

Complaint

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from the fact that its thinner slices enables the consumer to conveniently serve and consume smaller individual portions.

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

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

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

Commissioner Anderson not participating for the reason that he did not hear oral argument, and Commissioner Higginbotham not participating by reason of the fact that this matter was argued before the Commission prior to the time when he was sworn into office.

IN THE MATTER OF

FORTE-FAIRBAIRN, INC., ET AL.

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

Docket 8453. Complaint, Nov. 17, 1961—Decision, Apr. 13, 1963

Order dismissing as not sustained by the evidence, complaint charging Boston, Mass., manufacturers of wool products with representing fiber stocks falsely on invoices as "Baby Llama".

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 Forte-Fairbairn, Inc., a corporation, and Orville W. Forte, Jr., Donald Forte, and Boyce W. Godsoe 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 Forte-Fairbairn, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 311 Summer Street, Boston, Massachusetts. Said respondent corporation is a manufacturer of wool products, and operates its woolen and specialty fiber stocks business through its division known as Forte, Dupee, Sawyer Co. whose address is the same as the corporate respondent. Individual respondents Orville W. Forte, Jr., Donald Forte and Boyce W. Godsoe are president, treasurer, and vice president and assistant treasurer respectively. Said individual respondents formulate, direct and control the acts, practices and policies of said corporate respondent. The office of the individual respondents is the same as that of the corporate respondent.

PAR. 2. Corporate respondent through its division Forte, Dupee, Sawyer Co. is now, and for some time last past has been, engaged in the sale of woolen and specialty fiber stocks and distributing such products throughout the United States.

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

PAR. 4. In the course and conduct of their business, as aforesaid, respondents have made representations concerning their said products on sales invoices. Among and typical of the representations made was the invoicing of their fiber stocks as "Baby Llama".

PAR. 5. The aforesaid representations were false, misleading and deceptive. In truth and in fact, said fiber stocks were not composed wholly of "Baby Llama" but were composed of fibers other than baby llama.

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

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

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sale of woolen and specialty fiber stocks of the same general kind and nature as that sold by respondents.

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

Mr. Michael P. Hughes and *Mr. Harry Garber* supporting the complaint.

Ely, Bartlett, Brown & Proctor by *Mr. David E. Place*, of Boston, Mass., and *Howrey, Simon, Baker & Murchison* by *Mr. David C. Murchison* and *Mr. Richard L. Perry*, of Washintgon, D.C., for respondents.

INITIAL DECISION BY WILLIAM K. JACKSON, HEARING EXAMINER

MARCH 5, 1963

This proceeding was commenced by the issuance of a complaint on November 17, 1961, charging the above-named corporate respondent and the individual respondents with unfair and deceptive acts and practices and unfair methods of competition, in commerce, in violation of the Federal Trade Commission Act by falsely identifying fiber stocks on invoices as "Baby Llama" when actually they were not composed wholly of "Baby Llama" but were composed of fibers other than baby llama.

Upon being served with the complaint, respondents appeared by counsel and denied the charges of falsely invoicing their fiber stocks. Pursuant to notice duly given, a prehearing conference was held in this matter at Washington, D.C. on March 14, 1962, and the initial hearing was held from October 8, through October 17, 1962, at New York, New York, and on December 5, 1962, at Washington, D.C. At these hearings, testimony and other evidence were offered in support of and in opposition to the allegations of the complaint. At the end of the hearing on December 5, 1962, the record was closed, and, in due course, both parties filed proposed findings of fact, conclusions of law, and briefs in support thereof. Consideration has been given to the proposed findings of fact, conclusions of law, and briefs submitted by the parties and all proposed findings of fact hereinafter not specifically adopted are rejected. Based upon the entire record and his observation of the witnesses, the hearing examiner makes the following findings as to facts, conclusions drawn therefrom, and order.

PRELIMINARY STATEMENT

At the outset, in order to put this matter in proper perspective, it should be noted that the charges in the complaint and, as hereinafter found, relate to a single sale by respondents of several lots of fiber stocks sold to Northfield Mills, Inc., 35 Kneeland Street, Boston, Massachusetts, on November 25, 1959, and invoiced as "Baby Llama." The sole issue in this proceeding is whether the fiber stocks involved in this single sale were in fact composed wholly of "Baby Llama" or as alleged in the complaint composed of fibers other than "Baby Llama." The fibers in question were imported into the United States in 1956 and 1957 from Peru through various firms, and complaint counsel has meticulously traced by testimony and documents consisting of shipping records, purchase memoranda, sales receipts, lot cards, processing records, invoices, etc., the history of these fibers from their importation until they were sold on November 25, 1959, to Northfield Mills. Respondents also admit that the fibers imported in 1956 and 1957 are the same fibers that were ultimately sold by them to Northfield Mills in 1959 and delivered in early 1960. In short, there is no dispute as to the whereabouts and disposition of these fibers at all times between 1956 and 1960, and all references to fibers as hereinafter made in the findings relate to all or a portion of the fibers hereinabove identified.

FINDINGS OF FACT

Formation and Control of Respondent Corporation

1. Respondent, Forte-Fairbairn, Inc., is a corporation organized, existing and doing business since 1952 under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 311 Summer Street, Boston, Massachusetts. The respondent corporation is a manufacturer of wool products, but is divided into several departments: the wool department; specialty fibers department—which includes alpaca, llama and mohair; cashmere department; the noils department, and waste department. Individual respondent, Orville W. Forte, Jr., from January 2, 1959, to March 1961,¹ was a vice president of Forte-Fairbairn and head of the cashmere department. In that capacity, he had no responsibility for the specialty fibers department and, in particular, had no personal knowledge of, responsibility for or complicity in the acts or practices alleged in the complaint relating to the sale on November 25, 1959, to Northfield Mills of fibers invoiced as "Baby Llama." Accordingly, at the

¹ On March 1, 1961, Orville W. Forte, Jr., became president of Forte-Fairbairn succeeding his father, Orville W. Forte.

close of complaint counsel's case-in-chief, the hearing examiner granted a motion to dismiss the complaint insofar as it related to Orville W. Forte, Jr., in his individual capacity, but not in his capacity as an officer or agent of the corporate respondent.

Individual respondent, Donald Forte, is the salesman who negotiated the November 25, 1959, transaction and respondent, Boyce W. Godsoe, is the head of the specialty fibers department who was personally responsible for changing the designation of the fibers on the invoices to "Baby Llama." In these capacities, Donald Forte and Boyce W. Godsoe had personal knowledge of and were responsible for the acts and practices of the corporate respondent.

2. Forte-Fairbairn, Inc., is a closely held corporation and controlling interest at all times material to this complaint has been held by members of the Forte family. In addition, members of the Forte family predominate on its board of directors and serve as its principal executive officers. Boyce W. Godsoe is one of the larger minority stockholders.

3. Forte, Dupee, Sawyer Co., hereinafter referred to as Forte Dupee, was incorporated in Massachusetts in 1922. It also is a closely held corporation and controlling interest at all times material to this complaint has been held by members of the Forte family. As in the case of Forte-Fairbairn, members of the Forte family predominate on the board of directors and serve as principal executive officers of Forte Dupee. Boyce W. Godsoe is also one of its principal minority stockholders.

On January 1, 1959, Forte-Fairbairn acquired the inventories of Forte Dupee including the stocks on hand in its wool and specialty fiber department. After January 1, 1959, Forte Dupee² was merely a division of Forte-Fairbairn. Prior to January 1, 1959, Boyce W. Godsoe was in charge of the specialty fiber department of Forte Dupee and after that date was chief of the specialty fiber department of Forte-Fairbairn.

4. Forte-Fairbairn, through its Forte Dupee division, is now, and since January 1, 1959, has been engaged in the sale and distribution of woolen and specialty fiber stocks throughout the United States.

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

² On January 2, 1959, Forte, Dupee, Sawyer Co. changed its name to Forte Investment Fund, Inc.

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

Classification of the Llamas

6. The genus *Llama* is subdivided into two distinct species, *lama glama* and *lama vicuna*, both of which are part of the family *camelidae*. The *lama glama* species is further subdivided into *lama glama pacos* (the alpaca), *lama glama glama* (the llama), and *lama glama huanaca* (the guanaco). The habitat of the llama tribe, except the guanaco, is the high Andean regions of Southern Ecuador, Peru, Bolivia and Northwestern Argentina. Both the llama and alpaca have been domesticated for over 1200 years. All of the llamas are smaller in size and lighter in build than the camels.

7. The outer coat of the llama is thick and coarse and the hair next to the body is much finer closely resembling those of the alpaca. The young llama is left with its mother for about a year, after which it is placed in flocks. When about 4 years old, the males and females are separated, the former being trained to their tasks as burden carriers, the latter being sent to pasturage, for the females are used exclusively for breeding purposes and for their hair. Usually the males are never shorn until death, the hair being permitted to grow to form a cushion for the pack. The llama's economic importance is as a burden carrier and apparently always will be, for it remains today the only reliable draught animal of the upper Andes.

8. The alpaca is somewhat shorter than the llama, but its body is proportionately larger and of greater bulk. The hair of the alpaca hangs down its sides, rump, and breast in long glossy and more or less tangled strands, measuring from 8 to 12, and not infrequently, 16 inches in length, and when left unshorn for long periods will attain lengths of nearly 30 inches. This hair differs from that of the llama in having no coarse or brittle fibers, which are of common occurrence in the fleece of the llama. The alpaca has occupied a major position in the economic life of the great Andean Plateau and its position as a fleece bearer is unchallenged. For this reason, the alpaca is of specific importance to the textile industry.

9. Due to the difference in length and texture, the fleece of the adult alpaca may be distinguished by relatively simple methods of testing from the fleece of the adult llama. In contrast, the fleece of the baby alpaca and baby llama are of similar length and texture and cannot be distinguished either by ordinary sensory perception or simple methods

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of testing. It should also be noted that the importation and use of adult alpaca fibers in comparison to the importation and use of baby alpaca or baby llama fibers is much greater. Actually, the availability of baby llama or baby alpaca fibers is very restricted.

Importation of the Fibers

10. In August 1956, Curt W. Haedke of C. Haedke & Co., New York, New York, importers of specialty fibers and Emilio Salomon of Emilio Salomon Sahurie G., Arequipa, Peru, exporters of alpaca and llama fibers, called upon Boyce W. Godsoe, head of the specialty fibers division of Forte Dupee, and his assistant, William J. Hobbs, at which time Godsoe and Hobbs ordered several shipments of baby alpaca fibers pulled from skins (Tr. 93, 309). On August 31, 1956, Hobbs confirmed the purchase of 6 bales of "Kid Alpaca Fleece" (CX 40) and, on December 3, 1956, Hobbs confirmed the purchase of 14 bales of "Baby Alpaca Fleece" (CX 42) from C. Haedke & Co.

11. By invoice of Emilio Salomon Sahurie G., Arequipa, Peru, dated August 16, 1956 (CX 39A, 39B), 6 bales of alpaca fleece were shipped to C. Haedke & Co., New York, and by invoice of Emilio Salomon dated November 16, 1956 (CX 41A, 41B), 14 bales of alpaca fleece were shipped to Forte Dupee. On September 12, 1956, C. Haedke billed Forte Dupee for 6 bales of callao alpaca seconds³ (CX 10), and on November 30, 1956, C. Haedke billed Forte Dupee for 14 bales of alpaca fleece (Baby Alpaca) (CX 17).

In 1956 and 1957, Godsoe and Hobbs also ordered from Franz Rotmann, Arequipa, Peru, an exporter of fibers and skins, several shipments of "baby alpaca skins." Shipping advices confirming these orders and describing the shipments as "white baby alpaca skins," "baby alpaca skins in colors" and "Baby Alpaca Skins" were sent by Rotmann to Forte Dupee (CX 47, CX 56, CX 67).

12. The invoices of Emilio Salomon Sahurie G. (CX 39A, 39B, CX 41A, 41B), and the shipping advices of Franz Rotmann (CX 47, CX 56, CX 67) were prepared in the regular course of business at the time of the shipments by clerks in the offices of these concerns in Arequipa, Peru. The clerks who prepared these documents do not speak English, but merely copy the pertinent information, including the description of the fibers from other documents (Tr. 361, 364). Actually, Mr. Salomon and Mr. Rotmann, or the clerks who prepared these documents, as a matter of practice, never see the fibers but merely

³ C. Haedke testified that only two classes of customs export designations existed in Peru and that there was no classification for baby alpaca fibers so they were listed under the lower classification as "Callao Alpaca Seconds" (Tr. 370, 376). However, when the error was brought to Haedke's attention by Godsoe, Haedke admitted the error (Tr. 199) and changed it to "Baby Pulled Alpaca" (Tr. 101).

use the same description on their invoices that appears on the invoices they receive from their suppliers (Tr. 369). It is also the undisputed testimony of Mr. Haedke that even had Mr. Salomon or Mr. Rotmann or any of their employees personally inspected the baby fibers, they would have been unable to determine the difference between baby alpaca and baby llama (Tr. 372).

Entry of the Fibers on Books and Records of Forte Dupee

13. The routine procedure followed by Forte Dupee upon receipt of shipping invoices is to have them checked by Hobbs or someone else on Mr. Godsoe's staff to make sure that the information as to price, quantity and description thereon conforms to what was ordered. If everything is found to be in order, the stock is paid for approximately a week or two in advance of the arrival of the actual shipment. Upon arrival of the stock, it is trucked to Forte Dupee's warehouse in Boston, where the information on the bills-of-lading accompanying the stock is checked against the orders and shipping invoices previously received. Following this, it is Forte Dupee's procedure to have someone on Godsoe's staff go down and get samples from at least 10 percent of the bales and check them to see if they are of the same standard and quality as ordered. If the shipments meet with Forte Dupee's approval, appropriate entries are made on Forte Dupee's stock and inventory control records (Tr. 85-90).

14. Upon arrival of the stocks ordered from Haedke, Salomon and Rotmann, the foregoing procedures were followed: the bills-of-lading were checked and the fibers were entered on the records of Forte Dupee as baby alpaca (Tr. 104, 200). Specifically, lot cards established by Forte Dupee to cover the shipments of the 6 and 14 bales from C. Haedke and Emilio Salomon described the pulled fibers as "Kid Alpaca Fleece" (CX 12) and "Baby Alpaca Fleece" (CX 18) respectively. Similarly, lot cards established and maintained by Forte Dupee covering the shipments from Franz Rotmann described the skins as "Baby Alpaca Skins" (CX 58, CX 59, CX 68, CX 74, CX 75). At the time the lot cards were prepared, no one in Forte Dupee could tell the difference between baby alpaca and baby llama fibers (Tr. 188) and the description of the fibers as baby alpaca on the shipping invoices was not challenged.

Contract to Sell the Fibers to Old Bennington Weavers and Subsequent Repurchase by Forte Dupee

15. On January 29, 1957, Forte Dupee offered to sell 10,000 pounds of "Baby Alpaca Fleece" at \$4 a pound to Old Bennington Weavers, Inc., Bennington, Vermont (CX 83) and upon acceptance thereof

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Forte Dupee shipped 493 pounds (CX 27A). Old Bennington failed to exercise its rights further under the contract and no additional deliveries were made. As a result of Old Bennington's failure to live up to its contract, the contract was cancelled by mutual agreement and on December 31, 1958, a settlement of the transaction was agreed to by the parties (CX 14). The document evidencing the settlement described the fibers as "Baby Alpaca Fleece" and charged Old Bennington for 9,507 pounds at \$4 per pound or a total of \$38,028. In settlement, the described fibers were repurchased by Forte Dupee at \$2.50 a pound or a total of \$27,767.50, leaving a balance of \$14,260.50 owed by Old Bennington to Forte Dupee in the nature of liquidated damages for failure to live up to their contract. Old Bennington made an initial payment of \$2,000 on January 5, 1959, towards this indebtedness, and on May 4, 1960, made a final payment of \$4,607.34 wiping out its liability stemming from this transaction. Respondents admit and the lot card records of Forte Dupee conclusively show that the fibers sold to Old Bennington are the same fibers heretofore found to have been imported from Peru as "Baby Alpaca."

Processing of the Fibers by Damar Wool Combing Co.

16. As hereinabove found, Forte-Fairbairn, on January 1, 1959, acquired all of the inventories of Forte Dupee including specifically the stock of 9,507 pounds of "Baby Alpaca Fleece" repurchased from Old Bennington on December 31, 1958. In April 1959, Forte-Fairbairn sent the "Baby Alpaca Fleece" to Damar Wool Combing Co. to be carded and scoured. Entries covering this processing made by both Forte-Fairbairn and by Damar Wool Combing Co. referred at all times to the fibers as baby alpaca. Billings sent to Forte-Fairbairn on May 15, 1959, setting forth the scouring and carding charges on specific lots of these fibers consistently described the fleece as baby alpaca (CX 22A-D, CX 23A-B, CX 24A-D). Similarly, lot card entries made by Forte-Fairbairn reflecting the processing of these fibers were captioned "Various Colors Baby Alpaca Scoured & Carded" (CX 19), "Lite Fawn Baby Alpaca Fleece Scd. & Carded (CX 20) and "Scd. Baby Alpaca—Bleached" (CX 25).

Sale of the Fibers by Forte-Fairbairn to Northfield Mills, Inc.

17. Mr. H. Maxwell Goldfine of New York City, buyer for Northfield Mills, Inc., customarily telephoned Mr. Donald Forte, the salesman handling the Northfield account, two or three times a week to inquire about the availability of various fibers. In early June 1959, Goldfine, who had become interested in baby llama, telephoned Donald Forte to

inquire about the availability of baby llama fibers. Although the testimony of Goldfine and Donald Forte are in conflict as to the particulars of the conversation, the hearing examiner finds that Goldfine made it clear to Donald Forte that he was solely interested in purchasing baby llama fibers and that Donald Forte so understood Goldfine's inquiry.⁴

18. On June 9, 1959, Hobbs wrote Northfield Mills, Inc., Northfield, Vermont, attention Mr. Bussiere, Plant Manager, with a carbon to Goldfine, the following letter: (RX5)

Yesterday we were talking to Max Goldfine and during our conversation the matter of Baby Alpaca Llama Fleece was brought up. Max advised that he had something in mind for Fall, 1960, fabrics and requested that we mail you samples of our current accumulations of Baby Alpaca Llama Fleece. We therefore mailed you yesterday, with duplicates to Max, the following samples marked:

Lot 7027 White Baby Alpaca Llama Fleece representing spot quantity of 1,450#

Lot 7028 Dark Baby Alpaca Llama Fleece representing spot quantity of 6,500#

Lot 7029 Lite Fawn Baby Alpaca Llama Fleece—representing spot quantity of 8,000#

These three types we are offering combined at \$2.75 ex mill basis. We would like to call your attention to the fact that these stocks have been scoured and carded.

Max has requested that after you have the opportunity of examining the samples, you get in touch with him regarding these offerings.

19. Goldfine testified that he paid little or no attention to written offers received through the mail and apparently was not aware that the written offer describing the fibers as baby alpaca llama fleece differed from the verbal discussions with Donald Forte relating to baby llama.

20. Respondents explained the abrupt change in terminology employed by stating that the term "alpaca/llama" as used in this letter was to show the genus as well as the species of the animal from which the fibers came, although, at this time, respondents admit that they still believed that the fibers were of the alpaca species rather than the llama species. Respondents also admit that the fiber stocks had been on hand for some time and had been hard to move.

21. On July 30, 1959, respondents made a formal offer to Northfield Mills, Inc., 35 Kneeland Street, Boston, Massachusetts, of 180 pounds of fibers, describing them as "scoured and carded white baby alpaca/llama"; "scoured and carded random dark baby alpaca/llama", and "scoured and carded lite fawn baby alpaca/llama at \$2.75 per pound ex mill, together with an option on the balance of approximately 7,000 pounds (RX 6 and RX 7). The offer of 180 pounds was accepted by Northfield Mills.

⁴ See Goldfine's letter of January 26, 1960 (Finding No. 30, *infra.*) and Donald Forte's response (Finding No. 31, *infra.*)

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22. On August 4, 1959, Donald Forte wrote Northfield Mills, Inc., Northfield, Vermont, attention Mr. F. Bussiere, with carbon copy to Goldfine, as follows: (RX 31)

Confirming our conversation with Mr. Mac Goldfine, we have shipped to you approximately 200 lbs. of Baby Alpaca Llama Fleece as per our enclosed purchase confirmation of July 30, 1959.

You will note that we have shipped quantities in proportion to the balances remaining on hand and we have given you an option until September 4.

We have not received the bleaching charges on 7028, but will forward these to you immediately upon receipt of them.

We look forward to hearing from you regarding these lots.

23. On November 25, 1959, Forte-Fairbairn made a second formal offer to Northfield Mills, Inc., 35 Kneeland Street, Boston, Massachusetts, to sell the balance of the 7,000 pounds of fibers describing them again as: "scoured and carded white baby alpaca/llama" at \$2 per pound, and "scoured and carded lite fawn baby alpaca/llama" at \$2 per pound, and "scoured and carded random dark baby alpaca/llama" at \$1.25 per pound (RX 9, RX 10A-B). This offer was accepted by Northfield Mills, Inc. At this time, the respondents still believed the fibers were baby alpaca.

24. Early in January 1960, Goldfine called Donald Forte and asked for clarification of the identity of the fibers. Forte took up the matter with Godsoe, head of the Specialties Department of respondent and was told by Godsoe that he had recently obtained new information to the effect that the fibers were baby llama. Godsoe's information came from a Mr. Michell, a resident of Peru for 40 years and a large exporter of alpaca fibers. Based upon the information given him by Godsoe and without making any further independent check of the facts, Donald Forte wrote the following letter: (CX 32)

January 6, 1960

Northfield Sales Corp.
450 Seventh Avenue
New York, New York
Attention: Mr. H. M. Goldfine
Gentlemen:

Regarding our sales confirmation to you of November 25, 1959, you will note that the description for Lots 7027, 7028, and 7029 is "Baby Alpaca/Llama". Actually, for labelling purposes, we believe a more exact description would be "Baby Llama", since the bulk of this stock is produced from Baby Llama Skins although a few Baby Alpaca Skins are used.

