

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS, OPINIONS, AND ORDERS, JANUARY 1, 1963, TO JUNE 30, 1963

IN THE MATTER OF

RINSE-AWAY CORPORATION OF AMERICA ET AL.

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

Docket C-292. Complaint, Jan. 3, 1963—Decision, Jan. 3, 1963

Consent order requiring a number of sellers of "Rinse-Away" garbage disposal units to distributors or to the public directly, who were furnished by respondent Rinse-Away Corporation with sales aids, brochures, and other literature designed to assist them and their salesmen in obtaining appointments and concluding sales in customers' homes, to cease using a variety of deceptive practices including false claims of special selection of prospects and special limited prices, performance of their product and its superiority over similar models, scope of their business, their financial condition, qualifications and number of their personnel, failure to disclose that they discount purchasers' negotiable paper, among others, as in the order below more fully indicated.

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 above entitled corporation, firms and individuals, 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 Rinse-Away Corporation of America is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 5905 Pacific Boulevard, Huntington Park, State of California.

Respondent Harry Drake is an officer of the corporate respondent, Rinse-Away Corporation of America. He formulates, directs and controls the acts and practices of the corporate respondent, including

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the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

Respondent Robert M. Stone is a former officer of Van-R, Inc., an Illinois corporation, and Vanar, Inc., an Indiana corporation. He has assisted in the formulation, direction and control of the acts and practices of said corporations, including such acts and practices as are hereinafter described as the acts and practices of the respondents, notwithstanding the fact that the said corporations are not designated as respondents in this complaint. His address is 1326 Fargo Street, Des Plaines, Illinois.

Individual respondents Keith C. Owen and Melvin E. Glisson are copartners trading and doing business as Rinse-Away Sales Company. The individual respondents formulate, direct and control the acts and practices of the partnership, including the acts and practices hereinafter set forth. Respondent Keith C. Owen resides at 601 Banbury Court, Roselle, Illinois. Respondent Melvin E. Glisson resides at 6132 North Damen Avenue, Chicago, Illinois.

Individual respondents Melvin E. Glisson and Robert I. Goldstein are copartners trading and doing business as Bar-Lo Company. The individual partners formulate, direct and control the acts and practices of the partnership, including the acts and practices hereinafter set forth. The address of respondent Melvin E. Glisson is as hereinbefore set forth. The address of respondent Robert I. Goldstein is 6143 North Mozart Street, Chicago, Illinois.

Respondent Melvin E. Glisson is an individual trading under the name of Gloco Company. His address is as hereinbefore set forth.

Respondents Keith C. Owen, Melvin E. Glisson and Robert I. Goldstein are former agents of Dunbar-McQuay Company. They have assisted in the formulation, direction and control of the acts and practices of said company, including such acts and practices as are hereinafter described as the acts and practices of the respondents, notwithstanding the fact that said company is not designated a respondent in this complaint. Their addresses are as hereinbefore set forth.

All of the aforementioned respondents, together with other corporations, firms and individuals not designated as respondents in this complaint, have cooperated and acted together in carrying out the acts and practices hereinafter set forth.

PAR. 2. For some time last past the respondents have been engaged in the advertising, offering for sale, sale and distribution of "Rinse-Away" garbage disposal units to distributors for resale to the public, or to the public directly. Respondent Rinse-Away Corporation of America has purchased slightly modified standard disposers directly from the manufacturer. These disposers have then been sold directly

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to distributors who, in addition, have been furnished with sales aids, brochures and other literature designed to assist salesmen in obtaining appointments and in concluding sales in customers' homes. Distributing firms have either employed commission salesmen directly or have sold to subdistributors who have employed commission salesmen. Ultimately the salesmen have used the sales technique and sales presentation initiated by respondents Harry Drake and Rinse-Away Corporation of America, and transmitted to them by other respondents named herein or by others. Frequently those salesmen who have enjoyed a degree of financial success have formed individual proprietorships, or have banded together in partnerships, in order to become distributors or subdistributors of "Rinse-Away" units. In such cases they have either reproduced the sales aids they used as salesmen, or they have received a fresh supply from respondents Harry Drake and Rinse-Away Corporation of America. In either event the basic sales presentation which they have employed, and in which they have indoctrinated new salesmen, is the same as that designed by respondents Harry Drake and Rinse-Away Corporation of America.

PAR. 3. In the course and conduct of their business the respondents have caused their said product, when sold, to be shipped from its place of manufacture in the State of Wisconsin to purchasers thereof located in various other States of the United States, 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 garbage disposal units, by means of oral statements of sales representatives, and by means of sales aids, brochures and other literature which sales representatives have employed when soliciting prospective purchasers, respondents have represented, directly or by implication:

1. That appointments with prospective customers are solicited for the purpose of explaining an "advertising plan".

2. That the prospect has been especially "selected" to participate in the plan.

3. That respondents' product will process all waste animal and vegetable matter commonly disposed of through the use of a garbage can, and will thus eliminate the necessity of maintaining and using a garbage can.

4. That the health of the prospect and his family is endangered by the common method of garbage disposal which includes the use of a covered garbage can and a regular collection service.

5. That the Rinse-Away garbage disposal unit is safer, more efficient and quieter than similar models of comparable price.

6. That respondents' business is national in scope; that they employ statisticians and engineers among others; and that they are financially capable of spending many thousands of dollars annually in nationwide advertising media.

7. That current and valid statistics indicate that fifty percent of prospects interviewed will become purchasers.

8. That the price at which the Rinse-Away is being offered is available for a limited time only, and that the prospect must take advantage of such offer immediately, or forego indefinitely such special price.

9. That purchasers will recover all or a substantial part of the total cost of the disposal unit through the receipt of referral fees.

10. That there are liquidated damages which the purchaser must pay if he cancels his order prior to installation.

11. That the respondents have a credit department which handles personal credit matters, and that the respondents do not contemplate the immediate discounting of purchasers' negotiable paper.

PAR. 5. In truth and in fact:

1. Appointments with prospective customers are not solicited for the purpose of explaining an advertising plan, but for the purpose of selling respondents' product.

2. The prospect has not been especially selected to participate in any plan or sale.

3. Respondents' product will not process all waste animal and vegetable matter commonly disposed of through the use of a garbage can, and will not eliminate the necessity of maintaining and using a garbage can.

4. The health of the prospect or his family is not endangered by the common method of garbage disposal which includes the use of a covered garbage can and a regular collection service.

5. The Rinse-Away garbage disposal unit is neither safer, more efficient, nor quieter than similar models of comparable price.

6. Respondents' business is not national in scope; they do not employ statisticians or engineers; and they are not financially capable of spending many thousands of dollars annually in nationwide advertising media.

7. There are no current and valid statistics which indicate that fifty percent of prospects interviewed will become purchasers.

8. The price at which the Rinse-Away is being offered is not available for a limited time only, nor must the prospect take advantage of

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such offer immediately or risk foregoing indefinitely such special price.

9. Purchasers do not recover all or a substantial part of the total cost of the disposal unit through the receipt of referral fees.

10. There are no liquidated damages which the purchaser must pay if he cancels his order prior to installation.

11. Respondents do not have a credit department which handles personal credit matters, and they do contemplate the discounting of purchasers' negotiable paper.

Therefore, the representations referred to in Paragraph 4 were, and are, false, misleading and deceptive.

PAR. 6. In the course and conduct of their business, respondents have failed to disclose that in the event of a sale they intended to discount purchasers' negotiable paper. In the absence of such disclosure, prospective purchasers believe that no discounting is intended. In truth and in fact, respondents have promptly discounted purchasers' negotiable paper in the regular course of their business. There is a preference among installment buyers for dealing with vendors who do not discount their customers' negotiable paper. In many cases purchasers of respondents' product would not have entered into contracts of sale had they known that their paper was to be discounted. Respondents' failure to reveal the material fact of their intentions or course of business concerning the discounting of purchasers' negotiable paper was, and is, an unfair and deceptive act or practice.

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 in the sale of garbage disposal units of the same general kind and nature as that sold by respondents.

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

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 methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

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DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the 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 respondents of all the jurisdictional facts set forth in the complaint to issue herein, 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 such 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, Rinse-Away Corporation of America, 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 5905 Pacific Boulevard, Huntington Park, State of California.

Respondent Harry Drake is an officer of said corporation, and his address is the same as that of said corporation.

Respondent Robert M. Stone is a former officer of Van-R, Inc., an Illinois corporation, and Vanar, Inc., an Indiana corporation. His address is 1326 Fargo Street, Des Plaines, Illinois.

Respondents Keith C. Owen and Melvin E. Glisson are copartners trading and doing business as Rinse-Away Sales Company. Keith C. Owen resides at 601 Banbury Court, Roselle, Illinois. Melvin E. Glisson resides at 6132 North Damen Avenue, Chicago, Illinois.

Respondents Melvin E. Glisson and Robert I. Goldstein are copartners trading and doing business as Bar-Lo Company. Robert I. Goldstein resides at 6143 North Mozart Street, Chicago, Illinois. The address of Melvin E. Glisson is as hereinbefore set forth.

Respondent Melvin E. Glisson is an individual doing business as Gloco Company. His address is as hereinbefore set forth.

Respondents Keith C. Owen, Melvin E. Glisson and Robert I. Goldstein are former agents of Dunbar-McQuay Company. Their addresses are as hereinbefore set forth.

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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 Rinse-Away Corporation of America, a corporation, its officers, and Harry Drake, individually and as an officer of said corporation, and Robert M. Stone, individually, and Keith C. Owen and Melvin E. Glisson, individually and as copartners doing business as Rinse-Away Sales Company, and Melvin E. Glisson and Robert I. Goldstein, individually and as copartners doing business as Bar-Lo Company, and Melvin E. Glisson, individually and doing business as Gloco Company, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of garbage disposers or any other product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication,

(a) That an appointment with a prospective customer is solicited for the purpose of explaining an advertising plan or for any purpose other than the concluding of a sale.

(b) That a prospect has been especially selected to participate in any promotional plan or sale.

(c) That respondents' product will process all waste animal or vegetable matter commonly disposed of through the use of a garbage can, or will eliminate the necessity of maintaining or using a garbage can.

(d) That the health of the prospect or his family is endangered by the common method of garbage disposal which includes the use of a covered garbage can and a regular collection service.

(e) That respondents' product is safer, more efficient or quieter than similar models of comparable price.

(f) That respondents' business is national in scope; that they employ statisticians or engineers; that they are financially capable of spending many thousands of dollars annually in nationwide advertising media; that the size, scope, or financial capability of their business or the number of their employees is greater than the true size, scope, financial capability or number; or that the qualifications of any of their employees are other than the true qualifications.

(g) That statistics indicate that fifty percent, or any percentage other than the true percentage, of prospects will become purchasers.

(h) That the price at which the respondents' product is offered is a promotional price, or a reduced price, or is available for a limited time.

(i) That a purchaser will recover all or a substantial part of the total cost of respondents' product through the receipt of referral fees; or that the amount of money or money's worth any purchaser or prospective purchaser will receive, or may reasonably expect to receive, from the submission of names of prospects under respondents' referral program, or otherwise, is greater than the true amount.

(j) That respondents' sales contract contains a provision for liquidated damages or other penalty unless such penalty provision is a legally significant and enforceable obligation of a party thereto.

