substantially similar advertisements are disseminated for respondents' one ounce package of Blue Flame perfume and respondents' Blue Flame perfume atomizer except that the price amounts are stated to be \$16.50. Said perfumes also carry pre-ticketed price amounts of \$16.50.

Certain of respondents' advertising literature for its "Spray Mist" perfume carries the statements "Paris Inspired 'Ellyn Deleith' Crystalier 'Spray Mist' perfume! . . . Five most popular fragrances: 'A' 'C' 'CC' 'MS' 'WS'".

The packages containing said "Spray Mist" perfume in addition to the said pre-ticketed price amount of \$16.50 (in some instances \$10.00) have imprinted thereon one of the aforesaid letters or groups of letters.

PAR. 5. Through the use of the aforesaid statements, and others of similar import but not specifically set forth herein, respondents have represented, directly or indirectly:

1. That said products have been frequently and continuously advertised from 1940 to the present time in Vogue, Mademoiselle and Bazaar magazines.

2. That the aforesaid price amounts are the usual and customary retail selling prices of said products in the trade areas in which they are offered for sale.

3. That said products labeled with the initial "C", "A", "CC", "WS" and "MS" are the same as the perfumes sold under the brand names of "Chanel" by Chanel, Inc., New York, N.Y., "Arpege" by Lanvin Parfums, Inc., New York, N.Y., "Crepe de Chine" by Millot, Inc., New York, N.Y., "White Shoulders" by Parfums Evyan, Inc., New York, N.Y. and "My Sin" by Lanvin Parfums, Inc., New York, N.Y. respectively.

4. Through the use of the picture of the Eiffel Tower, the words "Paris Inspired" and "inspired in France", particularly in the context of advertisements containing fictitiously high price amounts, representations of being nationally advertised, representations that Ellyn Deleith is the distributor and other representations contained in the above quoted advertisements of respondents' Blue Flame perfume, that said perfume was manufactured or compounded or originated in France.

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

1. Said perfume has not been frequently and continuously advertised from 1940 to the present time in Vogue, Mademoiselle or Bazaar magazines.

2. The aforesaid price amounts are not the usual and customary retail selling prices of said products in the trade areas in which they are offered for sale. Said price amounts are fictitious and in excess of the usual and customary retail selling prices of said products in the trade areas in which they are offered for sale.

3. Said products are not the same as the perfumes sold under the brand names hereinabove stated in subparagraph 3 of Paragraph 5.

4. Said Blue Flame perfumes are not manufactured or compounded in France and did not originate in France.

PAR. 7. There is a preference on the part of a substantial number of purchasers of perfume for perfume manufactured in France.

There is also a preference by a substantial portion of the purchasing public for the perfumes and toilet waters of the said Chanel Inc., Lanvin Parfums, Inc., Millot, Inc., and Parfums Evyan, Inc. which said perfumes and toilet waters are nationally advertised and widely sold.

PAR. 8. By the aforesaid practices, respondents place in the hands of distributors, jobbers and retailers the means and instrumentalities by and through which they may mislead and deceive the public as to the quality, identity, origin and usual and regular retail selling price of said perfumes and toilet waters.

PAR. 9. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of perfumes and toilet waters 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, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

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

DECISION AND ORDER

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

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

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

1. Frank P. Becker, 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 209 West 38th Street, in the City of New York, State of New York. Frank P. Becker is President of the corporate respondent.

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

ORDER

It is ordered, That respondents Frank P. Becker, Inc., a corporation, and its officers, and Frank P. Becker, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of perfumes, toilet waters, cosmetics, or any other articles of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, that said products have been frequently and continuously advertised from 1940 to the present time in *Vogue*, *Mademoiselle* or *Bazaar* magazines; or that said products have been advertised in any magazines or publications or in any other manner or for any period of time unless such is the fact.

2. Representing, directly or indirectly, by preticketing or in any other manner, that any amount is the usual and regular retail price of merchandise when such amount is in excess of the price at which said merchandise is usually and regularly sold at retail in the trade area or areas where the representations are made.

3. Using the letters "C", "A", "CC", "WS" or "MS" or any other letters, numerals or symbols either singly or in combination in the advertising or labeling of said perfumes, toilet waters or cosmetics to designate or describe the kind or quality thereof without clearly and conspicuously revealing in immediate connection therewith the actual trade name of the manufacturer of said products.

4. Using the words "Paris Inspired", "Inspired in France" or any other words indicating French origin or using pictures of the Eiffel Tower or of any other typically French scenes in advertising or labeling to describe perfumes, toilet waters or cosmetics which are not manufactured or compounded in France.

5. Using any words, terms or pictures in advertising or in labeling which represent, directly or indirectly, that said merchandise was manufactured or compounded or originated in a given country or geographical area unless such is the fact.

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

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

IN THE MATTER OF

ROBERTS ELECTRIC COMPANY ET AL.

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

Docket C-3. Complaint, Oct. 17, 1961—Decision, Oct. 17, 1961

Consent order requiring Chicago distributors of electric generators, gas and electric motors, air compressors, etc., to cease representing falsely in newspaper advertisements and catalogs that the "Wisconsin 4-Cycle Gas Driven Engine Generating Plant" and all its parts were Government surplus property; that it cost the U.S. Government \$548 and purchasers saved the difference between that and their price of \$249; that excessive amounts were the usual selling prices for a "Reduction Unit", a "3 HP AC Motor", and

a "Briggs & Stratton 4-Cycle Air Cooled Gasoline Engine", and that their lower prices afforded savings to purchasers; and that said products were fully guaranteed.

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 Roberts Electric Company, a corporation, and Robert Boos, individually and as an officer of said corporation, hereinafter referred to as the 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 Roberts Electric Company is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois with its principal office and place of business located at 849 West Grand Avenue, in the city of Chicago, State of Illinois.

Respondent Robert Boos is an individual and an officer of said corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale, and distribution of electric generators, gas and electric motors, air compressors, and other articles of merchandise to manufacturers and wholesalers, to retailers for resale to the public, and 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 articles of merchandise, when sold, to be shipped from their place of business in the State of Illinois, to purchasers thereof located in various other states of the United States and in the District of Columbia, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said articles of merchandise, in commerce, as "commerce" as 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 said articles of merchandise, respondents have made numerous statements and representations respecting the source, the cost to the government, the price, and the guarantee of the said articles of merchandise. Said statements and representations have been made in newspaper advertisements and in catalogues distributed to their customers.

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Typical and illustrative of the foregoing, but not all inclusive thereof, are the following:

Brand New Surplus	Govt. Cost \$548.00	Wisconsin 4-Cycle Gas Driven Engine Generating Plant	Only \$249.00 fob
Full one year guarantee	Save hundreds of \$\$\$		
* * *			
Reduction Unit	Fully Guaranteed	Reg. \$69.50	Only \$11.75 pre-paid
* * *			
3 HP AC Motor	Brand New Navy Surplus	Save! Regular \$300.00 Value	\$135.00 fob
* * *			
Speed Reducer	Clutch Combination	Transmission	
Brand New!	Air Force Surplus	Govt. Cost. \$262.00	Only \$49.50 fob
			Fully Guaranteed
* * *			
AIR COMPRESSOR			
Brand New		Navy Surplus	Only \$34.95 fob
* * *			
Briggs & Stratton 2 $\frac{3}{4}$	Horsepower 4-Cycle	Air Cooled Gasoline Engine	Fully Guaranteed
War Surplus	Regular Price \$68.00		Only \$42.50 fob
* * *			

WISCONSIN GAS ENGINES

Brand New Surplus

* * *

GUARANTEE:—MATERIALS & EQUIPMENT PURCHASED CARRY OUR FULL MONEY-BACK GUARANTEE. SHOULD ANY ITEM PROVE UNSATISFACTORY RETURN IT TO OUR PLANT WITHIN 30 DAYS, IN UNDAMAGED CONDITION FOR REFUND, EXCHANGE OR CREDIT TOWARDS OTHER PURCHASE AS YOU PREFER.

PAR. 5. Through the use of the aforesaid statements and representations, and others similar thereto but not specifically herein set forth, respondents have represented, directly or indirectly, that:

1. All of the parts and components of said Wisconsin 4-Cycle Gas Driven Engine Generating Plant are government surplus property; and said Wisconsin Gas Engines are surplus government property.

2. Said Wisconsin 4-Cycle Gas Driven Engine Generating Plant cost the United States Government \$548.00, and that purchasers thereof saved the difference between \$548.00 and respondents' selling price.

3. \$69.50 is the respondents' customary and usual selling price for said Reduction Unit; \$300.00 is respondents' customary and usual selling price for said 3 HP AC Motor; \$68.00 is respondents' customary and usual selling price for said Briggs & Stratton 4-Cycle Air Cooled Gasoline Engine; and such alleged regular selling prices for each of said products have been reduced to \$11.75, \$135.00, and \$42.50, re-

spectively with the consequent savings afforded to the purchasers thereof.

4. Aforesaid products are fully guaranteed without any restrictions or qualifications or further cost to the purchasers thereof.

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

1. All of the parts and components of said Wisconsin 4-Cycle Gas Driven Engine Generating Plant are not government surplus property, but are derived in part from private sources; and said Wisconsin Gas Engines are not government surplus property.

2. Said Wisconsin 4-Cycle Gas Driven Engine Generating Plant did not cost the United States Government \$548.00 and purchasers thereof did not save the difference between \$548.00 and respondents' selling price.

3. \$69.50 is not the respondents' customary and usual selling price of the said Reduction Unit; \$300 is not respondents' customary and usual selling price for the said 3 H.P. AC Motor; \$68.00 is not the respondents' customary and usual selling price for the said Briggs & Stratton 4-Cycle Air Cooled Gasoline Engine; and such alleged regular selling prices for each of said products have not been reduced to \$11.75, \$135.00 and \$42.50, with consequent savings to the purchasers thereof.

4. Said products are not fully guaranteed without restrictions, qualifications, or further cost to the purchasers thereof. Said guarantees are subject to the requirement that the purchaser return said products to respondents' place of business in Chicago, Illinois, and pay all shipping charges incident thereto.

PAR. 7. In the course and conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms, and individuals in the sale of electric generators, gas and electric motors, air compressors, and other articles of merchandise of the same general kind and nature as that sold by respondents.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 9. 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 methods of competition in commerce, and unfair and

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

DECISION AND ORDER

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

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

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

1. Respondent Roberts Electric Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 849 West Grand Avenue, in the City of Chicago, State of Illinois.

Respondent Robert Boos is President of the corporate respondent and his address is the same as that of the corporate respondent.

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

ORDER

It is ordered, That respondents, Roberts Electric Company, a corporation, and its officers, and Robert Boos, individually, and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of respondents' electric generators, gas and electric motors, air compressors or any other articles of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, that:

(a) Said products, or any parts or components thereof, are surplus government property or were secured from any other governmental or private source, unless such is the fact.

(b) The United States Government, or any other governmental agency or former owner, paid or is paying for said products any amount greater than is the fact.

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

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

(e) Any product is guaranteed unless the terms and conditions of the said guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously set forth.

2. Using the words "regular", or "reg.", or any other words or terms of similar import or meaning, to describe or refer to respondents' prices for said merchandise unless such prices constitute the prices at which the advertised merchandise has been sold by respondents in the recent, regular course of business.

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

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

IN THE MATTER OF

EUGENE J. FRIEDMAN ET AL. TRADING AS GIBA-
FRIEDMAN

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

Docket C-4. Complaint, Oct. 17, 1961—Decision, Oct. 17, 1961

Consent order requiring Los Angeles furriers to cease violating the Fur Products Labeling Act by failing to disclose the true animal name of the fur

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used in fur products, and that certain fur was dyed; by setting forth fictitious prices and abbreviated information on invoices; and by failing to maintain adequate records as a basis for price and value 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 Eugene J. Friedman and John R. Giba, individually and as copartners trading as Giba-Friedman, 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. Eugene J. Friedman and John R. Giba are individuals and copartners trading as Giba-Friedman with their office and principal place of business located at 714 South Till Street, Los Angeles, California.

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

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

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

1. The true animal name of the fur used in the fur products.
2. That the fur contained in the fur products was dyed when such was the fact.

PAR. 4. Certain of said fur products were falsely and deceptively invoiced in that the respondents set out on invoices relating to fur products certain prices represented to be the usual or regular selling prices of the fur products which prices were in fact fictitious and in

excess of the prices at which respondents regularly or usually sold such fur products in the recent regular course of business, 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 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.

PAR. 6. Certain of said fur products were falsely and deceptively advertised in that the respondents, on consignment invoices, made representations and gave notices concerning said fur products, which representations and notices were not in accordance with the provisions of Section 5(a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder; and which representations and notices were intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of said fur products.

By means of the said representations and notices contained in the consignment invoices to customers and by means of other representations and notices of similar import and meaning not specifically referred to herein, respondents falsely and deceptively advertised their fur products in that respondents thereby made representations as to the usual or regular selling prices of fur products which prices were in fact fictitious and in excess of the prices at which respondents usually or regularly sold such fur products in the recent regular course of business in violation of Section 5(a)(5) of the Fur Products Labeling Act.

PAR. 7. Respondents in advertising fur products for sale as aforesaid made claims and representations respecting prices and values of fur products. Said representations were of the types covered by subsections (a), (b), (c) and (d) of Rule 44 of the Rules and Regulations promulgated under the Fur Products Labeling Act. Respondents in making such claims and representations failed to maintain full and adequate records disclosing the facts upon which such claims and representations were based in violation of Rule 44(e) of said Rules and Regulations.

PAR. 8. The aforesaid acts and practices by respondents, as herein alleged, were and 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 within the intent and meaning of the Federal Trade Commission Act.

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DECISION AND ORDER

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

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

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

1. Respondents Eugene J. Friedman and John R. Giba are individuals and copartners trading as Giba-Friedman with their office and principal place of business located at 714 South Hill Street, Los Angeles, California.

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 Eugene J. Friedman and John R. Giba, individuals and copartners trading as Giba-Friedman 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. Falsely or deceptively invoicing fur products by:

A. 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.

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

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.

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

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

B. Misrepresents in any manner the savings available to purchasers of respondents' fur products.

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

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

IN THE MATTER OF

JEROME KRAMER TRADING AS J. C. KRAMER FURRIER

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

Docket C-5. Complaint, Oct. 17, 1961—Decision, Oct. 17, 1961

Consent order requiring an Erie, Pa., furrier to cease violating the Fur Products Labeling Act by failing, in labeling, invoicing, and advertising fur products, to show the true name of the fur and the country of origin of imported furs; failing to show, in labeling and advertising, when a fur product was composed of cheap or waste fur, and to disclose in invoicing when fur was dyed; and 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

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vested in it by said Acts, the Federal Trade Commission, having reason to believe that Jerome Kramer, an individual trading as J. C. Kramer Furrier, hereinafter referred to as respondent, has violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Jerome Kramer is an individual trading as J. C. Kramer Furrier with his office and principal place of business located at 11 West 8th Street, Erie, Pennsylvania.

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

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

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 show that the fur product was composed in whole or in substantial part of paws, tails, bellies or waste fur when such was the fact.
3. To show the name or other identification issued and registered by the Commission of one or more of the persons who manufactured such fur product for introduction into commerce, introduced it into commerce, sold it in commerce, advertised or offered it for sale, in commerce, or transported or distributed it in commerce.
4. To show the name of the country of origin of the imported furs used in the fur products.

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

- (a) Information required under Section 4(2) of the Fur Products

Labeling Act and the Rules and Regulations promulgated thereunder was set forth in abbreviated form, in violation of Rule 4 of said Rules and Regulations.

(b) Labels affixed to fur products did not comply with the minimum size requirements of one and three-quarter inches by two and three-quarter inches, in violation of Rule 27 of said Rules and Regulations.

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

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

(e) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in handwriting on labels, in violation of Rule 29(b) of said Rules and Regulations.

(f) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not set forth separately on labels with respect to each section of fur products composed of two or more sections containing different animal furs, in violation of Rule 36 of said Rules and Regulations.

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

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

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

1. To show the true name of the fur used in the fur product.
2. To disclose that the fur contained in the fur products was dyed when such was the fact.
3. To show the name of the country of origin of the imported furs used in the fur product.

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

(a) Information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated there-

under was set forth in abbreviated form, in violation of Rule 4 of said Rules and Regulations.

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

PAR. 7. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that respondent 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 or assist, directly or indirectly, in the sale and offering for sale of said fur products.

PAR. 8. Among and included in the advertisements as aforesaid, but not limited thereto, were advertisements of respondent which appeared in issues of the Times News, a newspaper published in the city of Erie, State of Pennsylvania 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, respondent 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 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.

PAR. 9. The aforesaid acts and practices of respondent, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of the Federal Trade Commission Act and the Fur Products Labeling Act, and the respondent having been served with notice of said deter-

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mination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

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

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

1. Respondent Jerome Kramer is an individual trading as J. C. Kramer Furrier, with his office and principal place of business located at 11 West 8th Street, Erie, Pennsylvania.

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 Jerome Kramer, an individual trading as J. C. Kramer Furrier, or under any other trade name and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, 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. Setting forth on labels affixed to fur products:

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

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

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

C. Affixing to fur products labels that do not comply with the minimum size requirements of one and three-quarter inches by two and three-quarter inches.

