pointed, bleached, dyed, tip-dyed or otherwise artificially colored.

5. Failing to set forth the term "Dyed Broadtail-processed Lamb" in the manner required where an election is made to use that term instead of the term "Dyed Lamb".

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

B. 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 fails to describe as natural fur products which are not pointed, bleached, dyed, tip-dyed or otherwise artificially colored.

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

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

IN THE MATTER OF

KENTON LEATHER PRODUCTS, INC., ET AL.

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

Docket 7812. Complaint, Mar. 10, 1960—Decision, Nov. 13, 1962*

Order dismissing without prejudice, for failure of proof, complaint charging New York City manufacturers with attaching to their leather wallets and billfolds, tickets upon which a certain amount was printed along with the words "Comparable Billfolds", when in fact respondents' wallets or billfolds were inferior in grade and quality to products selling for the amount so printed.

*As amended October 26, 1960.

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 Kenton Leather Products, Inc., a corporation, and Murray Smallman and Michael Kaye, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of the said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Kenton Leather Products, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business at 101 West 31st Street, New York City, N.Y.

Individual respondents Murray Smallman and Michael Kaye are officers of the corporate body. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacture, offering for sale, sale and distribution of leather wallets and billfolds 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 product, when sold, to be shipped from their place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents, for the purpose of inducing the purchase of their product, have engaged in the practice, in connection therewith, of attaching or causing to be attached, tickets to their wallets or billfolds, upon which a certain amount is printed, accompanied by the legend "Comparable Billfolds", thereby representing, directly or by implication, that their said wallets or billfolds were of like grade and quality in all material respects to other wallets or billfolds currently offered for sale and sold at this amount printed on the ticket. In truth and in fact, respondents' said wallets or billfolds were inferior in grade and quality in material respects to other wallets and billfolds currently selling for the amount printed on said tickets.

PAR. 5. By the aforesaid practice, respondents place in the hands of retailers means and instrumentalities by and through which they may mislead the public into the belief that the grade and quality of respondents' wallets or billfolds are comparable to the grade and quality of wallets or billfolds of competitors, selling or sold at the amounts printed on the aforesaid ticket.

PAR. 6. In the course and conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of wallets of the same general kind and nature as that sold by respondents.

PAR. 7. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practice has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' product by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

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

Mr. Anthony J. Kennedy, Jr., for the Commission.

Howrey, Simon, Baker and Murchison, of Washington, D.C., for the respondents.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

Respondents are charged in the Commission's complaint issued on March 10, 1960, with practices alleged to be misleading and deceptive in violation of the Federal Trade Commission Act. The crux of the charges are set forth in paragraphs 4 and 5 as follows:

"Respondents, for the purpose of inducing the purchase of their product, have engaged in the practice, in connection therewith, of attaching or causing to be attached, tickets to their wallets or billfolds, upon which a certain amount is printed, accompanied by the legend 'Comparable Billfolds', thereby representing, directly or by implication, that their said wallets or billfolds were of like grade and quality

in all material respects to other wallets or billfolds currently offered for sale and sold at this amount printed on the ticket. In truth and in fact, respondents' said wallets or billfolds were inferior in grade and quality in material respects to other wallets and billfolds currently selling for the amount printed on said tickets."

"By the aforesaid practice, respondents place in the hands of retailers means and instrumentalities by and through which they may mislead the public into the belief that the grade and quality of respondents' wallets or billfolds are comparable to the grade and quality of wallets or billfolds of competitors, selling or sold at the amounts printed on the aforesaid ticket." (As amended October 26, 1960.)

Proposed findings of fact and conclusions of law were filed by counsel for the parties on March 16, 1962. Oral argument was had thereon on March 20, 1962. The hearing examiner has carefully reviewed and considered same. Proposed findings and conclusions which are not herein adopted, either in the form proposed or in substance, are rejected as not supported by the record or as involving immaterial matters.

Upon the entire record in the case, the hearing examiner makes the following:

FINDINGS OF FACT

1. Respondent, Kenton Leather Products, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 101 West 31st Street, New York, New York.

2. Individual respondent Murray Smallman is an officer of the corporate respondent. Individual respondent Michael Kaye was an officer of the corporate respondent until the date of his death on February 11, 1960. Their address was the same as that of the corporate respondent.