(k) That the respondents have a credit department which handles personal credit matters, or that the respondents do not contemplate the discounting of a purchaser's negotiable paper.

2. Failing to clearly and adequately inform prospects that respondents contemplate the discounting of purchasers' negotiable paper.

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

ISAAC M. TOPOL TRADING AS CONTINENTAL SCARF
AND NOVELTY CO.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FLAMMABLE FABRICS ACTS

Docket C-293. Complaint, Jun. 8, 1963—Decision, Jan. 8, 1963

Consent order requiring a New York City importer and jobber to cease selling in commerce any fabric which was so highly flammable as to be dangerous when worn.

Decision and Order

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Isaac M. Topol, an individual trading as Continental Scarf and Novelty Co., hereinafter referred to as respondent, has violated the provisions of said Acts and the Rules and Regulations promulgated under the Flammable Fabrics 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 Isaac M. Topol is an individual trading as Continental Scarf and Novelty Co., and has his office and principal place of business at 108 West 39th Street, New York, New York.

Respondent is engaged in business as a jobber of silk, rayon and woolen fabrics, which are sold in convenient sizes to smaller jobbers and manufacturers for use in the garment industry.

PAR. 2. Respondent, subsequent to July 1, 1954, the effective date of the Flammable Fabrics Act, has sold and offered for sale, in commerce, has imported into the United States; and has introduced, delivered for introduction, transported, and caused to be transported, in commerce; and has transported and caused to be transported for the purpose of sale and delivery after sale in commerce; as "commerce" is defined in the Flammable Fabrics Act, fabric, as the term "fabric" is defined therein, which fabric was, under Section 4 of the Flammable Fabrics Act, as amended, so highly flammable as to be dangerous when worn by individuals.

PAR. 3. The aforesaid acts and practices of respondent were and are in violation of the Flammable Fabrics Act and the Rules and Regulations promulgated thereunder, and as such 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

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 Flammable Fabrics 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

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The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the complaint to issue herein, 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 such 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 Isaac M. Topol is an individual trading as Continental Scarf and Novelty Co., and has his office and principal place of business at 108 West 39th Street, New York, New York.

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

ORDER

It is ordered, That respondent Isaac M. Topol, an individual trading as Continental Scarf and Novelty Co., or under any other trade name, and respondent's representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from:

- (a) Importing into the United States; or
- (b) Selling, offering for sale, introducing, delivering for introduction, transporting, or causing to be transported, in commerce, as "commerce" is defined in the Flammable Fabrics Act; or
- (c) Transporting or causing to be transported, for the purpose of sale or delivery after sale in commerce;

any fabric, which, under the provisions of Section 4 of the Flammable Fabrics Act, as amended, is so highly flammable as to be dangerous when worn by individuals.

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

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IN THE MATTER OF

EMPIRE SPORTING GOODS MFG. CO., INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND THE TEXTILE FIBER PRODUCTS IDENTIFICATION ACTS

*Docket C-294. Complaint, Jan. 8, 1963—Decision, Jan. 8, 1963*¹

Consent order requiring New York City manufacturers of athletic uniforms and accessories to cease setting forth fictitious prices in catalogs and other printed matter as usual prices; and to cease violating the Textile Fiber Products Identification Act by falsely labeling boys' cotton lined rayon jackets as "50% rayon, 50% cotton", failing to label products with the name of the manufacturer, etc., falsely advertising products as "flannel", "gabardine", "poplin", and "twill" without disclosing the true generic names of constituent fibers, using fiber trademarks on men's shirts without full disclosure of fiber content, and failing to comply in other respects with requirements of the Act.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Empire Sporting Goods Mfg. Co., Inc., a corporation, and Frank Rauch, Hobart Rauch, Melvin Rauch, Hyman Rauch and Harold Meiselman, 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 Textile Fiber Products Identification 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 Empire Sporting Goods Mfg. 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 office and principal place of business located at 443 Broadway in the city of New York, N.Y.

Respondents Frank Rauch, Hobart Rauch, Melvin Rauch, Hyman Rauch and Harold Meiselman are individuals and officers of the corporate respondent, and they formulate, direct and control the acts and practices of said corporation, including the acts and practices hereinafter set forth. All of said respondents cooperate and act together in the performance of the acts and practices hereinafter set forth. Their business address is the same as that of the corporate respondent.

¹ Enforcement of paragraphs 1 and 2 of the order, prohibiting deceptive pricing, was suspended by order of the Commission dated December 5, 1963.

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PAR. 2. Respondents are now, and have been for more than two years last past, engaged in the business of manufacturing, selling and distributing athletic uniforms and accessories, and cause such merchandise when sold to be transported to distributors and retailers in States other than the State of New York. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their said business, respondents at all times mentioned herein have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of merchandise of the same general kind and nature as that sold by respondents.

PAR. 4. In the course and conduct of their said business and for the purpose of inducing the purchase of their said merchandise, respondents have caused to be printed, and distributed and supplied to retailers, catalogs and other printed matter, for use by said retailers in the resale of respondents' merchandise. Said catalogs describe the numerous articles of merchandise offered for sale by respondents and in connection therewith set forth a price for each of said articles. Typical and illustrative of such listing are the following:

Deluxe All Nylon Knit Game Shell Pants 19.50 each.
Football Jerseys Rayon and Cotton 7.00 each.
Boys Satin Jacket 6.80 each.
Boys Plastic Helmet with Face Guard 4.20 each.
No. 320 In Stock (Baseball Suit) 9.30 each.
#333 Stock Little League Uniform 8.00 each.
#1019 Wool Felt Baseball Cap 15.00 doz.
#348 Official Umpire Shirt 6.50 each.
#3014 Mens Baseball Undershirt 2.30 each.

Respondents in inserts, distributed to retailers and others to whom their catalogs are sent, make the following statements:

50% Off All Prices Listed.

P.S. In 6 months, when we print our next catalog, we will offer to you, our customer (at cost) as many catalogs as you desire with your name, address and telephone number instead of Empire's name, address and telephone number. Send them to your customers and new prospects. This is a sure way to perk up some business.

Special Offer to Our Customers. Order a minimum of 25 of our catalogs with your name imprinted and Empire will pay ½ the cost. Empire does *not* make any profit on this sale. We know that these catalogs will help your sales and we're willing to help pay the cost.

Retailers, to whom said catalogs are distributed by respondents as aforesaid, display them to purchasers and prospective purchasers for the purpose of soliciting the sale of said products.

PAR. 5. Through the use of the prices set forth in connection with the illustrations and descriptions of their articles of merchandise, respondents represent, and have represented, that said prices or price amounts set forth in their catalogs are the usual and customary or generally prevailing prices at which said articles are sold at retail in the trade areas in which said catalogs are distributed and said articles of merchandise are offered for sale.

PAR. 6. In truth and in fact, retailers who purchase said articles of merchandise from respondents resell them at less than the prices represented, and said prices are fictitious and in excess of the prices at which said articles are generally sold at retail and in excess of the customary and usual retail prices of said articles in the trade areas in which said catalogs are distributed and said representations are made.

PAR. 7. Respondents by the aforesaid practice of publishing said prices in connection with the description of said articles of merchandise in their catalogs place in the hands of retailers and others the means and instrumentalities of representing, directly or by implication, that such prices are the usual and customary retail prices for such merchandise or the prices at which said articles are generally sold at retail.

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 beliefs.

PAR. 9. Subsequent to the effective date of the Textile Fiber Products Identification Act on March 3, 1960, respondents have been and are now engaged in the introduction, delivery for introduction, manufacture for introduction, sale, advertising, and offering for sale, in commerce, and in the importation into the United States, of textile fiber products; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, textile fiber products, which have been advertised or offered for sale in commerce; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce, textile fiber products; either in their original state or contained in other textile fiber products; as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

PAR. 10. Certain of said textile fiber products were misbranded by respondents within the intent and meaning of Section 4(a) of the

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Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, invoiced, advertised, or otherwise identified as to the name or amount of constituent fibers contained therein.

Among such misbranded textile fiber products, but not limited thereto, were boys' jackets with labels which set forth the fiber content as "50% rayon, 50% cotton", thereby implying that the body of such jacket was of the aforesaid fiber composition, whereas, in truth and in fact, the body of such jacket was composed entirely of rayon with the lining being composed entirely of cotton.

PAR. 11. Certain of said textile fiber products were further misbranded by respondents in that they were not stamped, tagged, labeled, or otherwise identified as required under the provisions of Section 4(b) of the Textile Fiber Products Identification Act, and in the manner and form prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products with labels which failed to disclose the name, or other identification issued and registered by the Commission, of the manufacturer of the product or of one or more persons subject to Section 3 of the said Act with respect to such products.

PAR. 12. Certain of said textile fiber products were further misbranded in violation of the Textile Fiber Products Identification Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Labels were not securely affixed to textile fiber products in such a manner as to remain on or affixed to such textile fiber products throughout the sale, resale, distribution and handling of the products and until such products were sold and delivered to the ultimate consumer, in violation of Rule 15 of the aforesaid Rules and Regulations.

(b) The required information as to fiber content was not set forth on the required label in such a manner as to separately show the fiber content of each section of textile fiber products containing two or more sections, in violation of Rule 25(b) of the aforesaid Rules and Regulations.

PAR. 13. Certain of said textile fiber products were falsely and deceptively advertised in that respondents in making disclosures or implications as to the fiber content of such textile fiber products in written advertisements used to aid, promote, and assist directly or indirectly in the sale or offering for sale of said products, failed to set forth the required information as to fiber content as specified by Section 4(c) of the Textile Fiber Products Identification Act, and in the manner

and form prescribed by the Rules and Regulations promulgated under said Act.

Among the aforesaid disclosures or implications as to fiber content, but not limited thereto, were the terms "flannel", "gabardine", "poplin" and "twill".

Among such textile fiber products, but not limited thereto, were articles of wearing apparel which were falsely and deceptively advertised by the means of catalogs, price lists, and other printed matter distributed by respondents throughout the United States, in that the true generic names of the fibers contained in such products were not set forth.

PAR. 14. Certain of said textile fiber products were further falsely and deceptively advertised in violation of the Textile Fiber Products Identification Act in that they were not advertised in accordance with the Rules and Regulations promulgated thereunder.

Among such textile fiber products, but not limited thereto, were textile fiber products which were falsely and deceptively advertised, by means of catalogs, price lists, and other printed matter distributed by respondents throughout the United States, in the following respects:

(a) Fiber trademarks were used in advertising textile fiber products, namely, men's shirts, without a full disclosure of the fiber content information required by said Act and Rules and Regulations in at least one instance in said advertisements, in violation of Rule 41 (a) of the aforesaid Rules and Regulations.

(b) Fiber trademarks were used in advertising textile fiber products, namely, men's shirts, containing only one fiber and such fiber trademarks did not appear at least once in said advertisements in immediate proximity and conjunction with the generic name of the fiber in plainly legible and conspicuous type of lettering, in violation of Rule 41 (c) of the aforesaid Rules and Regulations.

PAR. 15. The aforesaid acts and practices of respondents, as herein alleged in the aforesaid Paragraphs 10, 11, 12, 13, and 14, are in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder and along with the other 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.