D. Failing to set forth all the information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder on one side of such labels.

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

F. Failing to set forth on labels 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 Product Labeling Act.

B. Setting forth information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form.

C. 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 fur contained in a fur product.

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
MEYER SIEGEL TRADING AS
MAX SIEGEL & SON

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

Docket C-6. Complaint, Oct. 17, 1961—Decision, Oct. 17, 1961

Consent order requiring a Chicago furrier to cease violating the Fur Products Labeling Act by failing, in labeling and invoicing fur products, to show the true animal name of the fur, the country of origin of imported furs, and when fur was dyed; and to disclose, in labeling, the name of the manufacturer or seller of fur products; and by failing in other respects to comply with labeling and invoicing requirements.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Meyer Siegel, an individual trading as Max Siegel & Son, hereinafter referred to as respondent, has violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Meyer Siegel is an individual trading as Max Siegel & Son with his office and principal place of business located at 2637 North Milwaukee Avenue, Chicago, Illinois.

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

PAR. 3. Certain of said fur products were misbranded in that they were 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 products was dyed, when such was the fact.
3. To show the name or other identification issued and registered by the Commission of one or more of the persons who manufactured such fur product for introduction into commerce, introduced it into commerce, sold it in commerce, advertised or offered it for sale in commerce, or transported or distributed it in commerce.
4. To show the country of origin of the imported furs used in the fur products.

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 set forth in abbreviated form, in violation of Rule 4 of said Rules and Regulations.

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

(c) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in handwriting on labels, in violation of Rule 29(b) of said Rules and Regulations.

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

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

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

PAR. 7. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in that required item numbers were not set forth on invoices in violation of Rule 40 of said Rules and Regulations.

PAR. 8. The aforesaid acts and practices of respondent, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent Meyer Siegel is an individual trading as Max Siegel & Son, with his office and principal place of business located at 2637 North Milwaukee Avenue, Chicago, Illinois.
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 Meyer Siegel, an individual trading as Max Siegel & Son or under any other trade name, and respondent's representatives, agents and employees, directly or through any corporate

or other device, in connection with the introduction, manufacture for introduction, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce of fur products or in connection with the sale, manufacture for sale, advertising, offering for sale, transportation or distribution of fur products which have been made in whole or in part of fur which has been shipped and received in commerce as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act do forthwith cease and desist from:

I. Misbranding fur products by:

A. 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.

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.

C. Setting forth on labels affixed to fur products:

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

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

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

II. Falsely or deceptively invoicing fur products by:

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

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

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.

Complaint

IN THE MATTER OF

TODD BROTHERS APPAREL COMPANY ET AL.

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

Docket 8419. Complaint, June 1, 1961—Decision, Oct. 19, 1961

Consent order requiring Cincinnati furriers to cease violating the Fur Products Labeling Act by failing, in labeling and invoicing fur products, to show the true animal name of the fur in the product, the country of origin, and when the fur was dyed; by failing to keep adequate records as a basis for price and value representations made in advertising; and 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 Todd Brothers Apparel Company, a corporation, and Samuel P. Todd and Sidney Rosenfeld, 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 Todd Brothers Apparel Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio with its office and principal place of business located at 31 West Fourth Street, Cincinnati, Ohio.

Respondents Samuel P. Todd and Sidney Rosenfeld are officers of the corporate respondent. They control, direct and formulate 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. 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, offering for sale, 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 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:

(a) to show the true animal name of the fur used in the fur product;

(b) to disclose that the fur contained in the fur products was dyed;

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

PAR. 4. Certain of said fur products were misbranded in that the respondents, on labels attached thereto, set forth the name of an animal other than the name of the animal that produced the fur, in violation of Section 4(3) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder.

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 mingled with non-required information in violation of Rule 29(a) of said Rules and Regulations.

(b) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in handwriting on labels, in violation of Rule 29(b) of said Rules and Regulations.

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

(d) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not set forth separately on labels with respect to each section of fur products composed of two or more sections containing different animal furs, in violation of Rule 36 of said Rules and Regulations.

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

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 promulgated thereunder. Among such falsely invoiced fur products, but not limited thereto, were fur products which were not invoiced:

(a) to show the true animal name of the fur used in the fur product;

(b) to disclose that the fur contained in the fur products was dyed;

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

PAR. 7. 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) Information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not set forth separately on invoices with respect to each section of fur products composed of two or more sections containing different animal furs, in violation of Rule 36 of said Rules and Regulations.

PAR. 8. Respondents in advertising fur products for sale as aforesaid made claims and representations respecting prices and values of fur products. Said representations were of the type covered by subsections (a), (b), (c) and (d) of Rule 44 of the Rules and Regulations promulgated under the Fur Products Labeling Act. Respondents in making such claims and representations failed to maintain full and adequate records disclosing the facts upon which such claims and representations were based in violation of Rule 44(e) of said Rules and Regulations.

PAR. 9. 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.

Dinsmore, Shohl, Barrett, Coates & Deupree, by *Mr. Joseph C. Dinsmore*, Cincinnati, O., for respondents.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on June 1, 1961, charging them with having violated the Fur Products Labeling Act, the rules and regulations issued thereunder, and the Federal Trade Commission Act, by misbranding, and falsely invoicing their fur products. Respondents appeared and entered into an agreement, dated July 28, 1961, containing a consent order to cease and desist, disposing of all the issues in this proceeding without further hearings, which agreement has been duly approved by the Director and Assistant Director of the Bureau of Textiles and Furs, and by the Chief, Division of Enforcement of that Bureau. 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 or the Commission, including the making of findings of fact or conclusions of law and the right to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that said agreement is for settlement purposes only and does not constitute an admission by 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 order:

1. Respondent Todd Brothers Apparel Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio with its office and principal place of business located at 31 West Fourth Street, Cincinnati, Ohio. Individual respondents Samuel P. Todd and Sidney Rosenfeld are officers of the said corporation. They formulate, direct and control the 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 Fur Products Labeling Act and the Federal Trade Commission Act, and this proceeding is in the interest of the public.

It is ordered, That Todd Brothers Apparel Company, a corporation and its officers, and Samuel P. Todd and Sidney Rosenfeld, individually and as officers of said corporation and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce of fur products, or in connection with the sale, advertising, offering for sale, transportation, or distribution of fur products which are made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

I. Misbranding fur products by:

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

B. Setting forth on labels affixed to fur products the name or names of any animal or animals other than the name or names provided for in Section 4(2)(A) of the Fur Products Labeling Act;

C. Setting forth on labels affixed to fur products:

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

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

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

E. Failing to set forth separately on labels affixed to fur products

composed of two or more sections containing different animal furs the information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder with respect to the fur comprising each section;

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

II. Falsely or deceptively invoicing fur products by:

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

B. Setting forth information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form;

C. Failing to set forth information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder with respect to each section of fur products composed of two or more sections containing different animal furs.

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

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 19th day of October 1961, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

COLOGNES, INC., ET AL.

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

Docket 8310. Complaint, Mar. 8, 1961—Decision, Oct. 23, 1961

Consent order requiring Rockville, Md., distributors of rebottled colognes, toilet waters, and perfumed sprays, to cease enclosing some of said products in

cardboard boxes on the end of which was printed the fictitious price of \$10.00 represented thereby as the usual retail price; and to cease representing falsely that their said products were perfumes through offering them for sale in the one dram bottles historically used in the sale of perfumes and in pasteboard cartons bearing brand names of well-known perfumes, for the price of one dollar per bottle.

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 Colognes, Inc., a corporation, and D'Henri, Inc., a corporation, and Herman I. Porten and Henry W. Porten, individually and as officers of said corporations, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Colognes, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its principal office and place of business located at 5455 Randolph Road in the City of Rockville, State of Maryland.

PAR. 2. Respondent D'Henri, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland with its principal office and place of business located at 5455 Randolph Road in the City of Rockville, State of Maryland.

Respondents Herman I. Porten and Henry W. Porten are officers of the corporate respondents. They formulate, direct and control the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondents.

PAR. 3. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of rebottled colognes, toilet waters and perfumed sprays to distributors and retailers for resale to the public.

PAR. 4. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of Maryland 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 product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Respondents in the course and conduct of their business and for the purpose of inducing the sale of their products, have

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engaged in the practice of offering for sale and selling some of said products to distributors and retailers for resale to the public, enclosed in cardboard cartons on the ends of which was printed the price of \$10.00, thereby representing, directly or by implication, that such amount was the usual and customary retail price of the products in the trade areas where the representation was made.

PAR. 6. The aforesaid representation was false, misleading and deceptive. In truth and in fact, the amount set out on said cartons was fictitious and greatly in excess of the price which respondents' said products were actually or customarily sold at retail in the trade areas where the representation was made.

PAR. 7. By the aforesaid practice, the respondents placed in the hands of others means and instrumentalities by and through which the public may be misled as to the usual and regular retail price of said products.

PAR. 8. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of some of their products, respondents rebottled colognes or toilet waters in one dram bottles similar in appearance to the one dram bottles historically used in connection with the sale of perfumes, a more expensive and desirable product, and offered for sale and sold them in pasteboard cartons bearing brand names of well-known perfumes and the statement underneath the bottle "1 dram". Such products were offered for sale at retail for the price of one dollar per bottle.

PAR. 9. Through the use by respondents of the practices set out in Paragraph Eight, the respondents represented that their said products were perfume.

PAR. 10. By the aforesaid practice respondents place in the hands of retailers means and instrumentalities by and through which they may mislead the purchasing public into the erroneous and mistaken belief that respondents' bottled colognes and toilet waters are perfume.

PAR. 11. 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 toilet waters and colognes of the same general kind and nature as those sold by respondents.

PAR. 12. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' product by reason of said erroneous and mistaken belief. As a consequence thereof, substantial

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

PAR. 13. 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. DeWitt T. Puckett for the Commission.

Messrs. Karl W. Flocks, Alvin Browdy and Stanley H. Kamerow, of Washington, D.C., for respondents.

INITIAL DECISION BY HERMAN TOCKER, HEARING EXAMINER

In a complaint issued March 8, 1961, the respondents, Colognes, Inc., a District of Columbia corporation, D'Henri, Inc., a Maryland corporation, Herman I. Porten and Henry W. Porten, individually and as officers thereof, all of 5455 Randolph Road, Rockville, Maryland, were charged with misrepresenting the contents and actual retail prices of bottles of colognes and toilet waters sold and distributed in commerce, all in violation of the Federal Trade Commission Act.

Subsequent to the issuance of the complaint and the filing of respondents' appearance herein, counsel supporting the complaint moved for an amendment thereto so that Paragraph Eight thereof might be modified by a statement that the respondents' alleged deceptive bottling practice was accomplished by not stating "that the contents were colognes or toilet waters rather than perfume." Respondents not having objected thereto, an order was made granting the motion and the complaint is deemed amended accordingly. Whenever, herein or in the consent agreement, reference is made to the complaint, such reference shall be deemed to be to the complaint as amended.

The respondents (with the advice and agreement of their attorneys) and counsel supporting the complaint have entered into an agreement containing a consent order to cease and desist, which disposes of all the issues involved in this proceeding.

In the said 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.

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

It is further provided that the agreement, together with the complaint, shall constitute the entire record herein; that the complaint may be used in construing the terms of the order to be issued pursuant to the 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 hereby is accepted and shall be filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice, applicable hereto.

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, Colognes, Inc., and D'Henri, Inc., corporations, and their officers, and Herman I. Porten and Henry W. Porten, individually and as officers of said corporations, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale or sale of colognes or toilet waters, or any other product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist, directly or indirectly from:

1. Representing that any amount is the retail price of a product in a trade area or areas, when such price is in excess of the price at which the product has been usually and customarily sold at retail in the trade area or areas where the representation is made.

2. Representing that cologne or toilet water is perfume.

3. Offering for sale or selling cologne or toilet water in bottles having the size and appearance of bottles commonly used for perfume, without clearly and conspicuously stating on said bottles or in im-

mediate connection and conjunction therewith that such products are cologne or toilet water.

4. Using the name of any brand of perfume to describe cologne or toilet water, without clearly and conspicuously stating in immediate connection and conjunction therewith that such products are cologne or toilet water.

5. Furnishing means or instrumentalities to others by and through which they may mislead the public as to any of the matters and things prohibited in paragraphs 1 through 4 hereof.

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 23rd day of October 1961, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

THE SAMPLE, INC.

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

Docket C-7. Complaint, Oct. 23, 1961—Decision, Oct. 23, 1961

Consent order requiring Buffalo, N.Y., furriers to cease violating the Fur Products Labeling Act by failing to disclose on fur products labels when fur was dyed, the manufacturer or seller, and the country of origin of imported furs; failing to disclose in newspaper advertising the names of animals producing the fur in fur products, and when fur was artificially colored; and failing in other respects to comply with labeling and invoicing requirements.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that The Sample, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it

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

PARAGRAPH 1. The Sample, 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 1631 Hertel Avenue, Buffalo, New York.

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

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

Among such misbranded fur products but not limited thereto were fur products with labels which failed:

1. To disclose that the fur contained in the fur products was dyed when such the fact.

2. To show the name or other identification issued and registered by the Commission, of one or more of the persons who manufactured such fur product for introduction into commerce, introduced it into commerce, sold it in commerce, advertised or offered it for sale in commerce, or transported or distributed it in commerce.

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

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

- (a) Labels affixed to fur products did not comply with the minimum size requirements of one and three-quarter inches by two and three-quarter inches, in violation of Rule 27 of said Rules and Regulations.

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

- (c) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder

was not completely set out on one side of labels, in violation of Rule 29 (a) of said Rules and Regulations.

(d) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in handwriting on labels, in violation of Rule 29(b) of said Rules and Regulations.

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

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

PAR. 6. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that respondent caused the dissemination in commerce, as "commerce" is defined in said Act, of certain newspaper advertisements, concerning said products, which were not in accordance with the provisions of Section 5(a) of the said Act and the Rules and Regulations promulgated thereunder; and which advertisements were intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of said fur products.

PAR. 7. Among and included in the advertisements as aforesaid but not limited thereto, were advertisements of respondent which appeared in issues of the Buffalo Evening News, a newspaper published in the city of Buffalo, State of New York, 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, respondent falsely and deceptively advertised fur products in that said advertisements:

(a) Failed to disclose the name or names of the animals 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.

PAR. 8. The aforesaid acts and practices of respondent, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

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DECISION AND ORDER

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

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

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

1. Respondent, The Sample, 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 1631 Hertel Avenue, in the city of Buffalo, State of New York.
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 The Sample, 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 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:

I. Misbranding fur products by:

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

B. Setting forth on labels affixed to fur products:

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

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

C. Affixing to fur products labels that do not comply with the minimum size requirements of one and three-quarter inches by two and three-quarter inches.

D. Failing to set forth on labels all the information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder on one side of such labels.

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

II. 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.

III. 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 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.

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

IN THE MATTER OF

LUDWIG, INC., ET AL.

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

Docket C-8. Complaint, Oct. 23, 1961.—Decision, Oct. 23, 1961

Consent order requiring Boston furriers to cease violating the Fur Products Labeling Act by failing to disclose, in labeling and invoicing fur products,

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when the fur was dyed; failing to show on invoices the true animal name of the fur and the country of origin of imported furs; and failing in other respects to comply with labeling and invoicing requirements.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Ludwig, Inc., a corporation, and Herbert Ludwig, and Alvin Ludwig, individually and as officers of the 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. Ludwig, 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 18 Newbury Street, Boston, Massachusetts.

Herbert Ludwig and Alvin Ludwig are officers of the said corporation and control, direct and formulate the acts, practices and policies of the said corporation. Their office and principal place of business is the same as that of the said corporation.

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 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 without labels and with labels which failed:

1. To disclose that the fur contained in the fur products was dyed, when such was the fact.

PAR. 4. Certain of said fur products were misbranded in violation of the Fur Products Labeling Act in that they were not labeled

in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not set forth separately on labels with respect to each section of fur products composed of two or more sections containing different animal furs in violation of Rule 36 of said Rules and Regulations.

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

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

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 products was dyed when such was the fact.
3. To show the country of origin of imported furs used in the fur product.

PAR. 6. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in that required item numbers were not set forth on invoices in violation of Rule 40 of said Rules and Regulations.

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

DECISION AND ORDER

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents

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that the law has been violated as set forth in the complaint, and waivers and provisions as required by the Commission's rules; and

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

1. Respondent Ludwig, 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 18 Newbury Street, Boston, Massachusetts.

Respondents Herbert Ludwig and Alvin Ludwig are officers of the said corporation and control, direct and formulate the acts, practices and policies of the said corporation. Their office and principal place of business is the same as that of the said corporation.

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

ORDER

It is ordered, That Ludwig, Inc., a corporation and its officers, and Herbert Ludwig and Alvin Ludwig, 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 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 of the information required to be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act.