The reason this fiber is so fine is that it comes from the skins of Llamas either forced into premature birth or recovered from the baby of the slaughtered female before birth. Occasionally, a skin of a Baby Alpaca is included, but since the Alpaca is such a valuable animal for the fleece, it is seldom purposely slaughtered or forced to give birth prematurely. As you know, the Llama is a beast of burden,

and has a much coarser coat than Alpaca, although both are in the Llama family. If the baby Llama were born normally and allowed to live for even a few hours, the coat would be much coarser than the fiber from the unborn babies. Since the Alpaca is by nature a much finer type of wool than Llama, the fibers of their babies are almost as fine as the unborn Llama, if the fiber is recovered very soon after birth.

We feel that you would be slightly downgrading your description of this fiber by calling it "Baby Llama" rather than "Baby Alpaca/Llama", but since the predominant fiber is from the Llama, we believe that this is the truest description that you could give.

We hope that the above explanation proves of some interest to you.

Very truly yours,
FORTE, DUPEE, SAWYER CO.
By

25. Godsoe, when questioned by complaint counsel as to the basis for his information, changing the description of the fibers from baby alpaca to baby llama, testified as follows:

MR. HUGHES:

Q. You testified that you could not tell these baby fibers apart. If no one can tell them apart, what makes you think that the fibers you purchased now are different?

A. That needs a little explanation. As far as we are concerned no one could tell these fibers apart. We went to a lot of trouble trying to figure out in our mind whether these were baby alpaca or baby llama or what they were and I wanted for—to talk in a business conference with somebody by the name of Mitchell [sic] who has lived 40 years in Peru. He started out as a rancher—I am just trying to explain—he was probably in my mind and most other people's minds he was probably the best authority on alpaca.

Q. The information that was brought to your attention came about 10 years later?

A. No, sir.

Q. But you in the meantime had sold these fibers as alpaca?

A. That is correct. We changed our description because we believe and I believe that Mitchell [sic] proved to me very satisfactorily to my mind that these were not alpaca, but were 100 percent llama fibers.

Although Godsoe was subsequently called to testify as a witness for respondents, he was not questioned further about his relationship with Mr. Michell or asked to elaborate on the proof supplied him by Michell.

26 Mr. Donald Forte testified that Mr. Michell was a leading exporter of alpaca from Peru, but that Mr. Michell had never examined the specific fibers or skins shipped to Forte Dupee by Haedke, Salomon and Rotmann. Except for the reference to Mr. Michell's forty years experience in Peru as a rancher and his status as a leading exporter of alpaca, respondents offered no particulars concerning how Godsoe communicated with Michell, the exact information Michell

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supplied Godsoe, and the precise date this occurred. Although a Frank W. Michell, Arequipa, Peru, was noticed on respondents' pre-trial list of witnesses to testify as to the grade, quality and characteristics of baby llama and alpaca fibers, he was not called as a witness and no reason was given for his failure to appear and testify.

27. Pursuant to the November 25, 1959, sale, partial shipments of fiber stocks were made on January 11 and January 15, 1960. Invoices covering these shipments described the fibers as "scoured and carded baby alpaca/llama" and "scoured, carded and bleached random dark baby alpaca/llama" (RX 11, RX 13).

28. Contemporaneously, with these shipments, Donald Forte wrote the following letter to the Federal Trade Commission: (CX 28)

January 14, 1960.

Mr. Harvey H. Hannah
Chief, Division of Wool Act Administration
Federal Trade Commission
Bureau of Investigation
Division of Textiles and Furs
Washington 25, D.C.

Dear Mr. Hannah:

Confirming our telephone conversation, we are enclosing a copy of Sylan Stroock's *Llamas and Llamaland*.

On Page 7, showing the order of the "Artiodactyla", of which the genus *Lma* is a branch, under the genus "Lama", are the various branches which include the Alpaca, the Llama and the Guanaco. We agree with Mr. Stroock that this entire branch could be properly labelled "Llama", although, actually, the fleece of the Llama would be the coarsest in this group. The Llama is raised as a least of burden. Its fleece seldom is used for apparel; the other domesticated members of the genus "Lama" are raised primarily for the fleece, the Alpaca being the finest. We do not feel that fleece from the Llama (*Lama glama glama*) could be labelled "Alpaca" since not only would this be upgrading a coarser type, but, also, there is nothing in the generic name which could justify the Alpaca label.

We understand that Stroock labelled Alpaca "Llama" for years, since the name sounded more romantic than "Alpaca". We believe that some of our mills wish to label Alpaca "Llama" today for the same reasons.

We would be pleased to furnish further information from the authorities in Peru, or from the other Alpaca importers, if you so desire.

We look forward to hearing from you.

Very truly yours,

FORTE, DUPEE, SAWYER C.
A Division of Forte-Fairbairnc.
By /s/ Donald Forte

df/11
enc.

29. The Federal Trade Commission answered Donald Forte as follows: (CX 29)

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January 27, 1960

Mr. Donald Forte'
 Forte'-Fairbairn, Inc.
 311 Summer Street
 Boston 10, Mass.

Dear Mr. Forte' :

Reference is made to your letter of January 14, 1960 pertaining to Alpaca and Llama. Congress in Section 2(b) of the Wool Products Labeling Act specifically set forth Alpaca, Llama and Vicuna as separate and distinct types of specialty fibers. Further, the Commission has elaborated on this Section of the Act with Rule 18 specifically referring to Alpaca, Llama and Vicuna again as different specialty fibers.

In the Fur Products Name Guide prepared by the Commission by direction of Congress under the Fur Products Labeling Act Alpaca, Llama and Guanaco are listed as being of the same Order, Family and genus but of different species, whereas Vicuna is of the same Order and Family as the others but of different Genus and Species.

Under these circumstances it would appear that neither this Division or the Commission could give authority to use the work [sic] "Llama" to describe Alpaca Fibers.

Sincerely yours,

Harvey H. Hannah, Chief
 Division of Textiles and Furs.

FC:gwh

3. On January 26, 1960, Goldfine was still unsatisfied with the description contained on the invoices referred to in Finding No. 27 above and wrote Donald Forte as follows: (CX 85)

January 26, 1960

Forte Dupee Sawyer Co.
 311 Summer Street
 Boston 10, Mass.

Attention: Mr. Donald Forte

Dear Sir:

Regarding your confirmations of November 25, 1959 covering lots 7027, 7028, and 7029, it is my understanding from the letter of January 6, 1960 received from you and the many conversations had with you, that these can be properly labelled BABY LLAMA as originally offered prior to purchase.

Therefore, we would appreciate your sending us a corrected confirmation and invoices, to cover the above.

Thanking you for your attention to this matter, we remain,

Very truly yours,

NORTHFIELD SALES CORP.
 (s) H. MAXWELL GOLDFINE
 H. Maxwell Goldfine

HMC rg

31. On January 28, 1960, Donald Forte replied to Goldfine's request as follows: (CX 84)

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January 28, 1960

Northfield Sales Corp.
 450 Seventh Avenue
 New York, New York
 Attention: Mr. H. Maxwell Goldfine
 Gentlemen:

In reply to your letter of January 26, we are correcting the invoices and confirmations of November 25, 1959 for lots 7027, 7028 and 7029.

Very truly yours,

FORTE', DUPEE, SAWYER CO.
 By
 A Division of Forte'-Fairbairn Inc.

df/11
 cc: M Boston Office
 Northfield, Vt.

32. As a result of the above-quoted exchange of letters, corrected invoices for the January 11, 1960, and January 15, 1960, shipments were issued to Northfield Mills describing the fiber stocks as "scoured & carded baby llama" and "scoured, carded, & bleached random dark baby llama" (RX 12A, RX 14A). Invoices covering the balance of shipments under the November 25, 1959 sale described the fiber stocks as follows: invoice dated January 26, 1960, "scoured and carded white baby llama" (RX 15A); invoice dated February 23, 1960, "scoured and carded white baby llama" (RX 16A); invoice dated March 9, 1960, "scoured and carded random dark baby llama" (RX 17A); invoice dated March 14, 1960, "scoured and carded random dark baby llama" (RX 18A); invoice dated March 14, 1960, "scoured and carded random dark baby llama" (RX 19A), and invoice dated March 22, 1960, "scoured and carded white baby llama" (RX 20A).

1961 Discussions with Mrs. Murphy of Old Bennington

33. In November 1960, ownership of Old Bennington Weavers Inc., changed hands and Mrs. Elsie Murphy, formerly president of Stooock & Co., from 1949 until 1960, became one of its major shareholders and its president. Because of the poor financial condition of the old concern; the uncertainty of the new financial structure under Mrs. Murphy, and large outstanding accounts due at the time of her takeover, Vincent H. Dunning, the salesman handling the Old Bennington account, called upon Mrs. Murphy in early 1961 to discuss methods of paying her overdue accounts of approximately \$29,000 to Forte'Fairbairn. During the course of this conversation, Mrs. Murphy brought up the question of the fairness of the December 31, 1958, settlement of the "baby alpaca" transaction. In this and subsequent conversation with Donald Forte and Orville W. Forte, Mrs. Murphy never chal-

lenged the correctness of the identification of the fibers as "baby alpaca" although she had them tested earlier and determined to her satisfaction that they were in fact "baby fibers." Throughout her conversations in 1961 with Dunning, Donald Forte and Orville W. Forte, and in letters addressed to her by Donald Forte on March 24, 1961 (CX 27) and by Orville W. Forte on April 21, 1961 (CX 43), the expression "baby alpaca transaction" was the frame of reference used by all concerned to refer to the 1958 settlement. At no time during these conversations with Mrs. Murphy did Dunning, Donald Forte or Orville W. Forte reveal to her that the fibers involved had been recently sold to Northfield Mills as "baby llama". Donald Forte explained this omission by stating that it would have been unethical to reveal the details of a transaction with one customer to a competitor of that customer.

During the course of these conversations, Mrs. Murphy offered to settle her current indebtedness of \$29,000 to Forte-Fairbairn for \$10,000. Mrs. Murphy based this offer on the proposition that the 1958 settlement had been unfair, because the amount charged for cancelling the contract was too high. Donald Forte refused to accept this offer to settle Old Bennington's current account or make any adjustment of the 1958 settlement, which had been negotiated before Mrs. Murphy became associated with Old Bennington and had been paid in full.

Scientific Tests of the Fibers Conducted by Respondents' Experts in March and June 1962

A. *Source of the fiber samples tested*

34. Mr. John H. Field, Assistant Manager of Northfield Mills, testified that it is the general practice in the industry and the specific practice of Northfield Mills to draw random samples from each delivery of fiber stocks received. In the regular course of its business a stock house employee of Northfield Mills drew random samples from the 16 fiber shipments received from Forte-Fairbairn and placed them in 16 small sample boxes each identified by Forte's lot and Northfield's receiving numbers. The sample boxes were then sent from the stock house to the office building where Field inspected and compared them with purchase samples for quality and weight. While the fiber stocks are in inventory, the sample boxes are kept in a file room next to Field's office and when the inventory has been used up, the sample boxes are transferred downstairs to an inactive file where they are held for two or three years.

35. On March 8, 1962, Dunning of Forte-Fairbairn came to Northfield Mills at the request of Mr. Place, counsel for respondents, and

asked Field if he had retained samples of the November 25, 1959, sale. Present on this occasion were Mr. Creaser, the receiver of Northfield Mills; Mr. Frank Bussiere, Manager of Northfield Mills; Dunning, and Field. After checking his records, Field went to the inactive file room where he located the 16 sample boxes. At Dunning's request, the contents of each of the 16 fiber sample boxes were divided in half; one-half being replaced in their original boxes and retained by Northfield Mills; the other half being placed in 16 new sample boxes, each marked with the same lot and receiving numbers as the original boxes and sealed with gummed labels bearing the signatures of Bussiere, Dunning, and Field.

36. On the same day, March 8, 1962, Dunning hand-delivered the 16 fiber sample boxes to Mr. Terrell, head of Forte-Fairbairn's laboratory. Between March 8, 1962, and March 21, 1962, the 16 sample boxes were continuously in Mr. Terrell's custody. During this period, Terrell testified that he opened the 16 boxes and took a few fibers from each and then resealed the boxes. The boxes, while in Terrell's custody, were locked in a desk drawer in his office. Terrell testified that his purpose in removing a few fibers was to make certain fiber diameter measurements. On March 21, 1962, Mr. Place, counsel for respondents, instructed Terrell to meet him in Newark at the airport with the sample boxes. After his arrival in Newark, Terrell and Place personally delivered the boxes to Dr. Von Bergen, at Central Research Laboratories, J. C. Stevens & Co., Garfield, New Jersey.

37. Between March 21, 1962, and April 28, 1962, Dr. Von Bergen had custody of the sample boxes and removed fibers from each for the purposes of conducting tests. On April 28, 1962, Terrell received a Railway Express package from Dr. Von Bergen containing the 16 fiber sample boxes. On May 31, 1962, Terrell received instructions from Sam Bartlett, a partner of Mr. Place, directing him to hand-carry the sample boxes to Dr. Golub, ACH Fiber Service, Boston, which he did.

38. On August 18, 1960, Robert S. Scott, a Federal Trade Commission investigator, in the course of his investigation of this matter, visited Northfield Mills. Upon cross-examination, he was asked by Mr. Murchison: (Tr. 485)

Q Would you tell me how you checked the stock at Northfield Mills?

A The only manner in which I determined my opinion whether the stock was as represented in the cloth was by their purchase invoices, although at the same time the Commission would obtain physical exhibits for analysis purposes.

Q And you obtained these physical exhibits?

A Yes.

Q Where are those physical exhibits?

A They were forwarded to Washington.

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Q Tell me whether the physical exhibits that you refer to take the form of cloth or take the form of fiber.

A They take the form of fiber.

Q And isn't it a fact that you remove from bales a handful of fiber and retain this and submit it to Washington?

A Yes.

39. On rebuttal, Scott was recalled as a witness for the Commission and was questioned by Mr. Hughes as follows: (Tr. 862)

Q Mr. Scott, state whether or not in your previous testimony you stated that you called at Northfield Mills on August 18, 1960.

A Yes.

Q Mr. Scott, after you completed your examination of the mill records, will you state what occurred then?

A I advised Mr. Fields that I wished to obtain samples of the different types of baby alpaca from their various sources that they were using to make their baby alpaca fabric, as well as samples of cashmere stocks. I proceed [sic] with Mr. Fields to their stock room where a search was made for these various bales. I had, in looking through their stock book, noted their various purchases of these stocks, baby llama, from the two companies they were buying them from, and I was interested in getting a sample from a large lot. The only lot that we could find which related to the Forte-Dupee Sawyer source was a lot identified on a tag attached to the bale as Lot 286.⁵ I would have preferred to have gotten the sample from a larger lot. I knew that this was a small lot from the examination of the stock book, and I advised Mr. Fields that we should look to see if we could find a larger lot.

However, this was the only lot that Northfield Mills had left at the time of my inspection from Forte, and was properly labeled with a tag that showed 100 percent wool, and also the name of the source, the WPL number of the source. I took a sample of this Lot No. 286 stock and requested that Mr. Fields furnish me with a purchase invoice of this lot of stock.

We went back to the office and Mr. Fields did furnish me with the purchase invoice relating to this lot of stock.

* * * * *

Q Were you furnished with any other Forte sample?

A I couldn't get any other Forte sample at that time. (Tr. 865)

40. Mr. Field was thereupon recalled as a rebuttal witness and testified as follows: (Tr. 878)

Q What was the nature of Mr. Scott's request?

A Mr. Scott was conducting an investigation and checking on various fibers, and he asked to draw some samples from our supply of baby llama in our stock house.

* * * * *

THE WITNESS: Mr. Scott asked to go down into our stock house to draw some samples of fibers from our bales in the stock house.

* * * * *

⁵ Lot No. 286 is not one of the fiber shipments involved in this proceeding but involved a "sale of March 28, 1960" on invoice No. T-43 dated April 25, 1960 (Tr. 864). Northfield's lot numbers for the 16 Forte-Fairbairn shipments were 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 264, 265, 266, 267, and 268.

Q Did Mr. Scott ask to see Northfield's own retained samples?

A No, Mr. Scott wanted to go down to our stock house and draw samples himself.

Q Did he give any reason?

A Well, Mr. Scott ordinarily draws his own samples from bales in our stock house and he wanted to go down. This was his usual procedure.

* * * * *
Q On that occasion, at Mr. Scott's request, did you make a check of your own retained samples?

A No, Mr. Scott was only interested to my memory, in drawing samples from bales in our stock house.

* * * * *
Q Did Mr. Scott at any time question Northfield's procedure for the retention of its own samples?

A No, but another Federal Trade Commission investigator did. Mr. Buckwalter questioned our procedure.

Q Did Mr. Scott request to see or take Northfield's retained samples?

A No, he did not.

41. Upon the basis of their testimony, the hearing examiner finds that Mr. Scott made no request of Mr. Field for any Northfield Mills samples from their sample room, but merely requested and received permission to go down to the stockhouse and obtain for himself samples from any bales on hand. The examiner rejects the implications in complaint counsel's proposed findings that on August 18, 1960, or at any other time material to this proceeding, Northfield Mills did not have on hand fiber samples of the baby fibers received from Forte-Fairbairn. The examiner also rejects the vague and conjectural suspicions of complaint counsel, based on the fact the sample boxes were in Northfield's or respondents' possession at all times, that the "link of identification of said fiber samples has not been preserved." The uncontradicted testimony of the witnesses recited above accounted for the fiber samples at all times, and in the absence of any evidence impeaching their testimony, or a showing that their testimony is inherently incredible, the examiner is obliged to accept it. The examiner, therefore, finds that the fiber samples tested by respondents' experts were samples of the baby fibers sold to Northfield Mills on November 25, 1959, by Forte-Fairbairn.

B. *Qualifications of Respondents' Expert Witnesses*

42. Dr. Samuel J. Golub, one of the experts called by the respondents, is associate director of ACH Fiber Service and a fiber technologist. He received his doctorate in biology at Harvard University and taught biology, botany and zoology for 15 years at the University of Massachusetts and Brandeis University. More recently, he has specialized in fiber technology as Senior Research Associate for Fabric Research Laboratories and has been employed many times by the Federal Trade

Commission as a consultant on fiber identification problems and has testified for the Commission as an expert witness. Dr. Golub has had long experience in fiber and cellular structure studies, is a competent microscopist and has performed extensive research in wool, mohair, cashmere, camel, alpaca, llama, and vicuna construction and identification. He has had wide commercial experience in the field of fiber identification and is active in association work and in the adoption and perfection of standards for textile identification. His professional associations include the American Society for Testing Materials, the American Association of Textile Colorists and Chemists and the American Association of Textile Technologists. He has numerous publications to his credit and has recently written the chapter on test procedures for the forthcoming edition of the American Wool Handbook. Dr. Golub personally performed or supervised the tests on the 16 fiber samples in question and based his opinion on both his studies of the experiments of his staff and on experiments and observations made by himself. Complaint counsel did not challenge the qualifications of Dr. Golub.

43. Dr. Werner Von Bergen, another expert called by respondents, is recognized as the Dean of the fiber analysts; is an international authority and has done more research and published more on the subject than anyone else in the field. Since 1919 he has been a consultant in the woolen industry and was employed for over 31 years by Forstmann Woolen Company. Recently, he has been with J. P. Stevens & Co., who acquired Forstmann in 1957. In addition to the Federal Trade Commission, for which he has served as a consultant for many years, he has assisted other federal agencies, such as the Department of Agriculture, Beltsville Laboratory; the Western Regional Laboratory; Bureau of Standards; the Tariff Commission; and the Bureau of Customs, Department of the Treasury. He also assisted in drafting the definition of "wool" set forth in the Wool Products Labeling Act of 1939; pioneered the development of identification methods and procedures used by the American Society for Testing Materials of which he is a charter member; and is the coordinator of the Textile Fiber Atlas, author of several chapters in Matthew's Textile Fibers and editor of the American Wool Handbook. Similarly to Dr. Golub, Dr. Von Bergen personally performed or supervised the tests on the 16 fiber samples in question and based his opinions on both his studies of experiments of his staff and on experiments and observations made by himself. Complaint counsel unequivocally accepted Dr. Von Bergen as an expert.

44. Complaint counsel called no expert witnesses and there is no conflict of expert opinion in this case.

C. Results of the Scientific Tests of the Fiber Samples

45. Prior to 1960, no scientist ever had had occasion to develop reliable diagnostic criteria for distinguishing baby alpaca from baby llama. The first known work in this area was a study by Dr. Von Bergen in 1960 involving alpaca, llama and vicuna, including the baby fibers. The absence of earlier scientific work in this area is explained by the fact that there was no commercial interest in the baby fibers until recent years.

46. In developing reliable diagnostic criteria for distinguishing the baby fibers, Dr. Von Bergen gathered samples of known origin of both baby llama and baby alpaca skins. These were obtained from the Peruvian Department of Agriculture's Animal Experimental Farm. Although Dr. Golub had examined a few known samples of baby llama prior to 1962, he had not made an extensive study of the matter. Dr. Golub obtained known samples of baby llama from the following sources: The San Diego Zoological Park; the National Zoological Park, the Catskill Game Farm, the Franklin Park Zoo and the York Animal Farm. Although he attempted to obtain known samples of baby alpaca in the United States, he was unable to find any and secured his samples of known baby alpaca from the Animal Experimental Farm in Peru. Both Dr. Von Bergen and Dr. Golub had studied adult alpaca and llama fibers previously and were familiar with their characteristics.

47. In their research to discover what criteria are diagnostic in distinguishing baby alpaca from baby llama, Drs. Von Bergen and Golub subjected the known samples to the various standard identification techniques which appear in the scientific literature. These techniques include a study of the cuticle or epidermis layer of the fiber, also known as the scale structure. Factors studied which are sometimes diagnostic in the identification of fibers involve the spacing of the scales, the appearance of the scales, the shaping of the scale margins, the shape of the scale projections, and the number of scales per 100 microns. These studies are conducted by microscopic examination aided by various accessory techniques. The medulla which is the interior layer of the fiber consisting of honeycombed cells which are normally filled with air, is microscopically examined both longitudinally and cross-sectionally. When viewed longitudinally, the medulla appears as a dark inner core which sometimes runs continuously from the root to the tip of the fiber and is sometimes interrupted or fragmental, giving the appearance of tiny dots, which are called "medullary islands". In some fibers, these islands appear like a ladder and are evenly spaced, whereas in others they are irregular. The shape of the medulla in cross-sectional view is also sometimes important. In

some fibers, the medulla in cross-sectional view appears like a tiny dot or a hole in a doughnut. In other fibers, the medulla is not located at the center of the cortex, and it may appear in various forms other than a circle, such as a two-sided, three-sided, or a multi-sided configuration. In addition, the configuration of the medulla may be more or less directly related to the outer contour of the fiber itself.

