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.

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 E. Gottschalk & Co., Inc., a corporation, and Joseph W. Levy, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent E. Gottschalk & Co., Inc. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of California with its office and principal place of business located at Fulton and Kearn Streets, Fresno, California.

Respondent Joseph W. Levy is vice president and secretary of the said corporate respondent and controls, directs and formulates the acts, practices and policies of the said corporate respondent. His office and principal place of business is the same as that of the said corporate respondent.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents have been and are now engaged in the introduction into commerce and in the 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 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) The term "blended" was used as part of the information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder to describe the pointing, bleaching, dyeing or tip-dyeing of furs, in violation of Rule 19(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 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 set forth in the required sequence, in violation of Rule 30 of said Rules and Regulations.

PAR. 4. Certain of said fur products were falsely and deceptively invoiced by respondents in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act, and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 5. Certain of said fur products were falsely and deceptively invoiced in that said invoices connoted a false geographic origin of Mink by representing that such Mink was from the Aleutian Islands when such was not the fact in violation of Section 5(b)(2) of the Fur Products Labeling Act and Rule 7 of the said Rules and Regulations.

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

PAR. 8. Among and included in the advertisements as aforesaid, but not limited thereto, were advertisements of respondents which appeared in issues of the Fresno Bee, a newspaper published in the City of Fresno, State of California, and having a wide circulation in said State and various other States of the United States.

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

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

(b) Represented the volume of merchandise to be offered for sale to be $200,000 worth of precious furs when in truth and in fact the

merchandise to be offered for sale was worth substantially less than $200,000 in violation of Section 5(a)(5) of the Fur Products Labeling Act.

(c) Represented through such statements as "January Fur Sale" and "In January we make way for the new season by reducing our exquisite fur collection for clearance" and "Fabulous 55th Anniversary Sale" that savings could be effected from the purchase of respondents' fur products when such was not the fact in violation of Section 5(a)(5) of the Fur Products Labeling Act and Rule 44(a) of the said Rules and Regulations.

PAR. 9. In advertising fur products for sale as aforesaid respondents made claims and representations respecting prices and values of fur products. Respondents in making such claims and representations failed to maintain full and adequate records disclosing the facts upon which such claims and representations were based in violation of Rule 44(e) of said Rules and Regulations.

PAR. 10. 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. John J. McNally for the Commission.

Thomas, Snell, Jamison, Russel, Williamson & Asperger, Fresno Calif., by *Mr. Howard B. Thomas*, for the respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

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

the complaint may be used in construing the terms of the order; and that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

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

1. Respondent E. Gottschalk & Co., Inc., is a California corporation with its office and principal place of business located at Fulton and Kern (erroneously spelled Kearn in the complaint) Streets, Fresno, California. Respondent Joseph W. Levy is an officer of the said corporate respondent and has his office and principal place of business at the same address as said corporate respondent.

The said respondents are engaged in the sale at retail of a wide variety of merchandise. Their fur department is operated under a lease or concession arrangement with others regularly engaged in the sale of fur products. During the times materials to this proceeding the fur products offered for sale and sold on respondents' premises to the purchasing public were the property of their lessee and concessionnaire, Pacific Coast Fur Company, and were labeled, invoiced, advertised and sold by said lessee and concessionnaire and its representatives and agents, subject to respondents, over-all direction and control.

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

A. Misbranding fur products by:

1. Setting forth on labels affixed to fur products:

(a) The term "blended" as part of the information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder to describe the pointing, bleaching, dyeing or tip-dyeing of furs.

(b) 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. 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.

B. Falsely or deceptively invoicing fur products by:

1. 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.

2. Setting forth on invoices a false geographic origin of the animal that produced the fur.

3. 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. 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:

1. Fails to disclose 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. Represents directly or by implication that the volume of merchandise to be offered for sale is higher than is the fact.

3. Offers fur products at a purported reduction in price when such purported reduction is in fact fictitious.

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

D. Making claims and representations respecting prices and values of fur products 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 24th 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

T. W. HOLT & COMPANY, INC.

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

Docket 8371. Complaint, Apr. 21, 1961—Decision, Oct. 24, 1961

Consent order requiring the distributor of "Flaga" dried peas and beans, and rice, in Jacksonville, Fla., to cease violating Sec. 2(d) of the Clayton Act by paying promotional allowances to some customers but not to all their competitors on proportionally equal terms, such as a perferential payment of $250 made to Winn-Dixie Stores, Inc., a retail grocery chain with headquarters in Jacksonville.

COMPLAINT

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

PARAGRAPH 1. Respondent, T. W. Holt & Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida with its office and principal place of business located at 2222 Harper Street, Jacksonville, Florida.

PAR. 2. Respondent is now and has been engaged in the packaging, sale and distribution of dried peas and beans, and rice, under the trade name "Flaga". Respondent sells and distributes its products to wholesalers and to retail chain store organizations.

PAR. 3. Respondent sells and causes its products to be transported from its principal place of business in the State of Florida to customers located in other states of the United States. There has been at all times mentioned herein a continuous course of trade in said products in commerce as "commerce" is defined in the Clayton Act, as amended.

PAR. 4. In the course and conduct of its business in commerce, respondent paid or contracted for the payment of something of value to or for the benefit of some of its customers as compensation or in con-

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

PAR. 5. For example, in the year 1960, respondent contracted to pay and did pay to Winn-Dixie Stores, Inc., a retail grocery chain with headquarters in Jacksonville, Florida, the amount of $250.00 as compensation or as an allowance for advertising or other services or facilities furnished by or through Winn-Dixie Stores, Inc., in connection with its offering for sale or sale of respondent's products. Such compensation or allowance was not made available on proportionally equal terms to all other customers competing with Winn-Dixie Stores, Inc., in the sale and distribution of respondent's products.

PAR. 6. The acts and practices of respondent, as alleged, are in violation of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. David J. McKean for the Commission;

Milam, Le Maistre, Ramsay & Martin, by *Mr. George W. Milam*, Jacksonville, Fla., for the respondent.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on April 21, 1961, charging Respondent with violation of Section 2(d) of the Clayton Act as amended by the Robinson-Patman Act (U.S.C. Title 15, Section 13) by the payment of something of value as compensation or in consideration for services or facilities furnished by or through some of its customers, such payments not being made available to all other customers competing in the sale and distribution of Respondent's products.

Thereafter, on August 10, 1961, Respondent, its counsel, and counsel supporting the complaint herein entered into an Agreement Containing Consent Order To Cease And Desist, which was approved by the Director of the Commission's Bureau of Restraint of Trade, and thereafter, on August 17, 1961, submitted to the Hearing Examiner for consideration.

The agreement identifies Respondent T. W. Holt & Company, Inc. as a Florida corporation, with its office and principal place of business located at 2222 Harper Street, Jacksonville, Florida.

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

Respondent waives any further procedure before the Hearing Examiner and the Commission; the making of findings of fact and conclusions of law; and all of the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist, as contained in the agreement, when it shall have become a part of the decision of the Commission, shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said order; and that the agreement is for settlement purposes only and does not constitute an admission by Respondent that it has violated the law as alleged in the complaint.

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

It is ordered, That Respondent T. W. Holt & Company, Inc., its officers, agents, representatives or employees, directly or through any corporate or other device, in connection with the distribution, sale or offering for sale of grocery products, including dried peas and beans, and rice, in commerce, as "commerce" is defined in the amended Clayton Act, do fortwith cease and desist from paying or contracting for the payment of an allowance or anything of value to, or for the benefit of, any customer as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the handling, offering for sale, sale or distrbution of any of Respondent's products sold or offered for sale by such Respondent unless such payment or consideration is available on proportionally equal terms to all of its other customers competing in the distribution of such products.

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 Respondent T. W. Holt & Company, Inc., a corporation, shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist.

IN THE MATTER OF

H. L. KLEBANOW & SON, INC., ET AL.

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

Docket 8375. Complaint, Apr. 25, 1961—Decision, Oct. 24, 1961

Consent order requiring New York City importers to cease invoicing fabrics imported from Italy as "95% Wool 5% Nylon" when they contained substantially less than 95% wool and when the so-called "wool" fibers were actually reprocessed wool.

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 H. L. Klebanow & Son, Inc., a corporation, and Hyman L. Klebanow and Bernard Klebanow, 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 H. L. Klebanow & Son, 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 247 West 37th Street, New York, New York. Individual respondents Hyman L. Klebanow and Bernard Klebanow are President and Treasurer, respectively, of the corporate respondent. Said individual respondents formulate, direct and control the acts, practices and policies of said corporate respondent. The office of the individual respondents 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 importation into the United States of apparel fabrics from Italy and selling and distributing such products in the United States.

PAR. 3. Respondents, in the course and conduct of their business, now cause, and for some time last past have caused, said products, when sold, to be shipped from their place of business in the State of New York to purchasers located in various other states of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, as aforesaid, respondents have made representations concerning their said products on sales invoices. Among and typical of the representations was the following:

95% wool 5% Nylon

PAR. 5. The aforesaid representations were false, misleading and deceptive. In truth and in fact, said products contained substantially less woolen fibers than was represented; in addition, the woolen fibers were described on the invoices as "wool" whereas, in truth and in fact, they were reprocessed wool as this term is known to the public and defined in the Wool Products Labeling Act.

The word "wool" is understood by the trade and among the purchasing public to mean the fiber from the fleece of the sheep or lamb, or hair of the Angora or Cashmere goat, including the so-called specialty fibers from the hair of the camel, alpaca, llama and vicuna, which has never been reclaimed from any woven or felted product, as distinguished from "reprocessed wool."

PAR. 6. The acts and practices set out above have had and now have the tendency and capacity to mislead and deceive purchasers of said products as to the true fiber content, and the quality of the constituent fibers or material used in the manufacture of said product and to cause such purchasers to misbrand and misrepresent products manufactured by them in which said materials were used.

PAR. 7. In the course and conduct of their business and at all times mentioned herein, respondents have been and are in substantial competition, in commerce, with corporations, firms and individuals in the sale of apparel fabrics of the same general kind and nature as that sold by respondents.

PAR. 8. The acts and practices of the respondents set out above were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Michael P. Hughes supporting the complaint.

Guzik and Boughtein, of New York, N.Y., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

On April 25, 1961 the Federal Trade Commission issued a complaint charging that the above-named respondents had violated the provisions of the Federal Trade Commission Act. The complaint alleged that respondents, in the course and conduct of their business, had made representations which were false, misleading and deceptive concerning their apparel fabrics.

After issuance and service of the complaint respondents, their attorneys, and counsel supporting the complaint entered into an agreement for a consent order. The agreement disposes of the matters complained about and has been approved by the Chief of the Division and the Director of the Bureau of Deceptive Practices.

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

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

JURISDICTIONAL FINDINGS

1. Respondent H. L. Klebanow & Son, 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 247 West 37th Street, in the City of New York, State of New York.

2. Hyman L. Klebanow and Bernard Klebanow are individuals and officers of the corporate respondent and formulate, direct and control the acts, policies and practices of the corporate respondent. The office of the individual respondents is the same as that of the corporate respondent.

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

ORDER

It is ordered, That respondents H. L. Klebanow & Son, Inc., a corporation, and its officers, and Hyman L. Klebanow and Bernard Klebanow, 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 apparel fabrics or other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist, directly or indirectly in sales invoices, shipping memoranda, or in any other manner from:

1. Misrepresenting the name and amount of the constituent fibers of which their products are composed.

2. Describing, designating or in any way referring to any product or portion of a product which is "reprocessed wool" as "wool".

3. Using the word "wool" to describe, designate or in any way refer to any product or portion of a product which is not the fiber from the fleece of the sheep or lamb, or hair of the Angora or Cashmere goat, or hair of the camel, Alpaca, Llama, or Vicuna which has never been reclaimed from any woven or felted product; provided however, nothing herein shall prohibit the use of the terms "reprocessed wool" or "reused wool" when the products or those portions thereof referred to are composed of such fibers.

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 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

COMPTONE COMPANY, LTD., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 2(d) OF THE CLAYTON ACT

Docket 8377. Complaint, Apr. 25, 1961—Decision, Oct., 24, 1961

Consent order requiring New York City manufacturers and distributors of sunglasses to cease violating Sec. 5 of the Federal Trade Commission Act by advertising falsely in sales brochures, counter display cards, and other promotional material supplied to jobbers and retailers, that their lenses were "formed to 6 base convex shape", "Precision made to high optical standards", and "Guaranteed Safe Lenses"; and by failing to disclose clearly when lenses manufactured in Japan were contained in their sunglasses; and to cease violating Sec. 2(d) of the Clayton Act by paying certain of their customers, but not the latters' competitors, for services or facilities, such as an allowance of $5,000 for advertising furnished by United Whelan Corp.

COMPLAINT

The Federal Trade Commission, having reason to believe that Comptone Company, Ltd., a corporation and Manuel R. Nadel and George Jacques, individually, and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of the Federal Trade Commission Act and subsection (d) of Section 2 of the Clayton Act, as amended (15 U.S.C. 13), 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 with respect thereto as follows:

COUNT I

Charging a violation of Section 5 of the aforesaid Federal Trade Commission Act:

PARAGRAPH 1. Respondent Comptone Company, Ltd., is a corporation organized, existing and doing business under the laws of the State of New York with its office and principal place of business located at 1239 Broadway, New York, New York. Respondents Manuel R. Nadel and George Jacques are officess of the corporate respondent. These individuals formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set out. The address of these individual respondents is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and have been for some time, engaged in the manufacture, assembling, sale and distribution of sunglasses.

In the course and conduct of their business, as aforesaid, respondents now cause, and for the last several years have caused, said products, when sold, to be transported from their place of business in the State of New York to the purchasers thereof, many of whom are located in various other states of the United States.

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

PAR. 3. In the course and conduct of their business, respondents have made, and are making, deceptive and misleading statements with respect to their products. These statements are, and have been, made in sales brochures, counter display cards, and other promotional material supplied to jobbers, retailers and dealers and on labels affixed by respondents to such sunglasses prior to their sale and distribution, as aforesaid.

Among and typical, but not all inclusive, of such statements are the following:

Lenses formed to 6 base convex shape
Precision made to high optical standards
Guaranteed Safe Lenses

PAR. 4. Through the use of the foregoing statements and others similar thereto but not specifically set forth herein, respondents have represented and now represent, directly or by implication:

(a) That the lenses in their sunglasses designated as "6 base convex shape" have a 6 base curve. A "six base" lens is also known and described as one having a diopter curve of 6.

(b) That their sunglasses have been manufactured according to strict tolerances to have particular qualities which would be recognized or considered desirable in optical instruments by opticians or optometrists.

(c) That their sunglass lenses are unconditionally guaranteed.

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

(a) The sunglass lenses designated by respondents as having a "6 base convex shape" do not have a 6 base curve or a diopter curve of 6.

(b) The sunglasses described by respondents as "precision made to high optical standards" have not been manufactured according to strict tolerances to have particular qualities which would be recognized or considered desirable in optical instruments by opticians or optometrists.

(c) The sunglass lenses described by respondents as "guaranteed safe lenses" are not unconditionally guaranteed; the terms, conditions and extent to which said guarantee applies, and the manner in which

the guarantor will perform thereunder are not disclosed in respondents' advertising matter.

PAR. 6. Respondents also purchase sunglass lenses manufactured in Japan, which they insert into frames. In connection with the sale of said sunglasses having lenses of Japanese origin, respondents do not clearly and conspicuously disclose by markings or labels on the products that said sunglasses contain parts manufactured in Japan.

PAR. 7. Members of the American purchasing public believe that products which have a foreign origin are marked so as to disclose that fact. As a result the aforesaid practice of the respondents, as described in Paragraph Six, of failing to clearly and conspicuously disclose that said sunglass lenses are manufactured in Japan, has the capacity and tendency to create the mistaken and erroneous belief among purchasers and prospective purchasers that said sunglass lenses are of domestic origin. There is a preference on the part of a substantial number of the purchasing public for products manufactured in the United States over those manufactured in Japan, including sunglasses.

PAR. 8. Respondents by engaging in the acts and practices set out in Paragraphs Three and Six thereby provide means and instrumentalities to others whereby the purchasing public may be misled as to the matters set out in said Paragraphs.

PAR. 9. In the course and conduct of their business, respondents are in direct and substantial competition with corporations, firms and individuals engaged in the manufacture, sale and distribution of sunglasses in commerce.

PAR. 10. The use by the respondents of the aforesaid false, misleading and deceptive statements and representations has had, and now has, the capacity and tendency to mislead and deceive members of the purchasing public into the erroneous and mistaken belief that such statements and representations were and are true, and that all of their sunglasses are of domestic origin, and into the purchase of substantial quantities of respondents' products because of such erroneous and mistaken belief. As a result thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has been done to competition in commerce.

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

COUNT II

Charging a violation of subsection (d) of Section 2 of the aforesaid Clayton Act, as amended, the Federal Trade Commission alleges:

PAR. 12. The allegations set forth in Paragraph One of Count I of this complaint are hereby incorporated by reference and made a part of this Count as fully and with the same effect as if quoted here verbatim.

PAR. 13. Respondents are now, and have been for some time, engaged in the assembling, sale and distribution of sunglasses.

In the course and conduct of its business, as aforesaid, respondents now cause, and for the last several years have caused said products, when sold, to be transported from their place of business in the State of New York to the purchasers thereof, many of whom are located in various other states of the United States.

Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said sunglasses, in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended.

Said sunglasses are and were sold for use, consumption, or resale within the United States.

PAR. 14. In the course and conduct of its business in commerce, as aforesaid, respondents, during the period from on or about October 1, 1959, have paid or authorized payment of money, goods or other things of value to or for the benefit of one or more of its customers as compensation or in consideration for services or facilities furnished or agreed to be furnished by or through such customers in connection with the processing, handling, offering for sale or sale of respondents' sunglasses and respondents have not made or offered to make such payments, allowances or consideration available on proportionally equal terms to all of its other customers competing with the customers so favored in the sale or distribution of said products.