3. Individual respondent Murray Smallman formulated, directed and controlled the acts and practices of the corporate respondent, including the acts and practices set forth in the complaint in this matter.

Individual respondent Murray Smallman is the president of the corporate respondent and has been from the very incorporation of this business. This has been a corporation with the ownership equally divided between Murray Smallman and Michael Kaye until there was a new division of stock in August 1959, at which time certain stock was given to the children of Murray Smallman and Michael Kaye. However, at that time Murray Smallman and Michael Kaye reserved to themselves the majority shares of voting stock, i.e., Murray Small-

man 60 shares of Class A Stock and Michael Kaye 60 shares of Class B Stock.[1] The Board of Directors of the corporate respondent consisted of Murray Smallman, Michael Kaye and their wives. After the death of Michael Kaye in February 1960, the Board consisted of Murray Smallman, Adele Smallman and Mrs. Michael Kaye. There is no evidence of record to indicate that Mrs. Adele Smallman and Mrs. Michael Kaye ever took an active interest in the business of the corporate respondent.

4. Respondents are now, and for some time last past have been, engaged in the manufacture, offering for sale, sale and distribution of leather wallets and billfolds to retailers for resale to the public.

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

6. Respondents, for the purpose of inducing the purchase of their product, have engaged in the practice, in connection therewith, of attaching or causing to be attached, tickets to their wallets and billfolds, upon which a certain amount is printed, accompanied by the legend "Comparable Billfolds", thereby representing directly or by implication that their said wallets or billfolds were of like grade and quality in all material respects to other wallets and billfolds currently offered for sale and sold at this amount printed on the ticket. In truth and in fact respondents' said wallets and billfolds were inferior in grade and quality in material respects to other wallets and billfolds currently selling for the amount printed on said tickets.

7. By the aforesaid practice, respondents place in the hands of retailers means and instrumentalities by and through which they may mislead the public into the belief that the grade and quality of respondents' wallets or billfolds are comparable to the grade and quality of wallets or billfolds of competitors, selling or sold at the amounts printed on the aforesaid ticket.

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

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[1] There is a total of 100 issuable shares of Class A Stock; also, the same number of issuable shares of Class B Stock.

CONCLUSIONS

It must be concluded from the evidence that during the period contemplated by the complaint respondents engaged in the deceptive practice of selling billfolds and wallets ticketed as being "Comparable Billfolds" to those of competitors, when in fact they were inferior. There can be no doubt that a reasonable inference can be drawn from the semantics used by respondents that the legend "Comparable Billfolds" means comparability in grade, quality and value to competitors' billfolds retailed at the same or higher price. In fact, the theory of respondents' defense does not contest this.

The Commission's first witness, Virgil E. Hickman, an attorney-examiner for the Commission described the manner in which he obtained the wallets and billfolds that became Commission Exhibits 3A, 4A, 8D and 9C. Commission Exhibit 3A was purchased by him on October 27, 1959, at Gilchrist's in Boston [2] at a price of $2.99. Commission Exhibit 4A was purchased at Snellenberg's in Philadelphia at a price of $2.99 on October 19, 1959.[3] Commission Exhibit 8D was obtained from the sales office of Prince Gardner in New York in November 1959. Mr. Hickman testified that he asked for a wallet that retailed at $7.50.[4] He also stated that he had seen the identical wallet in many stores.[5] Commission Exhibit 9C was obtained from the sales office of Buxton in New York on November 23, 1959. His testimony further indicates it was substantially identical to those he had seen in the stores that retail at $7.50.[6]

Since these last two wallets were not purchased in retail stores, the hearing examiner was reluctant to consider this latter evidence of much probative weight.[7] Accordingly, counsel supporting the complaint introduced evidence by stipulation and exhibits to establish that these identical models were actually retailed at the list price of $7.50.[8]

From the foregoing, therefore, it is evident that the Princess Gardner wallet, Commission Exhibit 8D, and the Buxton wallet, Commis-

[2] See Commission Exhibit 3H.
[3] See Commission Exhibit 4F.
[4] See Tr. p. 116.
[5] See Tr. p. 125.
[6] See Tr. p. 129.
[7] See Tr. pp. 127, 133.
[8] With respect to the Princess Gardner wallet see the stipulation at Tr. p. 256 and Commission Exhibits 14, 15, 16 and 17 which reflect that model 19R55T was received by Martin's Department Store, Brooklyn, New York, and placed on sale during the month of August 1959. This is the same model as Commission Exhibit 8D.