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DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and the Textile Fiber Products Identification 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 respondents of all the jurisdictional facts set forth in the complaint to issue herein, 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 such 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 Empire Sporting Goods Mfg. 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 office and principal place of business located at 443 Broadway, in the city of New York, State of New York.

Respondents Frank Rauch, Hobart Rauch, Melvin Rauch, Hyman Rauch and Harold Meiselman are officers 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 respondents Empire Sporting Goods Mfg. Co., Inc., a corporation, and its officers, and Frank Rauch, Hobart Rauch, Melvin Rauch, Hyman Rauch and Harold Meiselman, 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 athletic uniforms or accessories, or any other articles of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, through the use of catalogs, brochures, price lists, other point-of-sale material or by

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any other means, that any amount is the usual and customary retail price of merchandise in the trade area or areas where the representations are made when it is in excess of the generally prevailing retail price or prices at which said merchandise is sold in said trade area or areas.

2. Furnishing or otherwise placing in the hands of retailers or dealers in said products the means and instrumentalities by and through which they may mislead or deceive the public in the manner or as to the things hereinabove prohibited.

It is further ordered, That respondents Empire Sporting Goods Mfg. Co., Inc., a corporation, and its officers, and Frank Rauch, Hobart Rauch, Melvin Rauch, Hyman Rauch and Harold Meiselman, 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, delivery for introduction, manufacture for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported of any textile fiber product, which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by:

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

2. Failing to affix labels to such products showing each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

3. Failing to securely and conspicuously affix labels to textile fiber products in such a manner as to remain on and attached thereto throughout the sale, resale, distribution and handling of the product and until sold and delivered to the ultimate consumer.

4. Failing to separately set forth the required information as to fiber content on the required label in such a manner as

to separately show the fiber content of the separate sections of textile fiber products containing two or more sections where such form of marking is necessary to avoid deception.

B. Falsely and deceptively advertising textile fiber products by:

1. Making any representations, by disclosure or by implication, as to the fiber contents of any textile fiber product in any written advertisement which is used to aid, promote, or assist, directly or indirectly, in the sale or offering for sale of such textile fiber product, unless the same information required to be shown on the stamp, tag, label or other means of identification under Sections 4(b) (1) and (2) of the Textile Fiber Products Identification Act is contained in the said advertisement, except that the percentages of the fibers present in the textile fiber product need not be stated.

2. Using a fiber trademark in advertising textile fiber products without making a full disclosure of the required content information in at least one instance in the said advertisement.

3. Using a fiber trademark in advertising textile fiber products containing only one fiber without such fiber trademark appearing at least once in the advertisement, in immediate proximity and conjunction with the generic name of the fiber, in plainly legible and conspicuous type.

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

SEIDENBACH'S INC., ET AL.

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

Docket C-295. Complaint, Jan. 8, 1963—Decision, Jan. 8, 1963

Consent order requiring a retail furrier in Tulsa, Okla., to cease violating the Fur Products Labeling Act by failing to show on labels and invoices the true animal name of fur; failing to show on labels when a product contained used fur, the name of the manufacturer, etc., and the country of origin of imported furs; failing to use the term "natural" in advertising in newspapers when fur was not artificially colored and to give a designated time of a

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bona fide compared price on window display cards which used comparative prices; failing to maintain adequate records as a basis for price and value claims; and failing in other respects to comply with requirements of the Act.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Seidenbach's Inc., a corporation, and J. L. Seidenbach and Clare Seidenbach, individually and as officers of Seidenbach's, Inc., 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 Seidenbach's Inc., is a corporation organized, existing and doing business by virtue of and under the laws of the State of Oklahoma.

Respondents J. L. Seidenbach and Clare Seidenbach are officers of the corporate respondent and formulate, direct and control the acts and practices hereinafter set forth.

Respondents are retailers of fur products and have their office and principal place of business at 413 Main Street, Tulsa, Okla.

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

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

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

1. To show the true animal name of the fur used in the fur product.
2. To show that the fur product contained or was composed of used fur, when such was the fact.
3. To show the name, or other identification issued and registered by the Commission of one or more of the persons who manufactured

such fur product for introduction into commerce, introduced it into commerce, sold it in commerce, advertised or offered it for sale, in commerce, or transported or distributed it in commerce.

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

PAR. 4. Certain of said 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 disclosure "secondhand" where required, was not set forth on labels, in violation of Rule 23 of said Rules and Regulations.

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

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

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

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

Among such falsely and deceptively invoiced fur products, but not limited thereto, were invoices pertaining to such fur products which failed to show the true animal name of the fur used in the fur product.

PAR. 6. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in that 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 or deceptively advertised in that said fur products were not advertised as required under the provisions of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

Said advertisements were intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of said products.

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

in issues of the Tulsa World, a newspaper published in the city of Tulsa, State of Oklahoma.

Among such false and deceptive advertisements of fur products, but not limited thereto, were advertisements referred to herein, which failed to use the term "natural" to describe fur products which were not bleached, dyed or otherwise artificially colored in violation of Rule 19(g) of the Rules and Regulations promulgated under the Fur Products Labeling Act.

PAR. 8. Certain of said fur products were further falsely or deceptively advertised in that said fur products were not advertised as required under the provisions of Section 5(a) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

Said advertisements were intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of said fur products by means of window display cards or placards which used comparative prices and which failed to give a designated time of a bona fide compared price, in violation of Section 5(a)(5) of the Fur Products Labeling Act and Rule 44(b) of the Rules and Regulations promulgated under the aforesaid Act.

PAR. 9. 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. 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 and unfair methods of competition 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

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The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the complaint to issue herein, 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 such 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 Seidenbach's Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oklahoma, with its office and principal place of business located at 413 Main Street, in the city of Tulsa, State of Oklahoma.

Respondents J. L. Seidenbach and Clare Seidenbach are officers 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 Seidenbach's Inc., a corporation, and its officers, and J. L. Seidenbach and Clare Seidenbach, 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 product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misbranding fur products by:

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

B. Setting forth on labels affixed to fur products information required under Section 4(2) of the Fur Products Label-

ing Act and the Rules and Regulations thereunder in handwriting.

C. Failing to disclose that fur products are "second-hand", when such is the fact.

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

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 in the sequence required by Rule 30 of the aforesaid Regulations.

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.

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) Makes use of comparative prices of the fur product unless a bona fide compared price at a designated time is given.

(b) Misrepresents in any manner the savings available to purchasers of respondents' products.

(c) Fails to use the term "natural" to describe fur products which were not bleached, dyed or otherwise artificially colored.

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.

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

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IN THE MATTER OF

AUTO-EUROPE, INC., ET AL.

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

Docket C-296. Complaint, Jan. 10, 1963—Decision, Jan. 10, 1963

Consent order requiring New York City solicitors of orders for European automobiles to be delivered in Europe, to cease making deceptive pricing and savings claims and misrepresenting the cost of transportation to foreign countries in newspaper, magazine, and other advertising.

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 Auto-Europe, Inc., a corporation and Alex T. Cecil, Jr., David Mungavin and Lloyd DeMause, 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 Auto-Europe, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its main office and principal place of business located at 25 West 58th Street, New York, N.Y.

Respondents Alex T. Cecil, Jr., David Mungavin and Lloyd DeMause are individuals and officers of said corporate respondent. They formulate, direct and control the policies, acts and practices of said corporate respondent, including those hereinafter set out. The address of each individual respondent is the same as that of the main office of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the business of soliciting orders from members of the public in the United States for the purchase of automobiles manufactured in Europe. Said orders are transmitted by respondents to representatives of the manufacturers of said automobiles located in the United States or in Europe, which representatives arrange for the delivery of the automobiles to the purchasers in Europe. Respondents also arrange with shipping agencies for the shipment of said automobiles to the United States upon return of the purchaser to the United States.

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PAR. 3. Respondents, in conducting the business aforesaid, send and transmit and cause to be sent and transmitted, various letters and documents of a commercial nature from their places of business in the State of New York and elsewhere to their clients and customers located in various States other than the State in which such letters and documents originate, and to persons and firms in foreign countries, thus engaging in extensive commercial intercourse, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents, in the course and conduct of their business and for the purpose of inducing the purchase of said automobiles, have placed and caused to be placed, advertisements in newspapers and magazines of general circulation and have distributed brochures, circulars and other material to prospective purchasers. Among and typical, but not all inclusive, of the statements appearing in said advertising material are the following:

FREE—THE ABC'S OF EUROPEAN AUTO TRAVEL * * * New Foreign Car Guide * * * Learn how to save enough money on a foreign car to pay for your trip

BUY A FOREIGN CAR * * * GET A FREE TRIP TO EUROPE! * * * Buy your foreign car through Auto-Europe and take delivery abroad * * * the savings can pay for return shipment and U.S. import duty, buy you a trip to Europe (even a European tour for two!) and give you the free use of a car abroad * * * write today.

Buy your new car now from Auto-Europe * * * Save enough for your round-trip to Europe * * * Enjoy free transportation in Europe * * * Choose any one of the fine cars made in Europe today. The low factory price saves you enough money for one or more round-trips to Europe * * * and your transportation in Europe is FREE! The Special AE Return Shipment Package includes everything but customs duty * * * from the time you surrender your car in Europe until you drive it away in the States.

CHART

Car	European factory price	Average price in United States	You save—	Round trip air fare plus money to spare	Return shipment package to United States east coast
Anglia sedan-----	\$1, 236	\$1, 688	\$452	1 round trip New York to London and \$20.	\$182
Renault Dauphine sedan.	1, 035	1, 545	510	1 round trip New York to Paris and \$38.	\$182

PAR. 5. By means of the aforesaid quoted statements and charts and others of like import not specifically set out herein, respondents have represented, directly or by implication, that:

1. By purchasing any automobile manufactured in Europe from or through respondents and taking delivery of said automobile in Europe,

the purchaser can save enough money over the price he would have to pay for the same automobile in the United States to pay for a round trip to Europe plus shipment of the automobile to the United States plus the United States import duty.

2. The price designated as "Factory Price" is the price at which the manufacturer generally sells the automobile to the retail dealer.

3. The price designated as "Average Price in U.S.A." is the price at which the retail dealer generally sells the automobile to the consuming public in the United States.

4. The round trip air fare from New York to Paris is \$472.

PAR. 6. In truth and in fact:

1. The purchaser, by purchasing an automobile manufactured in Europe from or through respondents and taking delivery of said automobile in Europe, cannot save enough money to pay for a round trip to Europe except in those instances where the automobile purchased is one of a higher price class with a list price in the United States in excess of \$3,500, such as the Jaguar and the Mercedes, and the list price is maintained by the dealer.

2. The price designated as "Factory Price" is the price at which the manufacturer generally sells the automobile to the retail dealer.

3. The price designated as "Average Price in U.S.A." is not the price at which the retail dealer generally sells the automobile to the consuming public in the United States but is substantially in excess of said price.

4. The round trip air fare from New York to Paris is substantially in excess of \$472.

Therefore, the statements and representations referred to in Paragraphs 4 and 5 were and are false, misleading and deceptive.

PAR. 7. At all times herein mentioned respondents have been, and are, in substantial competition in commerce, with corporations, firms and individuals in the sale of merchandise and services of the same general kind and nature as those sold by respondents.