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

C. Failing to set forth on labels 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 of the information required to be disclosed by each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

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

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

IN THE MATTER OF
JOE D. RIFF TRADING AS RIFF'S

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

Docket C-9. Complaint, Oct. 23, 1961—Decision, Oct. 23, 1961

Consent order requiring a furrier in Longview, Tex., to cease violating the Fur Products Labeling Act by failing to identify on labels the manufacturer or seller of fur products; advertising prices of fur products as reduced from usual prices which were, in fact, fictitious; failing to keep adequate records as a basis for price and value claims; and failing in other respects to comply with labeling and invoicing requirements.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Joe D. Riff, an individual trading as Riff's, hereinafter referred to as respondent, has violated the provisions of said Acts, and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Joe D. Riff is an individual trading as Riff's with his office and principal place of business located at Longview, Texas.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondent has been and is now engaged in the introduction into commerce and in the sale, advertising, and offering for sale, in commerce, and in the transportation and distribution, in commerce, of fur products; and has sold, advertised, offered for sale, transported and distributed fur products which have been made

in whole or in part of fur which had been shipped and received in commerce, as the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act.

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

Among such misbranded fur products, but not limited thereto, were fur products without labels and with labels which failed:

(1) To show the name or other identification issued and registered by the Commission of one or more of the persons who manufacture such fur product for introduction into commerce, introduce it into commerce, sell it in commerce, advertise or offer it for sale, in commerce, or transport or distribute it in commerce.

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

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

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

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

PAR. 6. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in that required item numbers were not set forth on invoices in violation of Rule 40 of said Rules and Regulations.

PAR. 7. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that respondent caused the dissemination in commerce, as "commerce", is defined in said Act, of certain newspaper advertisements, concerning said products, which were not in accordance with the provisions of Section 5(a) of the said Act and the Rules and Regulations promulgated thereunder; and which advertisements were intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of said fur products.

PAR. 8. Among and included in the advertisements as aforesaid, but not limited thereto, were advertisements of respondent which appeared in issues of the Longview Sunday News Journal, a newspaper published in the City of Longview, State of Texas, 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, respondent falsely and deceptively advertised fur products in that said advertisements:

(a) Represented prices of fur products as having been reduced from regular or usual prices where the so-called regular or usual prices were in fact fictitious in that they were not the prices at which said merchandise was usually sold by respondent 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. 9. Respondent in advertising fur products for sale as aforesaid, made claims and representations respecting prices and values of fur products. Said representations were of the types covered by subsections (a), (b), (c) and (d) of Rule 44 of the Rules and Regulations promulgated under the Fur Products Labeling Act. Respondent in making such claims and representations failed to maintain full and adequate records disclosing the facts upon which such claims and representations were based in violation of Rule 44(e) of said Rules and Regulations.

PAR. 10. The aforesaid acts and practices of respondent, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices in commerce, under the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent Joe D. Riff is an individual trading as Riff's with his office and principal place of business located at Longview, Texas.
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 Joe D. Riff, an individual trading as Riff's or under any other trade name and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution of 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. Setting forth on labels affixed to fur products information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder mingled with non-required information.

C. Failing to set forth on labels 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. 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:

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Complaint

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

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

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

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

 IN THE MATTER OF

SMOLOWITZ & BENKEL, INC., ET AL.

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

Docket C-10. Complaint, Oct. 23, 1961—Decision, Oct. 23, 1961

Consent order requiring New York City manufacturers to cease violating the Wool Products Labeling Act by labeling as "50% wool, 50% reprocessed wool", men's and boys' caps which contained a substantial quantity of non-woolen fibers; failing to disclose on labels the true generic names of fibers present in such caps, and the percentage thereof; failing to disclose the fiber composition of knitted ear covers of different fiber composition from the caps themselves; and failing in other respects to comply with requirements of the 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 Smolowitz & Benkel, Inc., a corporation, and Nathan Smolowitz and Samuel Small, 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 Smolowitz & Benkel, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Individual respondents Nathan Smolowitz and Samuel Small are president and secretary-treasurer, respectively, of the corporate respondent. Said individual respondents 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 office and principal place of business at 584 Broadway in New York, New York.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939 and more especially since 1950, respondents have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, and offered for sale in commerce, as "commerce" is defined in said Act, wool products as "wool products" are defined therein.

PAR. 3. Certain of said wool products were misbranded by the respondents within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively 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 boys' caps labeled or tagged by the respondent as "50% wool, 50% reprocessed wool", whereas in truth and in fact said products contained a substantial quantity of non-woolen fibers.

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

Among such misbranded wool products, but not limited thereto, were men's and boys' caps with labels which failed: (1) to disclose the true generic names of the fibers present and (2) to disclose the percentage of such fibers.

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) The required information contained on the labels or tags attached to the wool products was obscure and inconspicuous and so placed as to be unseen or unnoticed by purchasers and purchaser-

consumers, in violation of Rule 11 of the aforesaid Rules and Regulations.

(b) Certain wool products composed of two or more sections which were recognizably distinct and of different fiber composition, were not labeled in such a manner as to disclose the fiber composition of each section thereof, in violation of Rule 23(b) of the aforesaid Rules and Regulations.

Among such misbranded wool products were men's and boys' caps containing knitted ear covers of different fiber composition from the remainder of the caps which were not labeled to disclose the fiber composition of the aforesaid knitted ear covers.

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.

DECISION AND ORDER

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

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

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

1. Respondent Smolowitz & Benkel, 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 584 Broadway, in the city of New York, State of New York.

Respondents Nathan Smolowitz and Samuel Small are officers of

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said corporation and their address is the same as that of said corporation.

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

ORDER

It is ordered, That Smolowitz & Benkel, Inc., a corporation, Nathan Smolowitz and Samuel Small 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 offering for sale, sale, transportation, distribution, or delivery for shipment, in commerce, of wool products, as "commerce" and "wool products" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding wool products by:

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

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

3. Failing to disclose by sections and to separately set forth on the required stamp, tag, label or other means of identification the character and amount of the constituent fibers contained in each section of such wool products as required by Rule 23(b) of the Rules and Regulations promulgated under the aforesaid Wool Products Labeling Act of 1939.

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.

Decision

IN THE MATTER OF
ELLIOT KNITWEAR, INC., ET AL.ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION AND THE WOOL PRODUCTS LABELING ACTS

Docket 6637. Complaint, Sept. 17, 1956—Decision, Oct. 24, 1961*

Order—following remand of a review proceeding by the Court of Appeals for the Second Circuit for additional evidence to support a finding that “the label as a whole is deceptive”**—requiring New York City distributors of wool products, including sweaters, to cease violating the Wool Products Labeling Act by using the word “Cashmora” on labels, etc., attached to any wool product containing no cashmere but permitting its use on woolens containing a substantial amount of cashmere if accompanied by clear disclosure of the percentage of cashmere content.

Messrs. S. F. House and Charles W. O’Connell supporting the complaint.

Golenbock & Barell, by Mr. Martin C. Barell, of New York, N.Y., for respondents.

SUPPLEMENTAL INITIAL DECISION ON REMAND OF PROCEEDING BEFORE
JOHN LEWIS, HEARING EXAMINER

STATEMENT OF PROCEEDINGS

This proceeding is before the hearing examiner for decision on a remand from the United States Court of Appeals, for the Second Circuit. The complaint herein was issued September 17, 1956, and charged respondents with various acts of misbranding of wool products in violation of the Wool Products Labeling Act of 1939, the Rules and Regulations promulgated thereunder and the Federal Trade Commission Act. All of the charges, except one, were disposed of by an agreement containing a consent order which was embodied in an initial decision of this hearing examiner, filed May 17, 1957, said decision becoming the decision of the Commission by order issued June 25, 1957. The remaining charge, involving respondents’ use of the word “Cashmora” on tags, stamps or labels attached to certain of their products, was the subject of hearings at which evidence was offered in support of and in opposition to the allegations of the complaint. An initial decision disposing of this charge was filed by the examiner on October 17, 1957, in which respondents were found to have violated the law as charged and were ordered to cease and desist therefrom.

*Amended Sept. 8, 1960. Charges in the original complaint were disposed of by two separate orders—53 F.T.C. 1185 and 54 F.T.C. 1398.

**266 F. 2d 787, 6 S. & D. 566.

Said initial decision, with certain modifications, was adopted as the decision of the Commission by order issued April 25, 1958.

Following the filing of a petition by respondents to review and set aside the order of the Commission, the Court of Appeals for the Second Circuit on May 6, 1959, remanded the proceeding to the Commission for further evidence as to whether respondents' labels containing the name "Cashmora" were deceptive, and as to the choice of the remedy to be applied in the event deception was established. The proceeding was thereafter reopened and remanded to the undersigned hearing examiner by order of the Commission issued November 9, 1959, to receive additional evidence on these two questions. Prior to the taking of additional testimony, counsel supporting the complaint moved that the complaint be amended, so as to also charge respondents with a violation of Rule 25 of the Rules and Regulations issued under the Wool Products Labeling Act, through the use of the word "Cashmora." Said motion was granted, without objection from respondents, by order of the undersigned dated September 8, 1960. Thereafter additional evidence in support of the complaint was offered by counsel supporting the complaint at hearings held in New York, New York and Washington, D.C., on September 15, 1960, and October 18, 1960, respectively. Respondents were represented by counsel at the hearing held in New York, New York, and were afforded full opportunity to be heard and to examine and cross-examine witnesses. However, they elected not to be present or represented at the hearing held in Washington, D.C., on October 18, 1960, although given due notice of said hearing. No additional evidence in opposition to the complaint was offered by respondents on the remand of this proceeding.

Proposed findings of fact and conclusions of law were filed by counsel supporting the complaint, supplementing those originally filed herein. Respondents filed a memorandum in support of their position; in lieu of proposed findings and conclusions, supplementing the memoranda previously filed on their behalf herein. Proposed findings not herein adopted, either in the form proposed or in substance, are rejected as not supported by the record or as involving immaterial matters.

This initial decision is intended to supplement that heretofore filed the hearing examiner on October 18, 1957. The basic facts as to the nature of respondents' business, their engagement in interstate commerce and competition with others, and their use of the name "Cashmora" are set forth in said initial decision, and will not be referred to further herein, except as may be necessary to an understanding and resolution of the issues which were remanded.

Upon the supplemented record in this proceeding, the hearing examiner again finds that this proceeding is in the interest of the public, and based on such record, including his observation of the witnesses, makes the following:

SUPPLEMENTAL FINDINGS OF FACT

A. The Issues

1. As heretofore found, respondents¹ use the name "Cashmora" in connection with the sale of sweaters manufactured in Japan in accordance with their specifications. Such name is used on labels which are sewn into the back of the necks of said sweaters, on tags containing washing instructions which are attached to the sweaters, on the cardboard boxes in which the sweaters are packaged, and in advertising such sweaters in newspapers and magazines. On labels used by respondents prior to the issuance of the complaint the word "Cashmora" appeared in large, script-like letters on the upper portion of the label, and the lower portion of the label contained a statement of fiber content. The label read:

Full Fashioned
CASHMORA
By Elliot
30% Angora Rabbit² 70% Lambs Wool
Imported Hand Finished
WPL 7709

Sometime after the issuance of the complaint in this proceeding, the label was modified by adding the words "No Cashmere" below the statement of fiber content. As thus modified, the lower part of the label reads:

Hand 30% Angora Rabbit
Finished 70% Lambs Wool
WPL 12371 No Cashmere

The word "Cashmora" continues to be used on the upper part of the label in large, script-letters, considerably larger and more prominent than the statement of fiber content and the words "No Cashmere".

The cardboard tags attached to the sweaters, which include washing instructions and are referred to in the trade as "hang tags", contain the following legend on the back thereof:

Fine Imported
Cashmere
Cashmora
Lambs Wool

¹ Reference to respondents herein does not include Samuel I. Gross, individually and as a co-partner in Elliot Glove Company, who was heretofore dismissed from the proceeding by the Commission.

² An earlier form of the label did not use the word "Rabbit" following "30% Angora".

The version of the tags which was in use up to the time of the issuance of the complaint contained the following statement on the front thereof:

Elliot

Cashmora

The boxes in which the sweaters are packed contain the name "Cashmora", without any statement of fiber content.

2. In his earlier initial decision, the examiner found that the name "Cashmora", used in connection with respondents' sweaters, would give the impression to members of the purchasing public that such sweaters contained cashmere and that the name was, therefore, false, misleading and deceptive since the sweaters admittedly contain no cashmere. This finding was based not merely on the label itself, but on the context of its use, including admissions made by respondents' own witnesses. Thus, the evidence disclosed that there was a heavy consumer demand and preference for cashmere sweaters, that because of the price rise in such sweaters respondents sought to develop (in cooperation with its Japanese mill supplier) a less expensive fur-blend sweater which had the "look and feel of cashmere", that the sweaters which were developed enjoyed a rapid and phenomenal increase in sales compared to other fur blends sold by respondents, that such increase was attributed by respondent Herman Gross to the fact that the sweaters in question met the "poor man's need for a cashmere type sweater", and that in choosing the name Cashmora for their sweaters respondents intended to associate their product with cashmere and the qualities of the genuine product, albeit not to imply that they actually contained cashmere fiber. While there was no direct evidence of consumer deception, the examiner held that this was unnecessary since the basic fact to be established was the tendency and capacity of the name to deceive, rather than actual deception, and that this could be determined without consumer-type testimony or other direct evidence of deception.

3. The court of appeals, applying a concept which is generally associated with the antitrust or antimonopoly field of jurisprudence, held that the Commission had erroneously found that the name Cashmora to be "deceptive *per se*". It stated that while "[u]nder ordinary circumstances, the word 'Cashmora' without more might well be considered deceptive *per se* * * * this hardly can be said of the label in the present case" in view of the fact that it contains a statement of "content specification". The court cited, in this connection, the holding of the Commission in the *Jacob Siegel* case (43 FTC 256), in which it had found that the deceptive character of the coined name "Alpacuna" could be cured by a specification of fiber content on the label, and concluded that the fiber specification on the label here involved

“precludes the Commission from holding the label here used deceptive *per se*.”

Actually, the finding that the label here involved is deceptive was not a “*per se*” finding, i.e., one based solely on the label itself. As indicated above, there was additional evidence in the record on which this finding was based. However, for present purposes the examiner will assume that the court took such evidence into consideration in its ultimate holding that “in view of the specification of the actual contents of the product”, additional evidence was required in order to support a finding that “the label as a whole is deceptive”. Presumably the additional evidence envisioned by the court is evidence of a more direct nature than that in the record, which would establish that the name is deceptive despite the specification of fiber content on the label.

4. Upon the remand of the proceeding, further evidence purporting to show the deceptive character of the name “Cashmora” was adduced by counsel supporting the complaint. The additional evidence consisted of (a) testimony by ten buyers, merchandise managers and other representatives of department stores and apparel and sportswear specialty shops in New York, New York,³ Union City and Elizabeth, New Jersey, and Washington, D.C., (b) testimony by a consumer relations counselor and (c) a survey conducted among female college students at two universities in the Washington, D.C., metropolitan area. No further evidence was offered on behalf of respondents. The issue now presented is whether the additional evidence adduced by counsel supporting the complaint is sufficient, together with that already in the record, to establish that respondents’ use of the name “Cashmora” is false, misleading and deceptive, as charged in the complaint.

5. A further issue presented relates to the proper remedy to be utilized in the event the name “Cashmora” is found to be deceptive. In the initial phase of this proceeding respondents had urged that if the word “Cashmora” was found to be deceptive, there should be no absolute prohibition on its use, but that they should be permitted to use it with appropriate qualification or explanation. In his original decision herein, the examiner found that the name “Cashmora” was so inherently deceptive that its further use should not be permitted even on a qualified basis, and that the only appropriate remedy was that of complete excision. The Commission concurred in this conclusion, and adopted the examiner’s proposed order to this effect, with slight modification. The court of appeals, in its opinion, indicated that “the addition to the label of the phrase ‘contains no cashmere’ might

³ It was stipulated that three additional store representatives from New York City would testify substantially as did those who testified from that area.

well be a permissible and sufficient remedy, if the Commission finds that the label as presently composed is in fact deceptive." However, in view of the fact that further evidence adduced on the issue of deception might have a bearing on the choice of a remedy, the court elected to make no "final ruling" on this issue.

6. It is the position of counsel supporting the complaint that the additional evidence adduced by him, particularly that of the buyers and merchandise managers of mercantile establishments and the consumer relations counselor, not only establishes the deceptive character of the name, but also supports the conclusion that the remedy of excision is the only appropriate remedy in this case. No further evidence on this issue was offered by respondents. The issue thus presented is whether the additional evidence adduced by counsel supporting the complaint is sufficient, together with that already in the record, to require an absolute prohibition on the use of the name "Cashmora", if it is found to be deceptive, or whether continued use of the name, with appropriate qualification, should be permitted.

B. The Issue of Deception

The Expert Testimony

1. As above indicated, upon the remand of this proceeding counsel supporting the complaint offered the testimony of a number of buyers, merchandise managers and other persons experienced in the buying habits of consumers, with particular reference to the manner in which members of the buying public read labels and are familiar with the fiber contents of articles of apparel, including sweaters. The testimony given by these witnesses was based on an examination of two of respondents' Cashmora sweaters, one containing the name Cashmora and a statement of fiber content on the label (CX 2), and the other containing the additional words "No Cashmere", below the statement of fiber content (RX 25). The rule of separation of witnesses was invoked, and none of the witnesses was permitted to hear the testimony of any of the other witnesses. The store witnesses represented a broad cross-section of mercantile establishments, catering to persons in the upper income bracket as well as persons of modest circumstances. The consumer relations counselor was a person with training and experience in consumer psychology, who had written numerous articles on the subject, had worked with consumer groups, and had been retained by business organizations to advise on consumer attitudes.