PAR. 15. Illustrative of and included among the conduct alleged in Paragraph Fourteen, above, are the following acts and practices of the respondents:

During the year 1960 respondents contracted to pay and did pay United Whelan Corporation, Brooklyn, New York, $5,000 as compensation or as an allowance for advertising or other services or facilities furnished by or through United Whelan Corporation in connection with its offering for sale or sale of products sold to it by respondents. Such compensation or allowance was not offered or otherwise made available on proportionally equal terms to all other customers competing with United Whelan Corporation in the sale and distribution of respondents' products.

PAR. 16. The acts and practices of respondents, as alleged above, violate subsection (d) of Section 2 of the Clayton Act, as amended.

Mr. Charles D. Gerlinger for the Commission.
Mr. James Perkins Parker, of Washington, D.C., for respondents.

INITIAL DECISION BY HERMAN TOCKER, HEARING EXAMINER

The respondents in this case are Comptone Company, Ltd., a corporation organized and existing under the laws of the State of New York, and its officers, Manuel R. Nadel and George Jacques, all conducting their business at 1239 Broadway, in New York, New York. They were charged with deceptive practices involving the qualities and place of origin of the lenses of sunglasses sold and distributed by them in commerce contrary to the provisions of the Federal Trade Commission Act and with making preferential payments contrary to Section 2(d) of the Clayton Act, as amended, to some of the customers to whom they sold sunglasses.

The complaint was issued April 25, 1961, and, by order dated August 7, 1961, was amended to include within the allegation of nondisclosure of foreign origin the fact that such nondisclosure affected sales material as well as the actual commodity involved.

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

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

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

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

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

It is further provided in said agreement that the same, together with the complaint, as amended, shall constitute the entire record herein; that the complaint, as amended, herein may be used in construing the

terms of the order to be issued pursuant to said agreement; and that such order may be altered, modified or set aside in the manner prescribed by the statute for orders of the Commission.

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

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

ORDER

It is ordered, That respondents Comptone Company, Ltd., a corporation, and its officers, and Manuel R. Nadel and George Jacques, 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 sunglasses or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that their lenses have a given diopter curve unless such is the fact, provided, however, that in the case of ground and polished sunglass lenses a tolerance not to exceed minus or plus $\frac{1}{16}$th diopters in any meridian and a difference in power between any two meridians not to exceed $\frac{1}{16}$th diopter and a prismatic effect not to exceed $\frac{1}{8}$th diopter shall be allowed;

2. Representing, directly or by implication, that any product sold by respondents is precision made or made to meet high optical standards or is otherwise manufactured in such a way as to have particular qualities which would be recognized or considered desirable in optical instruments by opticians or optometrists, except when such is a fact;

3. Representing, directly or by implication, that any product sold by respondents is guaranteed unless the terms and conditions of such guarantee and the manner and form in which the guarantor will perform are clearly and conspicuously set forth;

4. Offering for sale or selling any product the whole or any substantial part of which was made in Japan, or any other foreign country, without clearly and conspicuously disclosing on such product or on sales or display cards in immediate connection therewith and if such product is enclosed in a package or container, on the package or

container in such a manner that it will not be hidden or readily obliterated, the country of origin of the product or part thereof.

5. Placing in the hands of others the means and instrumentalities by and through which they may deceive and mislead the purchasing public concerning the merchandise in the respects set out in Paragraph 4 above.

It is further ordered, That respondent Comptone Company, Ltd., a corporation, and its officers, and Manuel R. Nadel and George Jacques, 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 sunglasses or any other product, in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from paying, or contracting to pay to or for the benefit of any customer, an advertising allowance, display allowance or anything of value as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of respondents' products unless such payment or consideration is offered or otherwise made available on proportionally equal terms to all other customers competing in the distribution or resale of such products.

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 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

CENTRAL CONSTRUCTION COMPANY ET AL.

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

Docket 8378. Complaint, Apr. 26, 1961—Decision, Oct. 24, 1961

Consent order requiring an Omaha seller and installer of building siding to cease representing falsely in advertising and through its salesmen that it offered reduced prices to home and building owners who permitted their

property to be used for demonstrations and advertising, and that it would pay them commissions on resulting sales to others; that said offers must be accepted at once; and that the soliciting salesman was an officer, co-owner, or engineer of the corporation.

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 Central Construction Company, a corporation, and Irving Herzog and Jack J. Schrager, 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. Central Construction Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nebraska, with its principal place of business located at 2301 Cuming Street, Omaha, Nebraska.

Respondents Irving Herzog and Jack J. Schrager are individuals and officers of the aforesaid corporate respondent, with their offices and principal place of business located at the same address as that of the corporate respondent. Said individual respondents formulate, control and direct the policies, acts and practices of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the offering for sale, sale, distribution and installation of house or building siding and roofing materials. Respondents' sales of said materials are at retail to the owners of houses or buildings. Respondents cause, and have cause, said siding and roofing materials, when sold, to be shipped from their aforesaid place of business in the State of Nebraska to purchasers thereof located in various other States of the United States.

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

PAR. 3. In the course and conduct of their business, as aforesaid, respondents have been, and now are, in direct substantial competition with other individuals and with various firms and corporations in the sale and installation, in commerce, of house and building siding materials.

PAR. 4. In the course and conduct of their said business, as aforesaid, and for the purpose of inducing the purchase of their said mate-

rials, respondents have made, and are continuing to make, various statements in letters, circulars, folders and other advertising material sent, mailed or published by respondents or their agents, representatives or employees, and in sales talks made by their salesmen to prospective purchasers. Through the aforesaid statements respondents represented, directly or indirectly, that:

1. They are offering their siding materials and the installation thereof at reduced prices from their usual and customary prices to prospective purchasers who will permit their homes or buildings to be used for demonstrations and advertising after purchase and completion of the improvements.

2. They will use the homes or buildings of such purchasers for demonstration or advertising purposes and will pay commissions to such purchasers when sales are made to others as a result of such demonstrations or advertising.

3. The said offer of reduced prices must be accepted at once or within a limited time.

4. Respondents' representative or salesman, soliciting the sale of materials, is an officer, co-owner or engineer of the corporate respondent.

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

1. The prices at which respondents offer their siding materials and installation thereof to persons, who agree that their homes or buildings may be used for demonstration purposes, are not reduced prices from respondents' usual and customary prices but are respondents' usual and customary prices.

2. Respondents do not use the homes or buildings of such purchasers for demonstration or advertising purposes and do not pay commissions to such persons. This practice is engaged in for the purpose of leading prospective purchasers into the belief that they are obtaining a reduced price which will be further reduced by commissions, both of which are untrue.

3. Respondents' offer need not be accepted at once or within a limited time.

4. Respondents' representatives or salesmen, soliciting the sale of materials, are not officers, co-owners or engineers of the corporate respondent.

PAR. 6. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were, and are, true

and into the purchase of substantial quantities of respondents' siding materials because of such erroneous and mistaken belief. As a result thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has been, and is being, done to competition in commerce.

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

Mr. William A. Somers supporting the complaint.
Abrahams, Kaslow & Cassman of Omaha, Nebr., for respondents.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

The Federal Trade Commission duly issued its complaint in this matter on April 26, 1961, charging violation of Section 5 of the Federal Trade Commission Act in connection with the sale, distribution and installation of house or building siding and roofing materials. The complaint alleged false, misleading and deceptive statements, representations and practices with respect to prices charged, demonstration or advertising commissions, limited offers, and salesmen's positions.

On August 24, 1961, counsel submitted to the undersigned hearing examiner an agreement for the entry of an order on consent without further notice dated August 23, 1961 and executed by respondents, their counsel and counsel supporting the complaint. Said agreement was duly approved by the Acting Chief of the Division of General Advertising and by the Director of the Bureau of Deceptive Practices.

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

A. An admission by respondent parties of all jurisdictional facts alleged in the complaint.

B. Provisions that:

(1) The complaint may be used in construing the terms of the order;

(2) The order shall have the same force and effect as if entered after a full hearing;

(3) The agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission;

(4) The entire record on which any cease and desist order may be based shall consist solely of the complaint and the agreement;

(5) The order may be altered, modified, or set aside in the manner provided by statute for other orders.

C. Waivers of:

(1) The requirement that the decision must contain a statement of findings of fact and conclusions of law.

(2) Further procedural steps before the hearing examiner and the Commission;

(3) Any right to challenge or contest the validity of the order entered in acordance with the agreement.

In addition the agreement contains the following provision: A statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

Having considered said agreement, including the proposed order, and being of the opinion that it provides an apropriate basis for settlement and disposition of this proceeding; the hearing examiner hereby accepts the agreement but orders that it shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

The following jurisdictional findings are made and the following order issued:

1. Respondent Central Construction Company is a corporation existing and doing business under and by virtue of the laws of the State of Nebraska. Respondents Irving Herzog and Jack J. Schrager are individuals and officers of said corporate respondent. The office and principal place of business of said respondents is located at 2301 Cuming Street, Omaha, Nebraska.

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

ORDER

It is ordered, That respondents Central Construction Company, a corporation, and its officers, and Irving Herzog and Jack J. Schrager, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of building siding, or other product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly, that:

1. Any product is offered for sale at a reduced price from respondents' usual price, unless the price at which it is offered constitutes a

reduction from the price at which the product has been usually and customarily sold by respondents in the recent regular course of business.

2. The homes or buildings of the purchasers of their products will be used for demonstration or advertising purposes or that respondents will pay commissions to such purchasers when sales are made as a result of such demonstrations or advertising, or for any other reason, unless such is the fact.

3. Any offer must be accepted at any specific time or within any limited time, unless such is the fact.

4. Any person represents or is connected with the Central Construction Company or with any other company or person, in any manner or capacity, that is not in accordance with the facts.

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 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

KENMONT HAT CO., INC., ET AL.

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

Docket 8394. Complaint, May 11, 1961—Decision, Oct. 24, 1961

Consent order requiring New York City distributors of hats to retailers to cease selling finished hats converted from imported bodies with nothing to show the foreign country of origin, since the words showing the foreign country had been removed by shearing off the edges of the brims.

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 Kenmont Hat Co., Inc., a corporation, and Isadore Herman, 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 Kenmont Hat Co., 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 55 West 39th Street, in the City of New York, State of New York.

Respondent Isadore Herman is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the offering for sale, sale and distribution of hats to retailers for resale to the public.

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

PAR. 4. In the course and conduct of their business, the respondents purchase hat bodies from importers, convert said bodies into finished hats and sell them. When the aforesaid hat bodies are received by respondents they bear words stamped into the brims thereof, near the edge, showing the foreign country of origin of the hat bodies. In the course of finishing the hats, respondents remove the words showing the foreign country of origin of the bodies by shearing off the edges of the brims of the hats. The word "Imported" is stamped in the crown of the finished hats but the foreign country of origin of the hat bodies is not shown in any manner when the finished hats are sold by respondents. Consequently, the public is not informed of the foreign country of origin of the hat bodies.

PAR. 5. There is a preference among a substantial number of the American purchasing public for products, including hats, manufactured, partly or wholly, in certain foreign countries over those manufactured, partly or wholly, in other foreign countries.

PAR. 6. By and through the use of the aforesaid practices, respondents place in the hands of others means and instrumentalities by

and through which they may mislead and deceive the public as to the origin of their hat bodies.

PAR. 7. In the conduct of their business at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of hats of the same general kind and nature as that sold by respondents.

PAR. 8. The acts and practices of the respondents and their failure to disclose the foreign country of origin of their hat bodies, as aforesaid, has had, and now has, the capacity and tendency to mislead members of the purchasing public into the purchase of substantial quantities of their hats. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

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

Mr. DeWitt T. Puckett for the Commission;

Keating and Brodkin, by *Mr. John M. Keating*, New York, N.Y., for the respondents.

INITIAL DECISION, BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on May 11, 1961, charging Respondents with violation of the Federal Trade Commission Act by failing to show, on the finished hats sold by them, the foreign country of origin of the hat bodies which Respondents purchase from importers and convert into such finished hats.

Thereafter, on August 28, 1961, Respondents, their counsel, and counsel supporting the complaint herein entered into an Agreement Containing Consent Order To Cease And Desist, which was approved by the Chief, Division of General Practices, and the Acting Director of the Commission's Bureau of Deceptive Practices, and thereafter, on September 6, 1961, submitted to the Hearing Examiner for consideration.

The agreement identifies Respondent Kenmont Hat Co., Inc. as a New York corporation, with its office and principal place of business located at 55 West 39th Street, New York, New York, and Respondent Isidor Herman (erroneously named in the complaint as Isadore Herman) as an individual and an officer of said corporation, who formulates, directs and controls the policies, acts and practices thereof.

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

Respondents waive any further procedure before the Hearing Examiner and the Commission; the making of findings of fact and conclusions of law; and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist, as contained in the agreement, when it shall have become a part of the decision of the Commission, shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said order; and that the agreement is for settlement purposes only and does not constitute an admission by Respondents that they have violated the law as alleged in the complaint.

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

It is ordered, That Respondents Kenmont Hat Co., Inc., a corporation, and its officers, and Isidor Herman, individually and as an officer of said corporation, and Respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of hats, or any other product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale or selling hats containing fur or wool felt bodies which have been made in a foreign country unless such hats have a marking or stamping on an exposed surface of such conspicuousness as to be clearly visible to prospective purchasers of the hats and so placed and affixed as not readily to be hidden or obliterated, and of such a degree of permanency as to remain on the hats until consummation of consumer purchase thereof, revealing the foreign country of origin of such hat bodies;

2. Furnishing means and instrumentalities to others by and through which they may mislead the public as to the country or origin of such products.

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 Respondents Kenmont Hat Co., Inc., a corporation, and Isidor Herman (erroneously named in the complaint as Isadore Herman), individually and as an officer of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

L. T. BALDWIN DOING BUSINESS AS BALDWIN GAS PRODUCTS COMPANY

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

Docket 8405. Complaint, May 24, 1961—Decision, Oct. 24, 1961

Consent order requiring a St. Louis, Mo., distributor of water heaters to cease representing falsely in brochures, circulars, and other media, which he also furnished to retailers of his products, that his water heaters were unconditionally guaranteed for five years or one year without disclosing that there were various limitations imposed; and to cease using fictitious list prices for proration after the unconditional guarantee period.

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 L. T. Baldwin, an individual doing business as Baldwin Gas Products Company, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent L. T. Baldwin is an individual trading and doing business as Baldwin Gas Products Company, with his office

and principal place of business located at 1401 Macklind, St. Louis, Missouri.

PAR. 2. Respondent is now, and for more than two years last past has been, engaged in the advertising, offering for sale, sale and distribution of water heaters. Respondent ships, and causes to be shipped, his said water heaters, when sold, from the State of Missouri to purchasers thereof, many of whom are located in various other States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in said product, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of his business, and for the purpose of inducing the sale of his product, respondent has made certain statements and representations in brochures, circulars, folders, and other media, which he also furnishes to retailers of his product. Among and typical, but not all inclusive, of the statements and representations so made are the following:

Baldwin 10 year* Heavy Duty Automatic Gas Water Heaters Genuine Glass-lined Tanks.

*. . . For domestic use—5 years unconditional, and sixth to tenth year pro-rated. . . .

All Bhott Standard Weight Automatic Gas Water Heaters are unconditionally warranted for one full year, when properly installed according to local plumbing codes and ordinances.

PAR. 4. Respondent, through use of the aforesaid statements and representations and others similar thereto, represents, directly and by implication, that his "10 Year Heavy Duty Automatic Gas Water Heaters" are unconditionally guaranteed for a period five years and his "Bhott Standard Weight Automatic Water Heaters" are unconditionally guaranteed for one year, if installation conforms with local plumbing codes and ordinances.

PAR. 5. Said statements and representations were false, misleading and deceptive. In truth and in fact, neither of said water heaters is unconditionally guaranteed for the represented periods, as there are various limitations, conditions and requirements imposed in connection with the guarantees that are not disclosed in the advertising. Moreover, the proration in connection with the Heavy Duty Water Heater is based upon fictitious list prices.

PAR. 6. Respondent, in many cases, fails and refuses to perform under the terms of his written guarantees where his product covered by the guarantee has failed during the period of the guarantee and he has been notified of such failure.

PAR. 7. Respondent, at all times mentioned herein, has been, and

now is, in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of water heaters.

PAR. 8. The use by respondent of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true and into the purchase of substantial quantities of respondent's 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 respondent from his competitors and substantial injury has thereby been, and is being, done to competition in commerce.

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

Mr. William A. Somers supporting the complaint.

Mr. F. William Human, Jr., of *Ziercher, Tzinberg, Human & Michenfelder*, Clayton, Mo., for respondent.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

On May 24, 1961, the Federal Trade Commission issued a complaint charging that the above-named respondent had violated the provisions of the Federal Trade Commission Act. The complaint alleged that, in the course and conduct of his business and for the purpose of inducing the sale of his product, respondent had made certain statements and representations which were false, misleading and deceptive.

On July 20, 1961, respondent, his counsel and counsel supporting the complaint entered into an agreement authorizing the entry of a consent order to cease and desist the practices charged without further notice. Said agreement was duly approved by the Director and the Acting Chief of the Bureau of Deceptive Practices.

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

A. An admission by respondent of all jurisdictional facts alleged in the complaint.

B. Provisions that:

(1) The complaint may be used in construing the terms of the order;

(2) The order shall have the same force and effect as if entered after a full hearing;

(3) The agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission.

(4) The entire record on which any cease and desist order may be based shall consist solely of the complaint and the agreement;

(5) The order may be altered, modified, or set aside in the manner provided by statute for other orders;

C. Waivers of:

(1) The requirement that the decision must contain a statement of findings of fact and conclusions of law;

(2) Further procedural steps before the hearing examiner and the Commission.