With respect to the Buxton wallet, a stipulation was entered in the record at Tr. p. 301 to the effect that on August 28, 1959, the Buxton Corporation shipped to Becker's Leather Goods in Washington, D.C., six wallets, Model 20B8D. These wallets were received on September 8, 1959, and shortly thereafter were put on sale at the price of $7.50. This model is the same model as Commission Exhibit 9C.

sion Exhibit 9C, were on sale in the retail stores, prior to the purchase of the Kenton wallets, Commission Exhibits 3A and 4A in October 1959.

An expert, Paul Sterne, made a comparison of the aforesaid wallets. He was eminently qualified to do so. He had been in the leather business for over thirty years. He first learned the leather business in a tannery in Offenbach, Germany, from 1926 to 1936. From 1941 to 1954 he was with Centra Leather Goods, a wallet manufacturer, and from 1954 to 1960 with two leather importers.[9] He compared the Kenton wallet, Commission Exhibit 4A, with the Buxton wallet, Commission Exhibit 9C. It was his opinion, based chiefly on the leather quality and the quality of workmanship that the Buxton wallet, Commission Exhibit 9C was superior.[10] He then compared the Kenton wallet, Commission Exhibit 3A to the Princess Gardner wallet, Commission Exhibit 8D. Again it was his opinion that the Princess Gardner wallet was superior to the Kenton wallet, principally with respect to the leather quality and the workmanship quality.[11]

Respondents' defense is essentially three-fold:

1. Commission Exhibits 3 and 4 (Kenton wallets) should not be compared with Commission Exhibits 8 and 9 (Prince Gardner and Buxton wallets) since the latter wallets were not purchased until one month after the Kenton wallets and were not on the retail market at the same time as Commission Exhibits 3 and 4.

2. The Kenton wallets (Commission Exhibits 3 and 4) were shopworn and therefore not representative of like models then on the market which were comparable to competitors' wallets and billfolds at the same or higher retail price.

3. Commission Exhibits 3 and 4 were not otherwise typical or representative of respondents' wallets which were ticketed "Comparable Billfolds". Furthermore, respondents' wallets typically were comparable to the wallets of competitors sold at the same or higher price.

As regards respondents' point that Commission Exhibits 3 and 4 (Kenton wallets) should not be compared with Commission Exhibits 8 and 9 (Prince Gardner and Buxton wallets) since the latter wallets were not purchased until one month after the Kenton wallets and, therefore, were not on the retail market at the same time, there seems to be little merit. Assuming this contention is correct, it must reasonably be presumed, in the absence of evidence to the contrary, that wallets purchased one month after the Kenton wallets were purchased,

[9] See Tr. pp. 176–177.
[10] See Tr. p. 184.
[11] See Tr. p. 187.

were on the market at the same time as these Kenton wallets, and that, therefore, Commission Exhibits 8 and 9 were in competition with Commission Exhibits 3 and 4. Such an assumption need not be relied upon in this case, however, since the evidence offered by the Commission establishes that Commission Exhibits 3 and 4 and Commission Exhibits 8 and 9 were on the retail market at the same time.

Respondents' second point is equally without merit. Although Commission Exhibits 3 and 4 did have the appearance of being handled extensively, this was not a factor that was considered by the Commission's expert in determining comparability of those wallets with Commission Exhibits 8 and 9. In this connection, it might be added that respondents made no effort to introduce in evidence models which they did not consider shopworn, identical to Commission Exhibits 3 and 4.

The principal witness for the respondents was Stanley Phillips, plant manager, who testified that all of the respondents' wallets were comparable in grade and quality to competitors' wallets which sold at the same or higher retail price. The hearing examiner was impressed with the fact that Mr. Phillips was an expert for the purpose of making such comparisons both from the viewpoint of background and experience. Nevertheless, his testimony must be viewed as essentially self-serving [12] and, therefore, of minimal probative weight unless corroborated. Such corroboration, however, is notable by its absence in the respondents' case. Aside from the comparability of the wallets themselves, Mr. Phillips' testimony with regard to the efficient procedures of the respondent corporation in the manufacture of wallets, although impressive in some respects, is also self-serving and uncorroborated. Other respondents' witnesses who testified on the issue of comparability such as James Herrmann and Alex Roberts indicated they were not experts on leather. This is an essential element of proof in determining the quality of a leather wallet or billfold.