2. It was the unanimous opinion of these witnesses that most consumers would receive the impression that respondents' sweaters were made of, or contained, cashmere. According to their testimony most

consumers do not stop to read the fine print on labels and, because of the similarity in appearance of respondents' sweaters to cashmere sweaters and the close resemblance of the name "Cashmora" to the word cashmere, they would be led to believe that the sweaters were cashmere or contained some cashmere fiber. In fact, according to some of these witnesses, there would be members of the purchasing public who would actually mistake the word "Cashmora" for "Cashmere" upon a quick look and without the use of their reading glasses. One of the so-called experts testified that she herself would mistake "Cashmora" for "Cashmere" without her glasses (R. 165). Another testified that upon being shown one of the sweaters in the store by a Commission representative (whom she apparently mistook for a salesman) she advised him that, "I am not interested in another cashmere sweater." She explained the reason for her confusion as follows (R. 471): "When I glanced, I saw 'Cash' and I didn't go any further, at a quick glance."⁴

3. Aside from the fact that most or many consumers do not bother to read labels carefully, even those who do read the statement of fiber content will not necessarily have the initial impression of a number of them, that the sweaters contain or are made of cashmere, rectified. The testimony of the expert witnesses establishes that there are many consumers who do not know what cashmere is. They may know that it is a fine, soft, desirable fiber, but they do not know that it comes from the fiber of the Kashmir goat or what it consists of. The mere fact that the labels contain the statement of fiber content, "30% Angora Rabbit, 70% Lambs Wool", would not necessarily clear up the confusion resulting from the use of the name "Cashmora" and from the sweaters' similarity in appearance to genuine cashmere sweaters. Several of the witnesses testified that with the turnover in store personnel, some of the sales clerks would themselves be confused, and would be unable to give a satisfactory explanation to customers who might ask questions about the fiber content after reading the label. In fact, there was testimony that the stock clerks might mistakenly place the sweaters in with cashmere sweaters, and they would be sold as such (R. 473).

4. Even the words "No Cashmere", which respondents placed on the label following the issuance of the complaint in this proceeding, would not result in clearing up the confusion inherent in respondents' use of the name "Cashmora", according to most of the witnesses. In the first place, many consumers would fail to read the entire label, so as to take note of the words "No Cashmere". Furthermore, those

⁴ After the witness' mistake was explained to her, she showed the sweater to two of her employees to obtain their reaction. Both of them likewise thought the sweater was cashmere.

that did would, in a number of instances, fail to observe the word "No". According to several of the witnesses, the expression "No Cashmere" actually increased the confusion. As one of them stated, "the more you add the word 'cashmere' the more confusing it is" (R. 475). Appearing immediately below "30% Angora Rabbit" and "70% Lambs Fool", the impression which some members of the public would gain was that the label read "Angora Rabbit", "Lambs Wool" and "Cashmere", as indicative of the fiber content. The reason why many people would be apt to overlook the word "No", as explained by several of the witnesses, is that the average person in reading a label expects to find an affirmative statement of what the product *is* or what it *does* contain, not a negative statement of what it is *not* or what it does *not* contain. "Positive identification", as one of the witnesses stated, "is far more important than negative identification" (R. 337).

5. A number of the witnesses testified that the impression the sweaters were made of cashmere or contained cashmere was enhanced by the manner in which the labels were worded and also by the wording of the so-called hang tags. Thus, they stated that the labels resembled those used on more expensive sweaters, particularly cashmere sweaters, which typically contain the statement "Full Fashioned", and that the printing was more elaborate than that usually found on sweaters in that price range. They also referred to the statement on the hang tag "Fine Imported Cashmere", in close proximity to "Cashmora" and "Lambswool", as implying that the sweaters were made of cashmere or were a combination of cashmere and some other fiber, possibly lambs wool.

6. Respondents have placed considerable reliance on the fact that their sweaters sell in a much lower price range than genuine cashmere sweaters, as negating the possibility of confusion. As explained by respondent Herman Gross in his initial testimony in this proceeding (R. 56):

[T]he price is so different that it would be preposterous for anyone to think they were getting cashmere. You just don't get cashmere sweaters at this price [\$10.95].

However, according to the plausible and credited testimony of the expert witnesses called in support of the complaint there are cheaper-grade cashmere sweaters which sell at prices comparable to those of respondents, and many of the stores sell their more expensive sweaters at substantial price reductions during periodic sales and clearances. Furthermore, according to the testimony of the same witness, a significant part of the public is not sufficiently sophisticated to be able to distinguish between fabrics on the basis of price range and is, more-

over, always hopeful that they will be able to get a bargain. Moreover, the fact that better-grade cashmeres generally sell in a higher price bracket might simply lead those who are aware of such price differences to believe that respondents' sweaters are part cashmere, rather than pure cashmere.

7. Respondents suggest that there is some possible infirmity in the testimony of the store representatives who testified in support of the complaint because "these witnesses came from stores which did not sell Cashmora sweaters." However, there was no showing that the stores where they were employed had been adversely affected by competition with respondents, nor is there any other evidence from which bias on their part may be inferred. Their testimony indicated a general familiarity with consumer buying habits and practices in the reading of labels, even though they themselves had not previously handled respondents' sweaters, and was buttressed by their own personal reactions in observing respondents' sweaters and labels.

Respondents also refer to the stipulation in the original record, to the effect that if representatives of three of the stores which handled respondents' sweaters had been called, they would have testified that they "would not have purchased the sweaters if they believed the name in any manner deceptive", and that no complaints had been received from customers (R. 128). This argument has already been discussed in the examiner's earlier decision. However, it may be noted here that the broadly-worded stipulation concerning the beliefs of these persons, does not require that the detailed, specific and convincing testimony of the witnesses called in support of the complaint be disregarded. Although afforded an opportunity to present testimony of a similar nature after the court of appeals' remand had brought the issues more sharply into focus, respondents elected not to do so.

The Survey

8. Any doubt which may exist as to the reliability of the testimony of the expert witnesses called in support of the complaint, that a significant portion of the public would be led to believe that respondents' sweaters are made of or contain cashmere, is set at rest by the survey in evidence of the actual reactions of persons to whom respondents' sweaters were exhibited. The survey was conducted under the auspices of a professor in the Department of Psychology at the University of Maryland, who had previously conducted other consumer surveys. The reactions to respondents' sweaters and labels were obtained from 60 female students, selected at random and divided equally between the University of Maryland and American University. The students were interviewed by a graduate student and a senior student, respectively, at each university, neither of whom was advised as to

the purpose of the survey. The students were shown one of respondents' sweaters containing a label similar to those in evidence, and were asked various questions to elicit their reactions. The labels on the sweaters all contained the name Cashmora, a statement of the fiber content and also the additional legend "No Cashmere", in letters similar in size to the statement of fiber content.

9. In response to the general questions as to (1) what they thought of the sweater and (2) whether they would be interested in buying it, 12 per cent and 15 per cent, respectively, of the students referred to the fact that the sweater contained cashmere, in expressing their opinion of the sweater and whether they would be interested in buying one. Upon being asked the further specific question as to what kind of material they thought it was made from, 22 percent said that they thought it was made of cashmere. While the students were not specifically asked whether their answers were based on the wording of the label or the appearance of the sweater, approximately 70 per cent of those who thought the sweaters were cashmere referred to the label as the source of their information. These students represented 13 per cent of the total number of students interviewed.

10. In evaluating the results of the survey, it may be noted that the students interviewed represented a somewhat better educated, and more sophisticated, group of women than would be apt to be found among average store customers. It is significant, in this connection, that a much higher percentage of the girls interviewed at the University of Maryland were under the impression that the sweaters contained cashmere than was the case at American University.⁵ The University of Maryland is a state university and its students represent a broad cross section of the various areas of the state, both rural and urban. American University, on the other hand, is a privately-endowed institution, and a substantial part of its student body comes from the Washington, D.C. metropolitan area and from the cosmopolitan areas of New York City and northern New Jersey. The University of Maryland student body is obviously closer in composition to the general population of women than is that at American University. It is also to be noted that the circumstances under which both groups of women examined the sweaters, viz, in the relaxed atmosphere of their dormitory rooms, were more conducive to a careful examination of the sweaters than would be the case in the hustle and bustle of a department store.

11. There is no doubt as to the basic reliability of the survey offered by counsel supporting the complaint, and as to the fact that it establishes that respondents' labels, when viewed as a whole, are deceptive,

⁵ Thirty-seven percent of the students interviewed at the University of Maryland thought the sweaters were cashmere, as compared to 7 percent at American University.

even though they contain a statement of fiber content and a disclaimer as to any cashmere content. There is every reason to believe that if a similar survey were conducted among a typical group of consumers, including "the ignorant, the unthinking and the credulous, who, in making purchases, do not stop to analyze, but are governed by appearances and general impressions" (*Positive Products Co. v. FTC*, 132 F. 2d 165, 167) an even higher percentage of those interviewed would perceive respondents' sweaters as containing cashmere.

Respondents argue that the survey offered by counsel supporting the complaint is subject to objection as being hearsay. Aside from the fact that no objection to its introduction into evidence was made by respondents, it is well established that such surveys are admissible to establish the public's reaction to, or impressions received from, labels or advertising (*Arrow Metal Products Corp. v. FTC*, 249 F. 2d 83, CA 3, 1957). Respondents also suggest that the numerous letters which they received from satisfied customers constitute more reliable evidence than a survey. Such letters, as indicated in the examiner's earlier decision herein, are irrelevant. The fact that many of respondents' customers are satisfied or have not complained does not establish what impression they received from the labels at the time of purchase. Furthermore, as indicated in the examiner's earlier decision, it is not necessary to establish that all or even a majority of consumers were or would be deceived. If there are "some" members of the public who are likely to be deceived, the statutory test has been met (*Prima Products, Inc. v. FTC*, 209 F. 2d 405, 409). The survey evidence certainly establishes that a portion of the public, considerably in excess of de minimis quantities, is likely to be deceived.

Concluding Finding

12. The evidence in the record prior to the remand of this proceeding established that respondents had deliberately set about to associate their product with cashmere and had scored an immediate and spectacular success in the sale thereof. It was inferred and found that this success was due, in significant part, to the fact that the public had accepted the more obvious connotation of the name chosen by respondents, viz, that their product was made of or contained cashmere, rather than the more subtle one which respondents' claimed to have intended, viz, merely that their product "has a cashmere like feeling" (R. 139). Although there was no direct evidence as to what impression respondents' use of the name Cashmora would have on the public, it was inferred and found from the label and the context of its use that it would be apt to create the impression that the product was made of or contained cashmere.

The matter need no longer rest on inference or the Commission's expertise. It is now unmistakably clear, from the evidence developed since the remand of the proceeding, that a significant portion of the purchasing public would be apt to believe from respondents' labels as a whole, in the context of their use, that the sweaters to which they are affixed are made of or contain cashmere. This impression would exist despite the fact that the labels contain a statement of fiber, and despite the fact that labels used since the issuance of the complaint contain a disclaimer of cashmere content. It is accordingly concluded and found that respondents' labels as a whole are false, misleading and deceptive in that respondents' sweaters labeled Cashmora are not made of and do not contain any cashmere fiber.

C. The Appropriate Remedy

1. Respondents' labels containing the name Cashmora having been found to be deceptive, the next question presented concerns the appropriate remedy to be adopted. Reduced to its essence, the issue presented is whether complete excision of the name should be ordered or whether respondents should be permitted to use it if accompanied by qualifying or explanatory language. Respondents, of course, urge that they should be permitted to continue using the name on their labels provided they add qualifying language such as "contains no cashmere", which the court of appeals indicated "might well be a permissible and sufficient remedy".

2. Before considering the suggestion made by respondents, it should be noted that the court of appeals, as previously noted, made "no final holding" on this issue. Its statement that the addition of the language in question "might well be a permissible * * * remedy" was made on the basis of "the present record", and the court recognized that the "further evidence adduced [on the remand] may have a bearing on the choice of remedy". The examiner is, of course, aware of the principle referred to by the court of appeals, that complete excision of a trade name "should not be ordered if less drastic means will accomplish the same result" (*FTC v. Royal Milling Co.*, 288 U.S. 212, 217). However, where there is a reasonable likelihood that the name will continue to deceive the public, even though accompanied by explanatory language, it is quite clear that private property rights must give way to the public interest.

3. On the record now before him the examiner is convinced and finds that a complete prohibition on the use of the name Cashmora on products which do not contain cashmere is the only proper remedy to be adopted. The testimony and evidence discussed above, which establish the deceptive character and tendencies inherent in the name

Cashmora, also establish that a significant degree of deception will remain even with the addition of qualifying or explanatory language on the label. Thus, as already noted, the very labels which gave rise to the false impression, that the sweaters to which they are affixed contain cashmere, include both a statement of fiber content and a disclaimer of cashmere content. It is true that the statement of disclaimer on the labels in question reads, "No Cashmere", rather than "Contains No Cashmere" (as suggested by the court of appeals). However, on the basis of the purport of the testimony regarding the casual manner in which the public reads labels and the lack of effectiveness of disclaimer statements, and the fact that in some instances the witnesses' testimony (in response to questions addressed to them on cross-examination by counsel for respondents) specifically included the statement "Contains No Cashmere", it is clear that the latter type of disclaimer would be no more effective in eliminating confusion than is "No Cashmere".

4. Respondents suggest that the testimony and evidence offered in support of the complaint not be accepted because it is at variance with the decision of the Supreme Court in that *Jacob Siegel* case and with the Commission's decision in the *Country Tweeds* case, in which continued use of the names Alpacuna and Kashmoor, respectively, was permitted with additional explanatory language. There is no necessary conflict between the two situations since they are not in *pari materia*. The witnesses in the present case were testifying to matters of fact lying within their own personal knowledge and experience, whereas the form of the orders in the *Jacob Siegel* and *Country Tweeds* cases involved policy determinations of a judicial or quasi-judicial nature based on the records in those cases.

5. The fact that the Commission (not the Supreme Court as stated by respondents) permitted the qualified use of the name Alpacuna in the *Jacob Siegel* case (43 FTC 256)⁶ and the name Kashmoor in the *Country Tweeds* case (50 FTC 470), does not constitute a holding that excision is not a proper remedy, as a matter of law, in cases involving coined names of a deceptive character. Overlooking the fact that the orders in the two cases relied on by respondents actually differed from one another (the order in *Jacob Siegel* requiring a statement of fiber content and that in *Country Tweeds* providing for a statement of disclaimer), it does not follow that either remedy is

⁶ As noted in the examiner's earlier decision, the Supreme Court in the *Jacob Siegel* case (327 U.S. 608, 613) did "not reach the question whether the Commission would be warranted in holding that no qualifying language would eliminate the deception" since the Commission had not considered the feasibility of such a remedy. The case was accordingly remanded for such purpose. The Court did, however, emphasize the "wide latitude for judgment" in the fashioning of a remedy which the Commission had as an "expert body", and that "the courts will not interfere except where the remedy selected has no reasonable relation to the unlawful practices found to exist" (at 612).

appropriate here. In the light of the fact that the label in the instant case actually contained both types of statement, but has nevertheless been found to give rise to the impression that the sweaters contain cashmere, it seems evident that the orders adopted in those cases are not appropriate here.

6. While, as above noted, it is not proper to compare the factual testimony of the witnesses in the present case with the policy conclusions reached by the Commission in the *Jacob Siegel* and *Country Tweeds* cases, the testimony of the witnesses here actually affords a basis for distinguishing this case from the Commission's earlier holdings. During the course of the cross-examination of these witnesses, in which counsel for respondents sought to establish that their testimony was at odds with the holdings in the other cases, a number of them expressed the opinion that the names Alpacuna and Kashmoor are more susceptible of explanation than is Cashmora. In the case of the name Alpacuna, the garments actually contained 50 percent Alpaca, and the deceptive part of the name was the latter part. Several of the witnesses indicated that it was the initial part of the name, which would have the greater impact on the public, and that there would be fewer persons who would associate the last part of the name with vicuna. They were therefore of the opinion that the name was more susceptible of explanation than Cashmora, where the primary emphasis was on "Cash", implying cashmere of which there was none in the product. Similarly there was testimony that, graphically, Kashmoor resembles Kashmir, the home of the goat from which the fiber comes, but that the public is not generally familiar with this spelling and would not associate it with the word cashmere as readily as they would the word Cashmora.

Respondents argue that the explanation of these witnesses should not be accepted because the court of appeals in its decision here "knew no distinction as to the degree of deceptiveness". The fact that the testimony reveals a difference in the degree of deceptiveness involves a matter of fact, not a matter of law, and there is no necessary conflict between such testimony and the court's holding. As already indicated, the court of appeals actually made no "final holding". The opinion it expressed was based on the record before it, which has since been considerably amplified. That the testimony of the so-called expert witnesses, a number of whom were subjected to strenuous cross-examination, is worthy of credit is clear not only from the nature and quality of their testimony (including their demeanor in testifying), but from the corroboration which it received from the survey evidence. As previously noted, the young ladies involved in the survey were shown sweaters containing both a statement of fiber content and a

disclaimer of cashmere content. Yet a substantial number of them thought the sweaters were made of or contained cashmere. Several of the experts were themselves confused by the labels and received the initial impression that the sweaters were cashmere.