(3) Any right to challenge or contest the validity of the order entered in accordance with the agreement.

In addition the agreement contains the following provision: A statement that the signing of said 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.

Having considered said agreement, including the proposed order, and being of the opinion that it provides an appropriate basis for settlement and disposition of this proceeding; the hearing examiner hereby accepts the agreement but orders that it shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

The following jurisdictional findings are made and the following order issued:

1. Respondent L. T. Baldwin is an individual trading and doing business as Baldwin Gas Products Company, with his office and principal place of business located at 1401 Macklind, St. Louis, Missouri.

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

ORDER

It is ordered, That respondent L. T. Baldwin, individually and doing business as Baldwin Gas Products Company, or under any other name, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of water heaters, or any other product, do forthwith cease and desist from:

1. Representing, directly or by implication, that a product is guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly disclosed.

2. Representing, directly or by implication, that a product is sold under a guarantee unless the terms of the guarantee are strictly complied with.

3. Using fictitious list prices or any other fictitious prices in pro rata adjustment of guarantees.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

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

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

IN THE MATTER OF

ARCTIC LIGHT BLANKET CO., INC., ET AL.

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

Docket 8426. Complaint, June 2, 1961—Decision, Oct. 24, 1961

Consent order requiring Worcester, Mass., manufacturers to cease violating the Wool Products Labeling Act by such practices as labeling as 100% wool, blankets which contained a substantial quantity of reprocessed wool and other fibers, and by failing to disclose on blanket labels the presence of reprocessed wool and non-woolen fibers and the percentage thereof.

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 Arctic Light Blanket Co., Inc., a corporation, and Philip F. Goldberg, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act, 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 Arctic Light Blanket Co., Inc., is a corporation organized, existing and doing business under and by virtue

of the laws of the State of Massachusetts. Individual respondent Philip F. Goldberg is president and treasurer of the corporate respondent. Said individual respondent formulates, directs and controls the acts, policies and practices of the corporate respondent, including the acts and practices hereinafter referred to. Both respondents have their office and principal place of business at 1 Fay Street, Worcester, Massachusetts.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, and more especially since January 1958, respondents have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment and offered for sale in commerce, as "commerce" is defined in the 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 blankets labeled or tagged by respondents as 100% wool, whereas in truth and in fact said products contained a substantial quantity of reprocessed wool and fibers other than wool.

PAR. 4. Certain of said wool products were further misbranded by respondents in that they were not stamped, tagged or labeled as required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act. Among such misbranded wool products, but not limited thereto, were blankets with labels which failed: (1) to disclose reprocessed wool and other nonwoolen fibers present, and (2) to disclose the percentage of such reprocessed wool and other fibers.

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

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

PAR. 7. In the course and conduct of their business, as aforesaid, respondents have made various statements concerning their products in sales invoices. Among and typical of said statements is the following:

100% wool

PAR. 8. The aforesaid representations and statements set out in Paragraph Seven were and are false, misleading and deceptive. In truth and in fact, respondents' said products were not composed of 100% wool, but contained substantial amounts of fibers other than wool.

PAR. 9. The acts and practices of respondents as set out in Paragraph Seven of falsely identifying the constituent fibers of its wool products have had and now have the tendency and capacity to mislead and deceive the purchaser of said products as to the true fiber content thereof.

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

Mr. Michael P. Hughes, supporting the complaint.
Respondents, *pro se*.

INITIAL DECISION BY WALTER K. BENNETT, Hearing Examiner

The Federal Trade Commission issued its complaint against respondents on June 2, 1961, charging violation of the Federal Trade Commission Act and the Wool Products Labeling Act. The complaint charged respondents with both mislabeling and failing to properly label wool products and with issuing false and misleading statements concerning such products.

On August 22, 1961, counsel supporting the complaint presented an agreement dated August 14, 1961, and executed by him and by respondent corporation and by the individual respondent. Said agreement provided for the entry of an order on consent without further notice and was duly approved by the Chief, Division of Enforcement, the Acting Director and the Assistant Director of the Bureau of Textiles and Furs.

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

A. An admission by respondents of all jurisdictional facts alleged in the complaint.

B. Provisions that:

(1) The complaint may be used in construing the terms of the order;

(2) The order shall have the same force and effect as if entered after a full hearing;

(3) The agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission;

(4) The entire record on which any cease and desist order may be based shall consist solely of the complaint and the agreement;

(5) The order may be altered, modified, or set aside in the manner provided by statute for other orders;

C. Waivers of:

(1) The requirement that the decision must contain a statement of findings of fact and conclusions of law;

(2) Further procedural steps before the hearing examiner and the Commission.

(3) Any right to challenge or contest the validity of the order entered in accordance with the agreement.

In addition the agreement contains the following provision: A statement that the signing of said 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.

Having considered said agreement, including the proposed order, and being of the opinion that it provides an appropriate basis for settlement and disposition of this proceeding; the hearing examiner hereby accepts the agreement but orders that it shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

The following jurisdictional findings are made and the following order issued:

1. Respondent Arctic Light Blanket Co., Inc., is a corporation 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 1 Fay Street, Worcester, Massachusetts.

2. Individual respondent Philip F. Goldberg is an officer of said corporation. He formulates, directs and controls the acts, policies, and practices of the corporate respondent. The address of the individual respondent is the same as the corporate respondent.

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

ORDER

It is ordered, That respondents Arctic Light Blanket Co., Inc., a corporation, and its officers, and Philip F. Goldberg, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction into commerce, or the 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 wool blankets or other wool products, as such products are defined in and subject to the said Wool Products Labeling Act, do forthwith cease and desist from misbranding such products by:

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

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

It is further ordered. That respondents, Arctic Light Blanket Co., Inc., a corporation, and its officers, and Philip F. Goldberg, 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 wool blankets or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from directly or indirectly misrepresenting on sales invoices, shipping memoranda, or in any other manner the fiber content of said products.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 24th 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

RICHARD L. SCHROEDER ET AL. DOING BUSINESS AS INTERSTATE MERCHANDISERS

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

Docket 8431. Complaint, June 16, 1961—Decision, Oct. 24, 1961

Consent order requiring a Rochester, Minn., distributor of vending machines and nuts and candy dispensed thereby, to cease using deceptive offers of employment, false earnings claims, and other misrepresentations in newspaper advertisements, the real purpose of which was to sell its products.

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 Richard L. Schroeder and Lois I. Schroeder, individually and as copartners, trading and doing business as Interstate Merchandisers, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Richard L. Schroeder and Lois I. Schroeder are copartners trading and doing business as Interstate Merchandisers, with their office and principal place of business located at 1519 Fourth Avenue, N.W., Rochester, Minnesota.

Said individuals cooperate and act together in formulating, directing and controlling the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, sale and distribution of vending machines and nut meats, candy and other merchandise dispensed thereby, to purchasers thereof located in various States of the United States.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, said products, when sold, to be transported from their place of business located in the State of Minnesota, or drop-shipped from elsewhere, 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 products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents insert advertisements in newspapers soliciting persons to whom to sell said products. Persons responding to said

advertisements are contacted by respondents or their representatives. Said respondents or their representatives, in soliciting the sale of said products, make various oral representations concerning the benefits to be derived by purchasing said products. Among and typical but not all inclusive of the statements and representations made in newspapers, circulars, form letters, flyers and other printed material given to prospective purchasers are the following:

RELIABLE MAN OR WOMAN

From this area to service and collect from new automatic cigarette, candy, nut and gum vendors. No selling, we will establish accounts for you. To qualify party must have car, references, and cash capital of $495.00 to $1995 which is secured. Excellent earnings part time—Full time more. For personal interview give phone, etc. Write P.O. Box 156, Rochester, Minnesota.

EXCEPTIONAL OPPORTUNITY

Reliable man or woman from this area to distribute complete line of cigarettes, candy, nuts, or gum through new automatic vendors. No selling, we will establish accounts for you. To qualify party must have car, references, and cash capital of $900 which is secured by inventory. Excellent earnings part time—Full time more. For personal interview give phone, etc. Write P.O. Box 156, Rochester, Minnesota.

* * * You can get started on a shoestring and build your capital into a snug fortune. * * *

* * * We have, therefore designed our machines to attract attention through their attractive appearance. * * *

Undisputable Facts Concerning

PENNY MERCHANDISE VENDORS

The Safest Surest Business on Earth

1. NO RISK of losing your investment * * *.
2. No EXPERIENCE REQUIRED. * * *
3. NO SELLING OR SOLICITING.
4. NO LONG HOURS. * * *
5. NO WAITING for month, six months or a year or more to build up the business. It pays you a profit the first day your machines are on location. YOU CANNOT FAIL.
6. It's on ALL CASH Business. There are no charge accounts. NO BAD ACCOUNTS. Your NET PROFITS ARE approximately 100%, and on some vendors like the BASKETBALL DISPENSERS the Net Profit may be approximately 200% to 300%. Your average business is 10%.

* * *

8. And it is permanent—as long as Uncle Sam manufactures pennies. And it is depression proof. * * *

* * *

10. And because you get your original investment back (plus a profit) BECAUSE your machines "ON GOOD LOCATION" are worth from 25% to 33⅓%

more than you paid for them. If you doubt this statement, try to buy an established Route of GUM machines or other mechanical merchandise machines anywhere in the United States.

PAR. 5. By and through the use of the aforesaid statements and representations, and others of similar import but not specifically set forth herein, and by means of oral statements made by the respondents or their representatives, respondents represented, directly or by implication, that:

1. Respondents offer employment to persons responding to their advertisements.

2. Persons selected must own a car and have references in order to purchase respondents' products.

3. Any amount invested is secured by an inventory worth the amount invested and there is no risk of losing any part of the investment.

4. Persons selected will not be required to engage in any kind of selling activity.

5. The vending machine business is permanent and depression proof.

6. Respondents have designed the vending machines sold by them.

7. Respondents obtain or assist in obtaining satisfactory locations for vending machines purchased from them.

8. Substantial earnings are assured to persons who purchase respondents' vending machines and other products and engage in business.

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

1. Respondents do not offer employment to persons responding to their advertisements. Their sole purpose and intent is to sell their products to such persons.

2. It is not necessary to own a car or to furnish references in order to purchase respondents' products. The only requirement is the purchase price.

3. Invested sums of money are not secured by an inventory worth the amount invested and there is a real and substantial risk assumed by the purchaser of losing all or a substantial portion of the money invested.

4. Persons purchasing said products were required to engage in extensive selling or soliciting in order to establish, operate and maintain locations for said products.

5. The business opportunity offered by respondents is not permanent and is not depression proof.

6. Respondents do not design the vending machines sold by them.

7. Respondents do not obtain satisfactory locations for persons purchasing said products. Locations, if any, secured by respondents, are usually undesirable, unsuitable and unprofitable.

8. In most instances, persons purchasing respondents' products and engaging in business make little or no profit.

PAR. 7. In the course and conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of the same or similar products.

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

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

DECISION AND ORDER

This matter having come on to be heard by the Commission upon a record consisting of the Commission's complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and an agreement by and between respondents and counsel supporting the complaint, which agreement contains an order to cease and desist, an admission by the respondents of all the jurisdictional facts alleged in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint, and waivers and provisions as required by the Commission's rules; and

The Commission having considered the agreement and order contained therein and being of the opinion that the agreement provides an adequate basis for appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings are made, and the following order is entered.

1. Respondents Richard L. Schroeder and Lois I. Schroeder are individuals and copartners trading and doing business as Interstate Merchandisers, with their office and principal place of business located at 1519 Fourth Avenue, N.W., Rochester, Minnesota.

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 Richard L. Schroeder and Lois I. Schroeder, individually and as copartners, trading and doing business as Interstate Merchandisers, or under any other name or names, and their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution, of vending machines, vending machine supplies, or any other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

1. Employment is offered by respondents or others when in fact the real purpose of the offer is to obtain purchasers for respondents' merchandise;

2. Persons must own an automobile or furnish references in order to qualify for purchase of respondents' products;

3. The amount invested in respondents' products is secured or that there is no risk of losing the money so invested;

4. Selling or soliciting is not required to establish, operate or maintain a route of said products, or otherwise misrepresenting the amount of selling or soliciting required to establish, operate or maintain such route;

5. The sale of merchandise by, through, or in connection with respondents' products or devices is a permanent business or is unaffected by economic depression;

6. The respondents' vending machines or other merchandise have been designed by, or originated by, any person or organization other than the person or organization which actually designed or originated such vending machines or other merchandise;

7. Respondents or their sales representatives obtain, or assist in obtaining, profitable locations for the vending machines purchased from respondents;

8. The earnings or profits derived from the operation of respondents' vending machines will be any amount greater than that usually and customarily earned by operators of respondents' said machines.

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

EGON SEIDEN TRADING AS SEIDEN'S FURS

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

Docket 8434. Complaint, June 16, 1961—Decision, Oct. 24, 1961

Consent order requiring a Kansas City, Mo., furrier to cease violating the Fur Products Labeling Act by failing, in invoicing, labeling, and advertising, to show the true animal name of the fur used in fur products, and to disclose that fur was dyed; failing to set forth the term "dyed Broadtail processed Lamb" on labels as required; by newspaper advertising which stated falsely "All prices drastically reduced 25% to 50%" and represented falsely that he operated a factory storeroom; by setting forth on labels fictitious prices represented thereby as regular retail prices; and by failing in other respects to comply with requirements of the Act.

COMPLAINT

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

PARAGRAPH 1. Egon Seiden is an individual trading as Seiden's Furs with his office and principal place of business located at 935 Broadway, Kansas City, Missouri.

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 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 labels affixed thereto contained fictitious prices and misrepresented the regular retail selling prices of such fur products in that the prices represented on such labels as the regular prices of the fur products were in excess of the retail prices at which the respondents usually and regularly sold such fur products in the recent regular course of his business, in violation of Section 4(1) of the Fur Products Labeling Act.

PAR. 5. Certain of said fur products were misbranded in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

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

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

2. To disclose that the fur contained in the fur product was dyed.

PAR. 6. 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) The term "dyed Broadtail processed Lamb" was not set forth as required where an election was made to use that term instead of Lamb in violation of Rule 10 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.

PAR. 7. 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 such fur products which failed:

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

2. To disclose that the fur contained in the fur products was dyed.

PAR. 8. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in abbreviated form in violation of Rule 4 of said Rules and Regulations.

PAR. 9. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that said 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. 10. Among and included in the advertisements as aforesaid but not limited thereto, were advertisements of respondent which appeared in issues of the Kansas City Star, a newspaper published in the city of Kansas City, State of Missouri, 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, in violation of Section 5(a)(3) of the Fur Products Labeling Act.

(c) Represented directly or by implication through the use of percentage savings claims such as "All prices drastically reduced 25% to 50%" that the regular or usual prices charged by respondent for fur products were reduced in direct proportion to the percentage of savings stated when such was not the fact in violation of Section 5(a)(5) of the Fur Products Labeling Act.

PAR. 11. In advertising fur products for sale as aforesaid respondent falsely and deceptively advertised such fur products in violation

of Section 5(a)(5) of the Fur Products Labeling Act by representing, directly or by implication, through such statements as "Save at the factory storeroom" that respondent owned and operated a factory storeroom and savings could be effected from the purchase of fur products at such storeroom when, in truth and in fact, respondent did not own or operate a factory storeroom and no savings could be effected therefrom.

PAR. 12. In advertising fur products for sale as aforesaid respondent falsely and deceptively advertised such fur products in violation of Section 5(a)(5) of the Fur Products Labeling Act by setting forth fictitious prices on labels and misrepresenting the regular retail selling prices of such products in that the prices represented on such labels as the regular prices of the fur products were in excess of the regular retail prices at which respondent usually and regularly sold such fur products in the recent regular course of business.

PAR. 13. 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 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. 14. 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.

Messrs. Edward B. Finch and *Robert W. Lowthian* supporting the complaint.

Rich & Rich for respondent.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

The complaint herein was issued June 16, 1961, charging respondent with violation of both the Fur Products Labeling Act and the Federal Trade Commission Act through false and deceptive labeling, invoicing and advertising of fur products.

Thereafter and on July 27, 1961, respondent, his counsel and counsel supporting the complaint entered into an agreement authorizing the entry of a consent order to cease and desist the practices charged without further notice. Said agreement was duly approved by the Chief,

Division of Enforcement, Bureau of Textiles and Furs and the Director and Assistant Director of the Bureau of Textiles and Furs. It was presented to the undersigned on August 9, 1961.

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

A. An admission by respondent of all jurisdictional facts alleged in the complaint.

B. Provisions that:

(1) The complaint may be used in construing the terms of the order;

(2) The order shall have the same force and effect as if entered after a full hearing;

(3) The agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission;

(4) The entire record on which any cease and desist order may be based shall consist solely of the complaint and the agreement;

(5) The order may be altered, modified, or set aside in the manner provided by statute for other orders;

C. Waivers of:

(1) The requirement that the decision must contain a statement of findings of fact and conclusions of law;

(2) Further procedural steps before the hearing examiner and the Commission.

(3) Any right to challenge or contest the validity of the order entered in accordance with the agreement.

In addition the agreement contains the following provision: A statement that the signing of said 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.

Having considered said agreement, including the proposed order, and being of the opinion that it provides an appropriate basis for settlement and disposition of this proceeding; the hearing examiner hereby accepts the agreement but orders that it shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

The following jurisdictional findings are made and the following order issued:

1. Egon Seiden is an individual trading as Seiden's Furs, with office and principal place of business located at 935 Broadway, Kansas City, Missouri.

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

ORDER

It is ordered, That Egon Seiden individually and trading as Seiden's Furs or under any other trade name, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce of any fur product, or in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product which is 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. 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. Falsely or deceptively labeling or otherwise identifying such products as to the regular prices or values thereof by any representation that the regular or usual prices of such products are any amount in excess of the prices at which respondent has usually and customarily sold such products in the recent regular course of business.