PAR. 8. The use by respondents of the aforementioned false, misleading and deceptive statements, representations and practices has had, and now has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements were, and are, true, and into the purchase of substantial quantities of respondents' merchandise and services because of said mistaken and erroneous belief.

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 methods of competition in commerce and unfair and deceptive acts

and practices in commerce, in violation of Section 5 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 respondents of all the jurisdictional facts set forth in the complaint to issue herein, 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 such 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 Auto-Europe, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its main office and principal place of business located at 25 West 58th Street, New York, New York.

Respondents Alex T. Cecil, Jr., David Mungavin and Lloyd De Mause are officers 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 respondents Auto-Europe, Inc., a corporation, and its officers, and Alex T. Cecil, Jr., David Mungavin and Lloyd De Mause, 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 solicitation of orders for, or the offering for sale, sale or distribution of, automobiles or services in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that the purchaser of an automobile manufactured in Europe through or from respondents for delivery in

Europe can save enough money to pay for a round trip to Europe, or any other item, article or service of substantially the same cost or value, except in those instances where the automobile purchased is one of a higher price class with a list price in the United States in excess of \$3,500, such as the Jaguar and the Mercedes, and the list price is maintained by the dealer.

2. Representing that the price paid by the purchaser for the automobile is a "factory" price; or representing that any amount is a factory price unless such amount is the price at which the manufacturer generally sells the merchandise to distributors and dealers.

3. Representing that any amount is the average price or is the usual and customary retail price when it is in excess of the generally prevailing price or prices at which the merchandise is sold at retail in the trade area or areas where the representation is made; *Provided, however*, That respondents shall not be precluded from referring, in a nondeceptive manner to the retail price of the automobile suggested by the manufacturer and displayed on the automobile as required by Public Law 85-506 approved July 7, 1958.

4. Misrepresenting in any manner the cost of transportation of a trip to Europe or other foreign place.

5. Misrepresenting in any manner the savings available to purchasers of any merchandise or service from or through respondents.

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

MALBORO IMPORT CORPORATION ET AL.

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

Docket C-297. Complaint, Jan. 10, 1963—Decision, Jan. 10, 1963

Consent order requiring a New York City importer of stainless steel and chrome plated steel tableware with the word "Japan" printed in small letters on each piece, to cease selling its products packed in sealed retail display packages or boxes containing a five-piece table setting, or a set, with no disclosure thereon that the products were imported from Japan; and to cease using the statement "Never Stains", on the front of the packages, when in fact the table was not impervious to discoloration.

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 Malboro Import Corporation, a corporation, and Peter C. Reiman and Alfred Ginsburg, 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 Malboro Import Corporation 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 310 Fifth Avenue, New York, N.Y.

Respondents Peter C. Reiman and Alfred Ginsberg are individuals and officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent including those 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 importing, offering for sale, sale and distribution of stainless steel and chrome plated steel tableware 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 products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents import their stainless steel and chrome plated steel flatware from Japan. Prior to distribution respondents cause all said imported articles to be packed in retail display packages and in boxes. The packages contain a five-piece table setting and have a clear front and opaque back. At no place on the package is the fact disclosed that respondents' products are imported from Japan. The backs of the packages are sealed by gummed stickers bearing the statement, "Devon Steelsmiths, 310 Fifth Avenue, New York 1, N.Y." On the back of each utensil within the sealed package, the word "Japan" is printed in small and inconspicuous letters. As a result, any identification of the origin of the merchandise is not visible prior to purchase except by damaging or destroying the package and closely examining the contents thereof.

Respondents also sell sets of tableware which are packaged in boxes. At no place on said boxes is the fact disclosed that respondent's products are imported from Japan. On the back of each utensil within the boxes, the word "Japan" is printed in small and inconspicuous letters so that the public is not likely to be informed of the country of origin of said imported merchandise.

PAR. 5. In the absence of an adequate disclosure that a product, including stainless steel and chrome plated steel tableware is of foreign origin, the public believes and understands that it is of domestic origin, a fact of which the Commission takes official notice.

As to the aforesaid articles of merchandise, a substantial portion of the purchasing public has a preference for said articles which are of domestic origin, of which fact the Commission also takes official notice. Respondents' failure to clearly and conspicuously disclose the country of origin of said articles of merchandise is, therefore, to the prejudice of the purchasing public.

PAR. 6. On the front of the packages described in Paragraph 4 above appears the statement "Never Stains". By the use of this statement respondents have represented that the utensils contained in said packages are impervious to the formation of any discoloration and will remain so forever.

PAR. 7. In truth and in fact respondents' chrome plated steel tableware is not impervious to the formation of discolorations and will stain.

The representation contained in Paragraph 6 above is, therefore, false, misleading and deceptive.

PAR. 8. 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 the sale of tableware of the same general kind and nature as that sold by respondent.

PAR. 9. The use of the 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 that their products are of domestic origin and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of the respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5(a) (1) of the Federal Trade Commission Act.

DECISION AND ORDER

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the complaint to issue herein, 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 such 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 Malboro Import Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 310 Fifth Avenue, in the city of New York, State of New York.

Respondents Peter C. Reiman and Alfred Ginsberg are officers 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 respondents Malboro Import Corporation, a corporation, and its officers, and Peter C. Reiman and Alfred Ginsberg, 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 stainless steel and chrome plated steel tableware, or any other imported products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, in advertising or in labeling or in any other manner that products manufactured in

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Japan or any other foreign country are manufactured in the United States.

2. Offering for sale, selling or distributing any product manufactured or assembled in whole or in part in Japan or in any other foreign country, without affirmatively and clearly disclosing on the product itself the country of origin thereof and, if any product should be packaged in a manner which would cause the mark identifying the country of origin to be not readily visible, without clearly disclosing the country of origin on the front or face of the package or container thereof.

3. Representing that their chrome plated steel tableware never stains or otherwise representing, directly or by implication, that such tableware is impervious to the formation of stains.

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

APOSTOLOS SKAPERDAS TRADING AS APOSTOLOS
SKAPERDAS

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

Docket C-298. Complaint, Jan. 11, 1963—Decision, Jan. 11, 1963

Consent order requiring a manufacturer of mink plates in New York City to cease violating the Fur Products Labeling Act by failing to disclose on invoices the true name of the animal that produced the fur, the country of origin of imported furs and when fur was artificially colored or natural; and by failing to set forth required item numbers.

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 Apostolos Skaperdas, an individual trading as Apostolos Skaperdas, 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. Respondent Apostolos Skaperdas is an individual trading as Apostolos Skaperdas with his office and principal place of business located at 236 West 27th Street, New York, N.Y. Respondent manufactures mink plates.

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

PAR. 3. Certain of said fur products were 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 fur products covered by invoices which failed:

1. To disclose the true name of the animal that produced the fur.
2. To disclose that the fur contained in the fur product was bleached, dyed, or otherwise artificially colored, when in fact such fur products were bleached, dyed, or otherwise artificially colored.
3. To disclose the name of the country or origin of the imported furs contained in fur products.

PAR. 4. Certain of said fur products were falsely 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:

1. Fur products which were not pointed, bleached, dyed, tipped or otherwise artificially colored, were not described as natural, in violation of Rule 19(g) of said Rules and Regulations.
2. Required item numbers were not set forth on invoices, in violation of Rule 40 of said Rules and Regulations.

PAR. 5. 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 un-

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fair and deceptive acts and practices and unfair methods of competition in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

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

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the complaint to issue herein, 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 such 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 Apostolos Skaperdas is an individual trading as Apostolos Skaperdas with his office and principal place of business located at 236 West 27th Street, New York, N.Y.
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 Apostolos Skaperdas, an individual trading as Apostolos Skaperdas or under any other trade name, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, manufacture for introduction, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce of fur products, or in connection with the sale, manufacture for sale, advertising, offering for sale, transportation or distribution of fur products which have been made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur product" are defined in

the Fur Products Labeling Act, do forthwith cease and desist from:

1. Falsely or deceptively invoicing fur products by:
 - A. Failing to furnish invoices to purchasers of fur products showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.
 - B. Failing to describe fur products as natural when such fur products are not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.
 - C. Failing to set forth on invoices the item number or mark assigned to a fur product.

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

IN THE MATTER OF

D L PRODUCTS, INC.

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

Docket C-299. Complaint, Jan. 11, 1963—Decision, Jan. 11, 1963

Consent order requiring a Buffalo, N.Y., manufacturer of its "D L Handi Cleaner" and dispensers, to cease discriminating in price in violation of Sec. 2(a) of the Clayton Act by such practices as (a) selling its product to some buyers classified as "Jobbers" and "Redistributing Jobbers" at jobber prices less discounts of 5% and 10% while allowing no discount to other "Jobbers" in competition with those favored; (b) paying arbitrary discounts bearing no relation to selling costs to its "Jobber" and "Redistributing Jobber" purchasers; and (c) wrongly classifying as "Warehouse Distributors" and giving a 20% discount to some purchasers who functioned as "Jobbers", while selling to other competing "Jobbers" with no discount or at jobber prices less a quantity discount of 5% or 10%.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated and is now violating the provisions of subsection (a) of Section 2 of the Clayton

Act, as amended (U.S.C. Title 15, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent D L 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 office and principal place of business located at 47 East Market Street, Buffalo, N.Y.

PAR. 2. Respondent is now and has been engaged in the manufacture, sale and distribution of a hand cleaner known as "D L Handi Cleaner", and also dispensers for said hand cleaner. Respondent sells its products of like grade and quality to a large number of purchasers located throughout the United States for use, consumption or resale. Respondent's sales of its products are substantial, exceeding \$800,000 annually.

PAR. 3. Respondent sells and causes its products to be transported from its principal place of business in the State of New York to purchasers located in other States of the United States and the District of Columbia. 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 has been, and is now, discriminating in price between different purchasers of its products of like grade and quality by selling said products to some purchasers at higher and less favorable prices than the same products are sold to other purchasers who are in competition with the purchasers paying the higher prices.

PAR. 5. Respondent classifies its customers according to the functions they perform and also according to the quantity of products they purchase. Purchasers are classified as "Industrials", "Dealers", "Jobbers", "Redistributing Jobbers" and "Warehouse Distributors". Many of respondent's purchasers are in competition with each other in the resale of respondent's products.

Industrials and Dealers: Respondent classifies an "Industrial" purchaser as one who uses the products he purchases on his own premises, such as a factory. Respondent classifies a "Dealer" purchaser as a retailer, such as a gasoline service station or a retail hardware store. "Industrial" and "Dealer" accounts are normally serviced by one of respondent's "Jobbers", "Redistributing Jobbers" or "Warehouse Distributors". Respondent's direct sales to "Industrial" and "Dealer" purchasers account for only one (1%) percent of respondent's sales.

Jobber: Purchasers classified as "Jobbers" purchase respondent's hand cleaner at jobber prices. They normally sell to "Dealer" and "Industrial" accounts. On purchases of over 1,000 pounds and under 2,000 pounds of hand cleaner, a "Jobber" is allowed a 5% quantity

discount. On purchases of over 2,000 pounds of hand cleaner, a "Jobber" is allowed a 10% quantity discount. On purchases of under 1,000 pounds, he receives no discount.