7. Respondents' repeated emphasis on the decisions in the *Jacob Siegel* and *Country Tweeds* cases is bottomed on the basic assumption that the principle of stare decisis is applicable in administrative proceedings. However, it is now generally accepted that administrative agencies are not bound by precedent in the same sense as are courts of law, but that they may exercise discretion and ingenuity in working out a solution in each new case on the basis of the facts of that case and in the light of their accumulated experience.⁷ If the Commission had strictly followed the principle of stare decisis it would not have permitted the qualified use of the name Kashmoor in the *Country Tweeds* case, since it had 15 years earlier ordered an absolute prohibition on the use of the identical name in *Cohen Bros. Corp.*, 27 FTC 923. The Commission having made an allowable judgment with respect to remedy in the light of the then existing situation in *Country Tweeds*, may now choose a different remedy in a case involving a somewhat different name if it feels it necessary to do so on the basis of the facts before it, and in order to protect the public interest.

8. While the record clearly establishes that it is not in the public interest to permit continued use of the present label, despite the fact that it includes a statement of fiber content and the disclaimer "No Cashmere", respondents suggest that if the disclaimer statement appeared in larger letters it might dispel the confusion presently attached to the Cashmora label. Counsel for respondents suggested this same possibility during the cross-examination of a number of the witnesses who testified as to the deceptive impression conveyed by the label. While several of the witnesses indicated that it would help if the words "No Cashmere" or a similar phrase appeared more prominently on the label, it was the consensus of the testimony that an appreciable degree of confusion would still remain. This was due to the fact that a significant part of the public does not read labels carefully. Also, in view of the fact that the public is not accustomed to seeing negative statements on a label, there would be consumers who, in reading the label hurriedly, would actually read it as "Cashmora-Cashmere". There was also testimony that a single word, such as "Cashmora", has a greater impact on the public mind than a phrase or group of words, particularly where they contain a negative statement.

9. To the extent that the witnesses indicated that the addition of

⁷ *Shawmut Association v. SEC*, 146 F. 2d 791 (CA 1, 1945), *Kentucky Broadcasting Corp. v. FCC*, 174 F. 2d 38 (DC Cir, 1949), and *FCC v. WOKO, Inc.*, 329 U.S. 223. See generally Cooper, *Administrative Agencies and the Courts*, 238-241 (1951).

the words "No Cashmere" in larger letters might be helpful, they generally did so in the context that it was an improvement over the existing label if it were imperative that the name Cashmora be retained. However, they indicated that it would be preferable to cease using such coined names, since they add to the public's confusion and misunderstanding about the diverse fibers on the market, and help destroy its confidence in labels. As stated by one of them (R. 264-265):

Well, I think that there are millions of these names around and I think they are very confusing. In my opinion these names are picked out with a purpose. We have a lot of names like "Vicuará" and "Vicusela", and a play on the names of expensive fibers, things which I think tend to confuse the public greatly. * * * I do believe that this kind of stuff just confuses the issue tremendously, and I think it then, perhaps, undermines the public's confidence in all kinds of labels.

While the court of appeals expressed doubt as to the application of the contradiction doctrine (as referred to in such cases as *FTC v. Algoma Lumber Co.*, 291 U.S. 67; and *FTC v. Army & Navy Trading Co.*, 88 F. 2d 776), in view of the fact that respondents here were not actually using the precise name cashmere, it may be noted that several of the witnesses indicated that the word Cashmora was so close to cashmere that to permit its use with the statement "No Cashmere" actually involved a contradiction in terms. Thus, one of them testified (R. 292):

It is a very ambiguous and contradictory thing, to begin with, with a "no cashmere" and the name "Cashmora", to my mind.

As expressed by another (R. 185):

Well, the name "Cashmora" to me looks like cashmere. Actually, you are using the name inferring anyway, that it is cashmere. You are trying to get around it by putting "no cashmere" on the label. It hasn't [got] it. You are going around the bush on it.

Respondents suggest that this testimony should be disregarded since it conflicts with the opinion of the court of appeals. However, the examiner doubts that the observation by the court of appeals, based on the record then before it, was intended to take precedence over testimony reflecting the actual reactions and factual opinions of persons whose livelihood depends on their familiarity with the public's buying habits and attitudes.

Concluding Finding

10. It is the conclusion and finding of the examiner, based on the record as a whole, that the public interest requires an absolute prohibition on the use of the name Cashmora on sweaters not containing a substantial portion of cashmere fiber. The name, as heretofore found, is basically deceptive, and no method has been suggested by which

such deception can be eliminated to an extent that the public interest will not be materially jeopardized. Aside from all other considerations, and to the extent that long, unchallenged usage may sometimes justify some accommodation of the Commission's basic obligation to protect the public, the period of unchallenged usage here is so brief as not to warrant any deviation from the remedy otherwise called for by the facts.⁸

C. The Application of Rule 25

1. The original complaint, insofar as it involved respondents' use of the word Cashmora, was based on an alleged violation of Rule 30 of the Rules and Regulations promulgated under the Wool Products Labeling Act. This rule prohibits the use of any stamp, tag or label "which is false, misleading, or deceptive in any respect". Since the Federal Trade Commission Act likewise covers advertising or representations which are false, misleading or deceptive, and since the Wool Products Labeling Act specifically provides that the misbranding of a wool product in violation of that Act or its Rules and Regulations shall also constitute an unfair and deceptive act or practice within the meaning of the Federal Trade Commission Act, the examiner in his original decision found that respondents had violated both the Federal Trade Commission Act and the Wool Act and the Rules and Regulations promulgated under the latter Act.

2. While the complaint did not originally charge a violation of Rule 25 of the Rules and Regulations promulgated under the Wool Act, the examiner, in his original decision, cited that section as indicative of a Commission policy not to countenance the use of trade names on labels which are suggestive of fibers not contained in the product. Rule 25 provides that:

Words which constitute the name or designation of a fiber which is not present in the product shall not appear in or as part of the listing or marking of required fiber content on the stamp, tag, label, or other mark of identification affixed to the wool product.

Although not specifically pleaded, the examiner regarded Rule 25 merely as a particularization of the type of conduct which would be proscribed under the broader language of Rule 30, prohibiting the use of labels which are false, misleading or deceptive. Counsel supporting the complaint, apparently out of an abundance of caution, have now caused the complaint to be amended, so as to specifically charge a violation of Rule 25, as well as Rule 30.

⁸ As noted in the examiner's earlier decision (at 32) the period which elapsed between the time respondents' Cashmora sweaters first came on the market and the date when the Commission challenged the use of the name involves a matter of weeks or at most a few months.

3. In his original decision the examiner cited the legislative history of the Wool Act, as indicating a congressional intent to insure an even higher degree of accuracy in labels under the Wool Products Labeling Act than was considered possible under the more generally worded provisions of the Federal Trade Commission Act. In view of this intent and the policy of the Commission, as expressed in Rule 25, the examiner concluded that even if it were appropriate in a proceeding involving solely a violation of the Federal Trade Commission Act (as was the case in the *Jacob Siegel* and *Country Tweeds* proceedings) to permit qualified use of a deceptive trade name, it would not be proper to permit the use of such names on labels which violated the Wool Act and the Rules and Regulations promulgated thereunder.

4. In affirming the examiner's findings and conclusions, the Commission stated that complete excision of the name Cashmora on products containing no cashmere was required even under the Federal Trade Commission Act. Accordingly, it found it unnecessary to "rule on the existence of possible differences in the discretion the Commission may exercise in its selection of appropriate remedies to correct deception under the [Wool Products Labeling Act and the Federal Trade Commission Act]".

5. In the opinion of the examiner, Rule 25 of the Rules and Regulations promulgated under the Wool Act would bar the use of language on a label referring to or suggestive of fibers which the product does not contain. This would include the word Cashmora, which is clearly suggestive of cashmere, and also negative statements such as "no cashmere" or "contains no cashmere". For this reason, continued use of the name Cashmora, with or without qualification or explanation, would not, in the opinion of the examiner, be an appropriate remedy under the Wool Products Labeling Act. Whether or not there is any difference in the permissible scope of the remedy under the Wool Products Labeling Act than under the Federal Trade Commission Act, it is the conclusion and finding of the examiner that, in this proceeding which is brought under the Wool Products Labeling Act, and now specifically includes a charge of violation of Rule 25 of the Rules and Regulations promulgated thereunder, the remedy of excision is the only appropriate one to be adopted.

CONCLUSIONS

1. It is concluded that the use by respondents of the word "Cashmora" on tags, stamps, or labels attached to certain of their sweaters which do not contain cashmere constitutes the misbranding of wool products, and that the introduction, sale, transportation or distribution of such products, in commerce, by respondents is a violation of the

Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, including Rules 25 and 30 thereof, and that the delivery for shipment, shipment, sale or offer for sale of such products, in commerce, by respondents also constitutes a false and deceptive act and practice and an unfair method of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

2. It is further concluded that the aforesaid violation of the Wool Products Labeling Act and the Federal Trade Commission Act can be effectively terminated only by ordering respondents to cease, unconditionally, the use of the name "Cashmora" on tags, stamps or labels attached to wool products not composed in substantial part of cashmere.

ORDER

It is ordered, That the respondents Elliot Knitwear, Inc., and Elliot Import Corporation, both corporations, and their officers, and Herman Gross, individually and as an officer of said corporations, and respondents' respective agents, representatives, and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce or the offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of wool products, as "wool products" are defined in and subject to the Wool Products Labeling Act, do forthwith cease and desist from misbranding such products by using the word "Cashmora" or any word of similar import or any stamp, tag or label attached to any wool product that is not made or composed of cashmere: Provided, however, that this shall not be construed as prohibiting use of the word "Cashmora" on a stamp, tag or label attached to a wool product composed in substantial part of cashmere if such word is accompanied by a clear and conspicuous statement of the percentage by weight of the cashmere contained therein.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission having now determined that the hearing examiner's supplemental initial decision on remand of proceeding, filed June 22, 1961, is adequate and appropriate to dispose of this proceeding:

It is ordered, That the aforesaid supplemental initial decision on remand of proceeding be, and it hereby is, adopted as that of the Commission.

It is further ordered, That the respondents Elliot Knitwear, Inc., and Elliot Import Corporation, both corporations, and Herman Gross, 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 supplemental initial decision on remand of proceeding.

IN THE MATTER OF
RURAL GAS SERVICE, INC., ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT AND SECTIONS 2 AND 3 OF THE CLAYTON ACT

Docket 7065. Complaint, Feb. 19, 1958—Decision, Oct. 24, 1961

Order dismissing—the allegations not being adequately supported by the record—complaint charging a distributor of liquified petroleum (LP) gas in the New England states and New York with obliging its distributors to purchase their gas requirements and equipment only from it, preventing its dealers from engaging in the same business for one year after termination of their contracts, and discriminating in price.

Mr. John Perechinsky for the Commission.

Bulkley, Richardson, Godfrey and Burbank, Springfield, Mass., by
Mr. Robert B. Atkinson for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

1. The corporate respondent, Rural Gas Service, Inc., a Massachusetts corporation, is engaged in the sale and distribution of liquefied petroleum gas (propane), with its main office and plant located in Westfield, Massachusetts. The area in which the company sells comprises the New England States (Massachusetts, Vermont, New Hampshire, Connecticut, Maine, Rhode Island) and the State of New York. The individual respondent, George Hammond, is President of the corporation and directs and controls its policies and practices. For convenience the singular term respondent will be used hereinafter and will refer to the corporation.

2. The Commission's complaint is in three counts. Count I charges the maintenance of an exclusive-dealing arrangement between respondent and its distributors, in violation of Section 3 of the Clayton Act. Count II charges violation of the Federal Trade Commission Act through the maintenance and enforcement by respondent of a policy which prevents its distributors from engaging in a similar business in a specified territory for a designated period of time after the severance of their relationship with respondent. Count III charges price discrimination by respondent in violation of Section 2(a) of the Clayton Act.

3. Upon the close of the case in chief in support of the complaint, respondent moved to dismiss for failure of proof. Admittedly there was no evidence in support of Count III, and this count was dismissed by order of the hearing examiner issued March 3, 1960. In the same order the motion to dismiss was denied as to the other two counts. Thereafter, respondent presented its evidence as to Counts I and II. Proposed findings and conclusions have been submitted by the parties, oral argument not having been requested, and the case is now before the hearing examiner for final consideration. Any proposed findings or conclusions not included herein have been rejected.

4. As indicated by its name, liquefied petroleum gas is in liquid form. It may be stored under pressure in metal tanks and cylinders. When released, it is in the form of a gas and is used in both homes and industrial plants for heating, refrigeration, cooking, fuel and other purposes. Respondent's sales of the product fall into two general categories: bulk sales, and sales in relatively small interchangeable cylinders. These cylinders are some 4½ feet in height and hold approximately 100 pounds of gas. In bulk sales, the gas is delivered by respondent in tank trucks to stationary tanks on the premises of the consumer. The tanks range in capacity from a few hundred gallons to many thousands of gallons. In both bulk sales and cylinder sales, all of the equipment, including tanks, cylinders, piping, tubing, etc., is supplied—loaned—to the consumer by respondent.

5. Some 60 percent of respondent's sales fall into the bulk category. These sales are made by respondent through its own employees direct to the consumer, no distributor or other intermediate party being involved. The remaining 40 percent fall largely into the cylinder category. These sales are made through some ninety distributors located at various places in respondent's sales area. While the distributors also solicit bulk sales to some extent, usually with the assistance of respondent's employees, such sales make up only a minor part of their business; by far the greater portion of their business is made up of sales in interchangeable cylinders.

6. Consumers wishing to be supplied by respondent with gas through its interchangeable cylinder service execute a written "Consumer Application" to respondent. While the application is made through the distributor, the application, if accepted by respondent, is in fact a contract between the consumer and respondent, not between the consumer and the distributor.

7. Relations between respondent and its distributors are governed by a contract known as a "Distributor Agreement", and it is certain provisions in this contract which form the principal subject matter of the present proceeding. There is sharp difference of opinion between counsel as to whether the agreement is in legal effect a contract

of sale and purchase as contended by Commission counsel, or a contract of agency as claimed by respondent's counsel. For the purposes of the present decision it is assumed by the hearing examiner that the agreement is one of sale and purchase. (In this connection it might be noted that some three years ago the form of the agreement was revised and it is now designated as an "Agency Agreement".)

8. As already stated, Count I of the complaint charges the maintenance of an exclusive-dealing arrangement between respondent and its distributors, in violation of Section 3 of the Clayton Act. There is no doubt that an exclusive-dealing arrangement does exist. Respondent's agreement with its distributors expressly provides that the distributor will purchase all of his requirements of liquefied petroleum gas from respondent; that no such gas except that purchased from respondent in cylinders bearing respondent's trade name shall be purchased or sold by the distributor; and, further, that no gas service equipment except that furnished by respondent shall be purchased, sold, or used by the distributor.

9. Next presented is the vital question of the competitive effect of the exclusive-dealing arrangement. Considered alone, that is, apart from figures for the industry generally, respondent's sales are substantial. Its total sales of liquefied petroleum gas in the area in question amounted to \$1,390,472.64 in 1956 and \$1,465,660.53 in 1957. These figures, however, lose their significance when considered in connection with total sales by the industry in the same area. Total sales, in gallons, in the area by the industry and by respondent for the years 1953-1957 were as follows:

Year	Total industry sales	Respondent's sales
1953	168,676,000	4,076,294
1954	182,326,000	4,585,964
1955	188,625,000	5,115,100
1956	206,914,000	6,227,709
1957	220,352,000	5,932,714

10. It will thus be seen that respondent's sales accounted for only some 3 percent of the total sales by the industry in the area. And, as already indicated, some 3/5ths of respondent's sales are bulk sales which are made by it direct through its own employees, its distributors being in no way involved. Other evidence establishes that the liquefied petroleum gas industry in the area is highly competitive; that there are numerous sellers, one hundred or more, active in the area; and that a number of these are larger than respondent.

11. It is elementary that Section 3 of the Clayton Act forbids exclusive-dealing arrangements only where the effect "may be to substantially lessen competition or tend to create a monopoly". Clearly,

no such effect has been shown here. In fact, the record establishes the contrary. In order to find a violation of the statute it would be necessary to hold that respondent's contract with its distributors is unlawful per se, a view for which there is no warrant in the statute nor, insofar as the hearing examiner is advised, in any of the adjudicated cases.

12. Count II of the complaint attacks as violative of the Federal Trade Commission Act a provision in respondent's contract with its distributors to the effect that the distributor shall not, for a period of one year after the termination of his contract, engage in the business of selling liquefied petroleum gas in the territory covered by the contract. It appears that in some five or six instances respondent has instituted litigation against former distributors to enforce this provision and that it was successful in each instance.