C. 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.

D. Failing to set forth the term "Dyed Broadtail processed Lamb" in the manner required.

E. 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.

2. 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. 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.

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 products as set forth in the Fur Products Name Guide and as prescribed under the Rules and Regulations.

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

B. Makes use of comparative prices or percentage savings claims unless such compared prices or claims are based upon the current market value of the fur product or upon a bona fide compared price at a designated time.

C. Represents directly or by implication that respondent owns and operates a factory storeroom, or similar establishment, and savings can be effected from the purchase of fur products at such factory storeroom or similar establishment, when such is not the fact.

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

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 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 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.

IN THE MATTER OF

THE YOUNG MEN'S SHOP OF WASHINGTON, INC., ET AL.

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

Docket 8098. Complaint, Aug. 25, 1960—Decision, Oct. 25, 1961

Consent order requiring Washington, D.C., retailers of men's and boys' wearing apparel to cease making deceptive price and savings claims in advertising

and labeling—such as ". . . Summer Suits Reg. $59.95 now $39.99", "Were $39.50 now $29.99", "Rayon Silk $59.50 Sale Price $39.99", etc.—when the higher prices thus set out were not regular retail prices.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that The Young Men's Shop of Washington, Inc., a corporation, and Martin B. Levy, President, and Jacob Wolk, Secretary-Treasurer, 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 its public interest, hereby issues its complaint stating its changes in that respect as follows:

PARAGRAPH 1. Respondent The Young Men's Shop of Washington, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia with its principal place of business located at 1319–21 F. Street, NW., in the District of Columbia. Said corporation trades under the name of Young Men's Shop and is engaged in the sale of men's and boys' wearing apparel in stores located in the District of Columbia and in Arlington County, Virginia.

Respondents Martin B. Levy and Jacob Wolk are officers of the corporate respondent and maintain business offices at the same address as the corporate respondent. These individual respondents formulate, direct and control the acts, policies and practices of the corporate respondent.

PAR. 2. In the course and conduct of their business respondents have sold their products at retail to customers in the District of Columbia and in the State of Virginia 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. 3. In the course and conduct of their business, at all times mentioned herein, respondents are now and have been, in substantial competition, in commerce, with corporations, firms and individuals in the sale of products of the same general kind and nature as those sold by the respondents.

PAR. 4. In the course and conduct of their business respondents have caused advertisements to be inserted in newspapers circulated in the District of Columbia and in States adjacent thereto in which their merchandise was offered at alleged reduced prices. Among and typical

of the statements made in said advertisements, but not all inclusive thereof, are the following:

Reorganization Sale. Our Entire Stock of Suits, Topcoats, Sportscoats and Slacks. Reduced from 20% to 30% Off.

* * *

Group Silk Blend Summer Suits Reg. $59.95 now $39.99.

* * *

Sport Coats. Year Around Weights and Summer Madras Cottons, in newest patterns.

* * *

Were $39.50 now $29.99.

Respondents also attached tickets to the suits and sportcoats referred to in the aforesaid advertisements upon which was printed, respectively among other things, the following:

Rayon Silk $59.50 Sale Price
$39.99 and
$39.50 Sale Price $29.99

PAR. 5. By and through the use of the aforesaid statements, and others of the same import not specifically set out herein, respondents represented that the higher prices set out in the advertisements and on the labels under the designation of "Reg" and "Were" and not specifically designated, were the prices at which the suits and sportcoats had been sold at retail by respondents in the recent, regular course of their business and that the differences between the higher prices and lower sales prices represented savings from respondents' usual and customary retail prices for said merchandise in the recent, regular course of business.

PAR. 6. Said statements and misrepresentations were false, misleading and deceptive. In truth and in fact, the higher prices set out in said advertisements were not the prices at which respondents had sold the said suits and sportcoats at retail in their recent, regular course of business but were in excess of such prices and the difference between said prices and the lower sales prices did not represent savings from respondents' usual and customary retail prices for said merchandise in the recent, regular course of business.

PAR. 7. The use by the respondents of the aforementioned false, misleading and deceptive statements and representations has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the public into the erroneous and mistaken belief that such statements and representations were, and are true, and into the purchase of a substantial amount of respondents' merchandise because of said erroneous and mistaken belief. As a result

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

PAR. 8. The acts and practices of respondents, as herein alleged, were, and are, all of 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.

Messrs. Michael P. Hughes and *Morton Nesmith* supporting the complaint.

Steptoe & Johnson by *Mr. I. Martin Leavitt*, of Washington, D.C., for respondents.

INITIAL DECISION by John B. Poindexter, Hearing Examiner

On August 25, 1960, the Federal Trade Commission issued a complaint charging that the above-named respondents had violated the provisions of the Federal Trade Commission Act. The complaint alleged that respondents had made false, misleading and deceptive statements and representations with regard to their merchandise.

After issuance and service of the complaint the respondents, their counsel, and counsel supporting the complaint entered into an agreement for a consent order. Under the terms of the agreement the undersigned hearing examiner issued an initial decision on February 28, 1961 and on April 7, 1961 the Commission issued an order which vacated the hearing examiner's initial decision and remanded the case to the hearing examiner requesting additional information in support of the proposed dismissal of the complaint as to Jacob Wolk, as an individual. Additional information has been set out in an affidavit, dated June 30, 1961, executed by Martin B. Levy, President of said corporation. The affidavit attached to and made a part of the agreement states that respondent Jacob Wolk, although an officer, has not at any time formulated, directed or controlled corporate policy, nor has he participated in the acts and practices of the corporation, including the alleged unfair trade practices set forth in the complaint and also that he does not own any stock of the corporation. Accordingly, the term "respondents," as hereinafter used, does not include Jacob Wolk in his individual capacity.

Said agreement further provides as follows: Respondents admit all jurisdictional facts; the complaint may be used in construing the terms of the order; the order shall have the same force and effect as if entered after a full hearing and the said agreement shall not become a part of the official record of the proceeding unless and until it be-

comes a part of the decision of the Commission; the record herein shall consist solely of the complaint and the agreement; respondents waive the requirement that the decision must contain a statement of findings of fact and conclusions of law; respondents waive further procedural steps before the hearing examiner and the Commission, and the order may be altered, modified, or set aside in the manner provided by statute for other orders; respondents waive any right to challenge or contest the validity of the order entered in accordance with the agreement and the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

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

JURISDICTIONAL FINDINGS

1. Respondent The Young Men's Shop of Washington, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia. Said corporation trades under the name of Young Men's Shop with its principal place of business located at 1319–21 F Street, N.W., in the District of Columbia.

2. Respondents Martin B. Levy and Jacob Wolk are officers of the corporate respondent. Respondent Martin B. Levy formulates, directs and controls the acts and practices of the corporate respondent. Their address is the same as that of the corporate respondent.

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

ORDER

It is ordered, That respondents The Young Men's Shop of Washington, Inc., a corporation, and its officers, and Martin B. Levy, individually and as an officer of said corporation, and Jacob Wolk, 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 men's or boys' clothing, or other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication:

(a) That any amount is respondents' customary and usual retail price of their merchandise, when it is in excess of the price at which

said merchandise is usually and customarily sold at retail by respondents in the recent, regular course of business;

(b) That any savings are afforded from respondents' customary and usual retail prices in the purchase of their merchandise unless the price at which such merchandise is offered constitutes a reduction from the price at which it has been usually and customarily sold at retail by the respondents in the recent, regular course of business.

2. Using the term "Reg." or the word "Were" or any other term or words of the same import, in connection with the retail prices of their merchandise unless such prices are the prices at which the merchandise referred to has been usually and customarily sold at retail by respondents in the recent, regular course of business.

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

It is further ordered, That the complaint be dismissed as to Jacob Wolk, individually.

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

It is ordered, That respondents, The Young Men's Shop of Washington, Inc., a corporation; Martin B. Levy and Jacob Wolk, as officers of said corporation; and Martin B. Levy, individually, shall within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

CROMIT PRODUCTS CORPORATION TRADING AS ALBICROME PRODUCTS ET AL.

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

Docket 8303. Complaint, Mar. 3, 1961—Decision, Oct. 25, 1961

Consent order requiring Boston manufacturers of alleged chrome plating kits to cease representing falsely that purchasers of such kits could instantly

chromeplate worn and pitted metal surfaces with a copper-nickel-chrome build-up and achieve the same finish and durability as imparted by commercial electroplating methods.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the Cromit Products Corporation, a corporation, and Donald L. Albion, Charles Albion, and Roland Albion, individually and as officers of the corporate respondent, 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 Cromit Products Corporation is a corporation organized and existing under and by virtue of the laws of the State of Massachusetts. Said corporation trades under the name of Albicrome Products. Its office and principal place of business is located at 90 Brookline Avenue, Boston, Massachusetts.

Respondents Donald L. Albion, Charles Albion and Roland Albion are officers of the corporate respondent and they formulate, direct and control the acts and practices of the corporate respondent, as hereinafter set forth. Their business address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacture, advertising, offering for sale, sale and distribution of alleged chrome plating kits to distributors and retailers for resale to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said product, when sold, to be shipped from their place of business in the State of Massachusetts to purchasers thereof located in various other States of the United States and maintain and at all times mentioned herein have maintained, a substantial course of trade in said product 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 product, respondents make and have made certain statements, in connection with and for the purpose of inducing the sale of their products. Typical, but not all inclusive, of said statements are the following:

Now Crome Plate Metal Instantly.

Actually replaces worn, rusted or pitted metal, (once smoothed and cleaned) on your car—in your home and office in seconds.

Same copper-nickel-chrome build-up and durability as in old-fashioned electroplating, but at a fraction of the cost:

Brilliant, Durable Plating Results In Seconds Every Time With Albicrome.

PAR. 5. Through the use of the aforesaid statements the respondents represent that purchasers of such kits may instantly chromeplate worn and pitted metal surfaces (after cleaning and smoothing) with a copper-nickel-chrome build-up, and achieve the same finish and durability as imparted by commercial electroplating methods.

PAR. 6. In truth and in fact, respondents' kits will not chormeplate metal instantly nor will they supply the same copper-nickel-chrome build-up, and durability as a commercial chrome-electroplated surface.

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

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

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

Mr. Ames W. Williams for the Commission.

Mr. Donald L. Albion, of Boston, Mass., for respondents.

INITIAL DECISION BY HERMAN TOCKER, HEARING EXAMINER

The respondents in this case are Cromit Products Corporation, a corporation organized and existing under the laws of the State of Massachusetts, Donald L. Albion, Charles M. Albion (named in the complaint as Charles Albion) and Roland A. Cormier (named in the complaint as Roland Albion). The individual respondents were charged

both individually and as officers of the corporate respondent. Their business is now conducted at 22 Elkins Street, in South Boston, Massachusetts.

The complaint was issued March 3, 1961, and it was alleged therein that the respondents had violated the Federal Trade Commission Act by misrepresenting the plating qualities of the materials in so-called "chrome plating kits" advertised and sold by them in commerce for resale to the public.

All the respondents have entered into an agreement with counsel supporting the complaint whereby they have consented to a proposed order to cease and desist, coupled with a provision for the dismissal of the complaint as to Roland A. Cormier, in his individual capacity.

As appears from the agreement, Roland A. Cormier is nominally an officer of the corporate respondent but he performs no services for it, he has no financial interest in it, and he receives no remuneration from it. These being the facts, there does not appear to be any reason to extend any action taken against the respondents in this proceeding to him as an individual. To the extent that he continues as an officer of the corporation, he will be bound by such action in his capacity as an officer. The agreement, while stipulating that the complaint shall be dismissed as to him in his individual capacity, provides for including him in the cease and desist order as a corporate officer.

The Hearing Examiner is, therefore, of the opinion that the agreement disposes of all the issues involved in this proceeding.

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

By its terms, the respondents admit all the jurisdictional facts alleged in the complaint and they agree that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with the allegations.

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

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

It is further provided in said agreement that the same, together with the complaint, shall constitute the entire record herein; that the complaint herein 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 proposed order therein contained, and, it appearing that said agreement and order provide for an appropriate disposition of this proceeding, the same is hereby accepted and shall be filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice.

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

ORDER

It is ordered, That respondents Cromit Products Corporation, a corporation, doing business under its own name or trading as Albicrome Products, or under any other name, and its officers, and Donald L. Albion and Charles Albion, individually and as officers of said corporation, and Roland Cormier, as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the manufacturing, advertising, offering for sale, sale and distribution of their products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

1. Their kits or components will produce a chromium plating.
2. Their kits will provide a copper-nickel-chrome build-up.
3. The coating produced by the use of said kits is comparable in durability to the finish imparted by commercial electroplating.

It is further ordered, That the complaint be and the same hereby is dismissed as to respondent Roland Cormier, individually.

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

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

Complaint

IN THE MATTER OF

KOSAK FURS, INC., ET AL.

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

Docket 8348. Complaint, Apr. 5, 1961—Decision, Oct. 25, 1961

Consent order requiring New York City furriers to cease violating the Fur Products Labeling Act by failing to set forth the term "dyed Mouton processed Lamb" where required on invoices of fur products and failing in other respects to comply with invoice requirements, and by furnishing false guaranties that certain of their fur products were not misbranded, falsely invoiced, or falsely advertised.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Kosak Furs, Inc., a corporation, and Fred Kosak and Sol Horowitz, 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 Kosak Furs, Inc. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 305 Seventh Avenue, New York 1, New York.

Respondents Fred Kosak and Sol Horowitz are officers of the corporate respondent and control, direct and formulate the acts, practices and policies of the corporate respondent. 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 manufacture for introduction into commerce, and in the sale, advertising, offering for sale, transportation and distribution, in commerce, of fur products; and have manufactured for sale, sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce, as the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act.

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

PAR. 4. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in that the term "dyed Mouton processed Lamb" was not set forth where an election was made to use that term instead of Lamb in violation of Rule 9 of said Rules and Regulations.

PAR. 5. The respondents furnished false guaranties that certain of their fur products were not misbranded, falsely invoiced or falsely advertised when respondents in furnishing such guarantees had reason to believe the fur products so falsely guaranteed would be introduced, sold, transported or distributed, in commerce, in violation of Section 10(b) of the Fur Products Labeling Act.

PAR. 6. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

Mr. Charles W. O'Connell for the Commission.
Mr. Charles Goldberg, New York, N.Y., for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

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

complaint may be used in construing the terms of the order; and that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

The proposed order provides for the dismissal of the complaint as to respondent Sol Horowitz as an officer of the respondent corporation but not in his individual capacity. As it is evident from the agreement and an affidavit attached thereto that respondent Horowitz is no longer an officer of the corporation nor otherwise connected with it, such dismissal appears to be appropriate.

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

1. Respondent Kosak Furs, Inc., is a New York corporation with its office and principal place of business located at 305 Seventh Avenue, New York, New York.

Respondent Fred Kosak is an officer of the corporate respondent. His address is the same as that of the corporate respondent.

Respondent Sol Horowitz is a former officer of the corporate respondent. His address is 2723 Brown Street, Brooklyn, New York.

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

ORDER

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

A. Falsely or deceptively invoicing fur products by:

1. 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.

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

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

It is further orderd, That the complaint be, and the same hereby is, dismissed as to respondent Sol Horowitz as an officer of respondent corporation.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 25th day of October 1961, become the decision of the Commission; and, accordingly:

It is ordered, That Kosak Furs, Inc., a corporation, Fred Kosak, individually and as an officer of said corporation, and Sol Horowitz, individually, shall within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

TEXTRON, INC.

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

Docket 8433. Complaint, June 16, 1961—Decision, Oct. 25, 1961

Consent order requiring manufacturers in Providence, R.I., to cease violating the Wool Products Labeling Act by labeling fabrics "25% Wool, 70% Reprocessed Wool, 5% Nylon", "60% Reprocessed Wool, 30% Wool, 10% Nylon", and "100% Wool" and invoicing them similarly, when in fact the fabrics contained substantially less woolen fibers than thus indicated; failing to show on labels the percentage of the total fiber weight of the constituent fibers; and failing in other respects to comply with labeling requirements.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Amerotron Company, a corporation,

hereinafter referred to as respondent, has 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 Amerotron Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Rhode Island. Said respondent is a division of Textron, Inc., with its office and principal place of business at 1407 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 1959 respondent has 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 respondent within the intent of the 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 woolen fabrics labeled or tagged as:

25% Wool, 70% Reprocessed Wool, 5% Nylon,
60% Reprocessed Wool, 30% Wool, 10% Nylon and,
100 Wool%,

whereas in truth and in fact each of said fabrics contained substantially less woolen fibers than represented.

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

Among such misbranded wool products, but not limited thereto, were woolen fabrics which failed to show on the tags or labels attached thereto the percentage of the total fiber weight of the woolen fibers contained therein.

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 that the labels attached to said wool products set out required information descriptive of fiber content in abbreviated form, in violation of Rule 9 of the aforesaid Rules and Regulations.

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PAR. 6. Respondent, in the course and conduct of its business, as aforesaid, was and is in substantial competition in commerce with corporations, firms and individuals likewise engaged in the manufacture and sale of woolen fabrics.

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

PAR. 8. In the course and conduct of its business respondent has described on invoices certain of its woolen fabrics as:

70% Rep. Wool, 25% Wool, 5% Nylon;
70% Rep. Wool, 25% Wool, 5% Nylon.

In truth and in fact, both said woolen fabrics contained substantially less woolen fibers than represented.

PAR. 9. The practice of respondent as set out in Paragraph Eight of falsely identifying the constituent fibers of its wool fabrics has had, and now has, the tendency and capacity to mislead and deceive purchasers of said products as to the true fiber content thereof and to misbrand products manufactured by them in which said fabrics were used.