48. Analytical criteria expressed statistically which are sometimes useful in identifying fibers include the calculation of the standard deviation (S.D.) and the coefficient of variation (C.V.). The S.D. is a statistical criterion based upon the fact that in plotting a normal distributional curve of a fiber population, one observes a curve which is in the shape of a bell. The S.D. is one-sixth of the base line across the curve so plotted. The C.V. is an arbitrary number derived by dividing the S.D. by the average diameter of the fiber population. In effect, the C.V. is the percentage which the S.D. is of the average diameter. It is a convenient form for expressing the distribution of the fiber population from the smallest to the largest in relation to the average diameter.

49. Fiber fineness, which must be measured in plotting the distributional curve of a fiber population and in calculating the S.D. and C.V., is sometimes helpful for diagnostic purposes. Fiber fineness is measured by the wedge projection method whereby the fiber is observed at a magnification of 500 times. The widths of the fibers are recorded by a wedge ruler which covers a range of 10 to 70 microns, which is the normal average range of all animal fibers used in the textile industry. While visual observation of itself is sometimes helpful in fiber identification, both experts agreed that it would be of little or no value in distinguishing baby alpaca from baby llama.

50. Of the foregoing techniques and observations some were considered to be diagnostic in distinguishing baby alpaca from baby llama, whereas others were not. For example, the average diameter of the 16 fiber samples permitted the experts to conclude that they came from baby animals. This fact, however, was not considered diagnostic in differentiating baby alpaca and llama because the baby fibers of both animals average about the same. Similarly, the length of the fibers and the presence of fiber tips and roots clearly pointed to the conclusion that the 16 fiber samples were composed of baby fibers, but was not considered diagnostic in distinguishing baby alpaca from baby llama.

51. The two experts agreed that there exist both morphological and statistical criteria which permit distinguishing baby alpaca from baby llama fibers. Both the samples of known origin and the samples of

unknown origin were subjected to these tests. The diagnostic factors are as follows:

A. Upon microscopic examination of the cross-section of a population of baby llama fibers, the presence of a relatively high number of coarse fibers is apparent. This is a characteristic of known samples of baby llama, which even in infancy exhibit the double coated fleece, which is a pronounced characteristic of that animal in adulthood. The presence of coarse fibers, however, is not observed in known samples of baby alpaca. That animal has a single coated fleece, both in adulthood and as a baby. The presence of coarse hairs was observed in the 16 fiber samples as well as in the known samples of baby llama.

B. The shape of the medulla was also considered diagnostic. The medulla of a baby alpaca fiber is quite round and shows little or no tendency toward irregularity. The medulla of a llama fiber, on the other hand, exhibits a pronounced tendency toward such irregularity. This characteristic was observed in the 16 fiber samples as well as in known samples of baby llama.

C. While Dr. Von Bergen noted that some differences between baby alpaca and llama exist insofar as the appearance of the scale structure is concerned, he did not rely on this factor in reaching his conclusions. Dr. Golub, on the other hand, pointed out that if an examination is made of the lower two-thirds portion of fibers of medium size, a difference in the scale margins can be observed. He testified that while the literature makes no reference to the baby animals in this regard, he made a special study of baby alpaca and baby llama to see if this feature was observable, and he found that it was. Thus, he testified that in fibers of intermediate size the scale margins of baby alpaca are very jagged and irregular, whereas those of baby llama are smooth. In this respect, he found that the 16 fiber samples corresponded with the known samples of baby llama which he had studied.

D. Both experts agreed that the C.V. of the fiber population provided a reliable criterion for distinguishing baby alpaca from baby llama. The C.V. of the samples of baby alpaca studied by Dr. Von Bergen was between 18% to 25%, which reflects the relatively uniform staple of the fleece. Known samples of baby llama, on the other hand, range between 28% to 35%. Known samples of baby alpaca studied by Dr. Golub had an average C.V. of 22%, whereas the known samples of baby llama studied by him were consistently above 30%. In examining the 16 fiber samples, Dr. Von Bergen found that the C.V. averaged in the neighborhood of 30.5% to 31.5%, whereas Dr. Golub found a range between slightly below 30% to as high as 39%. Both experts agreed that their observations of the 16 fiber samples in terms

of C.V. agreed with known samples of baby llama, but did not agree with their observations of known samples of baby alpaca.

E. The S.D. of the 16 fiber samples was approximately 6 to 7 microns, which corresponds to the S.D. of the known baby llama samples tested.

52. Both Drs. Von Bergen and Golub testified that by using these various diagnostic factors they found a complete correlation between the morphological and microscopic features of the baby llama samples of known origin and the 16 samples of stock from Forte-Fairbairn. Both Drs. Von Bergen and Golub concluded, based upon their analyses of over 1000 fiber samples taken from each of the 16 fiber stocks, at issue in this proceeding, that the stocks were composed wholly of baby llama and that there was no evidence of the presence of fibers other than baby llama, such as baby alpaca, adult alpaca, adult llama or guanaco. Both experts were also in agreement that if any such other fibers had been present in any substantial quantity, their presence would have been detected.

DISCUSSION

The essential allegations of the complaint in this matter read as follows:

PARAGRAPH FOUR: In the course and conduct of their business, as aforesaid, respondents have made representations concerning their said products on sales invoices. Among and typical of the representations made was the invoicing of their fiber stocks as "Baby Llama".

PARAGRAPH FIVE: The aforesaid representations were false, misleading and deceptive. In truth and in fact, said fiber stocks were not composed wholly of "Baby Llama" but were composed of fibers other than baby llama.

As previously found, the representations offered in support of the above quoted allegations of the complaint were made in connection with a sale of fiber stocks invoiced as "Baby Llama" by respondents on November 25, 1959, to Northfield Mills. The burden of proof is on complaint counsel to establish by clear and convincing evidence that the fiber stocks involved in this sale were "not composed wholly of 'baby llama' but were composed of fibers other than baby llama". To do this, complaint counsel has relied almost exclusively on documentary evidence consisting of foreign supplier invoices and shipping memoranda originating in Peru which describe the fiber stocks as "baby alpaca". All subsequent documents identifying the fibers as "baby alpaca" were copied from these earlier supplier invoices and shipping memoranda originating in Peru. It is clear, therefore, that the later documents and actions of respondents in reliance thereon are in and of themselves entitled to no more weight than the original sup-

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plier invoices and shipping memoranda upon which they were based. These documents consist of the supplier invoices of Emilio Salomon Sahurie G., Arequipa, Peru, dated August 16, 1956 (CX 39A, CX 39B), and November 16, 1956 (CX 41A, 41B), and the shipping advices from Franz Rotmann, Arequipa, Peru (CX 47, CX 56, CX 67), describing the fiber stocks as "baby alpaca".

There is no doubt that these documents are sufficient to sustain a prima facie case in support of the allegations of the complaint. To rebut this evidence, however, respondents introduced uncontradicted and unimpeached direct scientific evidence based upon tests conducted by two eminently qualified experts demonstrating that the fiber stocks in issue in this proceeding were composed wholly of baby llama. The issue to be decided here, therefore, is whether the identity of the fibers based upon foreign supplier invoices and shipping memoranda is to prevail over direct scientific proof based upon expert testimony of fiber technologists who have analyzed samples of the fiber stocks involved herein.

In focusing on this issue, the hearing examiner has not overlooked the fact that at the time respondents issued the corrected invoices in January 1960, they had no scientific proof, but merely relied upon the information supplied by Mr. Michell. The hearing examiner has also considered respondents' failure to inform Mrs. Murphy in 1961 of their change in identification of the fiber stocks. Although these actions of respondents are not satisfactorily explained and may be inconsistent with their prior conduct, they are not determinative of the issue in this case. The question is not whether respondents had good cause to change the invoices in 1960 or whether their treatment of Mrs. Murphy was fair and above board, but rather of what in truth and in fact these fiber stocks are composed.

In the Matter of Alscap, Inc. [60 F.T.C. 275] (Docket No. 8292, February 14, 1962), the Commission recently adopted a hearing examiner's initial decision wherein he held in effect that blind reliance on foreign labels inaccurately describing fiber content is no defense to a charge of mislabeling, where the Commission adduced scientific evidence through expert witnesses establishing the correct fiber content. In view of the decision in this case, it would appear that the evidentiary weight to be accorded foreign supplier invoices and other overseas shipping advices cannot overcome direct scientific evidence on the issue of fiber identity or content.

In ruling on the admissibility of the foreign supplier invoices and the overseas shipping advices, the hearing examiner based his determination on the testimony of Curt W. Haedke, who testified from personal knowledge that these documents had been prepared in the regular

course of Emilio Salomon's and Franz Rotmann's business and it was the regular course of said businesses to make such documents at the time of the transactions. The standards applied are set forth in the Business Records Statute, 28 U.S.C.A. § 1732, which provides in pertinent part:

* * * any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence, or event, shall be admissible as evidence of such act, transaction, occurrence, or event, if made in regular course of any business, and if it was the regular course of such business to make such memorandum or record at the time of such act, transaction, occurrence, or event or within a reasonable time thereafter.

All other circumstances of the making of such writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect its weight, but such circumstances shall not affect its admissibility.

By admitting these documents into evidence, the hearing examiner in no way passed upon their trustworthiness, but on the contrary, indicated at that time that any weight to be given to them would depend upon the sources of information from which they were made and the method and circumstances of their preparation. (See Uniform Rules of Evidence, Rule 63 (13).) As indicated in Finding No. 12, *supra*, the clerks who prepared these documents did not speak English; the clerks merely copied the pertinent information, including the description of the fibers from other documents; moreover, the clerks never personally inspected the fiber stocks and even if they had they would have been unable to determine the difference between baby alpaca and baby llama. Such lack of personal knowledge of the identity of the fiber stocks by the clerks making the invoices or shipping advices seriously impairs the weight to be given to these documents. Consequently, these documents and the entries and acts of respondents made in reliance thereon are not to be accorded great evidentiary weight in this proceeding.

Finally, the hearing examiner is not unmindful that Donald Forte's January 6, 1960, letter (CX 32) contains admissions that "a few Baby Alpaca Skins are used" and "occasionally, a skin of a Baby Alpaca is included". These statements were presumably based upon information received by Godsoe from Mr. Michell, who as already found had never inspected the fiber stocks in issue and who did not appear or testify. Moreover, the exact details of Michell's conversations with Godsoe are not contained in the record and the hearing examiner consequently accords them little weight. In any event, admissions of this character cannot overcome direct scientific proof to the contrary.

Upon the basis of the entire record and the previous decision of the Commission in the *Alscap* case, the hearing examiner concludes that complaint counsel has failed to sustain the burden of establishing

that the fiber stocks in issue were composed of fibers other than baby llama.

CONCLUSIONS

1. The Federal Trade Commission has jurisdiction of and over the respondents and the subject matter of this proceeding.
2. The complaint herein states a cause of action, and this proceeding is in the public interest.
3. The reliable, probative and substantial evidence in this record does not sustain the allegations of the complaint that respondents have engaged in unfair acts and practices or unfair methods of competition in violation of the Federal Trade Commission Act by falsely identifying fiber stocks on invoices as "baby llama".

ORDER

Accordingly,
It is ordered, That the complaint in this matter be, and hereby is, dismissed.

DECISION OF THE COMMISSION

Pursuant to Section 4.19 of the Commission's Rules of Practice effective June 1, 1962, the initial decision of the hearing examiner shall, on the 13th day of April 1963, become the decision of the Commission.

IN THE MATTER OF

THE B. F. GOODRICH COMPANY AND TEXACO, INC. (FORMERLY THE TEXAS COMPANY)

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

Docket 6485. Complaint, Jan. 11, 1956—Decision, Apr. 15, 1963

Order requiring (1) Goodrich, one of the four leading United States manufacturers of rubber products, including tires and inner tubes, and engaged also in the purchase and resale of batteries, automotive parts and accessories (TBA products), with total net sales in 1954 exceeding one-half billion dollars, and (2) Texas, a large producer of petroleum products, with net sales of more than one and one-half billion dollars in 1954, selling its petroleum products to more than 42,000 service stations, a substantial number of which sold TBA products—
To cease entering into such restrictive contracts as those under which Texas agreed to promote the sale of Goodrich's TBA products to service stations and distributors selling Texas petroleum products and Goodrich paid Texas

- an "override" commission ranging from 5% to 10% on such sales in return for Texas' aid in promoting them;
- Requiring Texas to cease accepting anything of value for promoting such TBA sales, using its relationship with its outlets to induce them, intimidating or coercing its dealers to comply, and preventing them from dealing in TBA products of their own independent choice; and
- Requiring Goodrich to cease paying anything of value to Texas or any other marketing oil company for promoting the sale of TBA products to Texas' dealers or reporting to Texas concerning such sales.

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 B. F. Goodrich Company, and The Texas Company, hereinafter referred to as respondents, have violated the provisions of Section 5 of the Federal Trade Commission Act (U.S.C. Title 15, Sec. 45), 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 as follows:

PARAGRAPH 1. Respondent, The B. F. Goodrich Company, hereinafter sometimes referred to as "Goodrich", is a corporation organized, existing and doing business under the laws of the State of New York, with its principal office and place of business located at 500 Main Street, Akron, Ohio.

Respondent, The Texas Company, sometimes hereinafter referred to as "Texas", is a corporation organized, existing and doing business under the laws of the State of Delaware with its principal office and place of business located at 135 East 42d Street, New York 17, New York.

PAR. 2. Goodrich, one of the four leading manufacturers of rubber products in the United States, is engaged in the manufacture and sale of a great variety of rubber and associated products, including tires and inner tubes. It is also engaged in the purchase, resale and distribution of batteries, automotive parts and accessories and other items referred to as Car and Home Merchandise. Goodrich sells its various products directly to the consuming public through more than 500 company owned and operated retail outlets, and to other retailers and wholesalers having places of business located in the various States of the United States. Its total net sales in 1954 were more than one-half billion dollars.

Certain of Goodrich's said products; namely, tires, inner tubes, batteries, automotive parts and accessories, and certain Car and Home Merchandise items, are known in the trade as "TBA" products (an

abbreviation for tires, batteries and accessories) and will hereinafter be so referred to in this complaint.

PAR. 3. Texas is a large producer and distributor of petroleum products. Directly, or through its wholly owned or controlled subsidiaries, Texas is engaged in substantially all branches of the petroleum industry. It produces crude oil from its wells, cracks and refines gasoline, and refines and produces lubricants and a wide range of other petroleum products. Sales of said products are made to many types of customers, including petroleum wholesalers (hereinafter referred to as "distributors") and service stations. In 1954 its net sales totaled more than one and one-half billion dollars. Texas also acts as an agent in promoting the sale of the TBA products of certain companies, including those of respondent Goodrich, in the manner hereinafter described.

PAR. 4. In the course and conduct of their said businesses respondents are now and for many years have been engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act, in that they ship said products, including said TBA products, or cause them to be shipped from the States in which said products are manufactured or warehoused to purchasers thereof located in other States of the United States and the District of Columbia.

PAR. 5. In the course and conduct of their said business of selling, and promoting the sale of, TBA products in commerce, respondents are now and for many years have been engaged in competition with other corporations, partnerships, individuals and firms.

PAR. 6. Goodrich sells said TBA products directly and through wholesalers to many classes of customers, including service stations who purchase for resale to consumers for replacement use in their automobiles. Service stations, by the nature of their business, are particularly well adapted to be outlets for the sale of TBA products to the motorist consumer. They constitute a large and increasingly important market for TBA products.

Texas sells its petroleum products, directly and through distributors, to more than 42,000 service stations. In addition to petroleum products, a substantial number of these stations sell TBA products.

PAR. 7. In connection with Goodrich's sale of TBA products in commerce, it has entered into a contract with Texas under which Texas agrees to promote the sale of Goodrich's TBA products to the service stations and distributors selling Texas' petroleum products. Texas has also entered into a substantially similar agreement with the Firestone Tire & Rubber Company (hereinafter referred to as Firestone) as to the stations and distributors selling its petroleum products.

Under said contract Goodrich pays Texas an "override" commission, ranging from 5% to 10% on the net sales of TBA products to service stations and distributors selling Texas' petroleum products in return for the influence and aid given by Texas in promoting said sales. Texas has a large number of service stations and distributors affiliated with it which sell only its petroleum products and, pursuant to its agreements with Goodrich and Firestone, in various ways, urges, recommends and persuades the operators of these outlets to purchase the TBA products of Goodrich or Firestone. Said stations and distributors at no time authorized or requested Texas to find for them, or commit them to, a source of supply for TBA products. Said stations and distributors do not receive any part of the override commission.

Said service stations and distributors are operated ostensibly as independently owned business enterprises. However, their relationship with Texas is such that they are subject to its control. Such control is inherent in the power Texas has by virtue of the various types of contracts of employment, leases, purchase contracts, credit card contracts, franchises and other agreements between it and said service stations and distributors with respect to petroleum products and the occupancy, operation, use and tenure of the stations, other premises, facilities and equipment. Said agreements are for short terms and may be terminated or cancelled by Texas without reason at the end of the term or prior thereto for nonperformance of certain provisions. Some of said provisions are so broad and general as to be susceptible of arbitrary interpretation and thus afford a basis for termination of the agreement by Texas.

Thus, the economic welfare of said service stations and distributors is largely dependent upon Texas. If Texas chooses, for whatever reason or no reason, to terminate said franchise or other agreements the operator of the service station or distributor either loses his business entirely or must change to a different brand of petroleum products or change location or both depending upon the type of lease arrangement involved. Such termination would result in great financial loss and irreparable injury to the operator, such as loss of his business, customer goodwill, sales, profits and cost of relocation.

By virtue of these circumstances, Texas can greatly influence and control the purchasing and marketing activities of said service stations and distributors. Such influence and control has been and is being exercised by Texas over its affiliated service stations and distributors by recommending, urging, persuading and causing them to purchase a substantial quantity of TBA products from Goodrich and Firestone, the sellers designated by it.

PAR. 8. By virtue of said override commission agreement which

Texas has entered into with Goodrich, the latter has sold substantial quantities of TBA products in commerce to said service stations and distributors. Goodrich has been increasingly successful in selling TBA products to said service station and distributor market controlled by Texas. For example, Goodrich made such sales, under said agreement, amounting to \$8,868,751 in 1951 and approximately \$13,000,000 in 1952 on which it paid Texas commissions of \$700,000 and \$1,100,000, respectively, for those years.

Also, under the agreement between Texas and Firestone, as described hereinbefore, the latter has sold substantial quantities of TBA products to said service stations and distributors. Firestone made such sales amounting to \$26,973,539 in its fiscal year 1952 and \$31,248,557 in its fiscal year 1953, on which it paid Texas commissions of \$2,286,632 and \$2,723,890, respectively, for those years.

PAR. 9. In addition, Goodrich has entered into the same or a substantially similar override agreement with five other oil companies. Said oil companies exercise control over the service stations and distributors which purchase their petroleum products in the same manner and for the same reasons as hereinabove alleged as to Texas. By virtue of said agreements, Goodrich has been and is increasingly successful in selling TBA products to the service station and distributor market controlled by oil companies. For example, under such agreements Goodrich's sales increased from \$5,500,000 in 1946 to more than \$16,500,000 in 1952.

PAR. 10. Many competitors of Goodrich and Firestone are unable to sell their TBA products to a substantial number of said distributors and service stations because of said override agreements. Many of these competitors do not pay override commissions to any oil company.

PAR. 11. Among the effects of the adoption and use by respondents of said override commission agreements, and each of them, under the circumstances and in the manner hereinabove alleged are that they have:

1. Foreclosed a large and substantial amount of business to manufacturers, distributors, wholesalers and other vendors who compete with Goodrich and Firestone in the sale of TBA products.

2. Injured, lessened, prevented and destroyed competition between Goodrich and Firestone and between each of them and other manufacturers, distributors, wholesalers and other vendors of TBA products in the sale of said products.

3. Increased substantially the amount of TBA products business done by Goodrich and Firestone.

4. Deprived a substantial number of petroleum distributors and service station operators of their right to act as independent business-

men by denying them freedom of choice as to the TBA products which they may purchase and stock for resale.

5. Deprived the consuming public of equal access to the TBA products of competitors of Goodrich and Firestone and other advantages which would result from the natural and unobstructed flow of commerce in said products under conditions of free competition.

PAR. 12. Said agreements between respondents and said agreements between a respondent and others not parties herein, and the acts and practices of respondents thereunder, as hereinabove alleged, are all to the prejudice of the public, have a dangerous tendency to and have unduly frustrated, hindered, suppressed, lessened, restrained, prevented and eliminated competition in the sale of TBA products in commerce within the intent and meaning of the Federal Trade Commission Act; have the capacity and tendency to restrain unreasonably and have restrained unreasonably such commerce in said products; and constitute unfair methods of competition and unfair acts and practices, in commerce, within the intent and meaning of Section 5 of the Federal Trade Commission Act.

Mr. Peter J. Dias for the Commission.

White & Case, of New York, N.Y., by *Mr. Edgar E. Barton*, for respondent The B. F. Goodrich Company;

Royall, Koegel, Harris & Caskey, of New York, N.Y., by *Mr. Kenneth C. Royall*, for respondent The Texas Company.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

SEPTEMBER 24, 1962

This proceeding is based upon a complaint brought under Section 5 of the Federal Trade Commission Act, charging as unlawful, certain contracts entered into by the respondents, The B. F. Goodrich Company and The Texas Company, whereby The B. F. Goodrich Company agreed to pay The Texas Company a sales commission on all tires, batteries and accessories sold by The B. F. Goodrich Company to service stations and other outlets of The Texas Company. The complaint further charged that respondent, The B. F. Goodrich Company, had entered into similar contracts with certain oil companies other than The Texas Company, and that The Texas Company had entered into a similar contract with The Firestone Tire & Rubber Company.

The B. F. Goodrich Company and The Texas Company are engaged in business in practically the entire United States. Counsel supporting the complaint selected five trading areas as being typical of the

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general operations of respondents under the sales commission contract. Pursuant to this selection, testimony was taken in the Chicago, Omaha, Lincoln, Dallas and Atlanta areas.

After the completion of the taking of testimony, the hearing examiner filed his initial decision on October 23, 1959, dismissing the complaint as to The B. F. Goodrich Company, but holding that The Texas Company, by acts of coercion and intimidation had forced a substantial number of its dealers to purchase sponsored TBA, in violation of Section 5 of the Federal Trade Commission Act. Both sides appealed from the initial decision, and on March 9, 1961 [58 F.T.C. 1176, 1183], the Commission issued its order remanding this proceeding to the hearing examiner "for the reception of such further evidence concerning the competitive effects of the respondents' practices as may be offered in conformity with the views expressed in the accompanying opinion of the Commission."