13. The validity of covenants of this kind turns upon the question of their reasonableness. Here both the time element (one year) and the geographical limitation (the territory in which the distributor has been selling respondent's product) appear to be reasonable. It must be remembered that respondent has a substantial investment in the equipment loaned to consumers and also that the consumers' contracts are with respondent, not with the distributors. It further appears that while there are exceptions (one of which is exemplified by testimony the present case), usually distributors upon entering into their agreements with respondent are furnished by it with an already-existing supply of customers, that is, consumers who have entered into purchasing agreements with respondent.

14. In these circumstances there is merit in respondent's contention that it is entitled to reasonable protection against a distributor who, immediately upon the termination of his relations with respondent, would undertake the sale of a competing product and solicit business from consumers under contract to respondent.

15. Also attacked in Count II of the complaint is a provision in respondent's contract with its distributors which requires that upon termination of the contract the distributor shall surrender to respondent any executed consumer agreements which the distributor may have on hand. No illegality is seen in this provision. As heretofore pointed out, the consumer agreements are between the consumer and respondent, and respondent's contract with its distributors expressly provides that the consumer agreements are the property of respondent, not that of the distributor.

16. Finally, as Count II is based upon the Federal Trade Commission Act, the presence of substantial public interest is an essential element in the proceeding insofar as that count is concerned. In the light of the competitive conditions existing in the trade area in ques-

tion, it seems clear that the requisite public interest is not present. Actually, what the complaint seems to seek to do is to afford relief to respondent's distributors from what the complaint apparently regards as a burdensome and improvident contract. If the contract may properly be so regarded (as to which the hearing examiner expresses no opinion), the matter is essentially a private controversy, not a matter involving the substantial public interest necessary to bring it within the purview of the Federal Trade Commission Act.

CONCLUSION

The complaint has not been sustained.

ORDER

It is ordered, That the complaint be, and it hereby is, dismissed.

OPINION OF THE COMMISSION

By ELMAN, Commissioner:

This is an appeal from the hearing examiner's dismissal of the complaint.

Respondent, Rural Gas Service, Inc., sells liquefied petroleum (LP) gas in the New England states and the state of New York. It ranks about eighth in LP gas sales, accounting for approximately 3% of total sales in this area. In the states of Massachusetts and New Hampshire, however, it accounts for 8% of total sales.

Approximately 40% of respondent's sales are made through distributors while 60% are made directly to consumers. Most of the gas sold through distributors is delivered in 100 lb. cylinders; gas to consumers is generally delivered in bulk to larger storage tanks on the consumer's premises.

Respondent has entered into agreements with each of its distributors which require the distributor to purchase all of its requirements of LP gas from respondent, prohibit it from purchasing or selling any LP gas except that purchased from respondent in its cylinders, and further prohibit it from purchasing, selling or using any gas service equipment except that furnished by respondent. Each agreement also provides that upon termination the distributor may not engage for one year in the sale of LP gas in the territory covered by the agreement.

In addition to the distributor agreements, Rural Gas has entered into agreements with each consumer, whether its purchases were made directly from respondent or through one of respondent's distributors, which provide that the consumer must use only LP gas and gas equipment furnished by respondent. The initial period of these

agreements is one year in the case of bulk sales and three years for sales through dealers in 100 lb. cylinders.

The complaint contains three counts. Count One alleges that the agreements with respondent's distributors, obliging them to purchase their requirements of LP gas from respondent and to use only cylinders and other equipment supplied by respondent, violate Section 3 of the Clayton Act by foreclosing competition in this segment of the market. Count Two charges that the foregoing provisions, together with the provision of the dealer contracts preventing the dealers from engaging in the same business for a period of one year after termination of their contracts, plus the requirements contracts between respondent and its consumer customers, violate Section 5 of the Federal Trade Commission Act. Count Three charges respondent with price discrimination in violation of the Robinson-Patman Act. No evidence was introduced on this count, and it was dismissed by the examiner at the close of the case-in-chief.

The examiner's initial decision was issued January 24, 1961. With respect to Count I, he held that since respondent's total sales accounted for only 3% of total industry sales in its market area, and since $\frac{3}{5}$ of these sales were made directly to consumers and not through its distributors, the requisite effect on competition had not been shown. On Count II, the examiner held that the post-termination restrictions upon respondent's distributors were a reasonable protection of its investment in equipment loaned to consumers and of its relationship with these consumers. He further held that these restrictions were lacking in substantial public interest and constituted "essentially a private controversy" beyond the purview of the Federal Trade Commission Act.

Without concurring in all of the views expressed in the initial decision, we have concluded that the allegations of the complaint are not adequately supported by the record, and that, in the circumstances of this case,¹ the complaint should be dismissed.

Count I: The likelihood of competitive injury which is requisite to proof of violation of Section 3 of the Clayton Act may, of course, be satisfied, as the Supreme Court held in the so-called *Standard Stations* case, by a showing of foreclosure of competition in a substantial segment of the relevant line of commerce. *Standard Oil Co. v. United States*, 337 U.S. 293 (1949). Respondent accounted for approximately 3% of total LP gas sales in all of the states in which it sold, and approximately 8% of total sales in each of the states

¹ Whether, because of deficiencies in proof, a case should be remanded for the taking of further evidence or the complaint should be dismissed necessarily depends on the Commission's determination, in the light of all relevant factors, as to which disposition would best serve the public interest in effective enforcement of the law.

of Massachusetts and New Hampshire. These figures do not reflect, however, the amount of competition which was foreclosed by the exclusive dealing contracts—the essential question under Section 3.

Respondent made only about 40% of its total sales through distributors, and only this part of its business was foreclosed to competition by the exclusive dealing provisions of its dealer contracts. Forty per cent of respondent's business would, of course, amount to less than $\frac{1}{2}$ of its 8% market share even in the states where it did the largest share of the total business. This situation resembles *Standard Stations* where the defendant sold about 23% of the gasoline in the relevant market, but where its sales through individual distributors who were affected by its requirements contracts accounted for only about 6.7% of the market. The Supreme Court considered this foreclosure sufficient to meet the requirements of Section 3, but gave no indication as to how small a market share might suffice in another case.

In the present case, we are not able to infer competitive injury solely from the market shares foreclosed. Where foreclosure is so small, further evidence of competitive effect is required. Such evidence is here completely absent. The record fails to reveal even the most basic information concerning the structure of the industry, e.g., the relative size of the competitors of Rural Gas and the method by which their gas is sold. The latter would seem of particular importance since if it should be found that these competitors sold their gas directly to consumers, competition could hardly be injured by their foreclosure from possible sales to respondent's distributors.

The brief of counsel supporting the complaint seeks to enlarge the market shares foreclosed by pointing out that all of respondent's sales, whether made directly or through distributors, were covered by consumer contracts which required the purchasers to buy all of their requirements of LP gas from respondent. It is claimed that all of respondent's sales were thus foreclosed from competition. But this was not alleged in the Section 3 Clayton Act Count, which concerns only the contracts with respondent's distributors.² Further, the requirements contracts with consumers were for relatively short periods (from one to three years) and since consumers could change suppliers at the end of these periods, their effect upon competition is, on this record at least, too speculative to serve as a basis for finding the requisite competitive injury.

² Although Count II did allege the requirements provisions of the agreements with consumers who purchased through respondent's dealers, it did not allege the similar provisions of respondent's contracts with its bulk customers. Thus, even under Count II, the alleged requirements contracts with consumers could not serve to increase the share of competition foreclosed.

Even if the foreclosure resulting from respondent's consumer agreements were to be considered under Count I, the foreclosure could probably be considered substantial only in the states of Massachusetts and New Hampshire where respondent accounted for about 8% of total LP gas sales. But the record contains no evidence from which the appropriateness of these states as relevant market areas may be determined. Although the Supreme Court in *Tampa Electric Co. v. Nashville Coal Co.*, 365 U.S. 320 (1961), did not purport to lay down any absolute or comprehensive principles applicable to every case, its opinion makes clear that "the area of effective competition in the known line of commerce must be charted by careful selection of the market area in which the seller operates, and to which the purchaser can practicably turn for supplies." 365 U.S., at 327. No facts from which an "area of effective competition" smaller than respondent's total market area could be delineated are to be found in the present record.

In sum, although the restrictive agreements imposed by respondent on its distributors are of the very sort proscribed by Section 3, there is lacking here the evidence necessary to determine that the agreements have that degree of substantiality in their anticompetitive effects required to condemn them under the statute. See *Murray Space Shoe Corp.*, D. 7476 (Oct. 17, 1961), p. 803 herein.

Count II: The same considerations which preclude a finding of violation of Section 3 of the Clayton Act in the exclusive dealing provisions of respondent's dealer agreements similarly bar a finding of a violation of Section 5 of the Federal Trade Commission Act.

Count II also alleges the unlawfulness of respondent's dealer agreements in so far as they prohibit a dealer from engaging in a similar business for a period of one year after termination of its agreement. The validity of these covenants does not, as the examiner's opinion implies, depend on their abstract reasonableness, viewed in isolation from other provisions of the agreements or respondent's entire course of dealings with its distributors. Nor can we agree that these covenants involve only a private controversy between respondent and its dealers. In addition to the reasonableness of their duration and geographic scope and the interest intended to be protected by them, the legality of these provisions depends on whether they have the substantial potential capacity to aid in enforcing compliance by the dealers with other unlawfully restrictive practices. It was in this context that such covenants were held unlawful in *Dictograph Products, Inc. v. Federal Trade Commission*, 217 F.2d 821 (C.A. 2, 1954), cert. denied, 349 U.S. 940. However, in the instant case, since no other provisions of respondent's dealer agreements have been proved

unlawful, and since these covenants do not appear unreasonable when viewed alone, we cannot find that they violate Section 5 of the Federal Trade Commission Act.

With the foregoing modifications, the Commission adopts the examiner's initial decision and order dismissing the complaint. This disposition of the case will not, of course, preclude the initiation of any new proceedings in the future based upon new or additional facts not shown by the present record, if such proceeding be required in the public interest.

Commissioner MacIntyre did not participate in the decision of this case.

FINAL ORDER

This matter having been heard by the Commission upon the appeal of counsel in support of the complaint from the hearing examiner's initial decision and order dismissing the complaint, and upon the briefs and oral argument in support thereof and in opposition thereto; and

The Commission, for the reasons stated in the accompanying opinion, having denied the appeal of counsel in support of the complaint and having adopted the examiner's initial decision as modified by the opinion of the Commission:

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

It is further ordered, That the complaint be, and it hereby is, dismissed.

By the Commission, Commissioner MacIntyre not participating.

IN THE MATTER OF

GOLD SEAL CHINCHILLAS, INC., ET AL.

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

Docket 8058. Complaint, July 29, 1960—Decision, Oct. 24, 1961

Consent order requiring a Tacoma, Wash., seller of chinchilla breeding stock to cease misrepresenting—directly and through his salesmen, by written and oral statements—the ease and simplicity of raising such animals for profit, their rate of production, value of the animals raised, the returns to be expected from sale of the pelts, and the terms and conditions of the sale of the animals.

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 Gold Seal Chinchillas, Inc., a corporation, and Estell G. Streets, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Gold Seal Chinchillas, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oregon, with its principal office and place of business located at 8604 South Tacoma Way, in the City of Tacoma, State of Washington.

Respondent Estell G. Streets is an officer of said corporation and is the principal stockholder. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, and distribution of chinchilla breeding stock 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 chinchillas when sold, to be shipped from their place of business in the State of Washington to purchasers thereof located in various other states of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said chinchillas 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 chinchillas, respondents and their salesmen have made written and oral statements with respect to the ease and simplicity of raising such animals for profit, their rate of production, the value of chinchillas raised, the expected returns from their pelts, and the terms and conditions of the sale of such animals. Typical of said representations are the following:

1. That it is practicable to raise chinchillas in the home and large profits can be made in this manner.

2. That every mated pair of chinchillas offered for sale or sold by respondents will produce 3 pairs of breeding stock in one year, 8 pairs in two years and 22 pairs in three years; and that two pairs of chin-

chillas purchased from respondents will at the end of four years, or less, produce at least fifty mated pairs of top quality breeding stock.

3. That such fifty pairs of chinchillas raised from breeding stock purchased from respondents will produce two hundred or more chinchillas with top quality pelts each year thereafter for the pelting market.

4. That forty pairs of chinchillas raised from respondents' stock will result in an annual income of from \$6,472.50 to \$26,250.; that thirty pairs will result in an annual income of from \$4,315.00 to \$17,500.00.

5. That a grower of chinchillas, starting with two mated pairs purchased from respondents, will at the end of 3½ years or less have an annual income from pelts, depending upon their quality, of \$8,630.00, \$20,200.00 or \$35,000.00

6. That the value of two pairs of chinchillas purchased from respondents, and their increase, will be \$4,900.00 at the end of the first year and \$34,300.00 at the end of the third year.

7. That a pair of young unproven chinchillas is given free with the purchase of each pair of proven chinchillas as a special offer.

8. That a purchaser of respondents' chinchillas could expect to receive a price of from \$40, to \$160, for each pelt produced.

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

1. It is not practicable to raise chinchillas in the home and large profits cannot be made by raising chinchillas in such manner.

2. In most cases mated pairs of respondents' chinchillas will not produce 3 pairs of breeding stock in one year, 8 pairs in two years or 22 pairs in three years; and two pairs of chinchillas purchased from respondents will not in most cases produce fifty mated pairs of top quality breeding stock at the end of four years or less.

3. Fifty pairs of offspring from chinchillas purchased from respondents will rarely, if ever, produce as many as two hundred top quality pelts each year.

4. Forty pairs of chinchillas raised from respondents' stock will not result in an annual income of from \$6,472.50 to \$26,250, and thirty pairs of such chinchillas will not result in an annual income of from \$4,315.00 to \$17,500, but substantially less than these amounts.

5. A grower of chinchillas starting with two mated pairs purchased from respondents will not at the end of 3½ years have an annual income depending on quality of \$8,630.00, \$20,200.00 or \$35,000.00, but substantially less than these amounts.

6. The value of two pairs of chinchillas purchased from respondents, and the increase from the same, will not at the end of the first year

be \$4,900.00 nor \$34,300.00 at the end of the third year, but substantially less than these amounts.

7. The inclusion of a pair of unproven chinchillas with the purchase of each pair of chinchillas is not a special offer but is the customary way in which respondents sell their chinchillas.

8. A purchaser of respondents' chinchillas could not expect to receive a price of from \$40.00 to \$160 for each pelt produced, but substantially less than such amounts.

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

PAR. 7. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the tendency and capacity 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' chinchillas 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. Charles W. O'Connell for the Commission.

Mr. E. Albert Morrison, Tacoma, Wash., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on July 29, 1960, issued its complaint herein, charging the above-named respondents with having violated the provisions of the Federal Trade Commission Act in certain particulars, and respondents were duly served with process.

On August 30, 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 August 14, 1961, subject to the approval

of the Bureau of Deceptive Practices of the Commission, which had subsequently duly approved the same.

On due consideration of such agreement, the hearing examiner finds that said agreement, both in form and in content, is in accord with Section 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 Gold Seal Chinchillas, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Oregon, with its office and principal place of business located at 5446 South Washington, in the City of Tacoma, State of Washington. The former office and principal place of business of the corporate respondent, as stated in the complaint, was 8604 South Tacoma Way, Tacoma, Washington. Respondent Estell G. Streets is an officer of the corporate respondent. His 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; and

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

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 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 respondent Gold Seal Chinchillas, Inc., a corporation, and its officers and respondent Estell G. Streets, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of chinchilla breeding stock 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 the earnings or profits which may be derived through raising chinchillas for pelts is any amount in excess of the amount usually and customarily earned by growers of chinchillas purchased from respondents;

(2) That a mated pair of chinchillas purchased from respondents will produce breeding stock in any number in excess of the number usually and customarily produced by them; or that every two pairs of chinchillas purchased from respondents will produce at least fifty mated pairs of top quality breeding stock within four years;

(3) That every fifty pairs of offspring from chinchillas purchased from respondents will produce 200 or more top quality pelts each year for the pelting market; or that the number of top quality pelts produced from fifty pairs of such chinchillas is any number in excess of the number of top quality pelts usually and customarily produced by breeding stock purchased from respondents;

(4) That forty pairs of chinchillas will result in an annual income of \$6,472.50 to \$26,250.00; or that thirty pairs of chinchillas will result in an annual income of from \$4,315.00 to \$17,500.00 or that a grower of chinchillas starting with two mated pairs will at the end of 3½ years or less have an annual income from pelts of from \$8,630.00 to \$35,000.00; or that the earnings or profits which may be derived through raising chinchillas for pelts is any amount in excess of the amount usually and customarily earned by growers of chinchillas purchased from respondents under usual and normal conditions;

(5) That the value of two pairs of chinchillas purchased from re-

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spondents, and their offspring, will be \$4,900.00 at the end of the first year, or \$34,300.00 at the end of the third year; or that the value of two pairs of said chinchillas and their offspring at the end of any year will be any value in excess of the actual value of said animals;

(6) That a pair of young unproven chinchillas is given free or any other thing of value is given free unless such is the fact;

(7) That a purchaser of respondents' breeding stock will receive for the average chinchilla pelt produced any amount in excess of the amount usually and customarily received therefor.