Redistributing Jobber: Purchasers classified as "Redistributing Jobbers" purchase respondent's hand cleaner at jobber prices. They sell to "Dealers" and "Industrials" and also to other jobbers. When a "Redistributing Jobber" purchases in sufficient quantities to receive a 5% or 10% quantity discount, he is allowed a 5% "Functional Rebate" on that portion of his purchases of hand cleaner which he resells to other jobbers.

Warehouse Distributor: A purchaser classified as a "Warehouse Distributor" normally resells only to jobbers. A "Warehouse Distributor" is required by respondent to purchase an initial stock of 2,000 pounds of hand cleaner, and thereafter must purchase in quantities of no less than 1,000 pounds. A "Warehouse Distributor" purchases at jobber prices less 20% on all of his purchases.

PAR. 6. It is by means of, and through the use of, these various classifications that respondent has discriminated in price between different purchasers of its products of like grade and quality.

For example, respondent sells its hand cleaner to some "Jobbers" at jobber prices without allowing said "Jobbers" any discounts, while at the same time respondent sells its hand cleaner of like grade and quality to other "Jobbers" and "Redistributing Jobbers" at jobber prices less discounts of 5% and 10%. Many of respondent's "Jobber" purchasers who receive no discounts are in competition in the resale of respondent's hand cleaner with "Jobber" and "Redistributing Jobber" purchasers who receive 5% and 10% quantity discounts. Also, respondent's quantity discounts are arbitrary, and bear no relation to respondent's cost of selling to its "Jobber" and "Redistributing Jobber" purchasers in the varying quantities.

As a further example, respondent has classified some purchasers as "Warehouse Distributors" when said purchasers made no sales to jobbers, but rather functioned as a "Jobber" as so classified by respondent. Said purchasers who were wrongly classified as "Warehouse Distributors" are given a 20% discount on all purchases of respondent's hand cleaner. At the same time, respondent sold its hand cleaner of like grade and quality to "Jobbers" at jobber prices with no discounts, or in some instances at jobber prices less a quantity discount of 5% or 10%. Many of respondent's "Jobber" purchasers who receive no discounts, or a 5% or 10% quantity discount, are in competition in the resale of respondent's hand cleaner with the purchasers wrongly classified as "Warehouse Distributors".

PAR. 7. The effect of such discriminations in price made by respondent in the sale of its products, as hereinbefore set forth, may be substan-

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tially to lessen competition or tend to create a monopoly in the lines of commerce in which the favored purchasers from respondent are engaged, or to injure, destroy or prevent competition with said favored purchasers.

PAR. 8. The discriminations in price made by respondent in the sale of its products, as hereinbefore alleged, are in violation of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of subsection (a) of Section 2 of the Clayton Act, as amended, 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 to issue herein, 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 such 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, D L 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 office and principal place of business located at 47 East Market Street, in the city of Buffalo, State of New York.

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

ORDER

It is ordered, That respondent D L Products, Inc., a corporation, and its officers, employees, agents and representatives, directly or through any corporate or other device, in or in connection with the offering for sale, sale or distribution of any of its products in commerce, as "commerce" is defined in the Clayton Act, as amended, do forth-

with cease and desist from discriminating in the price of such products of like grade and quality:

By selling such products to any purchaser at net prices higher than the net prices charged any other purchaser who competes in the resale or distribution of such products with the purchaser paying the higher price.

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

IN THE MATTER OF

ALBERT R. CHAPMAN DOING BUSINESS AS MIDLAND
INSTITUTE

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

Docket C-300. Complaint, Jan. 11, 1963—Decision, Jan. 11, 1963

Consent order requiring a Dallas, Tex., seller of a correspondence course intended to prepare students for positions with railroad companies, to cease making deceptive offers of employment in the "Help Wanted" and other columns of newspapers and by mail, along with false claims of high earnings and job guarantee and seller's affiliation with a railroad company, among other misrepresentations, as in the order below indicated.

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 Albert R. Chapman, an individual, trading and doing business as Midland Institute, 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 Albert R. Chapman is an individual trading and doing business as Midland Institute with his principal place of business located at 1000 Main Street, Dallas, Tex.

PAR. 2. Respondent is now, and has been for more than one year last past, engaged in the sale and distribution of a course of study and instruction intended to prepare students thereof for employment as telegraph operators, station agents and kindred employment by rail-

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road companies, which course is pursued by correspondence through the United States mail, as well as in residence training at the school premises.

PAR. 3. In the course and conduct of his said business, respondent has caused said course of study and instruction to be sent from his place of business in the State of Texas to, into and through States of the United States other than the State of Texas, to purchasers thereof located in such other States. There has been at all times mentioned herein a substantial course of trade in said course of study and instruction, so sold and distributed by respondents in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of his aforesaid business, respondent has published and caused to be published, advertisements in the "Help Wanted" and other columns of newspapers distributed through the United States mail, and by other means, to prospective enrollees and students in the several states in which the course of study and instruction is offered for sale, of which the following is typical:

RAILROADS NEED MEN

I WANT to talk to men (18-37) who are interested in permanent employment with railroads as station agents, telegraphers, teletypists, rate men. Starting salaries \$385 to \$450 monthly. WE TRAIN YOU. Can maintain present income while training. Among the advantages railroad employment promises are:

STEADY EMPLOYMENT
INSURANCE & HOSPITAL BENEFITS
OPPORTUNITIES FOR ADVANCEMENT
FREE TRAVEL PASSES
RETIREMENT PAY
PAID HOLIDAYS
VACATIONS WITH PAY
TIME AND A HALF FOR OVER
8 HOURS WORK PER DAY
UNEMPLOYMENT PAY
40-HOUR WEEK

For personal qualifying interview, write Box L-3 Albuq. Publishing Co. today.

* * * * *

RAILROADS ARE HIRING

OPERATOR—Agents—Immediate openings for experienced men ages 19-35. If not experienced but willing to train at home and night school at own expense, you can qualify for position with major railroads with starting salary \$400 to \$450 per month plus many Railroad benefits & outstanding retirement plan. Excellent advancement opportunity. If you have high school education, no physical defects, not color blind, and are sincerely interested, write Box 3406, Springfield Newspapers, Inc. Give age, experience, race, address, phone, time available for interview.

* * * * *

RAILROADS NEED MEN

17-36. Due to Retirement—Station Agents, Teletype Operators. Clerks, urgently. WE TRAIN YOU without interfering with present income. Starting salaries \$385 month up. plus many outstanding benefits. Jobs WAITING, when qualified. For qualifying interview give address, age, race, phone number.

MIDLAND INSTITUTE
P.O. Box 5978, Dallas 22, Tex.

* * * * *

RAILROADS NEED MEN 17½-35 FOR AGENTS—OPERATORS
WE TRAIN YOU

Must have clear record. NO Physical handicaps. WE FINANCE YOUR TRAINING. Graduates qualify. Excellent salary, free pass plus retirement benefits. For interview call Mr. Willard. ED 5-3431, Friday and Saturday, 9 a.m.-7 p.m.

* * * * *

PAR. 5. By means of the statements appearing in said advertisements disseminated as aforesaid, respondent has represented, and is representing, directly or by implication, that:

1. The advertisement is an offer of employment.
2. A minimum starting salary of \$382 to \$450 a month would be assured.
3. Railroad station agents, telegraph and teletype operators and clerks were in great demand by railroad companies.
4. Respondent was a railroad company or affiliated with one or more railroad companies.
5. Positions of employment as railroad station agent, telegraph or teletype operator or clerk were open to graduates of respondent's course of training.
6. Respondent's course of study and instruction will not interfere with the enrollees' present employment.
7. Graduates of respondent's course of study and instruction may obtain immediate, and permanent steady employment with high income.
8. Through the use of such terms as "We finance your training" and other similar expressions, enrollees in respondent's course of study and instruction are led to believe that their training will be paid for or assumed by someone other than the enrollee or that part-time employment would be made available by or through respondent so as to meet the cost of training.
9. That, in conjunction with said business, respondent conducts a placement service by or through which he customarily places graduates of said schools in positions of employment as railroad station agents, telegraph and teletype operators or clerks or related employment.

PAR. 6. In truth and in fact:

1. The advertisement was not an offer of employment. The advertisement was a means of soliciting applications for enrollment in a correspondence and residence course of study and instruction.

2. The minimum monthly advertised starting salary of \$382 to \$450 greatly exceeds the actual earnings that graduates of respondent's school would receive should they be employed by railroad station agents, telegraph or teletype operators before acquiring seniority in any other positions of employment.

3. There was not, and is not, a great demand for railroad station agents, telegraph and teletype operators and clerks with railroad companies.

4. Respondent is not a railroad company, never was a railroad company nor is respondent's school affiliated with a railroad company.

5. Employment as railroad station agents, telegraph and teletype operators or clerks is not open to persons accepted by respondent as trainees and complete said course of study and instruction.

6. Respondent's course of study and instruction does interfere with the existing employment of the enrollee, as the enrollee is required to spend from several weeks to several months in residence training at respondent's school in Dallas, Texas so as to complete respondent's course of instruction and training.

7. Graduates of respondent's course of study and instruction cannot immediately obtain permanent employment, steady employment on high income.

8. No arrangements exist whereby the costs of training are paid for or assumed by anyone other than the enrollee. Respondent does not provide nor does he have facilities with which to provide part-time employment for enrollees to meet the costs of training.

9. Respondent, in conjunction with his said business, does not conduct a placement service by or through which he customarily places graduates of said school in positions of employment as railroad station agents, telegraph and teletype operators or clerks.

Therefore, the statements and representations as set forth in Paragraph 5 hereof are false, misleading and deceptive.

PAR. 7. In the course and conduct of his business, as aforesaid, respondent employs commission sales agents or representatives who call upon prospective purchasers and solicit their purchase or enrollment in said course of study and instruction.

In the course of such solicitation, such sales agents or representatives, either directly or by implication, have made many statements and representations to prospective purchasers or enrollees in said course of

study and instruction. Typical, but not all inclusive of which, are the following:

1. Railroad station agents, telegraph and teletype operators and clerks were in great and constant demand with the railroad companies.
2. Only a limited number of persons would be accepted from a specified geographical area to take this training.
3. Only persons with special qualifications for this type of work would be accepted for training.
4. Respondent guarantees employment as a railroad station, telegraph or teletype operator or clerk to graduates of respondent's course of study and instruction.
5. Everyone who has completed respondent's course has been placed in a position of employment with the railroads.
6. The management of the school is in some manner affiliated with a railroad company.
7. Positions of employment as station agent, telegraph or teletype operator or clerk were open to graduates of respondent's school upon completion of respondent's course of study and instruction.
8. Upon completion of the course, graduates would be immediately placed in steady employment with a railroad.
9. Respondent's course of study and instruction would enable graduates to be placed immediately in positions of employment by which they could obtain regular and steady monthly earnings ranging from \$382 to \$450.