PAR. 10. The acts and practices of the respondent set out in Paragraph Eight were all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair methods of competition, and unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

This matter having come on to be heard by the Commission upon a record consisting of the Commission's complaint charging the respondent, Textron, Inc. (erroneously named in the complaint as Amerotron Company, a corporation) with violation of the Wool Products Labeling Act of 1939 and the Federal Trade Commission Act, and an agreement by and between respondent and counsel supporting the complaint, which agreement contains an order to cease and desist, an admission by the respondent of all the jurisdictional facts alleged in the complaint, except the allegation that Amerotron Company is a corporation, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint, and waivers and provisions as required by the Commission's rules; and

The Commission having considered said agreement and the order

there in and being of the opinion that they provide an adequate basis for appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional finding are made, and the following order is entered:

1. Textron, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Rhode Island, with its office and principal place of business located at 10 Dorrance Street, Providence, Rhode Island. Amerotron Company is a division of Textron, Inc.

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

ORDER

It is ordered, That respondent, Textron, Inc., a corporation, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of woolen fabrics, or other "wool products", as such products are defined in and subject to the Wool Products Labeling Act, do forthwith cease and desist from:

A. Misbranding such products by:

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

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

It is further ordered, That respondent, Textron, Inc., a corporation, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of fabrics, or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

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 getting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF

RALPH L. AUTRY TRADING AS NATURAL MINERALS PLUS

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

Docket C-11. Complaint, Oct. 31, 1961—Decision, Oct. 31, 1961

Consent order requiring a Burbank, Calif., distributor of a drug preparation designated "Natural Minerals Plus" to cease misrepresenting the therapeutic properties of the product in advertisements in newspapers and magazines and other advertising media.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Ralph L. Autry, an individual trading as Natural Minerals Plus, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Ralph L. Autry is an individual trading as Natural Minerals Plus, with his principal office and place of business located at 1100 North Fairview Street in the City of Burbank, State of California.

PAR. 2. Respondent is now, and has 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 respondent for said preparation, the formula thereof and directions for use are as follows:

Designation: Natural Minerals Plus.

Description: A natural sedimentary mineral deposit to which Calcium, Phosphorus, Iron and Iodine have been added.

Formula: Ingredients and sources: Calcium and Phosphorus from Dicalcium Phosphate; Iodine from dehydrated Kelp; Iron from Sodium Ferric Pyrophosphate. The many trace minerals in this formula, for which no nutritional claims are made, come from a natural mineral deposit.

5 tablets (the suggested daily ration) supply the following amounts:

Calcium, 750 mg.

Phosphorus, 565 mg.

Iron, 37.5 mg.

Iodine, 0.65 mg.

Directions: Suggested Use: 5 tablets daily, with meals.

PAR. 3. Respondent causes the said preparation, when sold, to be transported from his place of business in the State of California to purchasers thereof located in various other states of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has 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 his said business, respondent has 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 has 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:

THEY SAID I WAS INCURABLE

Read this amazing true story about how a man, in a world of pain, sickness and despair, was cured because of a chance meeting with a total stranger.

MY DARKEST HOURS

A stranger came to me and cured me when heartbreak was closing in from all side. I am living proof of the wisdom of his advice. Then, in later years he came to me again to reveal another secret, the discovery of *Natural Minerals Plus.*

Two and a half years before, I had been medically discharged with an "incurable" disease from one of our biggest hospitals. I was blind, * * *.

* * *

*The author, Ralph Autry, now the picture of glowing health * * * blind at 18, Ralph found a new life along with others whose minds were tortured by psychosomatic fears of rheumatism, arthritis, weakness, nerves, insomnia, aches, pains and all kinds of other ailments.*

* * *

I AM CURED

* * * I have seen others follow that same advice and they were helped. *Folks whose minds were tortured by psychosomatic fears of the agonizing miser-*

ies of arthritis, rheumatism, constipation, indigestion, weakness, sleeplessness, depression; gnawing fear of all kinds of horrible ailments, aches and pains. Yes, they were helped by the same miracle that I had found.

* * *

* * * take Natural Minerals Plus for just 10 days, and then decide on its benefits. You must feel better by your own admission * * *.

* * * please rush by *Natural Minerals Plus* tablets to me immediately on your faith guarantee. That means that I must begin to see results in just 10 days. * * *

Grit, March 20, 1960
Police Gazette, November 1960

PAR. 6. Through the use of said advertisements, and others similar thereto not specifically set out herein, respondent has represented and is now representing, directly and by implication, that the preparation will be of bentfit in the treatment of, and will cure, blindness, rheumatism, arthritis, constipation, indigestion, weakness, nervousness, insomnia, depression, aches, pains, and all kinds of diseases.

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, the preparation will not be of benefit in the treatment of, or cure, blindness, rheumatism, arthritis, constipation, indigestion, weakness, nervousness, insomnia, depression, aches, pains, or any disease not caused by a deficiency of calcium or iodine.

PAR. 8. The dissemination by the respondent 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 respondent named in the caption hereof with violation of the Federal Trade Commission Act, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint, 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 Ralph L. Autry is an individual trading as Natural Minerals Plus, with his office and principal place of business located at 1100 North Fairview Street, in the City of Burbank, State of California.

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

ORDER

It is ordered, That respondent, Ralph L. Autry, an individual trading as Natural Minerals Plus, or under any other name, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the preparation designated "Natural Minerals Plus", or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist, directly or indirectly:

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 represents, directly or indirectly, that said preparation will be of benefit in the treatment of, or cure, blindness, rheumatism, arthritis, constipation, indigestion, weakness, nervousness, insomnia, depression, aches, pains or any disease not caused by a deficiency of calcium or iodine.

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

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

MAGICURE, INC., ET AL.

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

Docket C-12. Complaint, Oct. 31, 1961—Decision, Oct. 31, 1961

Consent order requiring Columbus, Ohio, distributors of their "Magicure" device to cease representing falsely in advertising in letters, circulars, pamphlets, etc., that use of the device would stop bed wetting and correct the bed wetting habit.

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 Magicure, Inc., a corporation, and Arthur C. Kinkead, Sr., and William Kinkead, individually and as officers of the said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Magicure, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Ohio. Its office and principal place of business is located at 600 East Town Street, Columbus 15, Ohio.

Respondents Arthur C. Kinkead, Sr., and William Kinkead are officers of the respondent corporation. They formulate, direct and control the acts and practices of the respondent corporation, including those hereinafter set forth. The address of the individual respondents 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 offering for sale, sale and distribution of a device, which comes within the classification of devices as the term "devices" is defined in the Federal Trade Commission Act, designated as "Magicure", for use in cases of enuresis, or bed-wetting.

PAR. 3. Respondents, in the course and conduct of their business, have caused said device, when sold, to be transported from their place of business in the State of Ohio to purchasers located in various states of the United States. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said device, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of said business, respondents have disseminated, and caused the dissemination of, certain advertisements concerning the said "Magicure" 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, circulars, letters and pamphlets for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said "Magicure" and have disseminated, and caused the dissemination of, advertisements concerning the said "Magicure" 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 in the Federal Trade Commission Act.

PAR. 5. Among and typical, but not all inclusive, of the statements and representations contained in said advertisements disseminated as hereinabove set forth are the following:

Bed-wetting can be corrected, without the use of diets, drugs, or even the restriction of liquids, just a short training program.

With the use of my remarkable new training method, you should not have a wet bed again even the first night you start the training.

. . . the Magicure methods that's guaranteed to stop bed-wetting.

PAR. 6. Through the use of said advertisements, and others similar thereto but not specifically set out herein, respondents have represented, and are now representing, directly or by implication, that the use of said device will stop bed-wetting and correct the bed-wetting habit.

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, use of the said device will not be effective in stopping bed-wetting or correcting the bed-wetting habit except in cases of functional bed-wetting not involving organic defects or diseases.

PAR. 8. Respondents do not guarantee the device "Magicure" in every respect. The terms, conditions and extent to which such guarantee applies and the manner in which the guarantor will perform thereunder are not disclosed in the advertisements.

PAR. 9. 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, Magicure, Inc., 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 600 East Town Street, in the City of Columbus, State of Ohio.

Respondents Arthur C. Kinkead, Sr., and William Kinkead are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation, and their address is the same as that of said corporation.

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

ORDER

It is ordered, That respondent Magicure, Inc., a corporation, and its officers, and respondents Arthur C. Kinkead, Sr., and William Kinkead, 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 sale of a device known as "Magicure", or any other device which functions in substantially the same manner, do forthwith cease and desist from, directly or indirectly:

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 represents, directly or by implication:

(a) That the use of said device is of value in stopping bed-wetting or correcting the bed-wetting habit unless expressly limited, in a clear and conspicuous manner, to cases of bed-wetting not caused by organic defects or diseases.

(b) That said device is guaranteed, unless the terms, conditions and extent to which such guarantee applies and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

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

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

JACOB KLAFF TRADING AS FRANCINE'S ET AL.

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

Docket C-13. Complaint, Oct. 31, 1961—Decision, Oct. 31, 1961

Consent order requiring Boston furriers to cease violating the Fur Products Labeling Act by representing falsely in advertisements in newspapers that they operated a "millionaire thrift salon", and that fur products offered for sale were "new arrivals, flown in from Hollywood", from "stage, screen and TV stars" and "social register society", etc.; and by failing to keep adequate records as a basis for pricing claims.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Jacob Klaff, an individual trading as Francine's, and Howard Klaff, an individual and manager of Francine's, 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. Jacob Klaff is an individual trading as Francine's with his office and principal place of business located at 10 West Street, Boston, Massachusetts. Howard Klaff is an individual and

manager of Francine's with his office and principal place of business located at the same address. Both individual respondents control, direct and formulate the acts, practices, and policies of the said Francine's.

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

PAR. 3. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that respondents caused the dissemination in commerce, as "commerce", is defined in said Act, of certain newspaper advertisements, concerning said products, which were not in accordance with the provisions of Section 5(a) of the said Act, and the Rules and Regulations promulgated thereunder; and which advertisements were intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of said fur products.

PAR. 4. Among and included in the advertisements as aforesaid, but not limited thereto, were advertisements of respondents which appeared in issues of The Boston Globe, a newspaper published in the City of Boston, State of Massachusetts, and having a wide circulation in said State and various other States of the United States.

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

(a) Represented that they own and operate a "millionaire thrift salon" when such was not the fact in violation of Section 5(a)(5) of the Fur Products Labeling Act.

(b) Represented that the fur products offered for sale were "just unpacked, new arrivals, flown in from Hollywood", when such was not the fact in violation of Section 5(a)(5) of the Fur Products Labeling Act.

(c) Represented that the fur products offered for sale were "formerly proudly owned and briefly worn by some of America's best dressed women" when such was not the fact in violation of Section 5(a)(5) of the Fur Products Labeling Act.

(d) Represented that the fur products offered for sale were from "stage, screen and TV stars" when such was not the fact in violation of Section 5(a)(5) of the Fur Products Labeling Act.

(e) Represented that the fur products offered for sale were from "envied society women" when such was not the fact in violation of Section 5(a)(5) of the Fur Products Labeling Act.

(f) Represented that the fur products offered for sale were from "social register society" when such was not the fact in violation of Section 5(a)(5) of the Fur Products Labeling Act.

PAR. 5. In advertising fur products for sale as aforesaid respondents made pricing claims and representations, of the types covered by subsections (a), (b), (c) and (d) of Rule 44 of the Regulations 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 pricing claims and representations were based in violation of Rule 44(e) of the said Rules and Regulations.

PAR. 6. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

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. Respondent Jacob Klaff is an individual trading as Francine's and respondent Howard Klaff is an individual and manager of Francine's. Both respondents have their office and principal place of business located at 10 West Street, in the city of Boston, State of Massachusetts.

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

ORDER

It is ordered, That Jacob Klaff, an individual trading as Francine's or under any other name, and Howard Klaff, an individual and manager of Francine's and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce of fur products, or in connection with the sale, advertising, offering for sale, transportation, or distribution of fur products which are made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

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

A. Represents directly or by implication that respondents own and operate a millionaire thrift salon or words of similar import when such is not the fact.

B. Represents directly or by implication that fur products offered for sale were just unpacked, new arrivals flown in from Hollywood or words of similar import when such is not the fact.

C. Represents directly or by implication that fur products offered for sale were formerly proudly owned and worn by some of America's best dressed women or words of similar import when such is not the fact.

D. Represents directly or by implication that fur products offered for sale are from stage, screen and TV stars or words of similar import when such is not the fact.

E. Represents directly or by implication that fur products offered for sale were formerly owned by envied society women or words of similar import when such is not the fact.

F. Represents directly or by implication that fur products offered for sale are from social register sources or words of similar import when such is not the fact.

2. Making pricing claims and representations of the types covered by subsections (a), (b), (c) and (d) under Rule 44 of the Regulations under the Fur Products Labeling Act unless there are maintained 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

MARIE ANTOINETTE, INC., ET AL.

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

Docket C-14. Complaint, Oct. 31, 1961—Decision, Oct. 31, 1961

Consent order requiring Austin, Tex., furriers to cease violating the Fur Products Labeling Act by labeling fur products falsely with respect to the country of origin of the fur; by failing to disclose on invoices the true animal name of fur, the country of origin of imported furs or when fur was artificially colored; by newspaper advertising which failed to disclose the names of animals producing certain furs, to set forth the terms "Dyed Mouton Lamb" and "Dyed Broadtail-processed Lamb" where required, and represented selling prices as reduced from regular prices which were in fact fictitious; by failing to maintain adequate records as a basis for price and value claims; and by failing in other respects to comply with labeling, invoicing, and advertising 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 Marie Antoinette, Inc., a corporation and Frank Fuccello and Mary Virginia Soderberg, 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 Marie Antoinette, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas. Individual respondents Frank Fuccello and Mary Virginia Soderberg are Vice-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 offices and principal place of business at Marie Antoinette, Inc., 10th and Congress Streets, Austin, Texas.

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 products" 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 country of origin of the imported furs contained in the fur product, in violation of Section 4(1) of the Fur Products Labeling Act.

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

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

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

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

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

(e) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not set forth separately on labels with respect to each section

of fur products composed of two or more sections containing different animal furs, in violation of Rule 36 of said Rules and Regulations.

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

PAR. 6. 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 involces pertaining to such fur products which failed:

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

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

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

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

PAR. 8. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that respondents caused the dissemination in commerce, as "commerce" is defined in said Act, of certain newspaper advertisements, concerning said products, which were not in accordance with 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. 9. Among and included in the advertisements, as aforesaid, but not limited thereto, were advertisements of respondents which appeared in issues of the Austin Statesman, a newspaper published in the City of Austin, 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, respondents falsely and deceptively advertised fur products in that said advertisements:

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

(b) Failed to set forth the term "Dyed Mouton Lamb" in the manner required, in violation of Rule 9 of said Rules and Regulations.

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

(d) 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 the said Rules and Regulations.

(e) Contained information required under Section 5(a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder which was not set forth in type of equal size and conspicuousness and in close proximity with each other, in violation of Rule 38(a) of said Rules and Regulations.

PAR. 10. 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. 11. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce under the Federal Trade Commission.

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. Respondent Marie Antoinette, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 10th and Congress Streets, in the city of Austin, State of Texas.

Respondents Frank Fuccello and Mary Virginia Soderberg are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation, and their address is the same as that of said corporation.

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

ORDER

It is ordered That Marie Antoinette, Inc., a corporation and Frank Fuccello and Mary Virginia Soderberg, 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 any fur product, or in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur products" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misbranding fur products by:

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

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

B. Falsely or deceptively labeling or otherwise falsely and deceptively identifying such fur product as to the country of origin of the imported furs contained therein.

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 the information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, on one side of the label.

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

G. Failing to set forth separately on labels attached 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.

2. Falsely or deceptively invoicing fur products by:

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

B. Setting forth 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 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 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.

B. Fails to set forth the term "Dyed Mouton Lamb" in the manner required when an election is made to use that term instead of the term "dyed lamb".

C. Fails to set forth the term "Dyed Broadtail-processed Lamb" in the manner required when an election is made to use that term instead of the word "Lamb".

D. Fails to set forth the information required under Section 5(a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in types of equal size and conspicuousness and in close proximity with each other.

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

4. Making pricing 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 is maintained by respondents full and adequate records disclosing the facts upon which such claims or 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

FRANKLIN STORES CORPORATION ET AL.

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

Docket C-15. Complaint, Oct. 31, 1961—Decision, Oct. 31, 1961

Consent order requiring a New York City corporation and its New Orleans subsidiary retailer of women's apparel to cease such false representations in newspaper advertising as that the New Orleans store had "on sale . . . 25 fabulous mink trimmed 100% cashmere coats $78, reg. $125" when the higher prices designated "reg." were not the usual prices but were fictitious; and to cease representing falsely, by price tickets affixed to cashmere coats before shipment from the New York headquarters and in advertising in New Orleans newspapers based thereon, that the usual price of $99 for cashmere coats was reduced 40% to $58, with consequent savings to purchasers.

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 Franklin Stores Corporation, and Mayfair of New Orleans, Inc., corporations, and Albert Rubenstein and Nathan Katz, as officers of said corporations, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the 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 Franklin Stores Corporation is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 320 West 31st Street, New York, New York.

Respondent Mayfair of New Orleans, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 1013 Canal Street, New Orleans, Louisiana. It is a wholly owned subsidiary of Franklin Stores Corporation engaged in retailing women's apparel.

Respondents Albert Rubenstein and Nathan Katz are officers of both of said corporations and as such formulate, direct and control the acts and practices of the corporate respondents. Their address is the same as that of Franklin Stores 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 falsely and deceptively advertised in violation of the Fur Products Labeling Act in that respondents caused the dissemination in commerce, as "commerce" is defined in said Act, of certain newspaper advertisements, concerning said products, which were not in accordance with the provisions of Section 5(a) of the said Act and the Rules and Regulations promulgated thereunder; and which advertisements were intended to aid,

promote and assist, directly or indirectly, in the sale and offering for sale of said fur products.