In its opinion accompanying said order of remand, the Commission stated:

Although there is evidence in the record tending to show that Texaco has in fact coerced its dealers to purchase sponsored TBA through use of threats of lease cancellation or other retaliatory action, we find that Texaco has sufficient economic power over its wholesale and retail petroleum distributors to cause them to purchase substantial amounts of sponsored TBA even without the use of overt coercive tactics. The determination of whether Texaco's exercise of such economic power in favor of Firestone and Goodyear [sic] under the oil company's sales commission contracts with these rubber companies constitutes an unfair method of competition depends, therefore, upon the competitive effects of these sales commission contracts; not upon whether Texaco has exercised its power to implement such contracts through the use of overt coercive tactics, or by more subtle, but equally effective, means.

In its opinion, the Commission reversed the conclusions of the hearing examiner that respondent, The B. F. Goodrich Company, should be dismissed because of the absence of evidence that The B. F. Goodrich Company engaged in, or participated in, any acts or practices designed to force dealers and distributors of The Texas Company to purchase Goodrich TBA products. The opinion further pointed out that the issue in this proceeding was the legality of the particular method of distribution of TBA used by The Texas Company and The B. F. Goodrich Company, known as the sales commission plan. The decision of the Commission and the matters contained in its opinion remanding this case, are binding upon this hearing examiner.

Pursuant to said order of remand, the hearing examiner set hearings to begin July 17, 1961, which hearings were cancelled, to be reset after disposition of a petition for an injunction to restrain the hearing examiner from proceeding with further hearings in this case, which

was filed by respondents in the District Court for the District of Columbia.

Thereafter, on June 19, 1962, the Court denied respondents' petition for injunction and entered its order for summary judgment which, in effect, requires the hearing examiner to complete the taking of testimony and other evidence, and issue his initial decision by October 2, 1962 [7 S. & D. 488]. Respondents immediately filed an appeal with the U.S. Court of Appeals for the District of Columbia, and in addition, filed a petition for preliminary injunction which was denied by said Court on June 22, 1962 [7 S. & D. 494].

Upon disposition of the various motions before the U.S. District Court and Court of Appeals, the hearing examiner set this case down on July 16, 1962, to proceed with consecutive hearings until final completion of this case. Hearings were held and case closed July 19, 1962.

This proceeding is now before the hearing examiner for final consideration in accordance with the remand of the Commission, upon the complaint, answer thereto, testimony and other evidence, proposed findings of fact and conclusions submitted by the parties and briefs in reply thereto. The hearing examiner has given consideration to the proposed findings of fact, conclusions and briefs in support thereof, submitted by the parties, and all findings of fact and conclusions of law proposed by the parties respectively not herein specifically found or concluded are herewith rejected.

In its order of remand, the Commission did not vacate or set aside the initial decision, nor does the order or opinion take issue with the factual findings made, but disagreed with certain conclusions reached by the hearing examiner. For the purpose of clarity, the hearing examiner hereby adopts and incorporates into this initial decision, the findings of fact set out in the previous decision. The hearing examiner hereby strikes the conclusions and order contained in said original initial decision and makes additional findings of fact based upon the record herein and the evidence adduced, subsequent to the remand.

FINDINGS OF FACT ADOPTED FROM INITIAL DECISION ISSUED PRIOR TO
REMAND

1. Respondent, The B. F. Goodrich Company (hereinafter sometimes referred to as "Goodrich"), is a corporation organized, existing and doing business under the laws of the State of New York with its principal office and place of business located at 500 Main Street, Akron, Ohio. Said respondent, among other things, is engaged in

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the sale and distribution in interstate commerce of tires, batteries, accessories and supplies (hereinafter referred to as "TBA").

2. Respondent, The Texas Company (hereinafter sometimes referred to as "Texas" or "Texaco"), is a corporation organized, existing and doing business under the laws of the State of Delaware with its principal office and place of business located at 135 East 42nd Street, New York 17, New York. Said respondent is engaged in the production and in the sale and distribution in interstate commerce of petroleum products, including gasoline and lubricants sold to petroleum wholesalers and service stations.

3. There are a large number of service stations and distributors which sell principally the petroleum products of The Texas Company. These service stations which purchase Texaco products for resale at retail to the consuming public are classified as "C" stations and "D" stations. A "C" station is one that is either owned or leased by The Texas Company, and in turn leased by it to the dealer. A "D" station, which is sometimes called a contract station, is either owned by the operator or leased by him from someone other than The Texas Company.

4. Sales to service stations are made by The Texas Company either direct with delivery from company-operated bulk plants or through consignees, who are designated as "B" accounts. A consignee is one who operates a bulk plant owned by The Texas Company or, in some instances, by the consignee. The Texas Company stocks the plant with its petroleum products, and the consignee delivers the products and is compensated by commissions. He is a wholesaler performing the same function that a Texas salary-operated plant would perform. The Texas Company also sells its petroleum products to distributors designated as "E" accounts, who operate bulk storage plants, purchase Texaco products, and sell such products to service station dealers and consumers.

5. The number of Texaco accounts in the various classifications during the past few years were as follows:

- (a) Texaco Lease ("C") stations—
 - 1951—11,570
 - 1952—11,858
 - 1953—12,070
 - 1954—12,674
 - 1955—13,366
 - 1956—13,764 (as of June 1956)
- (b) Texaco contract ("D") stations—
 - 1952—17,708
 - 1953—16,913

- 1954—16,853
- 1955—16,806
- 1956—(June) Not available.
- (c) Texaco consignee (“B”) accounts—
 - 1951—1,225
 - 1952—1,172
 - 1953—1,128
 - 1954—1,124
 - 1955—1,150
 - 1956—(June) Not available.
- (d) Texaco distributors (“E”) accounts—
 - 1951—687
 - 1952—664
 - 1953—652
 - 1954—697
 - 1955—711
 - 1956—(June) Not available.

6. The usual form of lease entered into by the respondent Texas with its lessee dealers or “C” stations was for a term of one year, and thereafter from year to year, subject to termination by either party at the end of the first or any subsequent year on ten days’ prior written notice. Rental provided by the lease was usually a flat rental, plus a cents-per-gallon charge, dependent upon the location of the station, financial condition of the lessee, and potential income. Such lease contained so-called “house-keeping” provisions relating to the use, maintenance and general appearance of the station. Breach of any of the terms, conditions or covenants of the lease by the lessee constituted ground for immediate termination by The Texas Company without notice to the lessee.

7. In addition to the lease, The Texas Company entered into an “Agreement of Sale” with its dealers. These agreements provided for the purchase of an annual minimum and maximum quantity of Texaco gasoline, oils and greases at the current posted price at the time delivery was made. These agreements were usually for a period of one year, and from year to year thereafter, and could be terminated at the end of the initial term, or any anniversary thereof, by giving thirty days’ written notice, with automatic termination upon termination of lease of property. These agreements also provided for a quantity discount or rebate, payable at the end of the year.

8. Tires, batteries and accessories have become a necessary and integral part of the business operation of the Texaco dealer. He cannot progress in his business unless he has the revenue from that portion of his business and also be in a position to serve his customers com-

pletely. It is to the interest of The Texas Company to have its dealers engaged in the sale of TBA as this builds a stronger dealer organization and increases the sale of gasoline.

9. On March 1, 1940, The Texas Company entered into a sales commission agreement with The B. F. Goodrich Company which provided for the payment of commissions to Texas on the sales by Goodrich of its tires, tubes, batteries and auto and home supplies to Texaco outlets, including service stations, distributors and consignees, in consideration of the services to be rendered by the Texas sales organization in promoting the sale of these products. This agreement was modified from time to time and was later superceded by contract dated November 23, 1943, which provided, among other things, for the payment of a commission of 10 percent on sales to "C" and "D" stations, and 7½ percent on sales to "B" and "E" stations by Goodrich. The Texas Company also entered into a similar sales commission agreement with The Firestone Tire & Rubber Company.

10. The services which were performed by The Texas Company pursuant to its contract with Goodrich and Firestone in promoting the sale of TBA products consisted principally of the following:

(a) Texas personnel, when interviewing prospective dealers for new or established service stations, advised them of the importance of TBA and recommended the TBA products of Goodrich and Firestone, and when dealer was selected would at times notify Goodrich or Firestone of such selection and introduce the new dealer to sales representatives of Goodrich or Firestone and assist the new dealer in setting up an adequate TBA inventory.

(b) Texas salesmen were encouraged by Texas management to write up orders for sponsored TBA without waiting for a formal request from a dealer.

(c) Texas frequently conducted dealer meetings and provided training courses for dealers, both of which included suggestions for the displaying and merchandising of TBA, in some instances with the active participation of Goodrich and Firestone.

(d) Texas incorporated suggestions on merchandising TBA in its dealer magazines and arranged for advertising and promotions, which included TBA products of Goodrich and Firestone, and participated in promotions instituted by Goodrich and Firestone.

(e) Texas made TBA products available to credit card holders, including merchandise sold on deferred payments without carrying charge.

11. Both Goodrich and Firestone have sold substantial quantities of their TBA products to Texaco outlets. Sales by both Goodrich

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and Firestone during the years 1952 to 1956 to the various classes of accounts were as follows:

Classes of Accounts

Year	Rubber company	"C"	"D"	"E"	"B"	Total
1952.....	G.....	\$5,803,896	\$1,911,638	\$1,605,665	\$3,425,084	\$12,746,283
	F.....	13,838,565	6,210,771	3,030,989	6,509,406	29,589,731
1953.....	G.....	6,832,705	1,807,688	1,804,391	3,480,551	13,925,335
	F.....	15,843,023	5,634,766	3,210,938	6,310,907	30,999,634
1954.....	G.....	7,698,833	1,826,738	1,726,499	3,571,274	14,823,344
	F.....	16,441,762	5,326,669	3,070,478	5,905,508	30,744,417
1955.....	G.....	9,444,122	2,151,778	2,003,965	4,334,376	17,934,244
	F.....	19,464,784	6,036,009	3,731,307	6,330,072	35,562,172
1956.....	G.....	10,515,043	2,159,457	1,947,333	4,310,815	18,932,648
	F.....	23,547,120	6,569,198	3,386,318	6,376,622	39,879,258
Totals.....		\$129,429,853	\$39,634,712	\$25,517,883	\$50,554,615	\$245,137,066

12. Based upon the foregoing sales, Goodrich and Firestone paid Texas the following annual sales commissions:

Year	Rubber company	Commission
1952.....	G.....	\$1,090,583
	F.....	2,557,991
1953.....	G.....	1,215,084
	F.....	2,704,976
1954.....	G.....	1,310,738
	F.....	2,678,005
1955.....	G.....	1,597,800
	F.....	3,197,654
1956.....	G.....	1,736,811
	F.....	3,743,852
Total.....		\$21,833,494

13. It is the contention of counsel supporting the complaint that because of the relationship, contractual and otherwise, between Texas and its station operators, consignees and distributors, the adoption of the Sales Commission Plan of selling and promoting the sale of TBA entered into by Texas with Goodrich and Firestone has a tendency to lessen, restrain, prevent or eliminate competition in the sale of TBA, and has foreclosed other suppliers of TBA from a substantial portion of the TBA business of the Texaco petroleum outlets.

14. In support of the charges of the complaint, eight former Texaco dealers were called to testify in this proceeding. Five of these

dealers testified to pressure being placed upon them relative to the purchase and display of nonsponsored TBA, and two claimed that TBA was involved in the cancellation of their leases. Except for these two dealers, three of the dealers voluntarily left their stations, and the leases of the remaining three were cancelled for reasons not involving the sale of TBA. The testimony relative to pressure and cancellation is summarized as follows:

(a) James S. Zaloudek, a Texas lessee from 1948 to 1954, testified on direct examination that he expected his lease to be cancelled for handling nonsponsored TBA. On cross-examination he admitted that cancellation might have resulted from difficulties arising from the sale of tires to a customer on credit card without mounting the tires, as required. He eventually had to make good on this sale as the customer resold the tires and defaulted in making payment. This witness further testified to controversies and arguments with Texas representatives relative to the carrying and display of nonsponsored TBA items. He testified that he had been told to get rid of a certain nonsponsored antifreeze; that he had been required to take certain nonsponsored filters off display and put them in the back room; that he had been told to remove Armstrong tires from the display rack and certain accessories from the shelves, which he refused to do; and that he was forced by Texas representatives to take out some Auto-Lite batteries he had purchased. With reference to the items of TBA which he continued to purchase, he was told by Texas representatives that he should not have them in his station, and finally in 1953 he dealt exclusively with Firestone with the exception of some nonsponsored waxes, polishes and filters; and in 1954 carried 92 percent Firestone and Texaco, the other 8 percent consisting of chains, antifreeze, filters, oil, polishes and waxes. The Texas salesman denied that he told Zaloudek that he could not handle, and should remove, the various TBA items.

(b) C. F. Sanford, Jr., a Texas lessee from 1953 to 1955, who purchased gasoline from an independent consignee of The Texas Company, testified that shortly after taking over the station he put in a stock of Continental batteries and was informed by a Texas representative that he would either handle Firestone or expect not to renew his lease; that he continued to handle these batteries and was subsequently notified of the cancellation of his lease. It further appears from the testimony in this proceeding that Sanford's operation of the station was generally poor; that he was in financial difficulties and gave bad checks to the consignee for the payment of gasoline. It also appears from the record that due to a highway change about 30 or 40 percent of the business of the station would be

lost, and that because of Sanford's financial condition the Texas representative was of the opinion that Sanford would not be able to survive, and that this was the primary factor in recommending the cancellation of the lease and that TBA was not involved.

(c) Harvey G. Talley, a Texas lessee from 1938 to 1951, testified that in 1945 the Texas representative asked him not to display Dayton tires but to place them in the back room. He later disposed of the Dayton tires and carried only Firestone until the end of his lease. He displayed Southern batteries and a few Willard batteries, but no objection was made to these batteries. Lease was cancelled because he could not stay open twenty-four hours a day, which was required at that particular location.

(d) Richard E. Tidwell, a Texas lessee from October 1953 to March 1955, testified that he consulted with a Texas salesman about handling a cheaper tire, but was told that the company would be more lenient and would look with favor upon dealers who were loyal. He did not take on the cheaper tire on a stocking basis, and when he found out that Texas Company desired him to carry only one line he endeavored to work along with them. He did carry a cheaper battery, but did not display it. Tidwell voluntarily gave up the station because of a desire to go back into flying.

(e) John D. Scott, a Texas lessee three years, bought only Goodrich TBA, except odds and ends from competitors. Carried Goodrich tires only and Goodrich recapping until about a year before testifying, when he changed recapping to another concern, owned by a friend of his, without any objection from Texas. He also carried Goodrich batteries, only, until about 8 months prior to hearing, when he put in a line of cheaper batteries, but did not display them. Lease was cancelled for reasons other than TBA including controversies over the clock and Coca-Cola machine and excessive drinking on the premises.

(f) Herman Gilbert, Earl M. Gause and H. Arpin Koehler carried Goodrich or Firestone exclusively except for some minor items purchased to meet competition. Their leases were cancelled for reasons not involving TBA.

15. Certain representatives of suppliers of TBA, who were selling in competition with respondent Goodrich, were called as witnesses in this proceeding. These parties testified generally that they had difficulty in selling TBA to Texaco stations and testified specifically as to reasons given by certain Texaco dealers for not buying or selling their TBA items. This testimony as to reasons given by Texaco dealers for not purchasing competitive TBA was allowed under the authority of *Lawlor vs. Loewe*, 235 U.S. 522. This latter testimony

was received not as proof of the truth of the facts recited, but for the purpose of showing the state of mind of the dealer. This testimony, however, is competent to show that dealers did not purchase a substantial amount of competitive nonsponsored TBA because of their feeling that they were required to purchase Goodrich or Firestone TBA.

16. In the course of its defense to this proceeding, The Texas Company introduced the testimony of 54 Texaco dealers and 5 ex-Texaco dealers who came from 13 of the 15 sales divisions of Texas in the United States. With the exception of 1 ex-dealer witness, who had handled Firestone prior to becoming a Texas dealer and who was completely sold on the Firestone line, all of these witnesses testified to displaying and selling nonsponsored TBA without objection or complaint by Texas.

17. The hearing examiner recognizes that present dealers appearing to testify were under considerable pressure because they were naturally interested in not jeopardizing the renewal of their leases. The record, as a whole, shows that there were no exclusive dealers in the sense that they confined themselves entirely to sponsored TBA, as all dealers carry some nonsponsored TBA to satisfy demands of their customers either in varying amounts or on a pickup basis. Many of the stations do not have the space or finances to stock a complete line of tires and batteries, but instead purchase nonsponsored as well as sponsored items on a pickup basis to satisfy customer demand. In some instances there was some confusion as to the definition of accessories among the dealers, as some included as accessories items generally known as repair parts, as distinguished from accessories, and some dealers testified to carrying nonsponsored items which were, in fact, not supplied by Firestone or Goodrich. Many of the dealers called maintained a high sales volume in gasoline gallonage, and also oil, and Texas would not jeopardize this gallonage by pressure tactics sufficient to irritate or alienate such dealers. This is also true as to those dealers in outlying locations where station operators are not readily available, but where it is important to Texas to maintain service.

18. As a result of an antitrust suit filed against Standard Oil Company of California, Walter Hochuli, General Sales Manager of The Texas Company, on June 1, 1948, issued a so-called policy letter to the territorial managers, which was subsequently disseminated down the chain of command to salesmen. This letter advised the personnel that they were to consider a Texaco dealer as an independent businessman; that he should be encouraged to expand his business by purchasing TBA; that the personnel have a right to recommend certain

lines, but that Texas has neither the right nor the desire to dictate to the dealer or influence him in any way as to the type of merchandise he should handle, or the source from which he should purchase it; that the Texaco dealer must be permitted to operate as an independent businessman and anyone who violates this policy would be subject to immediate dismissal.

19. The Texas policy was restated to its personnel in 1952 and 1953, and in 1955 it was incorporated in the portfolios of each salesman so that the salesman would have the statement of policy for ready reference, although by this time it did not carry with it the threat of immediate dismissal. This policy was not transmitted to the Texas dealers except on occasion, and then orally, by salesmen or other personnel, and it was only after the dealer sold a sufficient amount of lubricating oil to warrant the payment of a discount or rebate that he was informed by letter that he was free to select any brand of TBA merchandise which he might elect and that the only interest Texas had was to help him market that merchandise at a profit so that his business would be more successful in every way.

20. The dealer witnesses called by Texas all testified that they were familiar with, and knew, the Texas policy with reference to the sale of TBA and considered themselves independent businessmen, free to purchase TBA as they might see fit. Many testified that when they were interviewed as prospective dealers they were told that they could purchase TBA wherever they might wish. The ex-dealers called in support of the charges of the complaint testified that when they were interviewed as prospective dealers they were told that they could purchase either Goodrich or Firestone with no indication that they might purchase from other suppliers. It would be unusual to expect that Texas salesmen would vigorously insist to a dealer that he had a right to buy wherever he might wish when the salesman's compensation was based, in part, upon commission on sales of sponsored TBA.

21. After giving consideration to the testimony of the various witnesses appearing in this proceeding and giving consideration to their demeanor and credibility, it is the opinion of the hearing examiner that the record in this proceeding as a whole indicates that coercion and pressure was, in fact, brought on a substantial number of dealers to induce them to purchase sponsored TBA and to discontinue the purchase or display of nonsponsored items.

22. The use of credit cards in connection with the sale of Goodrich TBA was instituted by The Texas Company in March 1940. This was discontinued as of May 6, 1942, due to credit regulations issued by the Federal Reserve Board. The use of credit cards was again

resumed on January 1, 1948. From that date until January 1, 1955, there were no restrictions with regard to brands of TBA that might be purchased on credit, but commencing January 1, 1955, Texas specifically restricted the use of its credit card in connection with TBA purchases to Goodrich and Firestone products. It was on this date that Texas instituted the practices of selling TBA products on credit cards on a deferred payment basis, allowing 3 months for payment of purchases of \$30 or more, and 6 months for purchases of \$50 or more, with no service or carrying charge being made. The record shows that Texas dealers have from time to time continued to charge non-sponsored TBA items on the regular monthly settlement basis. It is logical for Texas to limit sales of TBA on deferred payment, without interest or carrying charge, to those products on which Texas receives a commission, as this would, in part, indemnify it for the expense in connection with the deferred payment plan.

SUPPLEMENTAL FINDINGS

23. Goodrich manufactures tires and tubes of all kinds, sizes, varieties and price. It buys and resells batteries, which carry the "B. F. Goodrich" brand and which similarly comprise a variety of lines of differing prices, sizes and quality. B. F. Goodrich sells a full line of automotive accessories, including fan belts, radiator hose and other rubber products of its own manufacture and nonrubber accessories which it buys and resells under the nationally advertised brand names of the manufacturers of those products.

24. Goodrich operates five tire manufacturing plants across the country located in Ohio, Pennsylvania, Alabama, Oklahoma and California. Its tires are shipped from these plants to 15 company-operated merchandising warehouses (also known as master warehouses) in major metropolitan centers over the nation. These plants and master warehouses in turn ship tires to 31 Goodrich district office-warehouses all around the country. The manufacturers from which B. F. Goodrich purchases its batteries have plants strategically located over the country from which they ship to the same master and district warehouses. The accessories B. F. Goodrich purchases from other national brand manufacturers also go to the master and district warehouses.

25. Goodrich sells tires, batteries, accessories and supplies to specialized tire dealers, new car dealers, garages, service stations and in every channel of trade where tires are sold. In addition to these independent distributors and dealers, it also sells through its own company-operated B. F. Goodrich Stores. Some of these independent distributors and The B. F. Goodrich Stores, located in the various

States of the United States, are supplied primarily from the master warehouses and district office-warehouses or occasionally from the manufacturing plants of Goodrich or the other concerns from which it purchases the batteries and accessories which it does not manufacture itself.