PAR. 8. In truth and in fact:

1. While in some instances employment as railroad station agents, telegraph and teletype operators and clerks occurs as a result of vacancies created by death, retirement and other reasons, such opportunities are decreasing due to technological and other changes in the railroad industry and there was not and is not, a great and constant demand for persons to fill such positions. Furthermore, such demand, as does occur is sporadic and seasonal, and, varies from place to place.
2. Respondent does not limit the number of enrollees in any specific geographical area.
3. Respondent's training is not limited to any selected group of persons or those with certain qualifications other than their ability to meet respondent's tuition charges.
4. Respondent does not guarantee employment as a railroad station agent, telegraph and teletype operators or clerk to graduates of respondent's course of study and instruction.
5. Respondent does not place everyone who has completed the course of study and instruction in a position of employment with the railroads. In fact, such employment as may be obtained by graduates is principally through the individual efforts of each graduate.

6. The management of the school is not affiliated with any railroad company.

7. Positions of employment as station agents, telegraph and teletype operators or clerk are not open to graduates of respondent's school as trainees without further training and experience.

8. Graduates of respondent's course of study and instruction cannot be immediately placed in steady employment with a railroad. Such employment as is available to men lacking railroad seniority and experience is generally on a part-time or "extra" basis at intervals which are not steady as to duration or at locations which are constantly changing, or both.

9. Respondent's course of study and instruction does not enable graduates to be immediately placed in positions of employment by which they can regularly obtain monthly earnings ranging from \$382 to \$450. Railroad employment in the aforementioned positions is subject to seasonal and economic conditions as well as seniority which necessitates irregular, sporadic and intermittent periods of apprenticeship until sufficient seniority can be attained to reach a degree of steady, permanent and localized employment conditions.

Therefore, the statements and representations as set forth in Paragraph 7 were and are false, misleading and deceptive.

PAR. 9. In the conduct of his business, at all times mentioned herein, respondent has been in substantial competition, in commerce, with corporations, firms and individuals in the sale of courses of study and instruction of the same general kind and nature as that sold by respondent.

PAR. 10. 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 to induce a substantial number thereof to subscribe to, enroll and purchase respondent's said course of study and instruction by reason of said erroneous and mistaken belief.

PAR. 11. 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 methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 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 vio-

lation 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 respondent of all the jurisdictional facts set forth in the complaint to issue herein, 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 such 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, Albert R. Chapman, is an individual, trading and doing business as Midland Institute, with his office and principal place of business located at 1000 Main Street in the city of Dallas, State of Texas.

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

ORDER

It is ordered, That respondent Albert R. Chapman, an individual, trading and doing business as Midland Institute, or under any other name or names, 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 of courses of study, training and instruction 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 being offered when, in fact, the purpose is to obtain purchasers of such courses of study, training and instruction;

2. Persons completing respondent's course of study and instruction are qualified for positions of employment with starting salaries \$382 to \$450 per month; or otherwise misrepresenting the earnings which such persons may expect to achieve;

3. Positions of employment as railroad station agent, telegraph or teletype operator or clerk are open to persons completing said course of study and instruction without further training or experience, or otherwise misrepresenting the opportunities for employment by persons completing said course;

4. Respondent is a railroad company or is affiliated with a railroad company;

5. Railroad station agents, telegraph or teletype operators and clerks are in great demand or otherwise misrepresenting the demand for persons to fill such positions of employment;

6. Respondent's course of study and instruction will not interfere with the present employment of persons enrolling for such course;

7. Persons completing respondent's course of study and instruction are able to obtain immediate, permanent or steady employment, or high income;

8. The respondent will provide ways and means by or through which the purchase price of the respondent's course of instruction may be paid for or assumed by persons other than the enrollee; or that part-time employment would be made available by or through the respondent so as to provide the student with the finances to make the payment of such purchase price;

9. Respondent operates a placement service by or through which he customarily finds employment with railroads for graduates of said course of study, instruction and training, or otherwise misrepresents the ease or the means and methods by which such graduates may obtain employment with railroad or other transportation companies;

10. Respondent guarantees employment to persons completing said course of study and instruction.

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

SOUTHERN INDIANA WHOLESALERS, INC.,* ET AL.

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

Docket 7962. Complaint, June 20, 1960—Decision, Jan. 16, 1963

Order requiring a retail furniture dealer in Evansville, Ind., to cease using the word "Wholesalers" in its corporate name and representing falsely in advertising in newspapers, by radio and television and otherwise, that its merchandise was offered at wholesale prices which afforded savings to purchasers.

* Now known as Southern Indiana Distributors, Inc.

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 Southern Indiana Wholesalers, Inc., a corporation, and Charles W. Allen, Cora Jean Allen and Charles H. Kinney, 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 Southern Indiana Wholesalers, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its principal office and place of business located at 25 Pennsylvania Street, Evansville, Indiana. Individual respondents Charles W. Allen, Cora Jean Allen and Charles H. Kinney are president, secretary and treasurer, respectively, of corporate respondent, and as such formulate, control and direct the acts, practices and policies of said corporate respondent. Said individual respondents have their offices at the same location as the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the business of offering for sale and selling furniture, rugs, appliances, luggage and other merchandise at stores located in Evansville, Indiana, and Paducah, Kentucky. Most of such sales are made at retail to the general public.

PAR. 3. In the course and conduct of their business, respondents cause, and have caused, substantial quantities of their merchandise, when sold to the aforesaid class of customers, to be transported from their places of business in the States of Indiana and Kentucky to purchasers thereof located in other States, and maintain, and have maintained, a course of trade in their said merchandise, with such customers, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the conduct of said business, respondents use the name of the corporate respondent, Southern Indiana Wholesalers, Inc., in radio broadcasts, television telecasts, in newspaper advertisements, in circulars sent through the United States mails, on invoices, letter-heads and by other means, all of which have been circulated among or supplied to the aforesaid class of prospective purchasers.

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PAR. 5. Through the use of the term "Wholesalers" as a part of the name of the corporate respondent and the use of such statements as:

WHY BUY RETAIL? Buy at wholesale.
BUY WHERE THE DEALERS BUY WHOLESALE
DON'T BE CHIDED INTO THINKING THAT YOU CAN BUY FOR LESS
THAN WHOLESALE
YOU KEEP THE PROFIT WHEN YOU BUY AT WHOLESALE PRICES

and other statements of similar import but which are not specifically set forth herein, in advertisements in newspapers and circulars circulated across State lines, and in radio and television continuities broadcast across State lines, respondents represent, and have represented, that their business is a wholesale business and that they offer to sell and sell their merchandise to the general public at wholesale prices.

PAR. 6. Said statements and representations were, and are, false, misleading and deceptive. In truth and in fact, respondents' business is primarily a retail business and they do not offer to sell or sell their merchandise to the general public at wholesale prices but at prices which are substantially in excess of wholesale prices.

PAR. 7. In the course and conduct of their business, respondents have engaged in the practice of using fictitious retail prices in connection with their merchandise by means of statements made in advertisements in newspapers and circulars circulated across State lines and in radio and television continuities broadcast across State lines. Typical of said practice is the use of certain amounts in connection with such words and terms as "Retail," "Retail Price," "Retail Value," "Suggested Retail Prices," "Suggested List Price," "Mfg. List Price" and "Regular List Price" and other words and terms of similar import, together with lesser amounts at which the advertised articles of merchandise are offered for sale.

By the use of said designations and the various amounts in connection therewith, and the lesser amounts, respondents represented that the larger designated amounts were the prices at which the advertised merchandise was usually and customarily sold at retail in the trade area or areas where the representations were made and that the differences between said amounts and the lesser amounts represented savings from the prices at which the advertised merchandise was usually and customarily sold at retail in the trade area or areas in which the representations were made.

Respondents, by the same means as aforesaid, have used certain amounts in connection with such words or terms as "Reg. Price," "Regular Price," and "Reg." and other words and terms of the same import, together with lesser amounts, at which the advertised articles of merchandise are offered for sale.

By the use of said designations and the various amounts in connection therewith, and the lesser amounts, respondents represented that the larger designated amounts were the prices at which the advertised merchandise had been usually and customarily sold by them in the recent regular course of their business and that the differences between said amounts and the lesser amounts represented savings from the prices at which the advertised merchandise had been usually and customarily sold by respondents in the recent regular course of business.

PAR. 8. The said statements and representations were false, misleading and deceptive.

In truth and in fact, the amounts represented as being the prices at which the advertised merchandise was sold in the area or areas in which the representations were made were fictitious and in excess of such prices, and the differences between such amounts and the lesser amounts did not represent savings from the prices at which the advertised merchandise was usually and regularly sold in the trade area or areas where the representations were made.

In truth and in fact, the amounts represented as being the prices at which respondents had usually and customarily sold the advertised merchandise in the recent regular course of business were fictitious and in excess of such prices and the differences between such amounts and the lesser amounts did not represent savings from the prices at which respondents had sold the advertised merchandise in the recent regular course of business.

PAR. 9. Respondents are in direct and substantial competition, in commerce, with other corporations and with individuals and firms likewise engaged in the sale of merchandise of the same kind to the general public.

PAR. 10. The use by respondents, as aforesaid, of the 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 purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true and to induce the purchase of respondents' merchandise as a result of such erroneous and mistaken belief. As a consequence thereof, trade in commerce has been unfairly diverted to respondents from their competitors and injury has been and is being done to competition in commerce.

PAR. 11. The aforesaid acts and practices of respondents, as herein alleged, are and were all to the prejudice and injury of the public and of respondents' competitors and constitute unfair and deceptive acts

and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Charles S. Cox for the Commission,
Mr. James D. Lopp, of Evansville, Ind., for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

MARCH 16, 1962

1. The complaint in this matter, issued on June 20, 1960, charges the respondents with making certain misrepresentations regarding their business status and the prices of their merchandise, in violation of the Federal Trade Commission Act. On July 19, 1960, an answer to the complaint was filed on behalf of respondents. Thereafter, hearings were held at which evidence both in support of and in opposition to the complaint was received. Proposed findings and conclusions have been submitted by Commission counsel, respondents having elected not to submit such proposals, and the case is now before the hearing examiner for final consideration. Any proposed findings or conclusions not included herein have been rejected.

2. The corporate respondent is an Indiana corporation, with its principal place of business at 25 Pennsylvania Street, Evansville, Indiana. At the time the complaint was issued the name of the corporation was Southern Indiana Wholesalers, Inc. Since that time, as will be seen later, the name of the corporation has been changed.

The individual respondents, Charles W. Allen, Cora Jean Allen and Charles H. Kinney, are president, secretary, and treasurer, respectively, of the corporation and formulate, control, and direct its policies, acts, and practices.

3. Respondents are engaged in the sale and distribution of furniture, rugs, electric appliances, luggage, and other merchandise. At present their only store is located in Evansville, Indiana. They formerly maintained a store in Paducah, Kentucky, also but that store was discontinued in February 1960.

4. In the sale and distribution of their merchandise respondents are engaged in interstate commerce, causing substantial quantities of their merchandise, when sold, to be transported from their place of business in the State of Indiana to purchasers located in other States, particularly the States of Illinois and Kentucky.

5. Respondents are in substantial competition in interstate commerce with other corporations and individuals engaged in the sale of similar merchandise.