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 24th day of October, 1961, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

GEORGE W. REAVES, JR., DOING BUSINESS AS
GEORGE W. REAVES, JR

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

Docket 8208. Complaint, Dec. 7, 1960—Decision, Oct. 24, 1961

Consent order requiring a distributor of food products in Dallas, Tex., to cease violating Sec. 2(c) of the Clayton Act by receiving from suppliers brokerage on purchases for his own account for resale, such as a discount of 10 cents per 1 $\frac{3}{8}$ bushel box of citrus fruit from Florida sellers.

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 George W. Reaves, Jr., is an individual doing business in his own name under and by virtue of the laws of

the State of Texas, with his office and principal place of business located at 910 South Pearl Street, Dallas, Texas.

PAR. 2. Respondent is now, and for the past several years has been, engaged in business primarily as a distributor, buying, selling and distributing, for his own account, citrus fruit, produce and other food products, all of which are hereinafter sometimes referred to as food products. Respondent purchases his food products from a large number of suppliers located in many sections of the United States.

In many transactions respondent also acts in the capacity of a broker, representing packer-principals, located in many sections of the United States, in the sale and distribution of their citrus fruits and produce, and is paid for his services in connection therewith the packers' usual rate of brokerage on the particular type of product sold. For example, some of the packer-principals so represented by respondent are citrus fruit packers located in the State of Florida. When so representing these packer-principals located in Florida, as their broker, respondent is paid for his services in connection with the sale of their citrus fruit, a brokerage or commission usually at the rate of 10 cents per 1 $\frac{3}{8}$ bushel box, or equivalent.

The annual volume of business done by respondent, both as a distributor and as a broker, is substantial.

PAR. 3. In the course and conduct of his business for the past several years, respondent has purchased and distributed, and is now purchasing and distributing, food products in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, from suppliers or sellers located in several States of the United States other than the State of Texas, in which respondent is located. Respondent transports, or causes such food products, when purchased, to be transported from the places of business or packing plants of his suppliers located in various other States of the United States to respondent who is located in the State of Texas, or to respondent's customers located in said State, or elsewhere. In addition, respondent, when representing packer-principals, has, directly or indirectly, caused such food products, when sold or purchased, to be shipped and transported from various packers' packing plants or places of business to respondent or to respondent's customers located in states other than the state of origin of the shipment. 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 for the past several years, but more particularly since January 1, 1958, respondent has been and is now making substantial purchases of food products for

his own account for resale from some, but not all, of his suppliers, and on a large number of these purchases respondent has received and accepted, and is now receiving and accepting, from said suppliers a brokerage, commission, 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 suppliers or sellers located in the State of Florida and has received from these suppliers or sellers on said purchases, a brokerage or commission, or a discount in lieu thereof, usually at the rate of 10 cents per 1 $\frac{3}{5}$ bushel box, or equivalent. In many instances, respondent receives a lower price from the suppliers or sellers 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).

Messrs. Cecil G. Miles and Ernest G. Barnes supporting the complaint.

Mr. L. W. Anderson of Dallas, Tex., for respondent.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

The complaint in this proceeding alleges that the above-named respondent in the course and conduct of his business in commerce has violated Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

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

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 he 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 George W. Reaves, Jr., is an individual doing business as George W. Reaves, Jr., under and by virtue of the laws of the State of Texas, with his office and principal place of business located at 910 South Pearl Street, Dallas, Texas.

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

ORDER

It is ordered, That George W. Reaves, Jr., an individual doing business as George W. Reaves, Jr., 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 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 his own account, or where respondent is the agent, representative, or other intermediary acting for or in behalf, or is subject to the direct or indirect control, of any buyer.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

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 24th day of October, 1961, become the decision of the Commission; and accordingly:

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

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IN THE MATTER OF

E. J. KORVETTE, INC., ET AL.

CONSENT ORDER, ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 8276. Complaint, Jan. 16, 1961—Decisions, Oct. 24, 1961*

Identical orders consented to by a New York City department store chain, three men's retail clothing stores in California, and six New York City men's clothing manufacturers, and issued in default against four New York City men's clothing manufacturers, requiring them to cease engaging in a common course of action under which said chain arranged for the manufacturers to sew labels of the three fashionable California men's retail clothing stores into garments it purchased direct from the manufacturers and then falsely advertised the merchandise as previously stocked and offered for sale by the three retailers at stated "Original Prices" and the difference between those amounts and advertised lower prices as constituting a saving to purchasers; and

Further consent order requiring said chain to cease misrepresenting the sources, history, prices, and savings afforded purchasers of men's wearing apparel it sold under the above-described plan or otherwise.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondents named in the caption hereof and hereinafter more particularly designated and described, have violated the provisions of Section 5 of the Federal Trade Commission Act (U.S.C. Title 15, Section 45) and it appearing to the Commission that a proceeding by it in respect thereof would be to the interest of the public, hereby issues its complaint pursuant to its authority thereunder and charging as follows:

PARAGRAPH 1. Respondent E. J. Korvette, Inc., hereinafter referred to as respondent Korvette, is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 12 East 46th Street, New York, New York.

Respondent Korvette is now, and at all times material hereto has been, engaged in the business of operating a chain of department stores selling to the public various types of goods, wares and merchandise, including men's wearing apparel such as suits, topcoats, sport coats, slacks, dress and sport shirts, ties and sweaters (said men's wearing apparel is hereinafter referred to as apparel merchandise) in competition with other corporations, firms and individuals also engaged in selling to the public goods, wares and apparel merchandise of the same nature. Respondent Korvette, directly or through sub-

sidiaries, owns and operates department stores in the States of New York, New Jersey, Pennsylvania and Connecticut.

In the course and conduct of its business, respondent Korvette now causes, and for some time last past has caused, goods, wares and apparel merchandise to be shipped from various manufacturers and sellers thereof in the several States of the United States to its department stores located in States other than the State where such shipments originate. Respondent Korvette, through its department stores, in some instances, has been and is now engaged in the sale of goods, wares and apparel merchandise to purchasers thereof located in States other than the State where the Korvette department store making the sale of the goods, wares and apparel merchandise is located. In such instances, respondent Korvette causes said goods, wares and apparel merchandise to be shipped and transported across State lines. Said respondent is and has been engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act.

In addition, respondent Korvette has been, and is now, engaged in disseminating and in causing to be disseminated in newspapers of interstate circulation, advertisements designed and intended to induce sales of its goods, wares and apparel merchandise. The amount expended by respondent Korvette upon such advertising has been and is now in excess of one million dollars annually.

PAR. 2. The respondents named in this Paragraph Two will sometimes hereinafter be referred to as "respondent retailers."

(a) Respondent Richel, Inc., doing business as Gus S. May, is a corporation organized and existing under the laws of the State of California, with its principal office and place of business located at 9878 Wilshire Boulevard, Beverly Hill, California.

(b) Respondent Ray Blumenthal, Jr., is an individual doing business as Ray's Shop for Men, with his office and principal place of business located at 222 North Palm Canyon Drive, Palm Springs, California.

(c) Respondent Monte Factor, Ltd., is a corporation organized and existing under the laws of the State of California, with its principal office and place of business located at 270 North Beverly Drive, Beverly Hills, California.

The respondent retailers named above in this Paragraph Two are now, and at all times material hereto have been engaged in the business of operating well-known retail establishments selling a line of high-priced men's clothing and furnishings and catering to vacationers, celebrities and others at Beverly Hills or Palm Springs, California or Las Vegas, Nevada. In 1959, each of these respondent retailers sold and shipped across State lines in interstate commerce a quantity of apparel merchandise and labels from each of their respective retail

establishments in Beverly Hills or Palm Springs to respondent Korvette in New York, New York.

PAR. 3. The respondents named in this Paragraph Three will sometimes hereinafter be referred to collectively as "respondent manufacturers".

(a) Respondent Bank Street Clothes, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 162 Fifth Avenue, New York, New York.

(b) Respondent Blacker Bros., Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 53 West 23rd Street, New York, New York.

(c) Respondent Al Meirou is an individual doing business as Al Meirou, with his office and principal place of business located at 133 Fifth Avenue, New York, New York.

(d) Respondent Kasinoff-Herman, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 80 Fifth Avenue, New York, New York.

(e) Respondent Townsman Clothes, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 120 Fifth Avenue, New York, New York.

(f) Respondent Leslie Lloyds Clothes, Incorporated, is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 73 Fifth Avenue, New York, New York.

(g) Respondent Damon Creations, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 16 East 34th Street, New York, New York.

(h) Respondents David Rappaport and Emanuel Rappaport are co-partners doing business as Lord Stuart Company, with their principal office and place of business located at 16 East 34th Street, New York, New York.

(i) Respondent Atlantic Shirt Co., Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 1235 Broadway, New York, New York.

(j) Respondent Lido Shirt Corporation is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 915 Broadway, New York, New York.

The respondent manufacturers named above in this Paragraph Three are now, and at all time materials hereto have been, engaged in the business of manufacturing and selling, or in selling and distributing, apparel merchandise, consisting of either one or more of the following items, men's suits, top coats, sport coats, slacks, dress shirts, sport shirts, ties and sweaters, to retailers and jobbers located in various parts of the United States. In the course and conduct of their respective businesses, each of said respondent manufacturers has shipped, and now ships, one or more of the above named items of apparel merchandise from its place of business in the State of New York to purchasers located in other States and maintain a course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In 1959, through a series of transactions in interstate commerce, as hereinafter alleged, respondent Korvette, respondent retailers and respondent manufacturers entered into an understanding, agreement, combination and conspiracy between and among themselves to pursue, and they did pursue a planned common course of action between and among themselves to deceive and mislead the purchasing public or cause the purchasing public to be deceived and misled, through false and deceptive advertising and misrepresentations in connection with respondent Korvette's purchasing, advertising, offering for sale and selling of a substantial quantity of apparel merchandise, consisting of but not limited to men's suits, top coats, sport coats, slacks (trousers), dress and sport shirts, ties and sweaters.

Pursuant to said understanding, agreement, combination, conspiracy and planned common course of action, and in furtherance thereof, respondent Korvette, respondent retailers and respondent manufacturers acted in concert and in cooperation in doing and performing the following methods, acts and practices:

(a) Respondent Korvette entered into separate understandings and agreements with respondent retailers to purchase a quantity of apparel merchandise from each respondent retailer with respondent Korvette being authorized by the respondent retailer to publicize said purchase and to advertise and sell said apparel merchandise with the respective respondent retailer's label and trade name affixed to the apparel merchandise purchased from the particular respondent retailer.

(b) Respondent Korvette in addition entered into other separate understandings and agreements with the respondent retailers which purported to sell, assign and transfer to respondent Korvette certain purchase orders or purchase commitments for apparel merchandise

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which each respondent retailer had purportedly previously placed with the respondent manufacturers and other men's clothing manufacturers. Pursuant to these understandings and agreements, the said manufacturers were purportedly authorized to deliver to respondent Korvette apparel merchandise that had been previously purchased by the respective respondent retailers, and respondent Korvette was authorized to advertise and sell said purportedly assigned apparel merchandise with the labels and trade names of the respective respondent retailers affixed thereto.

(c) Subsequent to entering into the understandings and agreements referred to and described in subparagraph (b) of this Paragraph Four, respondent Korvette entered into separate understandings and agreements with each of the respondent manufacturers to purchase, and it did purchase, substantial quantities of apparel merchandise with labels affixed thereto bearing the trade names of the respective respondent retailers. Pursuant to said understandings and agreements with the respondent manufacturers, respondent Korvette selected the types, styles, sizes and quantities of apparel merchandise which would be purchased from each respondent manufacturer, and respondent Korvette furnished, or caused the respondent manufacturers to be furnished, with labels of each of the respondent retailers for sewing onto the apparel merchandise purchased.

(d) Following the making of the understandings and agreements referred to and described in the foregoing subparagraphs of this Paragraph Four, respondent Korvette made the following typical, but not all inclusive, statements in a series of advertisements appearing in newspapers circulated in interstate commerce:

(1)

Only At Korvette's
Gus S. May the Finest Men's Apparel from the
Exclusive Beverly Hilton, Beverly Hills Calif.
Sale! Men's Luxury Wear

Gus S. May
of the Beverly Hilton, Beverly Hills Calif.
Hand-Tailored Suits
\$46 \$56
Gus S. May Original Prices
\$95 to \$135

Gus S. May
of the Beverly Hilton
Men's Deluxe Sport Jackets
Gus S. May Original Prices \$55-\$75
\$21.97 \$29.97

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(2)

From Palm Springs California
Millionaire's Menswear Sale!
You See The Original Labels and Price Tickets
From Exclusive RAY'S OF PALM SPRINGS!
You Get This Luxury Apparel at
Sensational Korvette Savings!

RAY'S
of Palm Springs, California
Men's Hand Tailored Suits
Ray's Original Prices \$95 to \$135
\$46 — \$56

RAY'S of Palm Springs
Men's Luxurious Dress Shirts
Ray's Original Prices 8.95 to 12.95
3.99 — 5.99

(3)

From Beverly Hill's! From Las Vegas!
Glamour Sports of the World Where Movie Stars Shop!
Monte Factor Men's Wear
Only at E. J. Korvette

Men's Hand Tailored Suits
Monte Factor Ltd. Original Prices \$95-\$135
\$46 — \$56

Monte Factor Ltd.
of the Stardust—Las Vegas
Men's Long Sleeve Sport Shirts
Monte Factor Ltd. Original Prices 6.95-10.95
3.99 — 5.99

PAR. 5. Through the use of the aforesaid statements, and others similar thereto not included herein, respondent Korvette represented that:

(1) The stock of apparel merchandise advertised and offered for sale with the respective respondent retailer's labels and price tickets affixed thereto was apparel merchandise which had been previously stocked and offered for sale by the respective respondent retailers and which had been purchased from each of the respondent retailers by respondent Korvette.

(2) The amounts designated as the "Original Prices" of the respective respondent retailers were the prices at which the apparel merchandise had been sold at retail by each of the respondent retailers in the recent, regular course of their respective businesses.

(3) The purchasers of the apparel merchandise with the respective respondent retailer's labels and price tickets affixed thereto were afforded savings equal to the differences between the higher and lower prices listed in said statements.

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

(1) Except for a small quantity of apparel merchandise which was purchased and obtained directly from each respondent retailer, all of the apparel merchandise advertised and offered for sale by respondent Korvette, with the labels and price tickets of the respective respondent retailers affixed thereto, was apparel merchandise which respondent Korvette purchased directly from the respondent manufacturers who sewed and affixed the labels of the respective respondent retailers to said apparel merchandise in accordance with the instructions and directions of respondent Korvette.

(2) Except for the small quantity of apparel merchandise which was purchased and obtained directly from each respondent retailer, the apparel merchandise advertised and offered for sale by respondent Korvette with the labels and price tickets of the respondent retailers affixed thereto was apparel merchandise which had never been stocked and offered for sale by any of the respondent retailers and, consequently, the amounts designated as the "Original Prices" of the respective respondent retailers were never applicable to said apparel merchandise.

(3) The purchasers of the apparel merchandise with the respective respondent retailer's labels and price tickets affixed thereto were not afforded savings equal to the differences between the higher and lower prices listed in said statements.

PAR. 7. All of the respondents were or are in substantial competition, in commerce, with other corporations, firms, and individuals engaged in the sale of apparel merchandise of the same general nature as that sold by respondents.

PAR. 8. The understanding, agreement, combination, conspiracy and planned common course of action in interstate commerce, and the methods, acts and practices of the respondents, as hereinbefore alleged, were designed and perpetrated to form some tenable basis for respondent Korvette using the aforesaid false, misleading and deceptive statements and representations in newspaper advertisements and to increase substantially the sales of apparel merchandise by all of the respondents to the detriment of competition. The use by respondent Korvette of the aforesaid false, misleading and deceptive statements and representations had the capacity and tendency to mislead and deceive members of the purchasing public into the erroneous and mistaken belief that the said statements and representations were true and into the purchase of substantial quantities of respondent Korvette's apparel merchandise because of such mistaken and erroneous belief. As a result of the aforesaid understanding, agreement, combination, conspiracy and planned common course of action and the

methods, acts and practices between and among all of the respondents herein and as a result of respondent Korvette's use of the aforesaid false, misleading and deceptive statements in newspaper advertising, substantial trade in commerce has been unfairly diverted to the respondent manufacturers and respondent Korvette from their competitors and substantial injury has thereby been done to competition in commerce.

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

Mr. William J. Boyd, Jr., supporting the complaint.
Simpson, Thacher & Bartlett, of New York, N.Y., for respondent Korvette;
Mr. Abraham Gottfried, of Beverly Hills, Calif., for respondent Richel;
Simon, Simon & Cleary, of Palm Springs, Calif., and *Mr. Harry Levin*, of Washington, D.C., for respondent Blumenthal;
Aaronson & Weil, of Beverly Hills, Calif., for respondent Factor;
Respondent Bank Street, *pro se*;
Mr. Simon F. Gross, of New York, N.Y., for respondent Meiorow;
Lopin & Jacobson, of New York, N.Y., for respondents Damon Creations, and *Messrs. David and Emanuel Rappaport*;
Rabbino & Ribbino, of New York, N.Y., for respondent Atlantic Shirt;
Mr. Alfred Norick, of New York, N.Y., for respondent Lido Shirt.

