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Complaint

(3) Respondents shall file, within sixty (60) days of receipt of this order, a written report setting forth in detail the manner and form of their compliance with the order.

Commissioner Anderson concurring in the result; Commissioner MacIntyre not concurring; and Commissioner Reilly not participating for the reason that he did not hear oral argument.

IN THE MATTER OF

SYLVANIA ELECTRIC PRODUCTS, INC.

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

*Docket 8501. Complaint, June 13, 1962—Decision, Feb. 28, 1964 **

Consent order requiring a Waltham, Mass., manufacturer of photographic lighting products, including flash lamps, flood lamps and projection lamps, to cease violating Sec. 2(d) of the Clayton Act by such practices as paying a membership service corporation composed of wholesale druggists at least \$18,000 as compensation for advertising and at least \$2,700 for promotional or other services furnished in connection with the sale of respondent's products, while not making comparable allowances available to all competitors of the favored wholesale druggists.

COMPLAINT

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

PARAGRAPH 1. Respondent Sylvania Electric Products, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 63 Second Avenue, Waltham, Massachusetts.

PAR. 2. Respondent is now and has been engaged in the business of manufacturing, selling and distributing flash lamps, flood lamps, projection lamps and other miscellaneous type of photographic lighting products. It sells its products to drug and sundries wholesalers located throughout the United States. The total sales of re-

*This proceeding was reopened, cease and desist order vacated and the complaint was dismissed on Feb. 24, 1965.

spondent's photo lamp division during the year 1959 was approximately \$28,885,000.

PAR. 3. In the course and conduct of its business, respondent has engaged, and is now engaging, in commerce, as "commerce" is defined in the Clayton Act, as amended, in that respondent sells and causes its products to be transported from the respondent's principal place of business, located in Massachusetts, to customers located in other states of the United States.

PAR. 4. In the course and conduct of its business in commerce, respondent paid or contracted for the payment of something of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished by or through such customers in connection with their offering for sale or sale of products sold to them by respondent, and such payments were not made available on proportionally equal terms to all other customers competing in the sale and distribution of respondent's products.

PAR. 5. For example, during the year 1959 respondent contracted to pay and did pay to Druggists' Service Company, Inc., a membership service corporation composed of wholesale druggists, at least \$18,000 as compensation or as an allowance for advertising and at least \$2,700 as compensation or in consideration for promotional, consultation, advisory or other services or facilities furnished by or through Druggists' Service Company, Inc., or its members, in connection with the offering for sale or sale of products sold to such wholesale members by respondent. Such compensation or allowances were not offered or otherwise made available on proportionally equal terms to all other customers competing with the wholesale members of Druggists' Service Company, Inc. in the sale and distribution of products purchased from respondent.

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

DECISION AND ORDER

This matter having come on to be heard by the Commission upon a record consisting of the Commission's complaint, charging the respondent named in the caption hereof with violation of subsection (d) of Section 2 of the Clayton Act, as amended, and an agreement by and between respondent and counsel supporting the complaint, which agreement contains an order to cease and desist, an admission by the respondent of all jurisdictional facts alleged in the complaint,

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a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint, and waivers and provisions as required by the Commission's rules; and

It appearing that the aforesaid agreement also provides, in effect, that it is subject to the condition that the effective date of the Commission's order entered in this proceeding pursuant to said agreement shall be stayed by the Commission until the Commission issues a final order in the matter of *General Electric Company*, Docket No. 8487 [p. 1238 herein], and that such condition is met inasmuch as service of this Decision and Order will not be made until issuance of the Commission's final order in that matter; and

The Commission having determined that such agreement provides an adequate basis for appropriate disposition of this proceeding and having accepted such agreement, the following jurisdictional findings are hereby made and the following order is entered:

1. Respondent, Sylvania Electric Products Inc., is a corporation organized and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 730 Third Avenue, New York, New York.

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

ORDER

It is ordered, That respondent Sylvania Electric Products Inc., a corporation, its officers, employees, agents and representatives, directly or through any corporate or other device, in the course of business in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Paying, or contracting for the payment of, anything of value to, or for the benefit of, any customer of respondent as compensation, or in consideration for advertising, promotional, consultation, advisory or any other services or facilities furnished by or through such customer, in connection with the processing, handling, sale, or offering for sale of flash lamps, flood lamps, projection flash lamps and other miscellaneous types of photographic lighting products manufactured, sold or offered for sale by respondent unless such payment or consideration is made available on proportionally equal terms to all other customers competing with such favored customer in the distribution of such products.