6. In promoting the sale of their merchandise respondents engage in extensive advertising, employing circulars which are sent through

the United States mail to prospective customers, and newspaper advertisements. Use is also made of radio and television continuities. All of this advertising is widely disseminated among members of the public residing in the three States of Indiana, Illinois, and Kentucky. In practically all of the advertising respondents' corporate name, Southern Indiana Wholesalers, Inc., has been featured, and in addition there are many statements such as "WHY PAY RETAIL? BUY AT WHOLESALE," "BUY WHERE THE DEALERS BUY—WHOLESALE" and "YOU KEEP THE PROFIT WHEN YOU BUY AT WHOLESALE PRICES".

In many instances respondents have designated the prices at which specific items of merchandise are offered as "wholesale" prices or "dealer" prices, and in connection with such prices have shown larger amounts designated as the "retail" prices of the respective items.

Respondents have thus represented that they are wholesalers and that the prices at which their merchandise is offered are wholesale prices.

7. These representations were clearly unwarranted and misleading. While for a period of some two years, beginning in 1955 and ending in 1957, respondents apparently did operate a wholesale business, there was a radical change in the latter part of 1957. At that time respondents, to use their own expression, "opened their doors to the public" and began to direct their advertising to the public. Since that time respondents' business has been essentially a retail operation. While occasionally a purchase may be made by a dealer, these instances are very rare and constitute only a negligible portion of respondents' sales, probably not more than 1 percent. All other sales are made to the general public. When purchases are made by dealers they pay the same price as the consuming public.

8. A wholesaler is one who sells to dealers who in turn resell to the ultimate consumer. A retailer, on the other hand, is one who sells direct to the consumer. Clearly respondents are retailers, not wholesalers.

9. As respondents are not wholesalers, it follows that their prices are not wholesale prices, but, on the contrary, are retail prices. During recent years respondents have bought practically all of their merchandise at the same prices as other retailers, that is, at wholesale prices. As respondents must pay wholesale prices for their merchandise, obviously they cannot sell at wholesale prices and remain in business.

10. Respondents' representations as to their business status and their prices also constitute representations that substantial savings will result from the purchase of respondents' merchandise. It is common knowledge that wholesale prices are substantially lower than retail

prices, and members of the public seeing respondents' advertisements would be almost certain to conclude that substantial savings will accrue to them if they purchase from respondents. Respondents' representations are thus misleading in this additional respect. As already stated, respondents' prices are retail, not wholesale prices, and the purported savings are not available to purchasers.

11. Respondents themselves apparently have come to recognize that the use of the word "Wholesalers" in their corporate name is unwarranted. On November 17, 1960, a supplemental answer was filed by respondents stating that on October 17, 1960, the name of the corporate respondent was changed from "Southern Indiana Wholesalers, Inc.," to "Southern Indiana Distributors, Inc."

12. In their advertising respondents in a number of instances have shown, along with the prices of various items, larger amounts designated as "Suggested Retail Price", "Suggested List Price", "Mfg. List Price", and "Regular List Price". The complaint charged that through the use of such terms respondents represented, contrary to fact, that the larger amounts were the prices at which the designated articles were customarily sold in the trade areas where the representations were made. However, there appears to be no evidence, certainly no substantial evidence, that the representations were untrue; that is, that the merchandise in question did not in fact customarily sell at the higher prices.

The complaint also charged respondents with misrepresenting the prices at which certain items had been sold by them. Along with the prices at which certain items were offered, respondents have shown larger amounts in their advertising and in connection with these larger amounts have used the terms "Regular Price", "Reg. Price", and "Reg." The charge here is that through the use of such terms in connection with the larger amounts respondents represented that these amounts were the prices at which the items had customarily been sold by them in the recent regular course of their business.

Actually, respondents appear to have made relatively little use of the terms in question. The theme of their advertising has been to emphasize that they were wholesalers and sold at wholesale prices. In doing this respondents, as indicated above, have made wide use for comparative purposes of the terms "Retail", "Retail Price", etc. In those instances in which the term "Regular Price" (or some contraction thereof) has been used, there appears to be no substantial evidence that respondents had not previously sold the specified merchandise at the prices indicated.

Respondent Charles W. Allen did state that he had never sold at "retail" prices but this was in connection with his contention that his

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prices had always been wholesale rather than retail prices. The statement would appear to have no relation to the charge regarding the use of the term "Regular Price".

It is therefore concluded that these charges in the complaint have not been sustained.

13. The use by respondents of the misrepresentations herein found has the tendency and capacity to mislead and deceive members of the public with respect to respondents' business status, the prices of their merchandise, and the savings available through the purchase of such merchandise, and the tendency and capacity to cause such members of the public to purchase substantial quantities of respondents' merchandise as a result of the erroneous and mistaken belief so engendered. In consequence, substantial trade has been diverted unfairly to respondents from their competitors. Respondents' acts and practices thus are to the prejudice of the public and of respondents' competitors, and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce in violation of the Federal Trade Commission Act. The proceeding is in the public interest.

ORDER

It is ordered, That the respondents, Southern Indiana Wholesalers, Inc. (now known as Southern Indiana Distributors, Inc.), a corporation, and its officers, and Charles W. Allen, Cora Jean Allen and Charles H. Kinney, 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, and distribution of respondents' merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Wholesalers" or any other word of similar import as a part of respondents' corporate or trade name; or otherwise representing, directly or by implication, that respondents are wholesalers or that their business is a wholesale business.
2. Representing, directly or by implication, that the prices at which respondents' merchandise is offered for sale or sold are wholesale prices.
3. Representing, directly or by implication, that savings are available to purchasers of respondents' merchandise, when such is not the fact.

It is further ordered, That the complaint be dismissed as to the charges referred to in paragraph 12 of this decision.

OPINION OF THE COMMISSION

NOVEMBER 19, 1962

By ANDERSON, *Commissioner*:

Respondents have been charged with violating Section 5 of the Federal Trade Commission Act by engaging in false, misleading and deceptive advertising. The complaint specifically charges that respondents have misrepresented their business status and that they have engaged in misrepresentation through the use of fictitious prices.

The hearing examiner found that the charges were sustained except as to some allegations concerning fictitious prices. He held that respondents had falsely represented themselves as "wholesalers" and that they had made misleading representations as to the savings passed on to the purchasers of their products. He ordered the respondents to cease and desist the practices so found to be unlawful and the complaint dismissed as to the other charged practices.

Counsel supporting the complaint has filed exceptions to the initial decision, contending that the examiner erred in his partial dismissal of the complaint. No answer was filed by respondents and no request was made for oral argument.

The complaint, in Paragraphs 7 and 8, alleges that respondents, in connection with the use in their advertisements of certain amounts and the terms "Retail," "Retail Price," "Retail Value," "Suggested Retail Prices," "Suggested List Price," "Mfg. List Price," "Regular List Price," and similar terms, together with lesser amounts at which articles were offered for sale, falsely represented that the larger amounts were the prices at which the merchandise was usually and customarily sold at retail in the trade area or areas in which the representations were made and that the differences in the amounts represented savings from the usual and customary prices. The complaint in these paragraphs also alleges that through the use of terms such as "Reg. Price," "Regular Price," and "Reg.," respondents falsely represented the prices at which they usually and customarily sold the advertised merchandise in the recent regular course of their business and the savings to be obtained.

The examiner dismissed the complaint as to the charged misrepresentation concerning fictitious prices but not the charged misrepresentation as to savings. On the price misrepresentation charges, he ruled that there was insufficient evidence to establish, in the one case, that the higher prices were not the usual and customary prices of the respondents in the recent regular course of their business. On the savings issue, he ruled that respondents' representations as to their business status and prices constitute representations of substantial

savings on the purchase of their merchandise and since the prices are retail and there are no such savings, the representations are misleading.

We will now consider the exceptions taken to the initial decision. We agree with the examiner on the dismissal of the allegation that respondents falsely represented their own regular prices. An example of such a representation is found in Commission Exhibit 3-C. There a chair is depicted with the following price representation: "Regular Price \$29.50. Close Out \$18.00." The impression from this advertisement is that respondents, in the recent regular course of their business, had regularly sold the chair at the higher figure and purchasers would save in the amount of the difference between this and the actual retail price. *Giant Food, Inc.*, Docket No. 7773 [61 F.T.C. 326] (Decision of the Commission, July 31, 1962). Counsel supporting the complaint, for proof of the allegation, relies upon certain admissions of respondent Charles W. Allen, president of corporate respondent. This witness stated that respondents never sold at prices listed as "retail," "list" and "elsewhere", but he did not say and there is no other indication in the record that respondents did not sell the goods in the recent regular course of their business at the prices labeled as "regular". We conclude that the complaint in this respect should be dismissed.

The other allegation as to fictitious pricing has been proved and the examiner erred in dismissing the complaint on such charge. Among respondents' price representations are the following:

Health-O-Rest Ortho Spring Mattress * * * Retail Price \$79.50. Wholesale Price \$36.00.

Recliners * * * Retail Price \$89.50. Wholesale Price \$47.50.

King Sized Recliner * * * Our Factory Price \$49.88. Suggested Retail \$89.50.

The use of the terms "Retail Price" and "Suggested Retail" in these advertisements are representations that the prices so identified are the usual and customary prices for the trade area and that purchasers will be afforded savings amounting to the differences between these and the actual selling prices. *Giant Food, Inc.*, Docket No. 7773, *supra*. The record shows, however, that the items so advertised were manufactured by the respondents, or made for the respondents to their specifications, and that respondents were the sole or practically the sole distributors of the merchandise.¹ Accordingly, the usual and

¹ Specifically as to the "Health-O-Rest Ortho Spring Mattress", Mr. Allen testified: "This is a mattress we had made for ourself, for certain specifications, and bearing that name, and nobody else would have that, and the manufacturer put the suggested retail price on that as \$79.50."

This witness' further testimony was as follows:

"Q. Do you know of any instance where the particular mattress on Commission Exhibit 1A, with the name, Health-O-Rest Ortho-Spring mattress sold for \$79.50?

"A. I know of no place that has that, anybody that has that. That is one we had manufactured for ourself. I know of mattresses comparable that retail for that."

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customary prices for the trade area would be those charged by the respondents, and the respondents never sold at prices as high as those labeled "retail" prices. This fact is disclosed by evidence such as the testimony of corporate respondent's president, Charles W. Allen, who stated, in effect, that respondents always sold under "retail" prices. Thus, the prices identified as "retail" or "suggested retail" in these advertisements were in excess of the usual and customary price or prices for the trade area. The advertisements are false, misleading and deceptive as to such price representations and as to the represented savings afforded to purchasers of the merchandise.

The exceptions of counsel supporting the complaint are sustained in part and rejected in part. The initial decision including the order will be modified to conform to the views expressed in this opinion and, as so modified, will be adopted as the decision of the Commission. The order contained in the initial decision, as modified, will be issued as the proposed order of the Commission. An appropriate order will be entered.

ORDER MODIFYING AND ADOPTING INITIAL DECISION AND PROVIDING FOR
THE FILING OF OBJECTIONS TO PROPOSED FINAL ORDER AND REPLY *

NOVEMBER 19, 1962

This matter having been heard by the Commission upon the exceptions of counsel supporting the complaint to the initial decision, no answer having been filed by the respondents and no oral argument having been requested, and the Commission having ruled on said exceptions and having determined that the initial decision should be modified to conform to the views expressed in the accompanying opinion and adopted, as modified, as the decision of the Commission:

It is ordered, That the first subparagraph of Paragraph 12 of the initial decision be, and it hereby is, stricken.