PAR. 4. Among and included in the advertisements as aforesaid, but not limited thereto, were advertisements of respondents which appeared in the March 20, 1960 and April 3, 1960 issues of The Times-Picayune, a newspaper published in the City of New Orleans, State of Louisiana, and having a wide circulation in said state and various other States of the United States.

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

Represented, directly or by implication through such statements as "on sale Monday at Mayfair just 25 fabulous mink trimmed 100% cashmere coats $78, reg. $125" and "on sale just 81 beautiful mink trimmed suits $38 reg. $59.95. Buy now and save on the luxury suit of your dreams", that the prices designated "reg." were respondents' usual and customary retail prices for the said fur products in the recent regular course of business, and that purchases at the lower prices would result in savings of the differences between the respective higher and lower prices of the coats and suits.

In truth and in fact, the higher prices in each instance designated by the term "reg." were not respondents' usual and customary prices in the recent regular course of business for the respective products advertised, but were fictitious prices, and the purchase of said products at the lower prices would not result in savings to purchasers of the differences between higher and the lower prices of the respective products, all in violation of Section 5(a)(5) of the Fur Products Labeling Act and Rule 44(a) of said Rules and Regulations.

PAR. 5. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

PAR. 6. Respondent Mayfair of New Orleans, Inc., is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution, among other merchandise, of ladies' cashmere coats, to the public.

PAR. 7. In the course and conduct of its business respondent Franklin Stores Corporation purchases said cashmere coats in the State of New York, marks and affixes price tickets thereto and ships said merchandise to its subsidiary, respondent Mayfair of New Orleans, Inc., for resale to the public. Respondent Mayfair of New Orleans, Inc., for the purpose of inducing purchases of said cashmere

coats, used the information appearing on said price tickets in advertisements inserted in newspapers of interstate circulation.

PAR. 8. Among and typical, but not all inclusive, of the statements appearing in the advertisements referred to in Paragraph Seven is the following:

Cashmere Coats
$99 values
$58
Buy now and
Save 40%

PAR. 9. Through the use of said statement, as set forth above, respondents represented directly or by implication that the cashmere coats were usually and customarily sold at retail for $99 in the trade area in which the representation was made, and that customers purchasing the coats for $58 would realize a savings of approximately 40% from the usual and customary price of the coats.

PAR. 10. The statement in said advertising was false, misleading and deceptive. In truth and in fact the amount of $99 was fictitious and in excess of the price at which said coats were usually and customarily sold at retail in said trade area and purchases of said coats at the lower price set out in the advertisement did not result in savings to purchasers amounting to the difference between the said lower price and said higher price.

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 ladies' cashmere coats 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' products by reason of said erroneous and mistaken belief.

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 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 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. Respondent Franklin Stores Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 320 West 31st Street, New York, New York.

Respondent Mayfair of New Orleans, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 1013 Canal Street, New Orleans, Louisiana. It is a wholly owned subsidiary of Franklin Stores Corporation engaged in retailing women's apparel.

Respondents Albert Rubenstein and Nathan Katz are officers of both of said corporations and as such formulate, direct and control the acts and practices of said corporations. Their address is the same as that of Franklin Stores 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 Franklin Stores Corporation and Mayfair of New Orleans, Inc., corporations, and their officers, and Albert Rubenstein and Nathan Katz, as officers of said corporations, and respondents'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:

A. 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:

1. Represents directly or by implication that any amount is respondents' usual and customary retail price of fur products when it is in excess of the price at which said products are usually and customarily sold by respondents in the recent regular course of business.

2. Uses the word "Reg." to describe or refer to the retail price of merchandise when such amount is not the price at which the merchandise has been usually and customarily sold by respondents at retail in the recent, regular course of business.

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

It is further ordered, That respondents Franklin Stores Corporation and Mayfair of New Orleans, Inc., corporations, and their officers, and Albert Rubenstein, and Nathan Katz, as officers of said corporations, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of wearing apparel or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing directly or by implication:

(a) That any amount is the price at which merchandise is usually and customarily sold at retail in the trade area, or areas, where the representation is made, when it is in excess of such price.

(b) That any savings are afforded in the purchase of merchandise from the price at which said merchandise is usually and customarily sold at retail in the trade area or areas where the representations are made unless the price at which it is offered constitutes a reduction from such price.

2. Using the word "value" to describe or refer to the retail price of merchandise when such amount is not the price at which the merchandise has been usually and customarily sold at retail in the trade area, or areas, where the representation is made.

3. Using percentage savings claims to represent that merchandise is offered at a reduction from the price at which said merchandise is usually and customarily sold at retail in the trade area, or areas, where the representation is made unless the price at which it is offered constitutes a reduction from such price.

4. Misrepresenting in any manner the amount of savings available to purchasers of respondents' merchandise from the price at which

said merchandise is usually and customarily sold in the trade area, or areas, where the representation is made.

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

SNAP-ON TOOLS CORPORATION

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

Docket 7116. Complaint, Apr. 10, 1958—Decision, Nov. 1, 1961

Order requiring the manufacturer of a complete line of tools ranging from simple hand tools to complex electronic devices and automotive testing equipment, to cease entering into restrictive agreements with its independent dealers which unlawfully established resale prices for its products, restricted sales territories and the persons to whom dealers could sell, and provided that dealers, upon termination of their agreements, could not engage in a similar business within the same State for one year.

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 Snap-On Tools Corporation, hereinafter referred to as respondent, has violated the provisions of Section 5 of the Federal Trade Commission 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 this respect as follows:

PARAGRAPH 1. Respondent herein is Snap-On Tools Corporation, a corporation organized, existing and doing business under the laws of Delaware. Respondent's principal office and place of business is at 8026 28th Avenue, Kenosha, Wisconsin.

PAR. 2. For a number of years in the past respondent has been, and now is, a manufacturer and nationwide seller of a line of products used by mechanics and industry consisting of wrenches, mechanics' hand tools and associated equipment. Net sales of the respondent during 1956 were $19,864,878.

PAR. 3. Respondent sells its products directly to many industrial, railroad and governmental users and to approximately eight hundred

independent dealers who resell the products to automobile mechanics and other users.

PAR. 4. Respondent, in the course and conduct of its business in selling its products, ships or causes the products to be shipped from the places of manufacture to the locations of the purchasers in the various states other than the state of manufacture and the District of Columbia, and has been, and now is, engaged in "commerce," as that term is defined in the Federal Trade Commission Act, and there has been a current of trade in commerce in products manufactured and sold by respondent between and among the various states of the United States and in the District of Columbia. Respondent, in the course and conduct of its business of selling its products is in competition in commerce with other manufacturers and sellers of similar products and with dealers in its products.

PAR. 5. Respondent, before selling its products to retail dealers and as a continuing condition of selling to them, requires each dealer to enter into a standard form of written bilateral contract, entitled "Dealer Agreement," containing among others, terms, agreements and conditions providing that:

1. The dealer agrees that he will not sell any of the products purchased from the respondent at a price varying from the retail price fixed by respondent;

2. The dealer shall resell respondent's products only within the geographical limits of the territory described in his agreement;

3. The dealer shall not sell respondent's products to the certain persons or firms specified by name in his agreement;

4. The "Dealer Agreement" may be terminated by the company at any time, and at the termination of the agreement, whether by the respondent or by the dealer, the dealer agrees that he will not engage in a similar business within the state in which he had been selling respondent's products for one year after the termination.

PAR. 6. Respondent has enforced the agreements, conditions and terms of sale described in Paragraph Five.

PAR. 7. Respondent has been and is selling, or attempting to sell its products directly to the persons, firms and other potential customers which the dealers are restricted from selling by the terms of the dealer agreements described in Paragraph Five, subdivision 3, above, which persons, firms and other potential customers are users, not resellers of respondent's products. Respondent also sells directly to other users of its tools which are not specifically excluded from the contracts of the dealers.

PAR. 8. Respondent has agreed with each retail dealer that it will not sell its products to any other dealer in the geographical territory allotted to each such dealer.

PAR. 9. Each of the agreements, conditions of sale, acts practices and methods of competition of respondent described in Paragraphs Five, Six, Seven and Eight, above, and each of the other agreements, acts, practices and methods of competition of respondent taken pursuant and related thereto, either individually or collectively, is in undue restraint of trade in commerce and is being engaged in by respondent for the purpose, or with the effect of:

1. Agreeing with the dealers to fix and to maintain the resale prices of respondent's products in a manner and method not permitted by applicable federal or state statutes;

2. Unduly hindering and restraining competition between respondent and other manufacturers of similar products;

3. Unduly hindering and restraining competition, including price competition, between the retail dealers in the sale of respondent's products to users;

4. Unlawfully depriving the users of respondent's products and the public generally of the advantages of competition, including price competition, with respect to respondent's products;

5. Unreasonably restraining trade and commerce with and among the dealers and that of the dealers themselves by reason of the covenant not to engage in a similar business for a year after the termination of the dealer agreement;

6. Unduly restraining and controlling the operations, independence and business decisions of the dealers in making them subservient to respondent by virtue of its ability to arbitrarily terminate the dealers' agreements which brings into operation the oppressive covenant not to compete;

7. Unduly hindering and restraining the trade and commerce of the dealers by limiting the freedom of such dealers to resell respondent's products to persons, firms and users of their own choice, wherever located.

PAR. 10. Each and all of respondent's contracts, agreements, conditions of sale, acts, practices and effects thereof, as herein alleged, constitutes an unfair act and practice or unfair method of competition in commerce in violation of Section 5 of the Federal Trade Commission Act. (15 U.S.C.A. Sec. 45)

Mr. John F. McCarty for the Commission.

Mr. Harry C. Alberts, Chicago, Ill., and *Mr. Kermit N. Caves*, Kenosha, Wis., for respondent.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

1. The complaint in this matter charges the respondent, Snap-On Tools Corporation, with entering into and enforcing certain restrictive

and anti-competitive agreements or covenants with the dealers who resell its products, in violation of the Federal Trade Commission Act. At the close of the Commission's case in chief, respondent moved for dismissal of the complaint on the ground that a prima facie case had not been established. On October 5, 1959, the motion was granted in part and denied in part by the hearing examiner.

Upon appeal to the Commission by counsel supporting the complaint, the Commission on January 21, 1960, vacated the hearing examiner's order and remanded the case for further proceedings. Thereafter respondent introduced its evidence. Proposed findings and conclusions have been submitted by both parties, oral argument having been waived, and the case is now before the hearing examiner for final consideration. Any proposed findings or conclusions not included herein have been rejected.

2. Respondent is a manufacturer and distributor of mechanics' service tools and related equipment and appliances, its main factory and offices being located in Kenosha, Wisconsin. Its products are used in such places of business as automotive repair shops, garages, service stations, and machine shops, and also in large industrial plants. The products currently number some 4,000 different items, which range from simple hand tools such as small wrenches and pliers to complicated electronic devices and automotive testing equipment. All of the products are sold under respondent's registered trade name "Snap-On".

3. Respondent markets its products primarily through independent dealers who make periodic calls upon customers and prospective customers within their respective territories. The dealers may aptly be described as "vendors on wheels", in that they operate and sell from walk-in motor trucks in which they carry a stock of the tools most frequently sold. This phase of respondent's business—sales by dealers to garages, service stations, repair shops, etc.—is known as the "mechanic trade".

The other phase of respondent's business is known as the "industrial trade", which includes sales to large industrial plants, railroads, government installations, etc. The dealers are free—in fact are encourage by respondent—to call on industrial customers. However, there frequently are instances in which the dealers are unwilling, or are unable because of inadequate educational and engineering background, to solicit such business. In such cases respondent uses its own corps of "industrial salesmen" who are employees of respondent rather than independent dealers.

4. Respondent enters into written agreements with its dealers, and it is certain provisions in the form of the agreement which constitute

the principal subject matter of the present proceeding. One of the provisions has to do with the matter of exclusive territories. This is the real issue about which the proceeding centers. In fact, it is the only real controversy remaining in the case, as the other challenged provisions in the agreement have already been eliminated by respondent.

On the subject of exclusive territories, the agreement provides:

> The Company hereby assigns to the Dealer, not as an agent, a non-exclusive franchise for the sale of its products only within the territory described below and under the conditions hereinafter outlined. (CX 3A)

While the dealers' territories are frequently referred to by respondent as "assigned territories" or "protected territories" rather than "exclusive territories", it seems clear that the territories are in fact exclusive and are so regarded by both respondent and the dealers. The reference in the provision quoted above to the franchise as "non-exclusive" evidently was intended only for the purpose of reserving to respondent the right, where necessary, to solicit and sell industrial customers.

5. Is the maintenance by respondent of exclusive territories for its dealers illegal? In the examiner's opinion it is not. The dealers, as already stated, operate and sell from motor trucks. Not only do they make periodic calls on customers; they extend credit, collect installment payments, adjust complaints, and replace tools and equipment found to be defective. In the case of certain equipment, they enter into rental arrangements with the customer and periodically collect the amount of rental due.

Moreover, customers frequently go to respondent's branch warehouses and make purchases direct. In such instances the dealers are entitled to their profit on the sale. In the absence of exclusive territories it would be almost impossible to determine the particular dealer to whom the credit was due.

In the circumstances there is merit in respondent's contention that the maintenance of exclusive territories is indispensable to the successful operation of its business; that "confusion and chaos" would result if it were forced to abandon the policy. In the absence of the maintenance of a very large corps of salesmen employees, the practice of exclusive territories for its dealers appears to be the only way in which respondent can be assured that sales territories will be adequately worked, that periodic calls will be made on customers, and that satisfactory service will be rendered customers.

6. Fundamental to consideration of this issue is the fact that competition in the sale and distribution of tools and equipment such as are here involved is very keen. There are many sellers in the field; the industry is highly competitive. The only possible adverse effect

of respondent's exclusive territory policy upon competition is that prospective purchasers are unable to play off one Snap-On dealer against another in the hope of obtaining a lower price. This would seem to be of little practical consequence in view of the fact that there are any number of sources available from which the purchaser can supply his needs.

7. As the examiner understands the authorities, the maintenance of exclusive territories by a seller certainly is not unlawful per se. On the contrary, the practice is unlawful only if it forms a part of a general plan or scheme which is unlawful. No such plan is involved here.

It is therefore concluded that respondent's policy of exclusive territories is not unlawful and that the complaint has not been sustained on this issue. This view appears to be in line with the decision of the Commission In Columbus Coated Fabrics Corporation, Docket No. 6677, and the authorities there cited. While reference was made in the Commission's opinion to the absence of agreement between Columbus and its dealers, it is not understood that that single point was decisive of the case.

8. The complaint also raises the issue of resale price maintenance. As will be seen later, the provision in the agreement relating to this subject has been eliminated by respondent and there is now no resale price maintenance. The provision formerly read as follows:

> The Dealer agrees that he will not sell any of the articles purchased by him from the Company at a price varying from the retail price fixed by the Company. Retail prices may be changed from time to time by the Company by written or telegraphic notice to Dealer. Such change in retail price shall become effective immediately unless the notice specifies otherwise. This paragraph of the Agreement shall be operative only in those states in which so-called "Fair Trade Acts" are in effect. (CX 3A)

Insofar as sales to the mechanic trade were concerned, there seems to be no doubt that this provision was within the exemption provided by the amendments made to Section 5 of the Federal Trade Commission Act by the Miller-Tydings and McGuire Acts.

9. As for sales to the industrial trade, the issue is whether there was in fact any resale price maintenance in respect of such sales. The provision quoted above does not expressly except industrial sales. And there is testimony from the former manager of respondent's Albany, New York, branch to the effect that insofar as that branch was concerned the policy of price maintenance was understood as applying to industrial as well as mechanic sales.

On the other hand, there is positive, unequivocal testimony from respondent's principal officers that there has never been any policy or practice of resale price maintenance as to industrial sales; that the

provision in question in the agreement was never regarded as having any application whatever to such sales. It should also be noted that while the quoted provision did not except industrial sales, it does seem to have applied only to "retail" sales, and it is very questionable whether sales to large industrial plants, railroads, governmental agencies, etc., can properly be regarded as retail sales.

On the whole, the greater weight of the evidence on this issue is in favor of respondent. In any event, as already indicated and as will be seen later, respondent no longer has any policy of resale price maintenance in connection with any phase of its business.

10. A further charge in the complaint is that respondent's contract with its dealers provides that "the dealer shall not sell respondent's products to the certain persons or firms specified by name in his agreement." Actually, there appears to have been only one instance in which an agreement undertook to exclude customers. This instance involved a dealer in the Albany, New York, territory, the contract providing in substance that two large industrial companies were excepted from the dealer's territory. These two accounts were handled by respondent's Albany branch office.

The contract in question, which was executed in 1950, represents a single and isolated instance and appears clearly to have been contrary to respondent's general policy and practice. As already pointed out, respondent's dealers are free, and are encouraged by respondent, to solicit and sell industrial customers. The branch managers who negotiated this contract is no longer associated with respondent, relations between the two having been terminated some three years ago. In the examiner's opinion this single instance fails to constitute substantial evidence in support of the complaint on this issue.

11. Finally, the complaint attacks a provision which formerly appeared in the agreement to the effect that upon termination of the agreement the dealer should for a period of one year refrain from engaging in a similar business in the state in which he had been selling respondent's products. The provision read as follows:

> It is understood and agreed between the Company and the Dealer that, in consideration of the execution and delivery of this agreement, the Dealer shall refrain from carrying on a similar business within the state or states in which he has been operating under this contract for one year from the date of termination thereof by either the Company or the Dealer (CX 2B)

12. The validity of covenants of this kind turns upon the question of their reasonablenesss. Here some restriction would appear to be reasonable, particularly in view of the fact that other provisions of the contract seem to contemplate that respondent will repurchase from the dealer all of the stock he has on hand at the time of termination of the relationship, and will also collect all of the dealer's outstanding

accounts with purchasers. At any rate it is respondent's practice to do both of these things.