26. Goodrich has sales commission arrangements with Texas, Continental Oil Company (hereinafter "Conoco"), The Ohio Oil Company (hereinafter "Ohio-Marathon"), Shell-American Petroleum Company (hereinafter "Shell-American"), Jenney Manufacturing Company (hereinafter "Jenney") and Emblem Oil Company (hereinafter "Emblem"). There are written contracts with Texas, Conoco, and Ohio-Marathon but there are no formal contracts with the other three oil companies, which are smaller, local concerns generally with only service station customers selling at the retail level but without wholesale outlets such as consignees, jobbers or distributors. With those exceptions, the terms and conditions of the arrangements with Shell-American, Jenney and Emblem, and their responsibilities thereunder, are the same as those of the oil companies which are parties to formal contracts, and their outlets are similarly served by Goodrich.

27. The typical service station requires unique services not required by the large-volume tire dealers directly served by Goodrich and others. Because of the comparatively small volume of its TBA business, limited capital, and restricted storage space in relation to the multiplicity of types, sizes, qualities and prices of tires and batteries now in demand, the service station generally stocks few if any of these items in the TBA line and consequently requires a fully stocked source of supply close at hand and prepared to make quick, small deliveries of items already ordered by a customer of the station.

28. Goodrich satisfies the need of service stations for quick delivery through numerous supply points located across the country. Generally these supply points are independent distributors, but in a few instances where independent distributors with the necessary facilities are not available, B. F. Goodrich Stores handle supply point distribution. Whenever Goodrich enters into a sales agreement or starts selling to an outlet of an oil company with which it has a sales commission arrangement, Goodrich usually designates a supply point nearest to the service station. The service station operator is not limited to the designated supply point, but is free to deal with any Goodrich supply point he may prefer.

29. These independent distributors have played an increasingly important role in the operation of B. F. Goodrich's sales commission programs with the various contracting oil companies. Of the total number of outlets of all the contracting oil companies on which Good-

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rich paid commissions, the percentage supplied by independent distributors from 1950 through mid-1956 was as follows:

As of	Total outlets on which commission was paid	Supplied by independent distributors	Percentage by independent distributors
12/31/50-----	2, 040	442	22%
12/31/51-----	2, 469	820	33%
12/31/52-----	4, 075	1, 876	46%
12/31/53-----	5, 065	2, 486	49%
12/31/54-----	6, 065	3, 127	52%
12/31/55-----	7, 042	3, 908	55%

The same trend is even more pronounced for Texas outlets, for which figures are available for two additional years:

As of	Total outlets on which commission was paid	Supplied by independent distributors	Percentage by independent distributors
12/31/50-----	1, 974	438	22%
12/31/51-----	2, 245	743	33%
12/31/52-----	2, 763	1, 228	44%
12/31/53-----	3, 189	1, 664	52%
12/31/54-----	3, 864	2, 172	56%
12/31/55-----	4, 444	2, 636	59%
12/31/56-----	4, 935	2, 954	60%
12/31/57-----	5, 059	3, 156	62%

30. In addition to Texaco, Goodrich also entered into a sales commission contract with Continental Oil Company (Conoco) in 1952. From 1952 to the end of 1955, the number of Conoco leased stations increased from 1,138 to 1,745.¹ Sales by Goodrich to Continental were substantial as is indicated by the following tabulation of total tire and tube sales for the years 1954-1957:

1954 -----	\$5, 328, 882
1955 -----	6, 413, 852
1956 -----	5, 911, 274
1957 -----	5, 613, 348 (RX 83)

31. In the year 1955, there was a total of 182,097 service stations in the United States.² In the same year, Texaco had 13,366 (C) stations and 16,806 (D) stations, for a total of 30,172 stations which would be subject to the sales commission contract. Taking the (C)

¹ CX 215

² RX 86F

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and (D) stations only of Texaco, this would amount to 16.5% of the service stations in the United States. The service stations controlled by the additional oil companies having sales commission contracts with Goodrich during the years 1953-1955 were as follows:

	12-31-53	12-31-54	12-31-55
Conoco.....	1,061	1,272	1,508
Shell.....	53	66	804
Jenney Mfg.....	138	188	201
Ohio Oil.....	594	666	60
Emblem.....	30	9	25
	1,876	2,201	³ 2,598

³ CX 136

32. A second method of distributing TBA to oil companies was the purchase resale plan. This was generally limited to tires and tubes and usually involved the supplying of private brand tires. The following oil companies market private brand tires under this plan:

Oil company	Tire supplier	Tire brand
American Oil Co.....	Mansfield Tire & Rubber Co..	Amoco
Cities Service Oil Co. (Del.)..	U.S. Rubber Co.....	Cities Service
Cities Service Oil Co. (Pa.)..	Dayton Tire Co.....	Cities Service
Billups Petroleum Co.....	U.S. Rubber Co.....	Billups
Esso Standard Oil Co.....	U.S. Rubber Co.....	Atlas
Humble Oil & Refining Co....	General Tire Co.....	Atlas
Standard Oil Co. of Calif....	Mansfield Tire & Rubber Co.	Atlas
	U.S. Rubber Co.	
Standard Oil Co. (Ind.).....	U.S. Rubber Co.....	Atlas
Standard Oil Co. (Ky.).....	U.S. Rubber Co.....	Atlas
Standard Oil Co. (Ohio).....	Cooper Tire & Rubber Co.	Atlas
	Seiberling Tire Co.	
General Petroleum Corp.....	Goodyear.....	Mobil
Magnolia Petroleum Corp.....	Goodyear.....	Mobil
Socony-Mobil Oil Co.....	Goodyear.....	Mobil
Phillips Petroleum Co.....	Lee Rubber & Tire Corp.....	Phillips
Pure Oil Co.....	Mansfield Tire & Rubber Co..	Pure
Tidewater Oil Co.....	U.S. Rubber Co.....	Flying "A"
Blakely Oil Co.....	Mansfield Tire & Rubber Co.	Pharis
	The B. F. Goodrich Co.	Brunswick
Century Oil Co.....	U.S. Rubber Co.....	Fisk

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33. During the course of the hearing upon remand, the respondent, The B. F. Goodrich Company offered in evidence copies of Crowell-Collier Automotive Survey for the years 1946 through 1955, which said respondent relied upon and utilized in the course of its business. This survey shows the percentage of replacement tire purchases by automobile owners from the companies listed during the period of time set out as follows:

Replacement Tire Purchases by Automobile Owners

	1946 (per- cent)	1947 (per- cent)	1948 (per- cent)	1949 (per- cent)	1950 (per- cent)	1951 (per- cent)	1952 (per- cent)	1953 (per- cent)	1954 (per- cent)	1955 (per- cent)
Goodyear.....	21.3	20	18.2	20	21	21	19.5	18.3	21.4	20.4
Firestone.....	19.5	20	17.6	18	18	16	16.9	16.8	15.3	17.6
U.S.....	9.4	9	8.7	9	8	10	8.9	8.0	7.4	8.2
Goodrich.....	10.7	10	8.9	8	10	9	10.2	7.2	8.9	7.0
Sears.....	5.8	6	6.6	8	9	8	10.8	11.7	10.7	12.1
Atlas.....	5.0	7	7.5	7	6	6	6.1	6.3	6.0	5.6
General.....	3.7	3	2.3	2	2	2	2.9	3.0	2.4	2.6
Riverside.....	2.9	3	4.5	4	5	4	3.8	4.5	4.2	3.9
Lee.....	2.4	2	3.2	2	2	3	2.0	2.7	2.7	1.9
Springfield.....	2.1	1	1.8	2	2	2	2.0	1.6	1.2	1.0
Ford.....	4.4									
Others.....	16.6	12	14.1	16	9	10	10.4	11.0	9.6	10.1
Davis.....		3	2.5	2	2	2	2.2	3.1	2.2	2.2
Fisk.....		2	1.7	2	2	1	0.5	0.5	1.0	0.9
Seiberling.....		1	1.4		2	2	1.0	1.6	1.5	1.2
Dunlop.....		1	1.0		1	2	1.4	0.7	1.6	0.8
Mobil.....					1	2	1.4	0.9	1.6	1.1
Armstrong.....								1.2	1.0	2.0
Gulf.....								0.9	1.3	1.4

34. There are at least 18 manufacturers of automotive tires in the United States, 10 of which also offer lines of batteries and accessories. Those selling batteries and accessories in addition to producing and selling tires are:

- (1) The Goodyear Tire & Rubber Company
- (2) The Firestone Tire & Rubber Company
- (3) United States Rubber Company
- (4) The B. F. Goodrich Company
- (5) Cooper Tire & Rubber Co.
- (6) Dunlop Rubber Co.
- (7) Gates Rubber Co.
- (8) General Tire & Rubber Co.
- (9) Lee Rubber & Tire Corp.
- (10) Seiberling Rubber Co.

Those companies which produce and sell only tires are:

- (11) Armstrong Rubber Co.

- (12) Corduroy Rubber Co.
- (13) Dayton Rubber Co.
- (14) Denman Rubber Manufacturing Co.
- (15) Mansfield Tire & Rubber Co.
- (16) McCreary Tire & Rubber Co.
- (17) Mohawk Rubber Co.
- (18) Schenuit Rubber Co.

CONCLUSIONS

1. Texaco has sufficient economic power over its wholesale and retail petroleum distributors to cause them to purchase substantial amounts of sponsored TBA, even without the use of coercive tactics. Such economic power exists independent of any particular method of distributing TBA which Texaco might use.

2. For the purpose of inducing the purchase of sponsored TBA by Texaco dealers, Texas representatives have, in fact, attempted to and did coerce and force Texaco dealers to purchase substantial quantities of Goodrich and Firestone TBA and respondent, Goodrich, had the benefits of such practices. These acts of coercion consisted of demands that dealers discontinue the purchase or display of non-sponsored TBA under the threats of lease cancellation or other coercive acts. Such coercion need not be 100% effective in order to constitute an unfair method of competition or an unfair act or practice in violation of the Federal Trade Commission Act.

3. The hearing examiner is bound by the decision of the Commission and the only issue left for consideration of the hearing examiner under the terms of the Commission's opinion and order of remand, is the competitive effects of the sales commission plan used by Goodrich with The Texas Company, and whether Texaco's exercise of such economic power in favor of Goodrich and Firestone under their sales commission contracts have sufficient competitive effect to constitute an unfair method of competition or an unfair act or practice.

4. The use of the sales commission method of distribution by Goodrich was designed to take advantage of the economic control which Texaco had over its dealers, and by such use, Goodrich was able to obtain an unfair advantage over its competitors in selling to Texaco stations and in addition, aided and abetted Texaco in removing from the open market a substantial number of new and established Texaco dealers by causing them to purchase Goodrich TBA exclusively or in substantial quantities, and thereby excluding competitors of Goodrich who might otherwise have been able to sell their TBA to a substantial number of such Texaco dealers.

5. Representatives of practically all of the competitors of Goodrich in the selected trade areas in which testimony was taken, testified generally that they had difficulty in selling TBA to Texaco stations and testified specifically as to the reasons given by certain Texaco dealers for not buying or selling their TBA items. This testimony shows that Texaco dealers did not purchase a substantial amount of competing nonsponsored TBA because of their feeling or understanding, that they were required to purchase Goodrich or Firestone TBA.

6. Informing new dealers of the commission arrangement with Goodrich and Firestone as to TBA and the recommendation of these companies by Texaco, carried with it an implication that Texaco dealers were required to purchase their TBA from either Goodrich or Firestone and resulted in the exclusion of TBA of the competitors of these companies.

7. Analysis of the tabulation of replacement tire purchases set out in supplemental findings, show that the market share of Goodrich in the sale of replacement tires during the years 1946 to 1955 has varied from year to year with a high of 10.7% in 1946 and a low of 7.0% in 1955, and averaging approximately 9% for the entire period. Respondent maintains that those percentages indicate no injury to competition. In considering this contention, it must be considered that the basis upon which these percentages were figured has increased considerably from 1946 to 1955. For example, during approximately the same period 1948 to 1955, passenger car registration increased 56.3%,⁴ which indicates a much larger market for replacement tires in 1955, and also indicates a possible doubling of gross income during that period by Goodrich. The hearing examiner is of the opinion that the percentages shown in said tabulation fully complies with the requirement of substantiality. The effect upon competition of the Goodrich sales commission contracts is greatly augmented by the cumulative effects of the sales commission contracts of Firestone, Goodyear and U. S. Rubber who use the sales commission plan of distribution extensively. These three rubber companies together with Goodrich are known as the "big four" and account for more than 50% of the tire sales in the replacement market.

8. The above share of the market percentages are not controlling on the question of injury to competition, but of more importance, is the fact that the sales of Goodrich to all classes of accounts of Texaco increased from \$12,746,283 in 1952 to \$18,923,649 in 1956, and the payments of commission by Goodrich to The Texas Company on the sales commission contract, increased from \$1,090,583 in 1952 to \$1,736,811 in 1956.

⁴ RX 55(b)

9. Subsequent to the issuance of the initial decision in this proceeding, the U.S. Court of Appeals on July 11, 1960, issued its opinion in *S. Kriete Osborn v. Sinclair Refining Company*, 286 F. (2d) 832. The facts in this case were substantially the same as in the present case. Goodyear had executed a sales commission agreement with Sinclair similar in all respects to the Goodrich agreement with Texaco. The contract of Sinclair with its dealers was similar to the Texaco dealers agreement, and the general method of doing business was substantially the same. Based upon these similar facts, the Court held that the agreement between Sinclair and its dealers constituted a tying arrangement which affected a substantial part of commerce, solely for Sinclair's economic benefit and was unjustified by the nature of the products. Referring to this situation, the Court in its opinion said:

The perniciousness of the imposed tie-in is aggravated by the fact that the defendant is not even in the business of selling the tied products, but is employing its economic power in the gasoline industry to force his dealers to do business with a supplier in another industry under an arrangement that yields the defendant an extraneous revenue. The defendant in this case goes a step further than the supplier in the usual tie-in case, for here the tied product is not even handled or sold by the defendant, but it farms out to another, for a price, its coercive economic power.

Even if it be considered that the facts in this case are not sufficient to constitute a tying contract under the terms of the Clayton Act, it must nevertheless be concluded that the facts in this case are contrary to the spirit of the Clayton Act and as such, constitute a violation of the Federal Trade Commission Act. A tying agreement is not required to be 100% effective to constitute a violation of the Clayton Act and the Federal Trade Commission Act. The participation of Goodrich in these practices by means of the sales commission contract, gives Goodrich an unfair competitive advantage over its smaller competitors in the sale of TBA products to Texaco outlets and other oil company outlets.

10. The use of the sales commission plan of distribution of TBA by the respondents, The Texas Company and The B. F. Goodrich Company as herein found, has a tendency and capacity to restrict, restrain or lessen competition in the sale of TBA products and constitutes an unfair method of competition and an unfair act and practice in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

ORDER

It is ordered, That respondent, The Texas Company, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device in connection with the pro-

motion, offering for sale, or sale and distribution of tires, inner tubes, batteries, and automotive accessories and supplies (hereinafter referred to as "TBA products"), in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly:

1. Entering into or continuing in operation or effect any contract, agreement or combination, express or implied, with The B. F. Goodrich Company, or with any other rubber company or tire manufacturer, or any other supplier of tires, batteries, or accessories, whereby The Texas Company receives anything of value in connection with the sale of TBA products to any wholesaler or retailer of Texas petroleum products by any marketer or distributor of TBA products other than The Texas Company;

2. Accepting or receiving anything of value from any manufacturer, distributor, wholesaler, or other vendor of TBA products, for acting as sales agent or for otherwise sponsoring, recommending, urging, inducing, or promoting the sale of TBA products, directly or indirectly, by any such vendor to any wholesaler or retailer of The Texas Company petroleum products;

3. Using or attempting to use any contractual or other device, such as, but not limited to, agreements, leases, training programs, promotions, dealer meetings, dealer discussions, service station identification, credit cards, and financial loans, to sponsor, recommend, urge, induce, or otherwise promote the sale of TBA products by any distributor or marketer of such products other than The Texas Company to or through any wholesaler or retailer of The Texas Company petroleum products;

4. Employing any method of inspecting, reporting, or surveillance or using or attempting to use, in any manner, its relationship with Texas outlets to sponsor, recommend, urge, induce, or otherwise promote the sale of any specified brand or brands of TBA products by any distributor or marketer of such products other than The Texas Company to any wholesaler or retailer of Texas petroleum products;

5. Intimidating or coercing or attempting to intimidate or coerce any wholesaler or retailer of The Texas Company petroleum products to purchase any brand or brands of TBA products;

6. Preventing or attempting to prevent any wholesaler or retailer of The Texas Company petroleum products from purchasing and reselling, merchandising, or displaying TBA products of his own independent choice.

It is further ordered, That respondent, The B. F. Goodrich Company, a corporation, and its officers, agents, representatives and em-

ployees, directly or through any corporate or other device, in connection with the promotion, offering for sale or sale and distribution of tires, inner tubes, batteries and automotive accessories and supplies (hereinafter referred to as "TBA products") in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly:

1. Entering into or continuing in operation or effect any contract, agreement or combination, express or implied, with The Texaco Company or with any other marketing oil company whereby The B. F. Goodrich Company, directly or indirectly, pays or contributes anything of value to any such marketing oil company in connection with the sale of TBA products by The B. F. Goodrich Company or any distributor of Goodrich products to any wholesaler or retailer of petroleum products of such marketing oil company;

2. Paying, granting or allowing, or offering to pay, grant or allow, anything of value to The Texas Company or to any other marketing oil company for acting as sales agent or for otherwise sponsoring, recommending, urging, inducing or promoting the sale of TBA products, directly or indirectly, by The B. F. Goodrich Company or any distributor of Goodrich products to any wholesaler or retailer of petroleum products of such marketing oil company;

3. Reporting or participating in the reporting to The Texas Company or to any other marketing oil company concerning sales of TBA products to wholesalers or retailers of petroleum products, individually or by groups, of any such marketing oil company.

DECISION AND ORDER

APRIL 15, 1963

This matter is again before the Commission on respondents' appeal from the revised initial decision of the hearing examiner issued September 24, 1962.

Respondents contend that the tables, surveys, and matters officially noticed by the examiner on remand were improperly admitted both because they are inappropriate objects for official notice and because respondents were afforded inadequate opportunity to rebut them.

It is not necessary to pass upon the correctness of these contentions, since the Commission excludes from its present decision any reliance upon the challenged evidence. It finds that the other evidence of record amply supports the conclusions and the order of the hearing

Complaint

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examiner. The legal principles relevant to this decision need not be reexamined here because they are set forth at length in the opinion of the Commission in *Goodyear Tire & Rubber Co., et al.*, Docket 6486, March 9, 1961 [58 F.T.C. 309], and *Firestone Tire & Rubber Co., et al.*, Docket 6487, March 9, 1961 [58 F.T.C. 371]. Accordingly,

It is ordered, That the findings of fact numbered 32, 33 and 34 and conclusion number 7 of the revised initial decision be, and they hereby are, stricken.

It is further ordered, That, as so modified, the initial decision and order be, and they hereby are, adopted as the decision and order of the Commission.

It is further ordered, That respondents B. F. Goodrich Co. and Texaco, Inc., 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.

Commissioner Anderson not concurring for the reason that the command of the remand order of March 9, 1961 [58 F.T.C. 1176], has not been met and complied with; and Commissioner MacIntyre not participating.

IN THE MATTER OF

ARTHUR KRAUSS ET AL. TRADING AS JOB LOT
TRADING CO.

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

Docket C-491. Complaint, Apr. 17, 1963—Decision, Apr. 17, 1963

Consent order requiring New York City sellers of sporting goods, hardware, navigational equipment, etc., to cease representing falsely in advertisements in newspapers, in brochures and other advertising matter that amounts used in connection with the terms "MFR LIST PRICE", "LIST PRICE", and "comparative list value" were the usual prices for their merchandise in the area referred to and that purchasers would realize savings by buying at the lower advertised price; and that their merchandise was "Fully guaranteed" with a "15 day money back guarantee".

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 Arthur Krauss, Sam Osman, Daniel Krauss and Harry Krauss, individuals and

PAR. 5. (1) Through the use of the amounts in connection with the terms "MFR LIST PRICE" and "LIST PRICE" respondents represented that said amounts were the prices at which the merchandise referred to was usually and customarily sold at retail in their trade area, and through the use of said amounts and the lesser amounts that the difference between said amounts represented a saving to the purchaser from the price at which said merchandise was usually and customarily sold in said trade area.

(2) By and through the use of the term "comparative list value", respondents represented, directly or by implication, that a product of like grade and quality is usually and regularly sold at retail in the trade area where the representation is made at a price of \$20.60, and purchasers of respondents' product would realize a saving of the difference between the \$20.60 price and respondents' price of \$6.95.

(3) By and through the use of the terms "Fully Guaranteed" and "15 day money back guarantee" respondents represented, directly or by implication, that their merchandise is unconditionally guaranteed and that purchasers thereof may obtain a refund of their money within 15 days after purchasing said merchandise.

PAR. 6. In truth and in fact:

(1) The amounts set out in connection with the terms "MFR LIST PRICE" and "LIST PRICE" were not the prices at which the merchandise referred to was usually and customarily sold at retail in respondents' trade area, but were in excess of the price or prices at which the merchandise was generally sold in said trade area, and purchasers of respondents' merchandise would not realize a saving of the difference between the said higher and lower price amounts.

(2) A product of like grade and quality is not usually and customarily sold at retail in the trade area where the representation is made at a price of \$20.60, and purchasers of respondents' product would not realize a saving of the difference between the said higher and lower price amounts.

(3) Respondents' guarantees are not unconditional. The advertised guarantees fail to set forth the nature, conditions and extent of the guarantee, the manner in which the guarantor will perform and the identity of the guarantor.

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

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

of merchandise of the same general kind and nature as that sold by respondents.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the purchase of substantial quantities of respondents' products 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.

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. Respondents Arthur Krauss, Sam Osman, Daniel Krauss and Harry Krauss are individuals and are partners trading as Job Lot Trading Co., with their office and principal place of business located at 43 Vesey Street, in the city of New York, State of New York.