Also lacking as a part of respondents' case was any specific evidence having probative weight which would establish with unequivocal clarity the procedures adopted or criteria applied in deciding that respondents' wallets were comparable in like grade and quality to the wallets of their competitors retailed at the same or higher price during the period both were competing on the market.

Respondents' third point recited herein to the effect that Commis-

[12] As distinguished from self-serving declarations, see Ballentine, Law Dictionary, page 1182, to the effect that self-serving evidence is self-regarding evidence which is favorable to the party who offers it. Self-regarding evidence is evidence which results from the conduct or language of the party who offers it or from the conduct or the language of his own witness.

sion Exhibits 3 and 4 were not otherwise typical or representative of respondents' wallets which were ticketed as being of comparable value and that respondents' wallets typically were comparable to wallets of competitors sold at the same or higher price is similarly without merit since the self-serving evidence adduced, although substantial in volume, was uncorroborated. The respondents offered an array of numerous wallets which Mr. Phillips testified were typical of the wallets that respondents had on the market at the same time that Commission Exhibits 3 and 4 (Kenton wallets) were on the retail market. Some of these wallets (i.e., competitors' wallets) were purchased by respondents' investigator subsequent to the filing of the complaint. Others were Kenton wallets held in stock at the plant of the respondent corporation. These latter wallets, when compared, appeared to the examiner to be of about the same quality as the wallets sold by competitors at the same or higher retail price. However, such visual observation by one not an expert is not persuasive. The expert testimony as to leather comparability was essentially that of Mr. Phillips, general manager of the respondent corporation and uncorroborated.

In presenting the foregoing evidence, respondents relied upon the testimony of Mr. Phillips, that this array of typical Kenton wallets, some of which were manufactured by Kenton and some by its competitors, were on the retail market at the same time contemplated by the complaint. However, there is no corroborative proof in the nature of Kenton invoices or retailers' invoices that would establish such wallets were on the market at the time contemplated by the complaint and if so, when. Respondents' evidence is clearly defective in this respect.

Commission's counsel during the course of the proceedings requested invoices reflective of when the foregoing wallets were on the market for the purpose of cross-examining Mr. Phillips. Respondents indicated that they would make such invoices available and allegedly did so. However, counsel for the Commission did not use them for purposes of cross-examination. Respondents thereafter failed to offer these invoices in evidence, although the hearing examiner suggested they might be an element of proof in establishing that typical or representative wallets of the respondent corporation were in every way comparable in grade and quality to the wallets of its competitors retailed at the same or higher price during the period contemplated by the complaint.[13] Failure to adduce available corroborative evidence alleged by respondents to be available without doubt has the effect

[13] See Tr. 1788–1789.

of making self-serving evidence rather unpersuasive. It is also difficult to understand why respondents did not offer adequate expert testimony other than self-serving evidence on the comparability of the leather used in the wallets which is an essential element in proving comparable quality.[14]

There is a recognized legal presumption that a party will produce evidence which is favorable to him if such evidence exists and is available.[15] And the mere withholding or failing to produce material evidence which is available and would, in the circumstances of the case, be expected to be produced, gives rise to a natural inference—less forceful than that arising from the destruction, fabrication or suppression of evidence in which other parties have a legal interest but constantly acted upon by the courts—that such evidence is held back because it would be unfavorable or adverse to the party withholding it.[16]

Lord Mansfield observed: "It is certainly a maxim that all evidence is to be weighed according to the proof which it was in the power of one side to have produced and in the power of the other to have contradicted." It is pertinent to note that the inference in question has persuasive rather than probative value, and, as pointed out by many authorities that it is not ordinarily to be accorded weight as substantive proof.[17]

The production of weak evidence when strong is available can lead only to the conclusion that the strong would have been adverse.