13. Insofar as the time element of the restriction is concerned—one year—this would seem to be entirely reasonable. However, the geographical limitation imposed—the entire state in which the dealer has been selling—goes too far. It must be remembered that the dealers' territories are relatively small, frequently comprising only one city or even a part of a city. To say that a former dealer must refrain from engaging in a similar business anywhere in the entire state would seem to be unduly restrictive and an unreasonable restraint upon competition. A reasonable limitation would appear to be the area in which the dealer has been selling or possibly the city or county in which his sales territory was located.

14. In only two instances has any attempt been made to enforce this provision in the contract. In these cases suits were brought in 1955 by respondent's Albany, New York, branch manager against two former dealers or subdealers. Both suits resulted in injunctions against the dealers, but the geographical limitation imposed by the court was limited to the areas in which the respective dealers had been selling.

15. There is extended testimony by respondent's officers regarding this litigation. It appears that the Albany branch manager insisted upon the bringing of the suits and in fact contended that under his contract of employment with respondent he had a right to institute the litigation. Respondent's officers finally acquiesced in the bringing of the suits, with the understanding that the branch manager would himself pay all expenses in connection therewith. Also, it appears to have been contemplated by respondent that the suits would be filed in the name of the branch manager rather than under respondent's corporate name. The branch manager was not an officer of the corporation. Respondent's officers testified that the first knowledge they had of the use of the company's name was when they were supplied with a copy of the injunction. As already indicated, the branch manager in question is no longer connected with respondent, relations between the two having been terminated some three years ago.

16. There remains the question whether there is any necessity for the issuance of an order to cease and desist in connection with the geographical limitation imposed upon former dealers. The entire provision restricting former dealers from engaging in a similar business was dropped from the revised form of contract adopted by respondent in January 1958 (CX 3A–B), and in June 1958 all outstanding agreements with dealers were amended to provide, among other things, that—

Any provision of the dealer agreement providing that the dealer shall refrain from carrying on a similar business for one year following termination of the dealer agreement is hereby cancelled. (CX 4)

17. The amendment also provided for cancellation of the entire provision relating to resale price maintenance.

18. Thus the restriction upon former dealers as to engaging in a similar business has been discontinued entirely, as has also the policy of resale price maintenance. True, the formal, written action amending the dealer agreements did not take place until June 1958, which was some two months after the issuance of the Commission's complaint. Actually, however, the discontinuance of the two policies was already in effect and had been for a substantial period of time. The action of June 1958 served merely to give formal written expression to changes which were already in effect.

19. There is positive, convincing testimony from respondent's principal officers that the discontinuance is complete and permanent; that the practices will never be resumed. The hearing examiner was impressed with the testimony and with the character of the witnesses. There is no reason to fear any resumption of the practices in the future.

20. In these circumstances neither the public interest nor any other useful purpose would be served by the issuance of an order to cease and desist.

21. In summary, it is concluded that the complaint has not been sustained except as to the issue of the geographical limitation upon the right of former dealers to engage in a similar business, and that as to this issue an order to cease and desist is unwarranted in view of the discontinuance of the restriction.

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, Snap-On Tools Corporation, manufactures a complete line of tools ranging from simple hand tools, such as small wrenches and pliers, to complex electronic devices and automotive testing equipment. Users of these products cover an equally wide range, from automobile mechanics to the largest industrial corporations.

Prior to 1950, respondent's products were sold through a distribution system in which its dealers were employees of the company. In

1950–51 this system was changed; under the new contracts the dealers were to be not employees or agents of the company but independent businessmen. At the same time, however, substantial control was retained over their operations by certain restrictive provisions which are the basis of the Commission's complaint.[1]

The complaint alleges that respondent has required its dealers to enter into contracts which have, *inter alia*,

(1) established resale prices for respondent's products,

(2) restricted the territory within which, and the persons to whom, each dealer may sell these products, and

(3) provided that, upon termination of his dealership agreement, a dealer may not engage in a similar business within the same state for a period of one year.

It charges that these restrictions, considered either individually or collectively, constitute unfair acts and practices, or unfair methods of competition in commerce, in violation of Section 5 of the Federal Trade Commission Act.

This is the second time this case is before the Commission on review.

Upon a motion to dismiss made by respondent at the close of the case-in-chief, the hearing examiner on October 5, 1959, held that a *prima facie* case had been proved on the issues of resale price maintenance and the restrictions against former dealers engaging in a similar business, but had not been made on the issues of exclusive territories and restrictions of the customers to whom dealers may sell. On appeal by counsel-in-support-of-the-complaint, the Commission on January 21, 1960, reversed the examiner's order, pointing out that "the complaint, in addition to challenging the legality of each of the conditions and limitations included in the contracts, strikes generally at the respondent's over-all course of dealing and places in issue the broad question of whether the respondent's entire method of doing business, including the imposition upon its dealers of all of the terms and conditions of the contracts and the use of all of the acts and practices engaged in pursuant thereto, considered together, constitute a restraint of trade in violation of the Federal Trade Commission Act."

The Commission held, therefore, that the ruling of the hearing examiner "based on considerations relating to separate fragments of the broad issue so presented, rather than to the issue as a whole," was erroneous, and that the motion to dismiss the complaint should have been denied *in toto*. Accordingly, the case was remanded with the instruction that the question of whether the maintenance of exclusive territories and the restriction of the dealers' customers contribute to

[1] In addition to the over 900 independent dealers who form the major part of its distribution system, respondent also employs salesmen who make direct sales to certain larger users of its products.

the illegality of the arrangement should be considered in its final disposition.

This direction was ignored, inexplicably,[2] in the initial decision of the examiner entered on remand, after the presentation of respondent's case. Despite the fact that his prior dismissal order had been reversed by the Commission because he had followed such a procedure, the examiner again considered separately and seriatim, as if each existed in isolation, the legality of the various restrictions upon respondent's dealers. Concluding that the complaint had not been sustained as to any of these practices, with the exception of one which had been discontinued, he dismissed the complaint.

Upon consideration of the full record, we are confirmed in the view expressed in our earlier opinion that all of the practices complained of should be considered as related and component parts of an entire course of dealing. Viewed in this way, we find that they constitute unfair acts and practices, and an unfair method of competition, in commerce in violation of Section 5 of the Federal Trade Commission Act.[3]

The basic issue here is, what degree of control may a manufacturer exercise over independent dealers who purchase and resell its products?

As already pointed out, respondent in 1950–51 changed from a system of distribution through employees of the company to one of independent dealers. At the same time it sought to retain control over these dealers by means of the restrictive provisions of its dealer agreements. But restrictions which are lawful when imposed on agents or employees of the company may be unlawful when imposed on independent businessmen. *Dr. Miles Medical Co.* v. *John D. Park & Sons Co.*, 220 U.S. 373 (1911); *United States* v. *General Electric Co.*, 272 U.S. 476 (1926). Nor is it a novel principle of antitrust law that what a company may do within its own organization, it may not be able to do by agreement with others.

Basic guidelines for determining the scope of permissible restrictions upon independent dealers were laid down by the Supreme Court in *Dr. Miles Medical Co.* v. *John D. Park & Sons Co.*, *supra*. Although the restrictions upon distributors there considered were not identical to those here, their effect was much the same. Quoting the opinion of the lower court in *John D. Park & Sons* v. *Hartman*, 153

[2] It should not be necessary to repeat here the elementary proposition that under no proper conception of the "independence" of a hearing examiner is he free to ignore or disregard applicable provisions and rulings of law, including judicial mandates and agency instructions.

[3] As examination of the individual provisions, *infra*, reveals, we believe that at least the majority of them are unlawful even when viewed alone. It is unnecessary, however, to make such a finding here.

Fed. 24 (C.A. 6, 1907), the Supreme Court summarized the effect of these restrictions:

> Thus all room for competition between retailers, who supply the public, is made impossible. If these contracts leave any room at any point of the line for the usual play of competition between the dealers in the product marketed by complainant [manufacturer] it is not discoverable. Thus a combination between the manufacturer, the wholesalers and the retailers, to maintain prices and stifle competition, has been brought about. 220 U.S., at 400.

The Court concluded that "The complainant having sold its product at prices satisfactory to itself, the public is entitled to whatever advantage may be derived from competition in the subsequent traffic", and that the restrictions which prevented this competition violated the Sherman Act.

Since the *Dr. Miles* case, the Supreme Court has repeatedly—and most recently in *United States* v. *Parke, Davis & Co.*, 362 U.S. 29 (1960)—struck down vertically imposed restrictions upon competition at the dealer level as violations of the Sherman Act, *United States* v. *A. Schrader's Son, Inc.*, 252 U.S. 85 (1920); *Ethyl Gasoline Corp.* v. *United States*, 309 U.S. 436 (1940); *United States* v. *Bausch & Lomb Optical Co.*, 321 U.S. 707 (1944); and of Section 5 of the Federal Trade Commission Act. *Federal Trade Commission* v. *Beech-Nut Packing Co.*, 257 U.S. 441 (1922).

In considering the lawfulness of Snap-On's distribution system, we are not dealing with a "single transaction, conceivably unrelated to the public interest." *Dr. Miles* v. *Park*, *supra*. As in the cases cited above, our inquiry is not whether a particular restraint upon an individual distributor is illegal *per se*, but rather whether all of the restraints imposed upon all of the respondent's dealers suppressed competition in the distribution of its products. Acts which may be lawful in themselves have long been held unlawful where they form part of a course of action unreasonably in restraint of competition. *Swift & Co.* v. *United States*, 196 U.S. 375 (1905).

1. Exclusive Territories:

The examiner focused his attention primarily upon the territorial restrictions imposed by respondent's dealership agreements, terming this "the only real controversy remaining in the case." Each of these dealership agreements provided:

> 2. The Company hereby assigns to the Dealer, not as an agent, a non-exclusive franchise for the sale of its products only within the territory described below and under the conditions hereinafter outlined: [4]

The examiner stated that the maintenance of exclusive territories by a seller is not unlawful *per se* but only if the practice forms a part

[4] The word "non-exclusive" in this provision meant only that Snap-On reserved the right to sell directly to consumers in the territory.

of a general plan or scheme which is unlawful. The examiner concluded, "No such plan is involved here."

It is clear from the testimony of respondent's own officials, however, that the provision for exclusive territories was part of the over-all distribution plan which encompassed all of the restrictions here involved, and was designed to prevent competition among its dealers. More specifically, exclusive territories buttressed the resale price maintenance provision by preventing all competition, including price competition, among respondent's dealers.

The relationship of respondent's territory and price restrictions was also recognized by the examiner, who stated that the only effect of the former is "that prospective purchasers are unable to play off one Snap-On dealer against another in the hope of obtaining a lower price." This, he thought, established the legality of these restrictions. But we think that precisely the converse is true. "Playing off" one dealer against another "in the hope of obtaining a lower price" is the essence of competition, and these provisions deprived the public of the benefit of "whatever advantage may be derived from competition in the subsequent traffic" (*Dr. Miles* v. *Park*, *supra*, p. 409) in the distribution of respondent's products. We conclude, therefore, that respondent's system of exclusive dealer territories contributed to the illegality of its over-all distribution plan. Cf. *United States* v. *Bausch & Lomb; Ethyl Gasoline Corp.* v. *United States*, *supra*.[5]

The territorial restrictions have also worked to the disadvantage of the dealers themselves. The record shows that in at least one instance respondent has used this clause to reduce the territory of a dealer who had increased his business to the point of adding another employee, and in other instances it has prevented Snap-On dealers from expanding their business.

Moreover, the territorial restrictions here in question were imposed upon all of respondent's dealers and not merely upon one or a few of them. This was, of course, essential to achieve the acknowledged purpose of preventing competition among them.

We have here, therefore, a series of restrictive provisions imposed upon all distributors that have the same destructive effects on competition as the horizontal allocations of territory condemned in *United*

[5] Cf. *United States* v. *Volkswagen of America, Inc.*, 182 F. Supp. 405 (D.N.J., 1960), where Judge Forman denied defendant's motion to dismiss that part of the complaint dealing with assignment of exclusive dealer territories, on the ground that the Government had alleged that this practice was used in aid of resale price-fixing. Cf. *Reliable Volkswagen Sales and Service Co., Inc.* v. *World-Wide Automobile Corp.*, 182 F. Supp. 412 (D.N.J., 1960).

States v. *Addyston Pipe & Steel Co.*, 85 Fed. 271 (C.A. 6, 1898), and are no less unlawful.[6]

The cases relied upon by respondent are of little aid here. *Schwing Motor Co.* v. *Hudson Sales Corp.*, 138 F. Supp. 899 (D. Md., 1956), affirmed, 239 F. 2d 176 (C.A. 4, 1956), cert. denied, 355 U.S. 823, and *Packard Motor Car Co.* v. *Webster Motor Car Co.*, 243 F. 2d 418 (C.A. D.C., 1957), cert. denied, 355 U.S. 822, involved the entirely different situation of exclusive franchises where the manufacturer agreed to sell to no other dealer in a designated area. No restraint upon the dealer was involved.[7] Somewhat closer to the present case is *Boro Hall Corp.* v. *General Motors Corp.*, 124 F. 2d 822 (C.A. 2, 1942), rehearing denied, 130 F. 2d 196, cert. denied, 317 U.S. 695 (1943), in which the court upheld an automobile manufacturer's right to prohibit one of its dealers from establishing a used car lot beyond its designated "zone of influence." The case did not, however, concern the dealer's right to sell beyond this zone; and, in any event, it involved only a single transaction and not a series of agreements having the effect of eliminating competition among all dealers concerned. See *Dr. Miles* v. *Park*, *supra*, p. 407.[8]

Respondent's claimed justification of its exclusive territorial agreements is that the prevention of competition among its dealers is essential to the orderly marketing of its products. Be that as it may, the law is clear that the public is entitled to the benefit of competition on the dealer level. This same argument was specifically considered and rejected by the Supreme Court a half-century ago in the *Dr. Miles* case, and we need not dwell on it any longer.

Nor do we concede that our holding here will have the dire consequences envisioned by respondent and the examiner. There is nothing to prevent Snap-On from assigning areas of primary responsibility to its dealers and insisting that they provide adequate sales coverage

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[6] The same conclusion was reached in *United States* v. *White Motor Co.*, 194 F. Supp. 562 (N.D. Ohio, 1961), where a series of dealer agreements establishing exclusive territories was held to violate Section 1 of the Sherman Act.

See also Kessler and Stern, *Competition, Contract, and Vertical Integration*, 69 Yale L. J. 1, 113: "Anti-cross-selling clauses [in automobile dealer franchise contracts] would seem to violate the section 1 Sherman Act *per se* rule against allocation of territory."

A number of bills which would permit the assignment of "protected" territories in automobile dealer franchise contracts have been introduced during recent sessions of Congress, but none has been enacted. See, e.g., S. 997, S. 2042, S. 2047, S. 2151, and H.R. 881, 86th Cong., 1st Sess. (S. 997 covered a category of "complex mechanical products") H.R. 10201, 86th Cong., 2d Sess.; H.R. 1212, and H.R. 1215, 87th Cong., 1st Sess.

[7] For a further examination of this distinction, see Rifkind, Division of Territories, in *How to Comply with the Antitrust Laws* (Van Cise-Dunn ed. 1954) 127, 135.

[8] In *General Cigar Co., Inc.*, D. 1879, 16 FTC 537 (1932), a complaint alleging the use of exclusive dealer territories was dismissed by this Commissioner. Since no majority opinion accompanied the Commission's order, the grounds of decision are unclear. In any event, that case can have little precedential significance now.

and service within these territories.[9] Similarly, any direct sales made by respondent's branch warehouses may just as easily be credited to the appropriate dealer if his territory is one of primary rather than exclusive responsibility. All this it may accomplish without suppressing or eliminating competition among its dealers.

Respondent also contends that the territorial restrictions of its dealership agreements were unilaterally imposed and, therefore, within the exception provided by *United States* v. *Colgate & Co.*, 250 U.S. 300 (1919). But the provision here in question was an express term of the "Dealer Agreement" entered into by respondent and each of its independent dealers.[10] As the Supreme Court pointed out in *United States* v. *A. Schrader's Son, Inc.*, 252 U.S., at 99–100:

> It seems unnecessary to dwell upon the obvious differences between the situation presented when a manufacturer merely indicates his wishes concerning prices and declines further dealings with all who fail to observe them, and one where he enters into agreements—whether express or implied from a course of dealing or other circumstances—with all customers throughout the different States which undertake to bind them to observe fixed resale prices. In the first, the manufacturer but exercises his independent discretion concerning his customers and there is no contract or combination which imposes any limitation on the purchaser. In the second, the parties are combined through agreements designed to take away dealers' control of their own affairs and thereby destroy competition and restrain the free and natural flow of trade amongst the States.

2. Resale Price fixing:

Each of respondent Snap-On's dealer agreements contained the following resale price maintenance provision:

> The dealer agrees that he will not sell any of the articles purchased by him from the Company at a price varying from the retail price fixed by the Company. Retail prices may be changed from time to time by the Company by written or telegraphic notice to the dealer. Such change in retail price shall become effective immediately unless the notice specifies otherwise. This paragraph of the agreement shall be operative only in those states in which so-called "Fair Trade Acts" are in effect.

Resale price maintenance agreements not within the Miller-Tydings and McGuire Acts are, of course, illegal *per se*. E.g., *Federal Trade Commission* v. *Beech-Nut Packing Co.*; *United States* v. *Bausch & Lomb Optical Co.*; *United States* v. *Parke, Davis & Co.*, *supra*. The question here is whether respondent could avail itself of the exception provided by these Fair Trade Acts. We conclude that it could not.