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

ORDER

It is ordered, That respondents Arthur Krauss, Sam Osman, Daniel Krauss and Harry Krauss, individually and as partners trading as

Job Lot Trading Co., or under any other name or names, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of sporting goods, hardware, navigational equipment, paints, binoculars, telescopes, microscopes 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. Using the words "MFR LIST PRICE", "LIST PRICE", 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 in the trade area.
2. Representing in any manner that, by purchasing any of respondents' merchandise, customers are afforded savings amounting to the difference between respondents' stated selling price and any other price used for comparison with that selling price, unless the comparative price used represents the price at which the merchandise is usually and customarily sold at retail in the trade area involved, or is the price at which such merchandise has been usually and regularly sold by respondents at retail in the recent, regular course of their business.
3. Representing in any manner that respondents' product is of a value comparable to any other product retailing at a higher price unless respondents' product is at least of like grade and quality in all material respects as the product with which it is compared and such other product is generally available for purchase at the comparable price in the same trade area, or areas, where the claim is made.
4. Representing, directly or by implication, that any saving is afforded in the purchase of respondents' product as compared to the purchase of another product unless respondents' product is at least of like grade and quality in all material respects as the product with which it is compared and such other product is generally available for purchase at the comparative price in the same trade area, or areas, in which the claim is made.
5. Representing, directly or by implication, that any of respondents' products are guaranteed unless the nature, conditions and extent of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

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Complaint

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

WHITING SALES COMPANY, INC., TRADING AS WHITING
MANUFACTURING COMPANY ET AL.

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

Docket C-492. Complaint, Apr. 17, 1963—Decision, Apr. 17, 1963

Consent order requiring Cincinnati distributors to jobbers, retailers, and dealers of pillows filled with various kinds of feathers and down, to cease such unfair practices as stating falsely on affixed tags that their "White Star" style pillows contained "ALL NEW MATERIAL CONSISTING OF WHITE DOWN".

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 Whiting Sales Company, Inc., a corporation, also trading as Whiting Manufacturing Company, and C. Ross Whiting, Joseph R. Godar, Kathleen Zink and Kathryn Whiting, 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 Whiting Sales Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, also trading as Whiting Manufacturing Company, with its principal office and place of business located at 9701 Kenwood Road, the city of Cincinnati 42, State of Ohio.

Respondents C. Ross Whiting, Joseph R. Godar, Kathleen Zink and Kathryn Whiting are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of

pillows filled with various kinds of feathers and down 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 product, when sold, to be shipped from their place of business in the State of Ohio to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their pillows, the respondents have made numerous statements on tags or labels which they have caused to be affixed or attached to their pillows purporting to state and set out the kinds or types and proportions thereof of filling material contained therein. Typical by way of illustration, but not limitation, of the statements appearing on the tags or labels of respondents' pillows which respondents describe as their "White Star" style pillow are the following:

ALL NEW MATERIAL CONSISTING OF WHITE DOWN

PAR. 5. By and through the use of the above-quoted statement, and others of similar import not specifically set out herein, the respondents have represented, directly or by implication, that the material with which the said pillows were filled, consisted in its entirety of new down.

PAR. 6. In truth and in fact, while the filling material in respondents' pillows is new, respondents' said "White Star" pillows contain substantially less than 100% down. Respondents' said "White Star" pillows contain substantial quantities of filling materials other than down.

Therefore, the statements and representations set forth in Paragraphs 4 and 5 hereof were and are false, misleading and deceptive.

PAR. 7. By the aforesaid practices, respondents place in the hands of jobbers, retailers and dealers, means and instrumentalities by and through which they may mislead the public with respect to the kinds or types and proportions of the material with which respondents' pillows are filled.

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 in the sale of feather and down products of the same general kind and nature as that sold by respondents.

PAR. 9. The use by respondents of the aforesaid false, misleading

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

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair 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 Whiting Sales Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 9701 Kenwood Road, in the city of Cincinnati, State of Ohio.

Respondents C. Ross Whiting, Joseph R. Godar, Kathleen Zink and Kathryn Whiting 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.

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ORDER

It is ordered, That respondents Whiting Sales Company, Inc., a corporation, also trading as Whiting Manufacturing Company or any other name or names, and its officers, and C. Ross Whiting, Joseph R. Godar, Kathleen Zink and Kathryn Whiting, 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 feather and down products or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Misrepresenting, in any manner, or by any means, directly or by implication, the identity of the kind or type of filling material contained in any such products, or of the kinds or types, and proportions of each, when the filling material is a mixture of more than one kind or type.

2. Place in the hands of jobbers, retailers, dealers, and others, means and instrumentalities by and through which they may deceive and mislead the purchasing public concerning any merchandise in the respects set out above.

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

IN THE MATTER OF

SAFEWAY STORES, INCORPORATED

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

Docket 7584. Complaint, Sept. 16, 1959—Decision, Apr. 18, 1963

Order requiring a corporation operating retail food stores in some 25 States in which it sold its own "Slender-Way" bread, to cease representing falsely by advertising in newspapers and by television and radio broadcasts, as well as by use of the designation "Slender-Way," that the bread was low in calories compared with other bread and would cause the consumer to lose weight or prevent him from gaining weight.

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 Safeway Stores, Incorporated, 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 Safeway Stores, Incorporated, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 4th and Jackson Streets, Oakland 4, California.

PAR. 2. Respondent owns, operates and controls retail food stores in approximately 25 States of the United States and in the District of Columbia in which it sells a bread, baked by respondent or one of its subsidiaries, designated as "Slender-Way" bread. Bread is a food as "food" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of its said business, respondent has disseminated and caused the dissemination of certain advertisements concerning the said "Slender-Way" bread by the United States mail and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in newspapers of interstate circulation and other advertising media, and by means of television and radio broadcasts, transmitted by television and radio stations located in various States of the United States, and in the District of Columbia, having sufficient power to carry such broadcasts across State lines, for the purpose of inducing, and which were and are likely to induce, directly or indirectly, the purchase of said "Slender-Way" bread; and has disseminated, and caused the dissemination of, advertisements concerning said "Slender-Way" bread by various means, including but not limited to the aforesaid media, for the purpose of inducing and which were and are likely to induce, directly or indirectly, the purchase of said "Slender-Way" bread in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Among and typical of the statements and representations contained in said advertisements designated as hereinabove set forth are the following:

SLENDERWAY BREAD
 Ideal for Weight Watchers

 SLENDER-WAY BREAD
 SKYLARK BAKED
 LOWER IN CALORIES

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SKYLARK SLENDER-WAY

BREAD * * * thinly sliced

Fewer calories per slice * * *

Contains Approximately 50 calories per slice.

Here's a bread sale you can't afford to miss!

Your choice of Slender-Way Bread, the bread
that's high in proteins and low in calories,

SLENDER-WAY—PROTEIN

MULTI-GRAIN

For the Modern Way to "Hold that Line", serve—

Slender-Way Bread

I guess about half the people in this country of ours are trying to lose weight. Whether you want to lose weight, or hold the line, here's a pleasant and sensible way to help the situation (hold up banner)—

Safeway's exclusive "Slenderway". Slenderway is definitely a very low-calorie bread. Its nut-like flavor is really delicious, making it a pleasant way to keep the pointer on the scales from creeping up and up. * * * You'll find it's a very pleasant, tasty and practical way to hold down your weight. Try Safeway's Slenderway Bread this week.

Here's a delicious way to control weight: enjoy SAFEWAY'S flavorful "Slenderway" bread. Slenderway bread offers a very low sum of calories, yet Slenderway gives you all the helpful vitamins and minerals you need. Here's the low-calorie bread you've been looking for.

PAR. 5. Through the use of said advertisements, and others similar thereto not specifically set out herein, respondent represented and is now representing, directly or by implication:

1. That said bread is low in calories when compared with other breads; and
2. That said bread is a low calorie food and that the consumption thereof will cause one to lose weight or prevent the consumer from gaining weight.

Through the use of "Slender-Way" as a designation for said bread respondent represented or implied that said bread is a low calorie food, that it is lower in calories than ordinary breads, and that the consumption thereof will cause one to lose weight or prevent one from gaining weight.

PAR. 6. The said advertisements were and are misleading in material respects and constituted, and now constitute, false advertisements as that term is defined in the Federal Trade Commission Act. In truth and in fact:

"Slender-Way" bread is not lower in calories than ordinary breads; is not a low calorie food; and the consumption thereof will not cause one to lose weight or prevent one from gaining weight.

PAR. 7. The designation by the respondent of the false advertisements, as aforesaid, constituted, and now constitutes, unfair and de-

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Initial Decision

ceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Morton Nesmith for the Commission.

Mr. Drummond Wilde, Mr. Bernal E. Dobell and Mr. James M. McGinty, of Oakland, Calif., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

FEBRUARY 27, 1963

On September 16, 1959, a complaint was issued in this proceeding charging Safeway Stores, Incorporated, a corporation, hereinafter called respondent, with false advertising, in violation of the Federal Trade Commission Act. The complaint alleged, in substance, that respondent had disseminated advertisements representing that its bread "Slender-Way" was a low-calorie food and its consumption as part of a diet would prevent the consumer from gaining weight. The complaint further alleged that "Slender-Way" bread is not a low-calorie food and the consumption thereof will not cause one to lose weight or prevent one from gaining weight. For these reasons, it was alleged, said advertisements were false and deceptive.

After answering the complaint counsel for respondent and counsel supporting the complaint entered into a written agreement dated December 4, 1959, wherein and whereby it was agreed, among other things, that this proceeding would be held in abeyance pending the final order to be issued in another proceeding then pending before the Commission, *Bakers Franchise Corporation, et al.*, D. 7472 [59 F.T.C. 70], which involved substantially similar charges. Said agreement also provided: (1) if there should be an excision of the trade name in that case, *Bakers Franchise Corporation, supra*, then respondent herein, Safeway Stores, Incorporated, agreed to an excision of its trade name "Slender-Way"; (2) if a cease and desist order should be issued against *Bakers Franchise Corporation, supra*, and, if appealed, the order should be affirmed, respondent Safeway Stores, Incorporated, would thereupon enter into an agreement containing a consent order to cease and desist on the same terms as those contained in the cease and desist order issued against *Bakers Franchise Corporation, supra*; and (3) that said agreement would be filed with the hearing examiner for his approval or rejection. This agreement was approved by the hearing examiner on December 11, 1959, and the proceedings herein held in abeyance as provided in said agreement.

Thereafter, the Commission issued its decision in *Bakers Franchise Corporation, supra*, which included the excision of the trade

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name of the bread there involved and a cease and desist order. That decision was affirmed by the United States Court of Appeals for the Third Circuit in 302 F. 2d 258 [7 S. & D. 464] (1962), and has now become final.

Accordingly, pursuant to the terms of said written agreement dated December 4, 1959, the respondent herein, Safeway Stores, Incorporated, its counsel, and counsel supporting the complaint have entered into an agreement for a consent order to be entered herein embodying substantially the same provisions as those included in the order of the Commission in the *Bakers Franchise* case, *supra*. Said agreement was entered into in accordance with the provisions of Section 3.25 of the Commission's Rules as published May 6, 1955, as amended, in effect at the time of the execution of the agreement dated December 14, 1959. This agreement disposes of the matters complained about.

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

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

JURISDICTIONAL FINDINGS

1. The respondent, Safeway Stores, Incorporated, is a corporation organized and doing business under the laws of the State of Maryland, with its office and principal place of business located at 4th and Jackson Streets, Oakland 4, California.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent herein and the proceeding is in the public interest.

ORDER

It is ordered, That respondent, Safeway Stores, Incorporated, a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of "Slender-Way" bread, or any other bread of substantially the same composition, whether sold under the same name or any other name, do forthwith cease and desist from, directly or indirectly:

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

(a) That said bread is lower in calories than other white bread;

(b) That said bread is less fattening, or is more effective in controlling body weight than other white bread.

2. Disseminating or causing to be disseminated any advertisement, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, in which the words "Slender-Way" or words of similar import or meaning are used as the trade name or designation for respondent's bread.

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF
COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, published May 6, 1955, as amended, the initial decision of the hearing examiner shall, on the 18th day of April 1963, become the decision of the Commission; and, accordingly:

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

Complaint

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IN THE MATTER OF

DAN A. LA PANTA COMPANY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (C)
OF THE CLAYTON ACT*Docket C-493. Complaint, Apr. 22, 1963—Decision, Apr. 22, 1963*

Consent order requiring Duluth, Minn., brokers and wholesale distributors of citrus fruit and produce to cease violating Sec. 2(c) of the Clayton Act by accepting discounts on purchases of citrus fruit for their own accounts for resale from Florida packers.

COMPLAINT

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

PARAGRAPH 1. Respondent Dan A. La Panta Company, Inc., is a corporation organized on or about August 8, 1947, existing and doing business under and by virtue of the laws of the State of Minnesota, with its offices and principal place of business located at 1201½ West Michigan Street, Duluth, Minnesota.

Respondent Dan A. La Panta is an individual and is president of the corporate respondent, and owns substantially all of its capital stock. As president and substantial owner, he formulates, directs and controls the acts, practices, and policies of the said corporate respondent, including the acts and practices hereinafter mentioned. Said corporate respondent and individual respondent are hereinafter jointly referred to as respondents.

PAR. 2. Respondents are now, and for the past several years have been, engaged in business as a broker, representing a number of principals located in various States throughout the United States, who sell and distribute citrus fruit and produce. Respondents also are now, and for the past several years have been, engaged in business as a wholesale distributor, buying, selling, and distributing citrus fruit and produce, all of which are hereinafter sometimes referred to as food products. Respondents purchase their food products from a large number of suppliers located in many sections of the United States. The annual volume of business done by respondents in the brokerage business and in the purchase and sale of food products is substantial.

PAR. 3. In the course and conduct of their business for the past several years, respondents have purchased and distributed, and are now purchasing and distributing, food products, in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, from suppliers or sellers located in several States of the United States other than the State of Minnesota, in which respondents are located. Respondents transport or cause such products, when purchased, to be transported from the place of business or packing plants of their suppliers located in various other States of the United States to respondents who are located in the State of Minnesota, or to respondents' customers located in said State, or elsewhere. Thus, there has been at all times mentioned herein a continuous course of trade in commerce in the purchase of said food products across state lines between respondents and their respective suppliers of such food products.

PAR. 4. In the course and conduct of their business for the past several years, respondents have been, and are now making substantial purchases of food products for their own account for resale from some, but not all, of their suppliers, and on some of these purchases, respondents have received and accepted, and are now receiving and accepting, from said suppliers a commission, brokerage, or other compensation or allowance or discount in lieu thereof in connection therewith. For example, respondents make substantial purchases of citrus fruit from various packers or suppliers located in the State of Florida, and receive on said purchases a brokerage or commission, or a discount in lieu thereof, usually at the rate of 10 cents per $1\frac{3}{4}$ bushel box, and 5 cents per $\frac{4}{5}$ bushel box. In some instances respondents receive a lower price from the supplier which reflects said commission or brokerage.

PAR. 5. The acts and practices of respondents in receiving and accepting a brokerage or a commission, or an allowance or discount in lieu thereof, on its own purchases, as above alleged and described, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Sec. 13).

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Restraint of Trade proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with

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violation of subsection (c) of Section 2 of the Clayton Act, as amended; and

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

The Commission, having reason to believe that the respondents have violated subsection (c) of Section 2 of the Clayton Act, as amended, and having determined that complaint should issue stating its charges in that respect, hereby issues its complaint, accepts said agreement, makes the following jurisdictional findings and enters the following order:

1. Respondent Dan A. La Panta Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its office and principal place of business located at 1201½ West Michigan Street, Duluth, Minnesota. Respondent Dan A. La Panta is an officer of said corporation.

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

ORDER

It is ordered, That respondents Dan A. La Panta Company, Inc., a corporation, and its officers, and Dan A. La Panta individually and as an officer of Dan A. La Panta Company, Inc., and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the purchase of citrus fruit or produce in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

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

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

Complaint

IN THE MATTER OF

VAN-R, INC., ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION ACT*Docket 8552. Complaint, Jan. 3, 1963—Decision, Apr. 24, 1963*

Order entered on respondents' default requiring Chicago sellers of "Rinse-Away" garbage disposal units to distributors for resale or to the public directly, to cease making various misrepresentations—by statements of sales representatives and by means of sales aids, brochures, and other literature employed by them—concerning the capacity, comparative merits, price and terms of sale of the product, opportunities for dealers, scope of the business, services available, etc., as in the order below in detail set forth.

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

PARAGRAPH 1. Respondent Van-R, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business formerly located at 5435 West Diversey Avenue, Chicago, Illinois.

Respondent Vanar, 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 formerly located at 410 West Creighton Avenue, Fort Wayne, Indiana.

Respondent Allen Terson is an officer of the corporate respondents Van-R, Inc., and Vanar, Inc. He formulates, directs and controls the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. His address is 2111 West Granville Avenue, Chicago, Illinois.

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.

PAR. 3. In the course and conduct of their business the respondents

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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 50 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 nation-wide advertising media.

7. There are no current and valid statistics which indicate that 50 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 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

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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.

Mrs. Rose W. Sloan and M. David J. Eden supporting the complaint.
No appearance for respondents.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

MARCH 12, 1963

The complaint in this proceeding was issued January 3, 1963. It charges respondents with violation of the Federal Trade Commission Act for false, misleading and deceptive statements, representations and practices.

Each respondent was duly served with a copy of the complaint and none filed an answer thereto. Each respondent was also served with a notice that the hearing scheduled in the complaint would be held in Room 747, 1101 Building, 11th Street and Pennsylvania Avenue, N.W., Washington, D.C., on March 11, 1963, at 10:00 a.m. The proceeding was called to order at 10:00 a.m. on that date in that place, and there being no appearance on behalf of any respondent was again called to order at 10:15 a.m. with the same result.

On motion of counsel supporting the complaint, the hearing ex-

aminer duly noted the default, and, pursuant to Rule 4.5 of the Rules of Practice, found the facts to be as alleged in the complaint and adopted the order accompanying the complaint.

By reason of respondents' failure to answer or appear in this proceeding, the hearing examiner is authorized to enter an initial decision based on the facts alleged in the complaint, without further notice.

Accordingly, the following findings are made, conclusion reached and order issued:

FINDINGS OF FACT

1. Respondent Van-R, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business formerly located at 5435 West Diversey Avenue, Chicago, Illinois.

2. Respondent Vanar, 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 formerly located at 410 West Creighton Avenue, Fort Wayne, Indiana.

3. Respondent Allen Terson is an officer of the corporate respondents Van-R, Inc., and Vanar, Inc. He formulates, directs and controls the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. His address is 2111 West Granville Avenue, Chicago, Illinois.

4. 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.

5. 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.

6. 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:

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

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

c. 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.

d. 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.

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

f. 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.

g. That current and valid statistics indicate that 50 percent of prospects interviewed will become purchasers.

h. 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.

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

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

k. 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.

7. In truth and in fact:

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

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

c. 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.

d. 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.

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

f. 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.

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g. There are no current and valid statistics which indicate that 50 percent of prospects interviewed will become purchasers.

h. 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 such offer immediately or risk foregoing indefinitely such special price.

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

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

k. 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 Finding No. 6 were, and are, false, misleading and deceptive.

8. 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.

9. 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.

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

CONCLUSION

The aforesaid acts and practices of respondents were and are all to the prejudice and injury of the public and of respondents' com-

petitors 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

It is ordered, That respondent Van-R, Inc., a corporation, its officers, and Vanar, Inc., a corporation, its officers, and Allen Terson, individually and as an officer of said corporations, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of 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 nation-wide 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 50 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.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF
COMPLIANCE

Pursuant to Section 4.19 of the Commission's Rules of Practice, effective June 1, 1962, the initial decision of the hearing examiner shall on the 24th day of April 1963, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

MEYERS DEVELOPMENT CORPORATION TRADING AS
FASHION FROCKS, INC., ET AL.

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

Docket 8536. Complaint, Oct. 11, 1962—Decision, Apr. 25, 1963

Order requiring a Cincinnati retail mail-order business to cease violating the
Textile Fiber Products Identification Act by falsely labeling textile fiber

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products as to fiber content and by implying falsely on labels and on "style cards"—by use of such terms as "silkura", "linen weave", and otherwise—that certain fibers were present in the product; by failing to disclose on labels the true generic name of fibers present and the percentage thereof, and the name of the manufacturer, etc.; by advertising which used terms connoting a fur-bearing animal and which used fiber trademarks improperly; by failing in other respects to comply with labeling and advertising requirements; and by using the word "free" and representing products as guaranteed without required qualification.

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 Meyers Development Corporation, a corporation, formerly Fashion Frocks, Inc., now trading as Fashion Frocks, Inc., and Philip M. Meyers, Sidney Meyers, Charles H. Jennings, Joseph A. Segal, Arthur L. Ehrmantrout and Ferd J. Schott, 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 Meyers Development Corporation, formerly Fashion Frocks, Inc., now trading as Fashion Frocks, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio.

Respondents Philip M. Meyers, Sidney Meyers, Charles H. Jennings, Joseph A. Segal, Arthur L. Ehrmantrout and Ferd J. Schott, are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth.

The respondents are engaged in a retail mail-order business with their principal office and place of business located at 205 West Fourth Street, in the city of Cincinnati, State of Ohio.

PAR. 2. 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, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported 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. 3. Certain of said textile fiber products were misbranded by respondents within the intent and meaning of Section 4(a) of the 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 textile fiber products with labels which:

1. Set forth the fiber content as 92% rayon and 8% acetate, whereas, in truth and in fact, said product contained a substantially different amount of rayon and acetate.

2. Contained terms which represented, either directly or by implication, certain fibers as present in the said product when such was not the case.

Among such terms, but not limited thereto, were the terms "silkura", "Linen-weave", "cashmere", "silky", "silk-like", "angora-like", "wool-like" and "worstray".

Also among such misbranded textile fiber products, but not limited thereto, were textile fiber products which were falsely and deceptively advertised by means of "style cards" and direct mail circulars distributed by respondents throughout the United States, in the following respects:

1. Certain of said advertisements contained terms which represented, either directly or by implication, certain fibers as present in the said product when such was not the case.

Among such terms, but not limited thereto, were the terms "silkura" and "linen-weave".

PAR. 4. 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 as prescribed by the Rules and Regulations promulgated under said Acts.

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

1. To disclose the true generic name of the fiber present; and
2. To disclose the percentage of such fibers; and

3. To disclose the name, or other identification issued and registered by the Commission of the manufacturer of the product or one or more persons subject to Section 3 of the said Act, with respect to such product.

PAR. 5. Certain of said textile fiber products were 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. Fiber trademarks were placed on labels without the generic names of the fibers appearing on such labels, in violation of Rule 17(a) of the aforesaid Rules and Regulations.

B. Fiber trademarks were used on labels without a full and complete fiber content disclosure appearing on such labels, in violation of Rule 17(b) of the aforesaid Rules and Regulations.

C. Words, symbols and depictions which constitute or imply the name or designation of fibers were used on labels attached to textile fiber products when such fibers were not present in the aforesaid textile fiber products, in violation of Rule 18 of the aforesaid Rules and Regulations.