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[14] Respondents' Exhibit 86, a report on leather tests made by Foster D. Snell, Inc., was received in evidence purportedly to establish the comparable quality insofar as wearability and durability of 32 wallets are concerned. They are meaningless in the absence of explanatory testimony of an expert. Respondents' witness, Rocco P. Scalici, an employee of Foster D. Snell, Inc., supervised and conducted the leather tests and attempted to explain them, although he is not a leather expert, which he concedes (Tr. 1228). In fact, respondents' counsel appears to rely on the uncorroborated self-serving testimony of Mr. Phillips, general manager of respondent corporation, in order to identify the leather tested as the same leather that the wallets received in evidence are made of (Tr. 1229). Under the circumstances, such self-serving testimony is unpersuasive.

[15] See also *Lewis-Simas-Jones Co.* v. *Southern P. Co.*, 283 U.S. 654, 51 Sup. Ct. 592, 75 L.Ed. 1333; *Stocker* v. *Boston & M. R. Co.*, 84 N.H. 377, 151 Atl. 457, 70 A.L.R. 1320.

[16] See *Mammoth Oil Co.* v. *United States*, 275 U.S. 13, 48 Sup. Ct. 1, 72 L.Ed. 137; *Kirby* v. *Tallmadge*, 160 U.S. 379, 16 Sup. Ct. 349, 40 L.Ed. 463; *Wood* v. *Holley Mfg. Co.*, 100 Ala. 326, 13 So. 948, 46 Am. St. Rep. 56; *Stedman* v. *Stedman*, 179 Cal. 288, 176 Pac. 437; *Louisville etc. R. Co.* v. *Thompson*, 107 Ind. 442, 8 N.E. 18. 9 N.E. 357, 57 Am. Rep. 120; *Crescent City Ice Co.* v. *Erman*, 36 La. Ann. 841; *Hersey* v. *Hersey*, 271 Mass. 545, 171 N.E. 815, 70 A.L.R. 518; *Masonite Corp.* v. *Hill*, 170 Miss. 158, 154 So. 295, 95 A.L.R. 157; *Dencer* v. *Jory*, 131 Or. 653, 284 Pac. 163, 70 A.L.R. 855; *Williams* v. *Commercial Nat. Bank*, 49 Or. 492, 90 Pac. 1012,, 91 Pac. 443, 11 L.R.A. (N.S.) 857; *Hall* v. *Vanderpool*, 156 Pa. St. 152, 26 Atl. 1069; Ex parte Hernlen, 156 S.C. 181, 153 S.E. 133, 69 A.L.R. 443; *Missouri etc. R. Co.* v. *Day*, 140 Tex. 237, 136 S.W. 435, 34 L.R.A. (N.S.) 111; *Miller* v. *Miller*, 111 W. Va. 338, 161 S.E. 566, reviewed 18 Virginia L.R. 554; *Studebaker Corp.* v. *Hanson*, 24 Wyo. 222, 157 Pac. 582, 160 Pac. 336, Ann. Cas. 1917E, 557; *Jones* v. *Wettlin*, 39 Wyo. 331, 271 Pac. 217, 69 A.L.R. 840.

[17] See Jones on Evidence, Sec. 19 at pp. 49 and 50.

Clifton v. *United States*, 4 How. 242, 247. Silence then becomes evidence of the most convincing character. *Runkle* v. *Burnham*, 153 U.S. 216, 225; *Kirby* v. *Tallmadge*, 160 U.S. 379, 383; *Bilokumsky* v. *Tod*, 263 U.S. 149, 153, 154; *Vajtauer* v. *Commissioner of Immigration*, 273 U.S. 103, 111, 112; *Mammoth Oil Co.* v. *United States*, 275 U.S. 13, 52; *Local 167* v. *United States*, 291 U.S. 293, 298.[18]

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

The aforesaid acts and practices of respondents, as hereinabove found, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act. Accordingly, since the Federal Trade Commission has jurisdiction and this proceeding is in the public interest, the following order shall issue:

ORDER

It is ordered, That respondents, Kenton Leather Products, Inc., a corporation, its officers, and Murray Smallman, individually and as an officer of the said corporate respondent, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the manufacture, offering for sale, sale and distribution of wallets or billfolds or any other similar product in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using on tickets or in any other manner the words "Comparable Billfolds" or any words of similar import, in connection with any price, as descriptive of respondents' said products, when such products are not of like grade and quality in all material respects as the merchandise to which compared and which said merchandise is usually and regularly sold at retail at the purported price.

[18] See *Interstate Circuit* v. *U.S.*, 306 U.S. 208, 226.