As already pointed out, all of the restrictive provisions of respondent's dealer agreements must be viewed as integral parts of a distribu-

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[9] See Rifkind, *supra*, n. 7, p. 135.

[10] This difference also distinguishes the present case from *Columbus Coated Fabrics Corp.*, D. 6677, in which the respondent merely requested its dealers not to sell outside their assigned territories.

tion system, one of whose admitted purposes was the prevention of all competition in the sale of respondent's products at the dealer level. Where, as here, such a system violates the Sherman and Federal Trade Commission Acts, its integral parts are illegal, notwithstanding that one or another of them, taken separately, might be lawful under other statutory provisions. Cf. *United States* v. *Bausch & Lomb Optical Co.*, 321 U.S. 707, 720, 724 (1944).

In any event, the resale pricing provisions of respondent's dealer agreements appear to fall within that section of the McGuire Act which provides:

> Nothing contained in paragraph (2) of this subsection shall make lawful contracts or agreements providing for the establishment or maintenance of minimum or stipulated resale prices on any commodity referred to in paragraph (2) of this subsection, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between retailers, or between persons, firms, or corporations in competition with each other. 15 U.S.C. 45(a)(5), 66 Stat. 632.

This provision was construed in *United States* v. *McKesson & Robbins, Inc.*, 351 U.S. 305 (1956), to prevent a manufacturer which sold some of its products directly to retailers from fixing the resale prices of competing wholesalers to whom it also sold these products.

Although respondent admittedly sells its products both to its dealers and to certain consumers, it argues that its sales are really divided into two categories, the so-called "mechanic trade" to garages, repair shops, etc., which is sold entirely by its dealers, and the so-called "industrial trade" to large industrial plants, railroads, government agencies, etc. Sales in the latter category are made both by its dealers and by the respondent directly. Snap-On's officers testified that the price maintenance provision of its dealer contracts applied only to sales in the "mechanic" trade and that it was never understood, either by the company or by its dealers, to apply to "industrial" sales. Although a contrary understanding was expressed by one of Snap-On's former branch managers, the examiner accepted respondent's contention in this regard. Respondent also argued, and the examiner agreed, that respondent's industrial sales were not "retail" sales within the meaning of the price maintenance provision of its dealer agreements.

We cannot agree with the examiner's conclusion. The plain language of respondent's price maintenance provision applied to all sales made by its dealers. For the same reason that the courts are reluctant to consider parol evidence concerning the meaning of a written contract, we also are reluctant to credit oral representations which seek to negative the plain meaning of this provision of respondent's written dealer agreements.

More important, although respondent may have distinguished, for some purposes, between the so-called "mechanic" and "industrial" trades, these categories are obviously not capable of precise definition. Respondent's products are sold to all conceivable users of a wide variety of tools, and we find in the record no definition by which a dealer could tell whether for a particular sale he was or was not bound by his contract's resale price provision.

In any event, it is clear that respondent did compete with its dealers for sales in the "industrial" trade since its dealers often made sales at the branches or plants of companies to whose central purchasing offices respondent at the same time made direct sales.

The situation here is strikingly similar to that presented in *Esso Standard Oil Co.* v. *Secatore's Inc.*, 246 F. 2d 17 (C.A. 1, 1957), cert. denied, 355 U.S. 834. In that case the plaintiff sold gasoline both to retail dealers and to large "commercial accounts," such as truck or taxicab fleets. In many cases, however, the retail dealers also sold to the same large fleet operators by delivering gasoline to individual trucks or taxicabs driven to their stations. The court, while recognizing the differences in these sales techniques, concluded that Esso and its retail dealers nevertheless competed for this business, and that, under *McKesson*, Esso was not protected by the Miller-Tydings and McGuire Acts in fixing its dealers' resale prices. The court further held that this exclusion applied to all of Esso's sales and not merely to that portion in which it competed with its retail dealers.

In a concurring opinion, Judge Aldrich reached the same result on the ground that both Esso and its dealers were "retailers" within the meaning of the McGuire Act proviso. In his view, a retailer, for purposes of the Fair Trade Acts, includes anyone who sells to the ultimate consumer.

Under either of these interpretations Snap-On is clearly barred from fixing the prices at which its dealers may sell to any customers.

Finally, respondent asserts, and the examiner held, that the resale price maintenance provision of its dealer agreements was "discontinued" at some unspecified time prior to the issuance of the complaint and was specifically cancelled by written amendment to the agreements some two months after the complaint was issued. We cannot agree that this "discontinuance" of the pricing provision, when the Commission's hand was already on respondent's shoulder, in any way vitiated its illegal nature or made its injunction less necessary.

For the period prior to the written amendment the price-fixing provision remained in the dealer contracts and respondent's claim of discontinuance amounts merely to a contention that it did not seek to enforce the provision. But failure of enforcement will not justify an

otherwise unlawful agreement. *United Shoe Machinery Corp.* v. *United States*, 258 U.S. 451, 458 (1922). An agreement to fix prices is forbidden by the Sherman Act, whether it be "wholly nascent or abortive on the one hand, or successful on the other." *United States* v. *Socony-Vacuum Oil Co.*, 310 U.S. 150, 224, n. 59 (1940). And it is therefore an unfair method of competition within the meaning of Section 5 of the Federal Trade Commission Act. *Federal Trade Commission* v. *Motion Picture Advertising Service*, 344 U.S. 392 (1953).

The fact that respondent finally cancelled its resale price maintenance provisions subsequent to the filing of the Commission's complaint does nothing to alter our conclusion. Respondent's claim in this respect is even weaker than that of the defendant in *United States* v. *Parke, Davis & Co.*, 362 U.S. 29, 48. The Supreme Court there reversed the trial court's refusal to enjoin an established antitrust violation allegedly discontinued before issuance of the complaint, commenting that relief should not be denied "by lightly inferring an abandonment of the unlawful activities from a cessation which seems timed to anticipate suit." See also *Browning King & Company, Inc.*, D. 7060 (August 2, 1961).

3. Limitation of Customers:

In addition to establishing through its dealer agreements exclusive territories and resale prices, respondent in some instances prevented its dealers from selling to certain "industrial" customers, reserving these accounts for itself. The examiner found that in only one instance was such a restriction imposed by a dealer agreement, and that this did not constitute sufficient evidence to support the allegations of the complaint on this issue. It was made clear in the testimony of respondent's dealers, however, that similar restrictions upon the sale to particular customers were imposed by respondent in cases not specifically provided in the dealer agreements. Although the record does not reveal the extent of this practice, we believe sufficient evidence was introduced to indicate that it formed an integral part of respondent's unlawfully restrictive dealer system, and that in this context it should be prohibited by the order herein. Restrictions of the customers to whom dealers may sell have been condemned when a part of similar distribution arrangements. *Ethyl Gasoline Corp.* v. *United States; United States* v. *Bausch & Lomb*, *supra*. In the latter case the Supreme Court pointed out:

> A distributor of a trade-marked article may not lawfully limit by agreement, express or implied, the price at which or the persons to whom its purchaser may resell, except as the seller moves along the route which is marked by the Miller-Tydings Act. (p. 721).

See also *Baldwin-Lima-Hamilton Corp.* v. *Tatnall Measuring Systems Co.*, 169 F. Supp. 1 (E.D. Pa. 1958), aff'd. 268 F. 2d 395 (C.A. 3, 1959); *United States* v. *White Motor Co*, *supra*.[11]

4. Restrictions after Termination of Dealer Contracts:

The final restrictive provision of respondent's dealer agreements provided:

> It is understood and agreed between the Company and the Dealer that, in consideration of the execution and delivery of this agreement, the Dealer shall refrain from carrying on a similar business within the state or states in which he has been operating under this contract for one year from the date of termination thereof by either the Company or the Dealer.

The examiner found this to be a reasonable and lawful restriction except to the extent that it prohibited a dealer from engaging in the same business in the entire state or states in which he had previously operated and not merely in his previous territory. Since the examiner also found, however, that the entire restriction had been discontinued in the same manner and at the same time as the resale price maintenance provision, he concluded that no order was necessary to correct this single unlawful aspect.

We cannot agree that in the context of this case this provision is a lawful one. Respondent's dealer agreements specifically provide for their termination by either party at any time, and may thus be terminated by the company upon violation by a dealer of the territorial, price or customer provisions, which we have already found unlawful. The restriction upon dealers' activities after termination provided a potent means of insuring compliance with these unlawful provisions. It is clearly an integral part of respondent's unlawful distribution system and should be enjoined by the order herein. *Dictograph Products, Inc.* v. *Federal Trade Commission*, 217 F. 2d 821 (C.A. 2, 1954), cert. denied, 349 U.S. 940; *Mytinger & Casselberry, Inc.*, D. 6962 (Sept. 28, 1960).

For the reasons stated in our discussion of respondent's resale price maintenance agreement, the alleged failure to enforce these post-termination restrictions, and their alleged discontinuance, afford respondent no defense in this proceeding.

Conclusion:

We conclude that the allegations of the complaint have been fully substantiated by the proof, and that an appropriate order should be entered dissipating the effects of the illegal practices found and prohibiting their continuance or future resumption. Although some of these practices might not be illegal standing alone, we believe it neces-

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[11] This does not conflict with *Roux Distributing Co.*, D. 6636, which merely held that a limitation on the customers to whom a purchaser may resell is not illegal *per se*.

sary in the public interest, and in the exercise of our responsibility to provide effective relief, that the order ban them individually at least until such time as their collective effect upon competition has been completely erased. Cf. *Federal Trade Commission* v. *National Lead Co.*, 352 U.S. 419 (1957). If and when this has been accomplished, the Commission will entertain any application for modification of the order as may be appropriate.

The appeal of counsel supporting the complaint is granted. The initial decision of the hearing examiner is hereby vacated, and in lieu thereof the Commission is issuing its own findings as to the facts, conclusions, and order in accordance with this opinion.

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

FINDINGS AS TO THE FACTS, CONCLUSIONS AND ORDER

The Federal Trade Commission issued its complaint against the above-named corporation on April 10, 1958, charging it with violating Section 5 of the Federal Trade Commission Act in connection with the sale and distribution of mechanic's service tools and related equipment and appliances by entering into and enforcing restrictive contracts or agreements with dealers in said products, and engaging in acts and practices pursuant to such agreements, with the purpose or effect of hindering, restraining, suppressing and preventing competition in the distribution of said products. In its answer, respondent denied the charges.

At the close of the introduction of evidence in support of the complaint, respondent filed a motion to dismiss the complaint on the ground that a *prima facie* case had not been established. By order filed October 5, 1959, the motion was granted in part and denied in part by the hearing examiner. Upon appeal to the Commission by counsel supporting the complaint, the Commission, on January 21, 1960, vacated the hearing examiner's order and remanded the case for further proceedings. Thereafter, further hearings were held before the hearing examiner and testimony and other evidence in opposition to the allegations of the complaint were received into the record. In an initial decision filed January 6, 1961, the hearing examiner found that the charges had not been sustained by the evidence and ordered that the complaint be dismissed.

Counsel supporting the complaint filed an appeal from said initial decision and the Commission, after considering said appeal and the entire record, has determined that the appeal should be granted and that the initial decision should be vacated and set aside. The Commission now makes this its findings as to the facts, conclusions drawn therefrom, and order to cease and desist, which, together with the

accompanying opinion, shall be in lieu of the findings, conclusions and order contained in the initial decision.

FINDINGS AS TO THE FACTS

1. Respondent, Snap-On Tools Corporation, is a corporation organized under the laws of the State of Delaware, with its principal office and place of business at Kenosha, Wisconsin.

2. Respondent is now and for many years has been engaged in the manufacture, sale and distribution of mechanic's service tools and related equipment and appliances. Since 1951, respondent has marketed a substantial portion of its products through independent dealers to garages, repair shops, service stations, industrial plants, railroads, Government installations, and other users of such products. Respondent has also sold directly to certain users through its own salesmen.

3. Respondent causes its products, when sold, to be shipped from the place of manufacture to the locations of the purchasers in various states other than the state of manufacture, and the District of Columbia, and maintains, and at all times mentioned herein has maintained, a course of trade in interstate commerce in said products.

4. In the course and conduct of its business of selling its products, respondent is now, and during the time mentioned herein, has been in competition in interstate commerce with other maufacturers and sellers of similar products and with dealers in its products.

5. Before respondent sells its products to any of its dealers, it requires each dealer to enter into a standard form of written contract, entitled "Dealer Agreement", which contains, *inter alia*, the following provisions:

> The Company hereby assigns to the Dealer, not as an agent, a non-exclusive franchise for the sale of its products only within the territory described below and under the conditions hereinafter outlined:
>
> * * *
>
> The dealer agrees that he will not sell any of the articles purchased by him from the Company at a price varying from the retail price fixed by the Company. Retail prices may be changed from time to time by the Company by written or telegraphic notice to the dealer. Such change in retail price shall become effective immediately unless the notice specifies otherwise. This paragraph of the agreement shall be operative only in those states in which so-called "Fair Trade Acts" are in effect.
>
> * * *
>
> It is understood and agreed between the Company and the Dealer that, in consideration of the execution and delivery of this agreement, the Dealer shall refrain from carrying on a similar business within the state or states in which he has been operating under this contract for one year from the date of termination thereof by either the Company or the Dealer.

6. Although respondent has reserved the right to sell directly to certain users of its products in territories assigned to its dealers, both respondent and its dealers understand the aforementioned provision relating to an assigned franchise or territory as restricting the geographical area in which a dealer may sell respondent's products to the area specified in the dealer's contract. The testimony of respondent's officials fully supports a finding that said provision in the dealer contracts was for the purpose of preventing competition among respondent's dealers.

Respondent has also prevented certain of its dealers from selling to particular customers specified by respondent and in at least one instance this restriction was imposed by written agreement. The evidence shows that this practice formed an integral part of respondent's distribution system.

7. The aforesaid resale price maintenance provision was a component part of a plan or policy to prevent competition among respondent's dealers. There is conflicting testimony as to whether respondent intended this provision to apply to sales to so-called "industrial" users of its products. This provision by its express terms, however, applies to all sales made by respondent's dealers, including sales to the "industrial" trade. The record also discloses that respondent has not identified the "industrial" users of its products with such precision that its dealers would be able to determine in all instances whether certain customers come within that classification. Moreover, it is clear from the evidence that respondent has, in fact, competed with its dealers for sales to certain "industrial" users of its products.

8. In certain instances, respondent has threatened to enforce and in other instances has attempted to enforce the aforesaid provision in its dealer agreements that the dealer shall for a period of one year after termination of the agreement refrain from engaging in a similar business within the state or states in which he has sold respondent's products. Said provision is unduly restrictive, at least as to the geographical limitation imposed on the dealer. Since the agreement may be terminated by respondent upon violation by the dealer of any provision of the contract, the post termination covenant not to compete has the effect of insuring compliance with the aforesaid provisions of the contract which restrict the territory within which each dealer may sell respondent's products and which establish resale prices for such products. Said post termination covenant not to compete is an integral part of a plan or policy to prevent or eliminate competition in the distribution of respondent's products.

9. Respondent has introduced evidence to show that subsequent to the issuance of the Commission's complaint it amended its dealer agreements to eliminate the provision relating to resale price mainte-

nance and the provision restricting former dealers from engaging in a similar business, and its officials have testified that respondent does not intend to resume the use of such provisions in its dealer agreements. The showing made by respondent with respect to alleged discontinuance does not constitute sufficient basis for the Commission to withhold issuance of an effective order to protect the public against any resumption of the illegal practices found.

10. The aforesaid provisions of respondent's dealer agreements which have been imposed upon all of respondent's dealers are integral parts of a distribution system established for the purpose of preventing competition in the sale of its products at the dealer level, and such provisions and the acts and practices engaged in pursuant thereto have had the effect of preventing, restraining, lessening and suppressing competition in the sale of such products to the ultimate consumer.

CONCLUSIONS

The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent. The aforesaid acts and practices of respondent, as herein found, were all to the prejudice and injury of the public and constituted unfair acts and practices and unfair methods of competition in commerce in violation of Section 5 of the Federal Trade Commission Act.

ORDER

It is ordered, That respondent, Snap-On Tools Corporation, a corporation, its officers, directors, representatives or employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of mechanic's service tools and related equipment and appliances in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Putting into effect, maintaining or enforcing any merchandising or distribution plan or policy under which contracts, agreements or understandings are entered into with dealers in or distributors of its products which have the purpose or effect of:

(a) Limiting, allocating or restricting the geographical area in which, or the persons or classes of persons to whom, any dealer or distributor may sell such products; or

(b) Fixing, establishing or maintaining the prices at which such products may be sold by dealers or distributors; or

(c) Requiring or inducing any dealer or distributor to refrain from selling such products in any specified geographical area or to any specified persons or classes of persons; or

(d) Preventing or restricting any dealer or distributor who has dealt in respondent's products from dealing in competitive products after he has discontinued dealing in respondent's products.

2. Entering into, continuing or enforcing, or attempting to enforce, any contract, agreement or understanding with any dealer in or distributor of its products for the purpose or with the effect of establishing or maintaining any merchandising or distribution plan or policy prohibited by paragraph 1 of this order.

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

By the Commission, Commissioner MacIntyre not participating.

IN THE MATTER OF

ALUMINUM COMPANY OF AMERICA

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

Docket 8175. Complaint, Nov. 17, 1960—Decision, Nov. 1, 1961

Consent order requiring a manufacturer of aluminum and aluminum products, including "Alcoa Wrap" aluminum foil, with annual sales exceeding $858,000,000, to cease violating Sec. 2(d) of the Clayton Act by such practices as paying $150 to a retail grocery chain in Burlington, Iowa, for advertising or other services furnished in connection with the sale of its products while not making any comparable payments to the chain's competitors.

COMPLAINT

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

PARAGRAPH 1. Respondent Aluminum Company of America is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 1501 Alcoa Building, Mellon Square, Pittsburgh, Pennsylvania.