D. Samples, swatches and specimens of textile fiber products subject to the aforesaid Act, which were used to promote or effect sales of such textile fiber products, were not labeled to show their respective fiber content and other information required by Section 4(b) of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, in violation of Rule 21(a) of the aforesaid Rules and Regulations.

PAR. 6. 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 such textile fiber products, but not limited thereto, were articles of wearing apparel which were falsely and deceptively advertised by means of "style cards" and direct mail circulars, distributed by respondents throughout the United States in that the true generic names of the fibers in such articles were not set forth.

PAR. 7. Certain of said textile fiber products were falsely and deceptively advertised by means of labels affixed to such textile fiber products in that the name of a fur-bearing animal, including among

others Mink, but not limited thereto, was used in the advertisement of such products when said products or parts thereof in connection with which the name of the fur-bearing animal was used, were not furs or fur products within the meaning of the Fur Products Labeling Act and did not contain the hair or fiber of such fur-bearing animal in violation of Section 4(g) of the Textile Fiber Products Identification Act and Rule 9 of the Rules and Regulations promulgated thereunder.

PAR. 8. Certain of said textile fiber products were 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 "style cards" and direct mail circulars distributed by respondents throughout the United States, in the following respects:

A. A fiber trademark was used in advertising textile fiber products, namely ladies' dresses, without a full disclosure of the fiber content information required by the said Act and the Rules and Regulations thereunder in at least one instance in said advertisement, in violation of Rule 41(a) of the aforesaid Rules and Regulations.

B. A fiber trademark was used in advertising textile fiber products, namely ladies' dresses, containing more than one fiber and such fiber trademark did not appear in the required fiber content information in immediate proximity and conjunction with the generic name of the fiber in plainly legible type or lettering of equal size and conspicuousness, in violation of Rule 41(b) of the aforesaid Rules and Regulations.

C. A fiber trademark was used in advertising textile fiber products, namely ladies' dresses, containing only one fiber and such fiber trademark did not appear, at least once in the said advertisement, in immediate proximity and conjunction with the generic name of the fiber, in plainly legible and conspicuous type, in violation of Rule 41(c) of the aforesaid Rules and Regulations.

D. The generic name of a fiber was used in advertising textile fiber products, in such a manner as to be false, deceptive, and misleading as to fiber content and to indicate, directly or indirectly, that such textile fiber product was composed wholly or in part of such fiber when such was not the case, in violation of Rule 41(d) of the aforesaid Rules and Regulations.

Among such products, but not limited thereto, were textile fiber products, namely ladies' dresses, advertised as "Linen-Weave" thus

implying that such products were composed wholly or in part of linen when in fact the products contained no linen.

E. Nonrequired information and representations used in advertising textile fiber products were false, deceptive and misleading as to the fiber content of the textile fiber product and were set forth and used so as to interfere with, minimize and detract from the required information, in violation of Rule 42(b) of the aforesaid Rules and Regulations.

Among such products, but not limited thereto, were textile fiber products, namely ladies' dresses, advertised as: "Silkura, 70% Rayon 30% Acetate in a silky nub linen weave" thus representing, directly or by implication, that the said products contained silk when such was not the case.

PAR. 9. The acts and practices of respondents, as set forth above were, and are, in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, and constituted, and now constitute unfair methods of competition and unfair and deceptive acts or practices, in commerce, under the Federal Trade Commission Act.

PAR. 10. In the course and conduct of their business, respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of merchandise, namely ladies' dresses, men's clothing, and other wearing apparel to the public.

PAR. 11. 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 Ohio 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. 12. In the course and conduct of their business respondents employ sales representatives who canvass, solicit and sell their products to members of the purchasing public in the various States of the United States. Respondents furnish said sales representatives with a "sales portfolio" containing information and supplies for their use in promoting the sales of respondents' products and in submitting orders to respondents' home office, among which are display cards designated as style cards with fabric swatches illustrating respondents' products, a stock list, an order book, return envelopes, tape measure, booklet of instructions on how to submit orders, appointment post cards and business cards.

PAR. 13. In the course and conduct of their business, and as an integral part of their program in promoting the sale of, and selling,

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their products, respondents have been, and are, engaged in the practice of soliciting persons to sell their merchandise, through and by means of advertisements in magazines of national circulation and direct mail circulars wherein the offer of a free dress is initially made. Typical but not all inclusive of statements in said advertisements are the following:

maybe I'm crazy! * * * But, I'm going to send you an authorization to get absolutely free any ONE of the new Fashion Frocks styles of your selection, *in your own size and in the color of your choice.*

* * *
 I want you to see with your own eyes, the almost unbelievable beauty of our styling, of our fabrics, of our workmanship. That's why I want you to get one of the styles from our new line, in the size and color of your choice, ABSOLUTELY FREE on my "crazy" offer. I just know that will be a good investment for us to make. Just mail the attached reservation card * * *

YOU DON'T SOUND CRAZY TO ME . .

Dear Mr. Burke:—I'm taking you at your word! Send me at once the Fashion Frocks Style presentation * * * and with it an authorization to select any style, any size, any color, absolutely FREE per your "crazy" offer.

MY NAME _____ AGE _____

ADDRESS _____

CITY _____ ZONE _____ STATE _____

YOUR STYLE PRESENTATION is reserved for you under the number at right →

PLEASE BE SURE TO USE THIS CARD

[Picture of woman wearing dress]

The dress she is wearing and showing is one of the lovely styles we supplied to her, and she is enjoying this easy way of earning up to \$23 weekly in spare time * * *

FEMALE HELP WANTED

\$23.00 weekly for wearing lovely dresses supplied to you by us. Just show Fashion Frocks to friends in spare time. No investment, canvassing or experience necessary.

PAR. 14. The foregoing statements appearing in advertisements, which represent directly or by implication, that a dress or dresses will be given free of charge, do not clearly and conspicuously set forth or

explain in the initial advertisement certain conditions precedent to the receipt and retention of the "free" merchandise and are therefore, false, misleading and deceptive.

PAR. 15. In the course and conduct of their business as aforesaid, the respondents have made many representations to the buying public respecting the quality, construction, and guarantee of the aforesaid merchandise, namely men's slacks. Said representations have been made in advertisements contained in "style cards" and "sales portfolios" which are distributed in commerce and from which orders for said merchandise were made.

Illustrative and typical of such representations, but not all inclusive, is the following:

All Styles
UNCONDITIONALLY
GUARANTEED

FOR ONE YEAR'S NORMAL WEAR!

Proven fabrics, engineered construction features, quality findings, and careful inspection make this guarantee possible.

PAR. 16. Through the use of the statements and representations set forth above and others similar thereto but not specifically set out herein, respondents have represented, directly or indirectly, to a substantial portion of the purchasing public that such merchandise was unconditionally guaranteed for one year's normal wear.

PAR. 17. In truth and in fact said merchandise was not in fact unconditionally guaranteed for a period of one year because the terms and conditions thereof or the manner in which performance thereunder would be made were not set forth in connection therewith. The foregoing and similar statements made by respondents as hereinabove stated were therefore false, misleading and deceptive.

PAR. 18. In the conduct of their business, at all times mentioned therein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the advertising, offering for sale, sale and distribution of merchandise, namely ladies' dresses, men's clothing and other wearing apparel of the same general kind and nature as those sold by respondents.

PAR. 19. The use by the respondents of the aforesaid false, misleading, and deceptive statements, representations and practices, has had, and now has, a capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 20. The aforesaid acts and practices of respondents, as herein

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

Mr. Eugene H. Strayhorn and *Mr. Edward B. Finch* supporting the complaint.

Mr. Burton Perlman of *Paxton & Seasongood*, of Cincinnati, Ohio, for respondents.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER*

MARCH 13, 1963

On October 11, 1962, the Federal Trade Commission issued its complaint in this proceeding charging the respondents with violation of the Textile Fiber Products Identification Act and the Federal Trade Commission Act. A true copy of such complaint was duly served on the respondents.

A prehearing conference was held December 13, 1962, and the results thereof were set forth in Prehearing Order No. 1 dated December 17, 1962, and amended December 28, 1962. At the request of both parties, time was thereafter extended to March 5, 1963, within which the parties might enter into a dispositive stipulation.

On March 5, 1963, the parties executed a stipulation of Facts and Joint Proposed Findings, Conclusions and Order which the hearing examiner has made the record in this case by order filed herewith.

On the basis of said stipulation, the prehearing conference heretofore had herein, including the exhibits there identified, and the response of respondents filed December 26, 1962, the hearing examiner makes the following findings of fact, conclusions and order.

FINDINGS OF FACT

1. Respondent Meyers Development Corporation, formerly Fashion Frocks, Inc., now trading as Fashion Frocks, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio.

2. Respondents Philip M. Meyers, Sidney Meyers, Charles H. Jennings, Arthur L. Ehrmantraut, erroneously named in the complaint as Arthur L. Ehrmantrout, and Ferd J. Schott, are officers of the

*Respondent Arthur L. Ehrmantraut erroneously named in the complaint as Arthur L. Ehrmantrout.

corporate respondent. They formulate, direct and control the policies, acts and practices of said corporation.

3. Respondent Joseph A. Segal is an officer of said corporate respondent but does not participate in the formulation, direction or control of the policies, acts and practices of the corporate respondent, including the policies, acts and practices complained of.

4. 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, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce 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.

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

6. Among such misbranded textile fiber products, were textile fiber products with labels which:

A. Set forth the fiber content as 92% rayon and 8% acetate, whereas, in truth and in fact, said product contained a substantially different amount of rayon and acetate.

B. Contained terms which represented, either directly or by implication, certain fibers as present in the said product when such was not the case.

7. Also among such misbranded textile fiber products, but not limited thereto, were textile fiber products which were falsely and deceptively advertised by means of "style cards" and direct mail circulars distributed by respondents throughout the United States, in the following respects: Certain of said advertisements contained terms which represented, either directly or by implication, certain fibers as present in the said product when such was not the case.

8. 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 as prescribed by the Rules and Regulations promulgated under said Acts.

9. Certain of said textile fiber products were 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.

A. Fiber trademarks were placed on labels without the generic names of the fibers appearing on such labels, in violation of Rule 17(a) of the aforesaid Rules and Regulations.

B. Fiber trademarks were used on labels without a full and complete fiber content disclosure appearing on such labels, in violation of Rule 17(b) of the aforesaid Rules and Regulations.

C. Words, symbols and depictions which constitute or imply the name or designation of fibers were used on labels attached to textile fiber products when such fibers were not present in the aforesaid textile fiber products, in violation of Rule 18 of the aforesaid Rules and Regulations.

D. Samples, swatches and specimens of textile fiber products subject to the aforesaid Act, which were used to promote or effect sales of such textile fiber products, were not labeled to show their respective fiber content and other information required by Section 4(b) of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, in violation of Rule 21(a) of the aforesaid Rules and Regulations.

10. Certain of said textile fiber products were falsely and deceptively advertised in that respondents in making disclosures or implications 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.

11. Certain of said textile fiber products were falsely and deceptively advertised by means of labels affixed to such textile fiber products in that the name of a fur-bearing animal, including among others Mink, was used in the advertisement of such products when said products or parts thereof in connection with which the name of the fur-bearing animal was used, were not furs or fur products within the meaning of the Fur Products Labeling Act and did not contain the hair or fiber of such fur-bearing animal in violation of Section 4(g)

of the Textile Fiber Products Identification Act and Rule 9 of the Rules and Regulations promulgated thereunder.

12. Certain of said textile fiber products were 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.

13. Among such textile fiber products, were textile fiber products which were falsely and deceptively advertised by means of "style cards" and direct mail circulars distributed by respondents throughout the United States.

A. A fiber trademark was used in advertising textile fiber products, namely ladies' dresses, without a full disclosure of the fiber content information required by the said Act and the Rules and Regulations thereunder in at least one instance in said advertisement, in violation of Rule 41(a) of the aforesaid Rules and Regulations.

B. A fiber trademark was used in advertising textile fiber products, namely ladies' dresses, containing more than one fiber and such fiber trademark did not appear in the required fiber content information in immediate proximity and conjunction with the generic name of the fiber in plainly legible type or lettering of equal size and conspicuousness, in violation of Rule 41(b) of the aforesaid Rules and Regulations.

C. A fiber trademark was used in advertising textile fiber products, namely ladies' dresses, containing only one fiber and such fiber trademark did not appear, at least once in the said advertisement, in immediate proximity and conjunction with the generic name of the fiber, in plainly legible and conspicuous type, in violation of Rule 41(c) of the aforesaid Rules and Regulations.

D. The generic name of a fiber was used in advertising textile fiber products, in such a manner as to be false, deceptive, and misleading as to fiber content and to indicate, directly or indirectly, that such textile fiber product was composed wholly or in part of such fiber when such was not the case, in violation of Rule 41(d) of the aforesaid Rules and Regulations.

E. Nonrequired information and representations used in advertising textile fiber products were false, deceptive and misleading as to the fiber content of the textile fiber product and were set forth and used so as to interfere with, minimize and detract from the required information, in violation of Rule 42(b) of the aforesaid Rules and Regulations.

14. In the course and conduct of their business, respondents are now, and for some time last past have been engaged in the advertising, offering for sale, sale and distribution of merchandise, namely ladies' dresses, men's clothing, and other wearing apparel to the public.

15. 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 Ohio 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.

16. In the course and conduct of their business respondents employ sales representatives who canvass, solicit and sell their products to members of the purchasing public in the various States of the United States. Respondents furnish said sales representatives with a "sales portfolio" containing information and supplies for their use in promoting the sales of respondents' products and in submitting orders to respondents' home office, among which are display cards designated as style cards with fabric swatches illustrating respondents' products, a stock list, an order book, return envelopes, tape measure, booklet of instructions on how to submit orders, appointment post cards and business cards.

17. In the course and conduct of their business, and as an integral part of their program in promoting the sale of, and selling, their products, respondents have been, and are, engaged in the practice of soliciting persons to sell their merchandise, through and by means of advertisements in magazines of national circulation and direct mail circulars wherein the offer of a free dress is initially made.

18. The statements appearing in advertisements, Commission Exhibits 60-72, which represent directly or by implication, that a dress or dresses will be given free of charge, do not clearly and conspicuously set forth or explain in the initial advertisement certain conditions precedent to the receipt and retention of the "free" merchandise and are therefore, false, misleading and deceptive.

19. In the course and conduct of their business as aforesaid, the respondents have made many representations to the buying public respecting the quality, construction, and guarantee of the aforesaid merchandise, namely men's slacks. Said representations have been made in advertisements contained in "style cards" and "sales portfolios" which are distributed in commerce and from which orders for said merchandise were made.

20. Through the use of the statements and representations set forth above and others similar thereto but not specifically set out herein, respondents have represented, directly or indirectly, to a substantial portion of the purchasing public that such merchandise was unconditionally guaranteed for one year's normal wear.

21. In truth and in fact said merchandise was not in fact uncondi-

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tionally guaranteed for a period of one year because the terms and conditions thereof or the manner in which performance thereunder would be made were not set forth in connection therewith. The foregoing and similar statements made by respondents as hereinabove stated were therefore false, misleading and deceptive.

22. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the advertising, offering for sale, sale and distribution of merchandise, namely ladies' dresses, men's clothing and other wearing apparel of the same general kind and nature as those sold by respondents.

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

CONCLUSIONS

1. The acts and practices of respondents, as set forth above were, and are in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, and constituted, and now constitute unfair methods of competition and unfair and deceptive acts or practices, in commerce, under the Federal Trade Commission Act.

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

3. The separation of *agreed* findings and *proposed* conclusions and order leaves the hearing examiner free in his discretion to modify the proposed order to conform with his judgment of the relief required by the facts agreed upon.

4. While underlying documents described in the stipulation relate to the improper use of specific terms which might be mistaken for a representation that other fibers than those present are included; mention of particular names and the use of the proviso in the order appear unnecessary and might lead to ambiguity. Hence, they are deleted.

5. The proviso with respect to sample cards in the proposed order also appears to be unnecessary and might lead to ambiguity. Hence, it is deleted.

6. The dispositive provisions with respect to the dismissal of the proceeding against Joseph A. Segal individually have been separated from the finding of fact and placed in the order which has also been amended to show that it binds Mr. Segal in his capacity as an official of respondent corporation.

ORDER

It is ordered, That respondents Meyers Development Corporation, a corporation, formerly Fashion Frocks, Inc., now trading as Fashion Frocks, Inc., and its officers, and Philip M. Meyers, Sidney Meyers, Charles H. Jennings, Arthur L. Ehrmantraut, erroneously named in the Complaint as Arthur L. Ehrmantrout, and Ferd J. Schott, individually and as officers of the said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery 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. Falsely or deceptively stamping, tagging, labeling, invoicing, advertising or otherwise identifying such products by representing, either directly or by implication, that any fibers are present in a textile fiber product when such is not the case.
3. Failing to affix labels to such textile fiber products showing each element of information required to be disclosed by

Section 4(b) of the Textile Fiber Products Identification Act.

4. Using a fiber trademark on labels affixed to such textile fiber products without the generic name of the fiber appearing on the said label.

5. Using a generic name or fiber trademark on any label, whether required or nonrequired, without making a full and complete fiber content disclosure in accordance with the Act and Regulations the first time such generic name or fiber trademark appears on the label.

6. Using words, symbols, or depictions on labels attached to textile fiber products, which constitute or imply the name or designation of a fiber when such fiber is not present in the aforesaid product.

7. Failing to affix labels showing the respective fiber content and other required information to samples, swatches and specimens of textile fiber products subject to the aforesaid Act which are used to promote or effect sales of such textile fiber products.

B. Falsely and deceptively advertising textile fiber products by:

1. Making any representations, by disclosure or by implication, as to the fiber content 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 any name, word, depiction, descriptive matter, or other symbol, which connotes or signifies a fur-bearing animal, unless such products or parts thereof in connection with which the names, words, depictions, descriptive matter or other symbols are used, are furs or fur products within the meaning of the Fur Products Labeling Act, provided, however, that where a textile fiber product contains the hair or fiber of a fur-bearing animal, the name of such animal, in conjunction with the word "fiber", "hair", or "blend" may be used.

3. Using a fiber trademark in advertisements without a

full disclosure of the required content information in at least one instance in the said advertisement.

4. Using a fiber trademark in advertising textile fiber products containing more than one fiber without such fiber trademark appearing in the required fiber content information in immediate proximity and conjunction with the generic name of the fiber in plainly legible type or lettering of equal size and conspicuousness.

5. 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.

6. Using a generic name of a fiber in advertising textile fiber products in such a manner as to be false, deceptive or misleading as to fiber content or to indicate, directly or indirectly, that such textile fiber products are composed wholly or in part of such fiber when such is not the case.

7. Using nonrequired information and representations in said advertising in such a manner as to be false, deceptive or misleading as to the fiber content of the textile fiber products or so as to interfere with, minimize or detract from required information.

It is further ordered, That respondents Meyers Development Corporation, a corporation, formerly Fashion Frocks, Inc., now trading as Fashion Frocks, Inc., and its officers, and Philip M. Meyers, Sidney Meyers, Charles H. Jennings, Arthur L. Ehrmantraut, erroneously named in the Complaint as Arthur L. Ehrmantrout, and Ferd J. Schott, individually and as officers of said corporation, and Joseph A. Segal as an officer of said corporation but not individually and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of women's dresses and other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act do forthwith cease and desist from:

A. Using the term "free" or any other term of similar import or meaning, to designate, describe, or refer to wearing apparel, or other merchandise, furnished as compensation for services rendered, unless in close connection therewith all of the conditions, obligations and other prerequisites to the receipt and retention of said wearing apparel or other items of merchandise are clearly and conspicuously set forth.

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B. Representing, directly or by implication, that wearing apparel or other merchandise is guaranteed unless the nature and extent of such guaranty and the manner in which the guarantor will perform thereunder are clearly and conspicuously set forth.

It is further ordered, That this proceeding be, and it hereby is, dismissed against Joseph A. Segal in his individual capacity.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 4.19 of the Commission's Rules of Practice, effective June 1, 1962, the initial decision of the hearing examiner shall on the 25th day of April 1963, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

HERBERT A. HOWELL DOING BUSINESS AS
HOOSIER SALES COMPANY

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

Docket 8551. Complaint, Jan. 3, 1963—Decision, Apr. 27, 1963

Order requiring a Fort Wayne, Ind., individual, engaged in the sale of "Rinse-Away" garbage disposal units to the public, to cease making a variety of misrepresentations—through his sales representatives and the literature they employed—concerning the effectiveness, comparative merits, and price of his product, scope of his business, his personnel, financial capacity, etc.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Herbert A. Howell, an individual trading and doing business as Hoosier Sales Company, hereinafter referred to as the 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:

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PARAGRAPH 1. Respondent Herbert A. Howell is an individual who for some time last past has traded and done business under the trade name and style of Hoosier Sales Company. His address is 2530 Tyler Street, Fort Wayne, Indiana.

PAR. 2. For some time last past the respondent has been engaged in the advertising, offering for sale, sale and distribution of "Rinse-Away" garbage disposal units to the public.

PAR. 3. In the course and conduct of his business the respondent has caused his 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 has 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 his business, and for the purpose of inducing the sale of his 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, the respondent has 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 respondent's 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 respondent's business is national in scope; that he employs statisticians and engineers among others; and that he is financially capable of spending many thousands of dollars annually in nationwide advertising media.
7. That current and valid statistics indicate that 50 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.

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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 respondent has a credit department which handles personal credit matters, and that the respondent does 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 respondent's product.

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

3. Respondent's 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. Respondent's business is not national in scope; he does not employ statisticians or engineers; and he is not financially capable of spending many thousands of dollars annually in nation-wide advertising media.

7. There are no current and valid statistics which indicate that 50 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 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. Respondent does not have a credit department which handles personal credit matters, and he does 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 his business, respondent has failed to disclose that in the event of a sale he intended to discount purchasers' negotiable paper. In the absence of such disclosure, pro-

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spective purchasers believe that no discounting is intended. In truth and in fact, respondent has promptly discounted purchasers' negotiable paper in the regular course of his 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 respondent's product would not have entered into contracts of sale had they known that their paper was to be discounted. Respondent's failure to reveal the material fact of his 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 his business, and at all times mentioned herein, respondent has 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 respondent.

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

PAR. 9. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair 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.

Mrs. Rose W. Sloan and Mr. David J. Eden supporting the complaint.