INITIAL DECISION AS TO CERTAIN RESPONDENTS BY JOHN LEWIS,
HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on January 16, 1961, 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 entering into a combination or conspiracy to deceive and mislead the purchasing public as to the sources, prices and savings of apparel merchandise advertised and offered for sale by respondent Korvette. After being served with said complaint respondents, except for respondents Blacker, Kasinoff-Herman, Townsman and Leslie Lloyds, appeared and entered into agreements dated, respectively, July 6, 25, 26, and 31, 1961, containing consent orders to cease and desist purporting to dispose of all of this proceeding as to all of said

parties. Said agreements, which have been signed by the appearing respondents, by counsel for said respondents (except for respondent Bank Street which was not represented) and by counsel supporting the complaint, and approved by the Director and Acting Chief of Division of the Bureau of Deceptive Practices, have 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.

The signatory respondents, pursuant to the aforesaid agreements, 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 agreements further provide that such 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 orders to cease and desist entered in accordance with such agreements. It has been agreed that the orders to cease and desist issued in accordance with said agreements 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 orders. It has also been agreed that the record herein shall consist solely of the complaint and said agreements, and that said agreements are for settlement purposes only and do 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 agreements containing consent orders, and it appearing that the orders provided for in said agreements cover all of the allegations of the complaint and provide for an appropriate disposition of this proceeding as to all parties signatory thereto, said agreements are hereby accepted and are 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. J. Korvette, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 12 East 46th Street, in the City of New York, State of New York.

Respondent Richel, Inc., doing business as Gus S. May, is a corporation existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 9878 Wilshire Boulevard, in the City of Beverly Hills, State of California.

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Respondent Ray Blumenthal, Jr., is an individual doing business as Ray's Shop for Men, with his office and principal place of business located at 222 North Palm Canyon Drive, in the City of Palm Springs, State of California.

Respondent Monte Factor, Ltd., is a corporation existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 270 North Beverly Drive, in the City of Beverly Hills, State of California.

Respondent Bank Street Clothes, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 162 Fifth Avenue, in the City of New York, State of New York.

Respondent Al Meirou is an individual doing business as Al Meirou, with his office and principal place of business located at 133 Fifth Avenue, in the City of New York, State of New York.

Respondent Damon Creations, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 16 East 34th Street, in the City of New York, State of New York.

Respondents David Rappaport and Emanuel Rappaport are co-partners doing business as Lord Stuart Company with their office and principal place of business located at 16 East 34th Street, in the City of New York, State of New York.

Respondent Atlantic Shirt Co., Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 1235 Broadway, in the City of New York, State of New York.

Respondent Lido Shirt 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 915 Broadway, in the City of New York, State of New York.

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 respondent, E. J. Korvette, Inc., a corporation, its officers, agents, representatives and employees, respondent Richel, Inc., a corporation, doing business as Gus S. May, or doing business under any other trade name, its officers, agents, representatives and employees, Respondent Ray Blumenthal, Jr., an individual doing business as Ray's Shop for Men, or doing business under any other trade

name, his agents, representatives and employees, respondent Monte Factor, Ltd., a corporation, its officers, agents, representatives and employees, respondent Bank Street Clothes, Inc., a corporation, its officers, agents, representatives and employees, respondent Al Meiorow, an individual doing business as Al Meiorow, or doing business under any other trade name, his agents, representatives and employees, respondent Damon Creations, Inc., a corporation, its officers, agents, representatives and employees, respondents David Rappaport and Emanuel Rappaport, co-partners doing business as Lord Stuart Company, or doing business under any other trade name, their agents, representatives and employees, respondent Atlantic Shirt Co., Inc., a corporation, its officers, agents, representatives and employees, and respondent Lido Shirt Corporation, a corporation, its officers, agents, representatives and employees, directly or through any corporate or other device, in or in connection with the advertising, offering for sale, sale or distribution of apparel merchandise and related products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common course of action, understanding, agreement, or combination between said respondent and any other respondent or respondents in the instant case, or between said respondent and any others not parties hereto, to:

1. Engage in, maintain or perpetuate any activities, acts or practices or to attempt to engage in, maintain or perpetuate any activities, acts or practices in purchasing, selling, manufacturing, or distributing said merchandise or products, whereby the origin, prior places of sale, past or present prices, or the quality or any other characteristic of said merchandise or products, is misrepresented, by any means or in any manner, or where the intent, purpose, or effect of same is to deceive, to mislead or to make any false claims concerning the origin, prior places of sale, prices, quality or other characteristics of said merchandise or products.

It is further ordered, That respondent E. J. Korvette, Inc., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of apparel merchandise and related 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:
 - (a) That any of said merchandise or products so advertised, offered for sale, sold, or distributed has been owned, was a part of the stock

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of, had been offered for sale by, or had been purchased by, any corporation, firm or individual when such is not the fact;

(b) That any of said merchandise or products previously has been offered for sale or sold in any place or geographical location, when such is not the fact;

(c) That any amount is the price at which any of said merchandise or products previously has been offered for sale or sold by any corporation, firm or individual, when such is not the fact; or

(d) That any saving is afforded in the purchase of said merchandise or products from the retail price of any corporation, firm or individual, which previously had sold or offered to sell same, unless the price at which said merchandise or products are offered by respondent, constitutes a reduction from the price at which said merchandise or products previously have been offered for sale or sold by said corporation, firm or individual in the recent regular course of business.

2. Misrepresenting, in any manner, savings available to purchasers at retail of any of said merchandise or products from respondent, or the amount by which the price of any of said merchandise or products is reduced from the retail price at which said merchandise or products previously have been offered for sale by respondent or another person in the recent regular course of business.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE
AS TO CERTAIN RESPONDENTS

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 24th day of October, 1961, become the decision of the Commission; and, accordingly:

It is ordered. That the respondents ordered to cease and desist in the initial decision 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 contained in the aforesaid initial decision.

INITIAL DECISION AS TO RESPONDENTS BLACKER BROS., INC., KASINOFF-HERMAN, INC., TOWNSMAN CLOTHES, INC., AND LESLIE LLOYDS CLOTHES, INCORPORATED, before John Lewis, Hearing Examiner

Mr. William J. Boyd, Jr., counsel supporting the complaint.

No appearances for respondents.

The Federal Trade Commission, on January 16, 1961, issued and thereafter served its complaint in this proceeding charging the re-

spondents hereinabove named with having engaged in unfair and deceptive acts and practices and unfair methods of competition, in commerce, in violation of the Federal Trade Commission Act, by entering into a combination or conspiracy to deceive and mislead the purchasing public as to the sources and prices of, and savings to be realized on, apparel merchandise advertised and offered for sale by certain of them. Although duly served with said complaint, respondents Blacker Bros., Inc., Kasinoff-Herman, Inc., Townsman Clothes, Inc., and Leslie Lloyds Clothes, Incorporated, failed to file answer thereto within thirty (30) days, as required by Section 3.7 of the Commission's Rules of Practice for Adjudicative Proceedings and by the Notice served with said complaint.

Thereafter, a hearing was held on July 24, 1961, in Washington, D.C., before the undersigned hearing examiner, theretofore duly designated to hear this proceeding. No appearance was made at said hearing by any of the non-answering respondents. Counsel supporting the complaint advised the undersigned that arrangements had been made with the remaining respondents for an appropriate disposition of the proceeding as to said respondents. Counsel supporting the complaint thereupon moved that, in view of the failure of the non-answering respondents to appear and show cause, the case be closed for the taking of testimony as to said respondents and that, in accordance with Section 3.7(b) of the Rules of Practice, the hearing examiner find the facts to be as alleged in the complaint. Counsel submitted a form of proposed order and moved that said order be entered against such respondents. The undersigned granted said motion to the extent that findings and conclusions would be made, based upon the allegations of the complaint, and that the proposed order would be taken into consideration in the framing of an appropriate order.

This proceeding having now come on for final consideration as to respondents Blacker Bros., Inc., Kasinoff-Herman, Inc., Townsman Clothes, Inc., and Leslie Lloyds Clothes, Incorporated, on the complaint and the proposed order of counsel supporting the complaint, and it appearing that the order proposed covers all of the allegations of the complaint pertaining to said respondents and provides for an appropriate disposition of this proceeding as to said respondents, and the undersigned having been advised that the proceeding will be otherwise appropriately disposed of as to the remaining respondents, the undersigned finds that this proceeding is in the interest of the public, and, in accordance with Section 3.7 of the Rules of Practice, makes the following findings as to the facts, conclusion and order:

FINDINGS OF FACT

PARAGRAPH 1. The respondents named in this Paragraph One will sometimes hereinafter be referred to collectively as "respondent manufacturers."

(a) Respondent Blacker Bros., Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 53 West 23rd Street, New York, New York.

(b) Respondent Kasinoff-Herman, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 80 Fifth Avenue, New York, New York.

(c) Respondent Townsman Clothes, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 120 Fifth Avenue, New York, New York.

(d) Respondent Leslie Lloyds Clothes, Incorporated, is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 73 Fifth Avenue, New York, New York.

The respondent manufacturers named above in this Paragraph One are now, and at all times material hereto have been, engaged in the business of manufacturing and selling, or in selling and distributing, apparel merchandise, consisting of either one or more of the following items, men's suits, top coats, sport coats, slacks, dress shirts, sport shirts, ties and sweaters, to retailers and jobbers located in various parts of the United States. In the course and conduct of their respective businesses, each of said respondent manufacturers has shipped, and now ships, one or more of the above-named items of apparel merchandise from its place of business in the State of New York to purchasers located in other States and maintains a course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 2. In 1959, through a series of transactions in interstate commerce, as hereinafter found, respondent manufacturers and certain other manufacturers, and the operator of a chain of department stores, together with certain other retailers, entered into an understanding, agreement, combination and conspiracy between and among themselves to pursue, and they did pursue a planned common course of action between and among themselves to deceive and mislead the purchasing public or cause the purchasing public to be deceived and misled, through false and deceptive advertising and misrepresentations in

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connection with the purchasing, advertising, offering for sale and selling of a substantial quantity of apparel merchandise, consisting of but not limited to men's suits, top coats, sport coats, slacks (trousers), dress and sport shirts, ties and sweaters, by the department store chain.

Pursuant to said understanding, agreement, combination, conspiracy and planned common course of action, and in furtherance thereof, the department store chain, certain other retailers and respondent manufacturers and certain other manufacturers acted in concert and in cooperation in doing and performing the following methods, acts and practices:

(a) The department store chain entered into separate understandings and agreements with certain retailers to purchase a quantity of apparel merchandise from each of said retailers, with the department store chain being authorized by the retailers to publicize said purchase and to advertise and sell said apparel merchandise with the respective retailers' labels and trade names affixed to the apparel merchandise purchased from the particular retailer.

(b) The department store chain, in addition, entered into other separate understandings and agreements with the said retailers which purported to sell, assign and transfer to said department store chain certain purchase orders or purchase commitments for apparel merchandise which each retailer had purportedly previously placed with the respondent manufacturers and certain other men's clothing manufacturers. Pursuant to these understandings and agreements, the said manufacturers were purportedly authorized to deliver to the department store chain apparel merchandise that had been previously purchased by the respective retailers, and the department store chain was authorized to advertise and sell said purportedly assigned apparel merchandise with the labels and trade names of the respective retailers affixed thereto.

(c) Subsequent to entering into the understandings and agreements referred to and described in subparagraph (b) of this Paragraph Two, the department store chain entered into separate understandings and agreements with each of the respondent manufacturers and certain other manufacturers to purchase, and it did purchase, substantial quantities of apparel merchandise with labels affixed thereto bearing the trade names of the respective retailers. Pursuant to said understandings and agreements with the said manufacturers, the department store chain selected the types, styles, sizes and quantities of apparel merchandise which would be purchased from each of said manufacturers, and the department store chain furnished, or caused the said manufacturers to be furnished, with labels of each of the aforementioned retailers for sewing onto the apparel merchandise purchased.

(d) Following the making of the understandings and agreements referred to and described in the foregoing subparagraphs of this Paragraph Two, the department store chain placed a series of advertisements in newspapers circulated in interstate commerce, in which it stated or represented, (1) that the apparel merchandise offered for sale with the respective retailers' labels and price tickets affixed was apparel merchandise which had previously been stocked and offered for sale by such retailers, (2) that the amounts designated as "Original Prices" were the prices at which the merchandise had been sold by such other retailers in the recent, regular course of business, and (3) that the purchasers would be afforded savings equal to the differences between the "Original Prices" and the lower prices advertised by the department store chain.

PAR. 3. The statements and representations made by the department store chain concerning said apparel merchandise so advertised by it were false, misleading and deceptive in that:

(1) Except for a small quantity of apparel merchandise purchased and obtained directly from the above-mentioned retailers, all of the apparel merchandise advertised and offered for sale by the department store chain in the aforementioned advertisements, with the labels and price tickets of said retailers affixed thereto, was apparel merchandise which the department store chain had purchased directly from the respondent manufacturers and certain other manufacturers, who sewed and affixed the labels of the respective retailers to said apparel merchandise in accordance with the instructions and directions of the department store chain.

(2) Except for the small quantity of apparel merchandise which was purchased and obtained directly from each retailer, the merchandise advertised and offered for sale by the department store chain in the aforementioned advertisements, with the labels and price tickets of said retailers affixed thereto, was apparel merchandise which had never been stocked and offered for sale by any of said retailers and, consequently, the amounts designated as "Original Prices" of such retailers were never applicable to said apparel merchandise.

(3) The purchasers of the apparel merchandise with such other retailers' labels and price tickets affixed were not afforded savings equal to the differences between the higher and lower prices listed in the advertisements.

PAR. 4. All of the respondents hereinbefore referred to are in substantial competition, in commerce, with other corporations, firms, and individuals engaged in the sale of apparel merchandise of the same general nature as that sold by respondents.

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PAR. 5. The understanding, agreement, combination, conspiracy and planned common course of action in interstate commerce, and the methods, acts and practices of the respondents, as hereinbefore found, were designed and perpetrated to form some tenable basis for the department store chain using the aforesaid false, misleading and deceptive statements and representations in newspaper advertisements to increase substantially the sales of apparel merchandise by all of the respondents to the detriment of competition. The use by the department store chain of the aforesaid false, misleading and deceptive statements and representations had the capacity and tendency to mislead and deceive members of the purchasing public into the erroneous and mistaken belief that said statements and representations were true and into the purchase of substantial quantities of its apparel merchandise because of such mistaken and erroneous belief. As a result of the aforesaid understanding, agreement, combination, conspiracy and planned common course of action and the methods, acts and practices between and among the respondents hereinabove mentioned and other persons, firms and corporations, and as a result of the use of the aforesaid false, misleading and deceptive statements in newspaper advertising, substantial trade in commerce has been unfairly diverted to the respondent manufacturers and others from their competitors and substantial injury has thereby been done to competition in commerce.

CONCLUSION

The acts and practices of the respondent manufacturers and others, as hereinabove found, were, and are, all to the injury and prejudice of the public and of the competitors of the said respondents and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondent corporations Blacker Bros., Inc., Kasinoff-Herman, Inc., Townsman Clothes, Inc., and Leslie Lloyds Clothes, Incorporated, and their respective officers, agents, representatives and employees, directly or through any corporate or other device, in or in connection with the advertising, offering for sale, sale or distribution of apparel merchandise and related products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common course of action, understanding, agreement, or combination between said respondents

and any other respondent or respondents in the instant case, or between said respondents and any others not parties hereto, to:

1. Engage in, maintain or perpetuate any activities, acts, or practices or to attempt to engage in, maintain or perpetuate any activities, acts or practices in purchasing, selling, manufacturing, or distributing said merchandise or products, whereby the origin, prior places of sale, past or present prices, or the quality or any other characteristic of said merchandise or products, is misrepresented, by any means or in any manner, or where the intent, purpose, or effect of same is to deceive, to mislead or to make any false claims concerning the origin, prior places of sale, prices, quality or other characteristics of said merchandise or products.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE AS TO RESPONDENTS BLACKER BROS., INC., KASINOFF-HERMAN, INC., TOWNSMAN CLOTHES, INC., AND LESLIE LLOYDS CLOTHES, INCORPORATED

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 24th day of October, 1961, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Blacker Bros., Inc., Kasinoff-Herman, Inc., Townsman Clothes, Inc., and Leslie Lloyds Clothes, Incorporated, 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

E. GOTTSCHALK & CO., INC., ET AL.

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

Docket 8301. Complaint, Mar. 3, 1961—Decision, Oct. 24, 1961

Consent order requiring a Fresno, Calif., furrier to cease violating the Fur Products Labeling Act by using the word "blended" improperly on labels on fur products; by representing falsely on invoices that certain mink was from the Aleutian Islands; by advertising in newspapers which failed to disclose the names of animals producing the fur in fur products, falsely represented the volume of merchandise offered for sale to be \$200,000 worth of precious furs when it was substantially less and that savings could be effected in its "January Fur Sale"; by failing to keep adequate records as a basis for price and value claims; and by failing in other respects to comply with labeling and invoicing requirements.