It is furthered ordered, That the last subparagraph of Paragraph 12 of the initial decision be, and it hereby is, modified to read as follows:

It is therefore concluded that this charge in the complaint has not been sustained.

It is further ordered, That in the initial decision Paragraph 13 be renumbered Paragraph 16 and that new paragraphs be included after Paragraph 12 as follows:

13. Respondents in their advertisements used certain statements with respect to the pricing of their merchandise. Among and illustrative of such statements are the following:

*Since the Proposed Final Order was adopted verbatim as the Final Order, it is omitted in printing.

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"Health-O-Rest Ortho Spring Mattress . . . Retail Price \$79.50. Wholesale Price \$36.00."

"Recliners . . . Retail Price \$89.50. Wholesale Price \$47.50."

"King Sized Recliner . . . Our Factory Price \$49.88. Suggested Retail \$89.50."

14. Through the use of these and similar statements not herein set out, respondents have created the impression that the amounts designated by the terms "Retail Price" and "Suggested Retail" and by other terms of similar import were the prices at which the products advertised were usually and customarily sold at retail in the trade area in which the representation was used and that the purchasers of the products advertised were afforded savings amounting to the differences between the actual selling prices and the higher comparative prices set out in the advertisements.

15. In fact, the impressions created by such representations as to price and savings are false, misleading and deceptive. The amounts designated by such terms as "Retail Price" and "Suggested Price" were not the prices at which the products advertised were usually and customarily sold at retail in the trade area and purchasers of the products advertised were not afforded savings amounting to the differences between the actual selling prices and the higher comparative prices set out in the advertisements.

It is further ordered, That the findings and conclusions contained in the initial decision, as so modified, and the order therein, modified in the manner shown by the proposed order set forth herein, be, and they hereby are, adopted as the findings and conclusions and proposed order of the Commission.

It is further ordered, That the order to cease and desist contained in the initial decision be modified as shown by the following proposed order of the Commission and that respondents may, within twenty (20) days after service upon them of this order, file with the Commission their objections to the changes so made in the order to cease and desist contained in the initial decision, together with a statement of the reasons in support of their objections and a proposed alternative form of order appropriate to the Commission's decision.

FINAL ORDER

The Commission on November 19, 1962, having issued its order providing for the filing of objections by the respondents to the proposed order of the Commission modifying the order to cease and desist con-

tained in the hearing examiner's initial decision filed March 16, 1962; and

and Respondents having been served with the aforementioned proposed order and not having filed objections within the time granted in the Commission's order of November 19, 1962; and

The Commission having determined that its proposed order to cease and desist should be entered as the final order of the Commission:

It is ordered, That the respondents, Southern Indiana Wholesalers, Inc. (now known as Southern Indiana Distributors, Inc.), a corporation, and its officers, and Charles W. Allen, Cora Jean Allen and Charles H. Kinney, 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, and distribution of respondents' merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Wholesalers" or any other word of similar import as a part of respondents' corporate or trade name; or otherwise representing, directly or by implication, that respondents are wholesalers or that their business is a wholesale business.

2. Representing, directly or by implication, that the prices at which respondents' merchandise is offered for sale or sold are wholesale prices.

3. Using the words "retail price," "suggested retail," or words of similar import, to refer to any amount which is in excess of the price or prices at which such merchandise is usually and customarily sold in the trade area where the representation is made; or otherwise misrepresenting the usual and customary retail selling price or prices of such merchandise.

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

It is further ordered, That the complaint be dismissed as to the charges referred to in Paragraph 12 of the findings contained in the initial decision, as modified.

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

Complaint

IN THE MATTER OF
ESTEE SLEEP SHOPSORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION ACT*Docket 8527. Complaint, Aug. 22, 1962—Decision, Jan. 16, 1963*

Order dismissing—it being determined that the consent order procedure should be made available to the parties named in a proposed amendment—complaint charging advertising of fictitious prices and deceptive guarantees of furniture, after it was found that the original respondent was nonexistent and the activities concerned were those of several corporations and their officers.

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 Estee Sleep Shops, a corporation, 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 Estee Sleep Shops is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office at 2400 West 21st Street in the city of Chicago, State of Illinois.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the business of manufacturing bedding, selling bedding as a wholesaler, assembling furniture, and selling bedding and furniture through nine retail stores owned and operated by Estee Sleep Shops.

PAR. 3. In the course and conduct of its business, respondent now causes, and for some time last past has caused, its said products, when sold, to be shipped from its place of business in the State of Illinois to purchasers thereof located outside that State, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business, and for the purpose of inducing the sale of said bedding and furniture, respondent has placed or caused to be placed advertisements in newspapers of general circulation. The following statements from the advertisements are typical but not all inclusive:

Kroehler Foam Cushioned Sofa and Chair Save \$60 Decorator designed * * *
Get yours today at Estee, only \$149.88

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3-Pc. Bedroom Suite * * * At Estee, yours for only \$149.88. Save \$60
 Handsome Decorator Living Room 2-Piece Sofa and Chair Suite \$139.95.
 Save \$45

Imported Danish Style Room Group for Easy Relaxation:

Foam Lounge-----	\$79.95	} ALL FOR ONLY \$119.88
Armchair-----	39.95	
Rocker-----	49.95	
60" Slat Bench-----	19.95	
Total-----	\$189.80	
You pay only-----	119.88	
	\$69.92	

PAR. 5. Through the use of the aforesaid statements the respondent has represented, directly or indirectly, that:

1. The respondent usually and customarily sold the Kroehler foam cushioned sofa and chair for \$209.88 in the recent regular course of its business and that a saving would be made of \$60.

2. The respondent usually and customarily sold the three piece bedroom suite for \$209.88 in the recent regular course of its business and that a saving would be made of \$60.

3. The respondent usually and customarily sold the two piece sofa and chair suite for \$184.95 in the recent regular course of its business and that a saving would be made of \$45.

4. The respondent usually and customarily sold the Danish style room group for \$189.80 in the recent regular course of its business and that a saving would be made of \$69.92.

PAR. 6. In truth and in fact the respondent has not regularly sold the items listed in Paragraph 5 at the prices stated therein and the savings stated therein would not be made. Therefore the statements and representations referred to in Paragraphs 4 and 5 are false, misleading and deceptive.

PAR. 7. In the course and conduct of its business the respondent has made the following guarantee statements in its newspaper advertisements of its mattresses:

- * 5 Year Guarantee
- * 5 Year Written Guarantee
- * 15 Year Guarantee
- * 10 Year Guarantee
- * 10 Year Written Guarantee

A footnote to these statements in each advertisement explains, "should mattress become unserviceable to original purchaser from normal use, free repairs will be made".

PAR. 8. In truth and in fact the purchaser must:

1. Fill out and mail in the guarantee stub which accompanies a mattress to the respondent within thirty days of purchase.
2. Use the mattress on an Estee foundation.
3. Pay all costs of transportation and handling.

These facts are not disclosed in the respondent's advertising. Therefore the statements and representations referred to in Paragraph 7 are false, misleading and deceptive.

PAR. 9. In the conduct of its business, at all times mentioned herein, respondent has been in substantial competition, in commerce, with corporations, firms, and individuals in the sale of bedding and furniture of the same general kind and nature as that sold by respondent.

PAR. 10. 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 products by reason of said erroneous and mistaken belief.

PAR. 11. 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 methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

ORDER DISMISSING COMPLAINT

This matter having come on to be heard by the Commission upon certification by the hearing examiner of complaint counsel's application for amendment of the complaint and respondent's answer in opposition thereto; and

It appearing that subsequent to the issuance of the complaint it has been determined that the corporation named as respondent therein is nonexistent but that the activities dealt with in said complaint are those of several corporations and their officers acting individually and in their official capacities; and

It further appearing that the primary purpose for the requested amendment, and the basis for the hearing examiner's certification, is to permit the substitution of the several corporations and the individuals as parties respondent, together with the addition of certain allegations as to corporate and individual relationship and responsibility and as to interstate commerce not previously alleged; and

The Commission having found upon its consideration of all information available to it that it has reason to believe that the ten corporations and four persons named as respondents in the proposed amended complaint have violated Section 5 of the Federal Trade Commission Act through the acts and practices challenged therein; and

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The Commission having determined that a proceeding with respect to said acts and practices is required in the public interest but that the consent order procedure should be made available to the parties named in the proposed amendment and that for this reason the complaint herein should be withdrawn for the purpose of redrafting in accordance with the proposed amendments and for reservice:

It is ordered, That the complaint in this matter be, and it hereby is, dismissed without decision on the merits and without prejudice to the Commission's right to summarily issue a new complaint covering the same or substantially similar alleged facts.

It is further ordered, That a copy of the complaint, redrafted in accordance with the proposed amended complaint, be served on the parties named therein pursuant to Part 3 of the Commission's Rules of Practice.

IN THE MATTER OF

TRADE CONSULTANTS OF AMERICA, INC., ET AL.

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

Docket 7350. Complaint, Jan. 6, 1959—Decision, Jan. 18, 1963

Order dismissing—for the reason that one corporate respondent and the two officers were convicted under the mail fraud statute for engaging in practices of the type alleged—complaint charging sellers of real estate advertising with using deception to obtain property listings.

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 Trade Consultants of America, Inc., and TCA South, Inc., corporations, and Max Tauchner and Florence G. Wohl, individually and as officers of said corporations, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Trade Consultants of America, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its offices and principal place of business located at 347 Fifth Avenue, New York, N.Y.

Respondent TCA South, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia. Its legal address and mailing address are 1734 Candler Building, Atlanta, Ga.

Respondent Max Tauchner is president and respondent Florence G. Wohl is secretary of both respondent corporations, and their office and principal place of business are those of corporate respondent Trade Consultants of America, 347 Fifth Avenue, New York, N.Y. These individuals formulate, direct and control the acts and practices of said corporate respondents. All of said respondents cooperate and act together in the performance of the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for more than one year last past have been, engaged in the business of soliciting the listing for sale and advertising of real estate and other property. In connection with this business, respondents are and have been engaged in the operation, in commerce, of a business which offers for sale advertising in newspapers and other advertising media and other services and facilities in connection with the offering for sale, selling, buying and exchanging of business and other properties. In connection therewith, the respondents have been, and now are, transmitting and receiving, through the United States mail, advertising matter, pamphlets, circulars, letters, contracts, checks, money orders and other written instruments which are sent and received between respondents' places of business in the States of New York and Georgia and persons, firms and corporations located in various States of the United States, and thereby have engaged in extensive commercial intercourse in commerce, as "commerce" is defined in the Federal Trade Commission Act.

The volume of the aforesaid business conducted by respondents has been and is substantial.

PAR. 3. In the course and conduct of their business, respondents, through the use of newspaper advertising, post cards, circulars and other written instruments circulated in various states, and through oral statements made by their solicitors or representatives, all for the purpose of obtaining listings of property for sale and collecting substantial sums of money as fees for the listing and sale of property, have represented, directly and by implication, to persons who had property for sale that:

1. Respondents have available prospective buyers who are interested in the purchase of their specific properties.
2. Their property would be sold within a short period of time as a result of respondents' efforts.