No appearance for respondent.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

MARCH 19, 1963

The complaint in this proceeding was issued January 3, 1963. It charges respondent with violation of the Federal Trade Commission Act for false, misleading and deceptive statements, representations and practices.

Respondent was duly served with a copy of the complaint and filed no answer thereto. Respondent was also served with a notice that the hearing scheduled in the complaint would be held in Room 747, 1101

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Building, 11th Street and Pennsylvania Avenue, N.W., Washington, D.C., on March 18, 1963, at 10:00 a.m. The proceeding was called to order at 10:00 a.m. on that date in that place, and there being no appearance on behalf of respondent was again called to order at 10:15 a.m., with the same result.

On motion of counsel supporting the complaint, the hearing examiner duly noted the default, and, pursuant to Rule 4.5 of the Rules of Practice, found the facts to be as alleged in the complaint and adopted the order accompanying the complaint.

By reason of respondent's failure to answer or appear in this proceeding, the hearing examiner is authorized to enter an initial decision based on the facts alleged in the complaint, without further notice.

Accordingly, the following findings are made, conclusion reached and order issued.

FINDINGS OF FACT

1. Respondent, Herbert A. Howell, is an individual who for some time last past has traded and done business under the trade name and style of Hoosier Sales Company. Respondent's address is set forth in the complaint as 2530 Tyler Street, Fort Wayne, Indiana. However, he was served at Rural Route No. 2, Hamilton, Indiana, according to the affidavit of service filed in this proceeding.

2. For some time last past the respondent has been engaged in the advertising, offering for sale, sale and distribution of "Rinse-Away" garbage disposal units to the public.

3. In the course and conduct of his business the respondent has caused his 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 has maintained a substantial course of trade in said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

4. In the course and conduct of his business, and for the purpose of inducing the sale of his 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, the respondent has represented, directly or by implication:

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

(b) That the prospect has been especially "selected" to participate in the plan.

(c) That respondent's 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.

(d) 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.

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

(f) That respondent's business is national in scope; that he employs statisticians and engineers among others; and that he is financially capable of spending many thousands of dollars annually in nationwide advertising media.

(g) That current and valid statistics indicate that 50 percent of prospects interviewed will become purchasers.

(h) 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.

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

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

(k) That the respondent has a credit department which handles personal credit matters, and that the respondent does not contemplate the immediate discounting of purchasers' negotiable paper.

5. In truth and in fact:

(a) Appointments with prospective customers are not solicited for the purpose of explaining an advertising plan, but for the purpose of selling respondent's product.

(b) The prospect has not been especially selected to participate in any plan or sale.

(c) Respondent's 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.

(d) 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.

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

(f) Respondent's business is not national in scope; he does not employ statisticians or engineers; and he is not financially capable of

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spending many thousands of dollars annually in nationwide advertising media.

(g) There are no current and valid statistics which indicate that 50 percent of prospects interviewed will become purchasers.

(h) 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 such offer immediately or risk foregoing indefinitely such special price.

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

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

(k) Respondent does not have a credit department which handles personal credit matters, and he does contemplate the discounting of purchasers' negotiable paper.

Therefore, the representations referred to in Finding No. 4 were, and are, false, misleading and deceptive.

6. In the course and conduct of his business, respondent has failed to disclose that in the event of a sale he 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, respondent has promptly discounted purchasers' negotiable paper in the regular course of his 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 respondent's product would not have entered into contracts of sale had they known that their paper was to be discounted. Respondent's failure to reveal the material fact of his intentions or course of business concerning the discounting of purchasers' negotiable paper was, and is, an unfair and deceptive act or practice.

7. In the course and conduct of his business, and at all times mentioned herein, respondent has 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 respondent.

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

CONCLUSION

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

It is ordered, That respondent Herbert A. Howell, individually and doing business as Hoosier Sales Company, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the 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 respondent's 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 respondent's product is safer, more efficient or quieter than similar models of comparable price.
 - (f) That respondent's business is national in scope; that he employs statisticians or engineers; that he is financially capable of spending many thousands of dollars annually in nation-wide advertising media; that the size, scope, or financial capability of his business or the number of his employees is greater than the true size, scope, financial capability or number; or that the qualifications of any of his 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 respondent's 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 respondent's 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 respondent's referral program, or otherwise, is greater than the true amount.

(j) That respondent's 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 respondent has a credit department which handles personal credit matters, or that the respondent does not contemplate the discounting of a purchaser's negotiable paper.

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 4.19 of the Commission's Rules of Practice, effective June 1, 1962, the initial decision of the hearing examiner shall on the 27th day of April 1963, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

ABBY KENT CO., INC., ET AL.

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

*Dockets C-328-C-490. Complaints, May 1, 1963—Decisions, May 1, 1963**

*Reported as modified on June 28, 1963. These orders were made effective on August 9, 1965, and the firms directed to file report of compliance.

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Complaint

Consent orders consolidated, requiring 163 wearing apparel manufacturers to cease discriminating in price among their customers in violation of Sec. 2(d) of the Clayton Act by favoring certain retailers with promotional payments not made proportionally available to competing stores, and postponing the effective date of the orders to cease and desist until further order of the Commission.

COMPLAINTS

The Federal Trade Commission, having reason to believe that the respondents named in the appendix herein, page 1251, have violated and are now violating the provisions of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C., Title 15, Sec. 13), and it appearing to the Commission that a proceeding by it in respect thereto would be in the interest of the public, the Commission hereby issues its complaints stating its charges as follows:

PARAGRAPH 1. The respondents are corporations engaged in commerce, as "commerce" is defined in the amended Clayton Act, and sell and distribute their wearing apparel products from one State to customers located in other States of the United States. The sales of respondents in commerce are substantial.

PAR. 2. The respondents in the course and conduct of their business in commerce paid or contracted for the payment of something of value to or for the benefit of some of their customers as compensation or in consideration for services and facilities furnished by or through such customers in connection with their sale or offering for sale of wearing apparel products sold to them by respondents, and such payments were not made available on proportionally equal terms to all other customers competing with favored customers in the sale and distribution of respondents' wearing apparel products.

PAR. 3. Included among, but not limited to, the practices alleged herein, respondents have granted substantial promotional payments or allowances for the promoting and advertising of their wearing apparel products to certain department stores and others who purchase respondents' said products for resale. These aforesaid promotional payments or allowances were not offered and made available on proportionally equal terms to all other customers of respondents who compete with said favored customers in the sale of respondents' wearing apparel products.

PAR. 4. The acts and practices alleged in paragraphs 1 through 3 are all in violation of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

DECISIONS AND ORDERS

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the appendix herein, and subsequently having determined that complaints should issue, and the respondents having entered into agreements containing orders to cease and desist from the practices being investigated and having been furnished copies of a draft of the complaints to issue herein charging them with violation of subsection (d) of Section 2 of the Clayton Act, as amended, and

The respondents having executed the agreements containing consent orders which agreements contain an admission of all the jurisdictional facts set forth in the complaints to issue herein, and statements that the signing of the said agreements is for settlement purposes only and does not constitute an admission by the respondents that the law has been violated as set forth in such complaints, and also contain the waivers and provisions required by the Commission's rules; and

The Commission, having considered the agreements, hereby accepts the same, issues its complaints in the form contemplated by said agreements, makes the following jurisdictional findings, and enters the following orders:

1. Respondents named in the appendix herein are corporations organized and existing under the laws of various States of the United States, with their offices and principal places of business located as set forth in the appendix.
2. The Federal Trade Commission has jurisdiction of the subject matter of these proceedings and of the respondents.

ORDERS

It is ordered, That respondents named in the appendix herein, p. 1251, corporations, their officers, directors, agents, representatives and employees, directly or through any corporate or other device, in the course of their business in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

- (1) Paying or contracting for the payment of anything of value to, or for the benefit of, any customer of the respondents as compensation or in consideration for advertising or promotional services, or any other service or facility, furnished by or through such customer in connection with the handling, sale or offering for sale of wearing apparel products manufactured, sold or offered for sale by respondents, unless such payment or consideration is made available on proportionally equal terms to all other

customers competing with such favored customer in the distribution or resale of such products.

It is further ordered, That the effective date of these orders to cease and desist be, and they hereby are postponed until further Order of the Commission.*

APPENDIX

RESPONDENTS NAMES AND ADDRESSES, NEW YORK CITY UNLESS OTHERWISE INDICATED

- (C-328) Abby Kent Co., Inc., 1400 Broadway
- (C-329) Adelaar Bros., Inc., 525 7th Ave.
- (C-330) All State Garment Corp., 205 W. 39th St.
- (C-331) Alps Sportswear Manufacturing Co., Inc., 65 Bedford St., Boston, Mass.
- (C-332) The Bernhard Altmann Corp., 100 W. 40th St.
- (C-333) Aquascutum Imports, Inc., 2 E. 37th St.
- (C-334) Aquascutum Co., Ltd., 2 E. 37th St.
- (C-335) Andrew Arkin, Inc., 530 Seventh Ave.
- (C-336) Aronoff & Richling, Inc., 1400 Broadway
- (C-337) Cay Artley Apparel, Inc., 232 Levergood St., Johnstown, Pa.
- (C-338) S. Augstein & Co., 15-58 127th St., College Point, Long Island, N.Y.
- (C-339) Ballantyne Sweaters, Ltd., 40 E. 34th St.
- (C-340) Barmon Brothers Co., Inc., 893 Broadway, Buffalo, N.Y.
- (C-341) Ben Barrack Dresses, Inc., 498 Seventh Ave.
- (C-342) Ben Barrack Petites, Inc., 498 Seventh Ave.
- (C-343) The Beaumart Co., 498 Seventh Ave.
- (C-344) Beaver Shirt Manufacturing Co., Inc., 350 Fifth Ave.
- (C-345) Beldoch Popper, Inc., 1410 Broadway
- (C-346) Bermuda Knitwear Corp., 1410 Broadway
- (C-347) Biltwell Co., Inc., 1128 Washington Ave., St. Louis, Mo.
- (C-348) Biltwell Slacks, Inc., 1324 Santee, Los Angeles, Calif.
- (C-349) Blairmoor Knitwear Corp., 33-00 Northern Blvd., Long Island City, N.Y.
- (C-350) Braemar Knitwear (U.S.A.) Ltd., 1407 Broadway
- (C-351) Sue Brett, Inc., 1400 Broadway
- (C-352) British Vogue, Inc., 1410 Broadway
- (C-353) Robert Bruce, Inc., 2867 E. Allegheny Ave., Philadelphia, Pa.
- (C-354) Candy Frocks, Inc., 501 Seventh Ave.
- (C-355) Streamline Garment Corp., 530 W. 1st St., Greensburg, Ind.
- (C-356) Casualcraft, Inc., 350 Fifth Ave.
- (C-357) David A. Church Co., Inc., 47 Greenpoint Ave., Brooklyn, N.Y.
- (C-358) Climatic, Inc., 1 Jackson Place, Yonkers, N.Y.
- (C-359) Martha Clyde, Inc., 525 Seventh Ave.
- (C-360) Joseph H. Cohen, Inc., 71 Fifth Ave.
- (C-361) Cotton Club Frocks, Inc., 275 Seventh Ave.
- (C-362) Country Set, Inc., 1520 Washington Ave., St. Louis, Mo.
- (C-363) Carol Crawford, Inc., 1400 Broadway
- (C-364) David Crystal, Inc., 498 Seventh Ave.

*The effective date postponed by modified order of June 28, 1963.

- (C-365) Dalton of America, Inc., 6611 Euclid Ave., Cleveland, Ohio
- (C-366) Darlene Knitwear, Inc., North Commercial St., Manchester, N.H.
- (C-367) H. Daroff & Sons, Inc., 2300 Walnut St., Philadelphia, Pa.
- (C-368) Davidow Suits, Inc., 550 Seventh Ave.
- (C-369) Defiance Manufacturing Co., Inc., 350 Fifth Ave.
- (C-370) Jacques de Loux, Inc., Sellersville, Pa.
- (C-371) Derby Sportswear, Inc., 1333 Broadway
- (C-372) Donmoor-Isaacson, 1115 Broadway
- (C-373) Donwood, Ltd., 1407 Broadway
- (C-374) Dorset Knitwear, Ltd., 381 Park Avenue South
- (C-375) Dotti Original, Inc., 525 Seventh Ave.
- (C-376) Eagle Clothes, Inc., 1107 Broadway
- (C-377) Eagle-Freedman-Rodelheim Co., 5th & Juniper Sts., Quakertown, Pa.
- (C-378) Elder Manufacturing Co., 13th & Lucas Ave., St. Louis, Mo.
- (C-379) Esquire Sportswear Mfg. Co., 43 W. 23rd St.
- (C-380) Excello Shirts, Inc., 390 Fifth Ave.
- (C-381) Exmoor Knitwear Co., Inc., 40 Spring St., Haverstraw, N.Y.
- (C-382) Stanley M. Feil, Inc., 2073 E. Fourth St., Cleveland, Ohio
- (C-383) Fordham-Bardell Shirt Corp., 212 Fifth Ave.
- (C-384) French Knitwear Co., Inc., 1407 Broadway
- (C-385) Gant of New Haven, Inc., 162 James St. New Haven, Conn.
- (C-386) Garland Knitting Mills, 117 Bickford St., Jamaica Plain, Mass.
- (C-387) Jerry Gilden Fashions, Inc., 498 Seventh Ave.
- (C-388) Globe Knitwear Co., Inc., 831 Arch St., Philadelphia, Pa.
- (C-389) Gordon & Ferguson Co., 250 E. Fifth St., St. Paul, Minn.
- (C-390) Grunwald-Marx, 932 Wall St., Los Angeles, Calif.
- (C-391) Harper Shirt Co., Inc., 350 Fifth Ave.
- (C-392) B. W. Harris Manufacturing Co., 396 Sibley St., St. Paul, Minn.
- (C-393) Haspel Brothers, Inc., 2527 St. Bernard St., New Orleans, La.
- (C-394) Hayette, Inc., 498 Seventh Ave.
- (C-395) Haymaker Sports, Inc., 498 Seventh Ave.
- (C-396) Helga, 722 Los Angeles St., Los Angeles, Calif.
- (C-397) Highlander Sportswear, Inc., 135 Monroe St., Newark, N.J.
- (C-398) Hochenberg & Gelb, Inc., 915 Broadway
- (C-399) Jane Holly, Inc., 525 Seventh Ave.
- (C-400) Henry I. Siegel Co., Inc., 16 E. 34th St.
- (C-401) Hortex Manufacturing Co., Inc., 100 S. Cotton St., El Paso, Tex.
- (C-402) House of Perfection, Inc., 45 W. 36th St.
- (C-403) House of Worsted-Tex, Inc., 2300 Walnut St., Philadelphia, Pa.
- (C-404) F. Jacobson & Sons, Inc., 390 Fifth Ave.
- (C-405) Juniorite, Inc., 1407 Broadway
- (C-406) Kadet, Kruger & Co., 216 W. Adams St., Chicago, Ill.
- (C-407) The Kaynee Co., Greenville, S.C.
- (C-408) William B. Kessler, Inc., Pleasant and Tilton Sts., Hammonton, N.J.
- (C-409) Lackawanna Pants Manufacturing Co., Inc., 300 Brook St., Scranton, Pa.
- (C-410) Lawrence of London, Ltd., 512 Seventh Ave.
- (C-411) The H. D. Lee Co., Inc., 117 W. 20th St., Kansas City, Mo.
- (C-412) Rhoda Lee, Inc., 525 Seventh Ave.
- (C-413) Lehigh Trouser Co., 514 S. Main St., Wilkes-Barre, Pa.
- (C-414) Levin & Co., Inc., 1350 Broadway
- (C-415) Londontown Manufacturing Co., 3600 Clipper Mill Road, Baltimore, Md

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- (C-416) Loomtogs, Inc., 1410 Broadway
- (C-417) MacShore Classics, Inc., 1410 Broadway
- (C-418) Majestic Specialties, Inc., 340 Claremont Ave., Jersey City, N.J.
- (C-419) Major Blouse Co., Inc., 525 Seventh Ave.
- (C-420) The Majer Brand Co., Inc., 200 Fifth Ave.
- (C-421) Masket Bros. Sport Wear, Inc., 498 Seventh Ave.
- (C-422) Lynne Manufacturing Co., 27-01 Bridge Plaza N., Long Island City, N.Y.
- (C-423) Abby Michael, Ltd., 1407 Broadway
- (C-424) Michaels Stern & Co., Inc., 87 N. Clinton Ave., Rochester, N.Y.
- (C-425) Miller Manufacturing Co., Inc., 915 Main St., Joplin, Mo.
- (C-426) Morrison Knitwear, Inc., 130 Palmetto St., Brooklyn, N.Y.
- (C-427) Nelly De Grab, 533 Seventh Ave.
- (C-428) Nelly Don, Inc., 3500 E. 17th St., Kansas City, Mo.
- (C-429) Nelson-Caine, 1400 Broadway
- (C-430) Newman & Newman, 11 E. 26th St.
- (C-431) Palm Beach Co., 426 E. 4th St., Cincinnati, Ohio
- (C-432) Park-Storyk Corp., 1407 Broadway
- (C-433) Pattullo-Jo Copeland, Inc., 498 Seventh Ave.
- (C-434) Pauker Boyswear Corp., 25 W. 31st St.
- (C-435) Peerless Robes and Sportswear, Inc., 350 Fifth Ave.
- (C-436) Fashions by Blauner, Inc., 134 W. 37th St.
- (C-437) Pickwick Knitting Mills, Inc., 49 Junius St., Brooklyn, N.Y.
- (C-438) Plymouth Manufacturing Co., 500 Harrison Ave., Boston, Mass.
- (C-439) Milton Saunders Co., 525 Seventh Ave.
- (C-440) Princess Peggy, Inc., 1001 S. W. Adams St., Peoria, Ill.
- (C-441) Rabhor Robes, Inc., South Norwalk, Conn.
- (C-442) Ratner Manufacturing Co., 730 Thirteenth St., San Diego, Calif.
- (C-443) Rona Dresses, 1400 Broadway
- (C-444) S. Rudofker's Sons, Inc., 22nd & Market Sts., Philadelphia, Pa.
- (C-445) Rugby Knitting Mills, Inc., 1490 Jefferson Ave., Buffalo, N.Y.
- (C-446) Sagner, Inc., South Wisner St., Frederick, Md.
- (C-447) Savoy Knitting Mills Corp., 801 Meadow St., Allentown, Pa.
- (C-448) Abe Schrader Corp., 530 Seventh Ave.
- (C-449) Alfred Shapiro, Inc., 240 Madison Ave.
- (C-450) Shelby Manufacturing Co., 1350 Broadway
- (C-451) M & D Simon Co., 700 St. Clair Ave., West, Cleveland, Ohio
- (C-452) Miss Smart Frocks, Inc., 501 Seventh Ave.
- (C-453) Smartee, Inc., 45 E. 12th St.
- (C-454) Sorority Frocks, Inc., 120 W. 28th St.
- (C-455) Sport Kraft, Inc., 413 W. Third St., Lewes, Del.
- (C-456) Sportsville Men's Wear, Inc., 16 E. 34th St.
- (C-457) Sigma Fashions, Inc., 1400 Broadway
- (C-458) Talbott, Inc., 1407 Broadway
- (C-459) Tellshire, Inc., 270 W. 38th St.
- (C-460) Thomson Co., 405 Park Ave.
- (C-461) Timely Clothes, Inc., 1415 Clinton Ave., North, Rochester, N.Y.
- (C-462) Towncliffe, Inc., 512 Seventh Ave.
- (C-463) Triton Mfg. Co., Inc., 18 Pocasset St., Fall River, Mass.
- (C-464) Troy Shirt Makers Guild, Inc., 71 Lawrence St., Glen Falls, N.Y.
- (C-465) Usona Shirt Co., 230 Fifth Ave.
- (C-466) Weber and Lott, Inc., 525 Seventh Ave.
- (C-467) Weber Originals, Inc., 525 Seventh Ave.

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- (C-468) Margo Walters, Inc., 1400 Broadway
- (C-469) Wentworth Manufacturing Co., Blanding St., Lake City, S.C.
- (C-470) White Stag Manufacturing Co., 5100 S. E. Harney Drive, Portland, Oreg.
- (C-471) Wolfson & Greenbaum, Inc., 132 W. 36th St.
- (C-472) Wright Manufacturing Co., Toccoa, Ga.
- (C-473) Ben Zuckerman, Inc., 512 Seventh Ave.
- (C-474) The Enro Shirt Co., Inc., 4300 Leghorn Drive, Louisville, Ky.
- (C-475) Famous-Sternberg, Inc., 950 Poeyfarre St., New Orleans, La.
- (C-476) Glen Mfg., Inc., 320 E. Buffalo St., Milwaukee, Wis.
- (C-477) Ilene Manufacturing Co., Inc., 525 Seventh Ave.
- (C-478) Jolee, Inc., 250 W. 39th St.
- (C-479) M. J. Levine, Inc., 250 W. 39th St.
- (C-480) Kelita, Inc., 1407 Broadway
- (C-481) Malcolm Kenneth Co., 11 Leon St., Boston, Mass.
- (C-482) Kimberly Knitwear, Inc., 1410 Broadway
- (C-483) Leathermode Sportswear, Inc., 357 Kossuth St., Bridgeport, Conn.
- (C-484) Mode de Paris, Inc., 58 Second St., San Francisco, Calif.
- (C-485) New Era Shirt Co., 316 N. 18th St., St. Louis, Mo.
- (C-486) Raab-Meyerhoff Co., 350 Fifth Ave.
- (C-487) Ronnie Fashions, Inc., 1400 Broadway
- (C-488) M. C. Schrank Co., 17-21 Broad St., Bridgeton, N.J.
- (C-489) Norman Wiatt Co., 124 E. Olympic Blvd., Los Angeles, Calif.
- (C-490) Wonderknit Corp., 112 W. 34th St.

IN THE MATTER OF

PERMA-LITE RAYBERN MFG. CORP. ET AL.

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

Docket 8486. Complaint, May 21, 1962—Decision, May 2, 1963

Order dismissing, without decision on the merits, complaint charging a Chicago concern with selling its home improvement products through misrepresentation, and directing preparation and submission to the Commission of a new complaint and proposed order.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by the said Act, the Federal Trade Commission, having reason to believe that Perma-Lite Raybern Mfg. Corp., a corporation, and Harry E. Swirsky and Raymond Weller, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of the said Act, and it appearing to the Commission that a proceeding by it in