2. Furnishing any means or instrumentality to retailers or others whereby they may mislead the public as to the grade and quality of respondents' said products, and it is

Further ordered, That the complaint is dismissed as to Michael Kaye, individually and as an officer of the respondent corporation by reason of his demise.

ORDER DISMISSING COMPLAINT

This matter having been heard by the Commission on respondent's exceptions to the hearing examiner's initial decision and on briefs and oral argument in support thereof and in opposition thereto; and

The Commission having duly considered said exceptions and the record herein and having determined that the allegations of the complaint have not been sustained by the evidence and that the complaint should be dismissed, such disposition of the case rendering it unnecessary to rule specifically on each of the exceptions to the initial decision:

It is ordered, That the complaint in this proceeding be, and it hereby is, dismissed without prejudice, however, to the right of the Commission to issue a new complaint or to take such further or other action against the respondents at any time in the future as may be warranted by the then existing circumstances.

IN THE MATTER OF

SPENCER GIFTS, INC., ET AL.

Docket 8281. Complaint, Jan. 27, 1961—Decision, Nov. 13, 1962

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

Order requiring mail order merchandisers in Atlantic City, N.J., to cease making such false claims in advertising as that their "Reduce-Eze" girdles would "Slim 4 Inches Without Diet", etc.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that Spencer Gifts, Inc., a corporation, and Max Adler and Harry Adler, 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 Spencer Gifts, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey. Its office and principal place of business is located at 1601 Albany Avenue Boulevard, Atlantic City, N.J.

Respondents Max Adler and Harry Adler are the officers and principal stockholders of the corporate respondent. They formulate, direct and control its acts and practices including those hereinafter set forth. The address of the individual respondents is the same as the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising and retail sale of various kinds of merchandise, including a device, as "device" is defined in the Federal Trade Commission Act, by and through the medium of the United States mails. Such device is a girdle sold under the brand name of "Reduce-Eze".

Respondents cause their said merchandise, including the "Reduce-Eze" girdles to be shipped from their place of business in Atlantic City, New Jersey, to the purchasers thereof located in various states of the United States and maintain, and have maintained, a substantial course of trade in said merchandise and devices, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their aforesaid business, respondents have disseminated and have caused the dissemination of, certain advertisements concerning the said device by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said device; and respondents have disseminated, and caused the dissemination of advertisements concerning said device by various means for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said device in commerce, as "commerce" is defined in the Federal Trade Commission Act.

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

Slim 4 Inches Without Diet
Slims You 2 Sizes

Trims 4 Inches Off Your Figure
To Reduce 4 Inches Without Diet

PAR. 4. Through the use of said advertisements and others of the same import but not specifically set out herein, respondents represented directly or by implication that the wearing of their girdles will reduce body weight without the necessity of dieting.

PAR. 5. The advertisements containing the aforesaid representations were and are misleading in a material respect and constituted and now constitute "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, the wearing of respondents' girdle will not reduce body weight.

PAR. 6. The dissemination by the 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.

Mr. Ames W. Williams for the Commission.
Mr. Saul W. Arkus of *Arkus & Cooper*, of Atlantic City, N.J., for respondents.

INITIAL DECISION BY RAYMOND J. LYNCH, HEARING EXAMINER

The complaint in this proceeding issued January 27, 1961, charges respondents, Spencer Gifts, Inc., a corporation and Max Adler and Harry Adler individually and as officers of said corporation with violating the provisions of the Federal Trade Commission Act by using false, misleading and deceptive statements and representations in advertisements of a device sold under the brand name of "Reduce-Eze" girdle. The complaint was duly served upon respondents, who filed answers thereto. Hearings were held in Atlantic City, New Jersey and New York City, New York. Respondents' counsel requested additional hearings in Washington, D.C., but after the matter was set, declined to produce any additional evidence and requested that the record be closed for the purpose of taking testimony. Proposed findings of fact and conclusions of law were filed by the parties. The examiner has given consideration to the proposed findings and conclusions, and all findings of fact and conclusions of law proposed by the parties not hereinafter found or concluded are herewith rejected. Based upon the entire record, the undersigned examiner makes the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

1. Respondent, Spencer Gifts, Inc., is a corporation, organized and existing under and by virtue of the laws of the state of New Jersey