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

IN THE MATTER OF

THE READER'S DIGEST ASSOCIATION, INC.

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

Docket C-718. Complaint, Feb. 28, 1964—Decision, Feb. 28, 1964

Consent order requiring a publisher with headquarters in Pleasantville, N.Y., to cease representing falsely, in advertisements in its Reader's Digest Magazine and in pamphlets, brochures and other advertising matter sent to subscribers and others on its mailing list, that phonograph record albums it offered for sale were available only to subscribers to Reader's Digest and that the offer was limited in point of time.

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 Reader's Digest Association, Inc., 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 The Reader's Digest Association, 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 Pleasantville in the State of New York.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of phonograph record albums to the public.

PAR. 3. In the course and conduct of its business, respondent now causes, and for some time last past has caused, its said product, when sold, to be shipped from its place of business in the State of New York to purchasers thereof located in various other States of the United States, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said product in com-

merce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business and for the purpose of inducing the sale of its phonograph record albums, respondent has made certain statements and representations by advertisements in its Reader's Digest Magazine and in pamphlets, brochures and other advertising materials sent by direct mail to subscribers and others on its mailing lists, of which the following are typical but not all inclusive:

An exclusive offer for Reader's Digest subscribers only
Once in a lifetime offer for Reader's Digest subscribers only
But our supply of these sets is limited
Remember—only one edition of these records will be published.

PAR. 5. Through the use of the aforesaid statements and representations, and others of similar import but not specifically set forth herein, respondent represented directly and by implication:

- (1) That the sale of the phonograph record albums being offered are available only to subscribers of the Reader's Digest Magazine;
- (2) That the offer is a limited offer in point of time, in that, unless the subscriber acts immediately he will not be able to obtain the phonograph record albums offered in the particular advertisement;

PAR. 6 In truth and in fact:

1. The respondent does not limit the sale of the said phonograph record albums to subscribers of Reader's Digest Magazine exclusively;
2. The respondent does not limit the sale of said phonograph records in point of time. Sales of the phonograph record albums are made continually as long as orders are submitted.

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

PAR. 7. In the conduct of its business, at all times mentioned herein, respondent has been in substantial competition, in commerce with corporations, firms and individuals in the sale of phonograph record albums of the same general kind and nature as those 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.

DECISION AND ORDER

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

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

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

1. Respondent, The Reader's Digest Association, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at Pleasantville, in the State of New York.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent The Reader's Digest Association, Inc., a corporation, and its officers, 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 phonograph record albums or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that the sale of respondent's products is being restricted to subscribers to the Reader's Digest Magazine or to any other class or group of persons without clearly and conspicuously disclosing in conjunction with such representation whether such products will be sold subsequently to other groups or to the public.

2. Representing, directly or by implication, that the supply of products being advertised is limited when an adequate supply is, in fact, available to respondent, or that any offer is limited in point of time or in any other manner unless such restriction or limitation is actually imposed, and adhered to, by respondent.

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

IN THE MATTER OF

SEACREST INDUSTRIES CORPORATION ET AL.

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

Docket C-719. Complaint, Feb. 28, 1964—Decision, Feb. 28, 1964

Consent order requiring Yonkers, N.Y., sellers of freezers, food and freezer-food plans through four wholly owned subsidiary corporations, to cease making various false representations in brochures, circulars and otherwise, concerning purported savings, professional assistance afforded purchasers of their products, guarantees, terms of sale and other false claims.

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 Seacrest Industries Corporation, a corporation, and Eugene Lissauer, William Lissauer and Sol Feldman, individually and as officers of said corporation, and Sidney Lissauer and Walter S. Blazer, individuals, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Seacrest Industries Corporation 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 6 Xavier Drive, in the city of Yonkers, State of New York.

Respondents Eugene Lissauer, William Lissauer and Sol Feldman are officers of said corporation. 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 Seacrest Industries Corporation.

Sidney Lissauer and Walter S. Blazer are individuals who participate in the management, direction and control of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent Seacrest Industries Corporation.

PAR. 2. The respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of freezers, food and freezer-food plans through the following whollyowned subsidiary corporations:

Serv-Well Foods Inc., Mt. Vernon, New York.

Bonded Food Service Corp., Yonkers, New York.

Franklin Foods Corporation, Yonkers, New York.

Franklin Sales Corporation, Yonkers, New York.

PAR. 3. In the course and conduct of their business, respondents, directly and through the aforementioned subsidiary corporations, cause freezers, when sold, to be shipped by the manufacturer from its plant or warehouse located in the State of New York to purchasers thereof, located in various other States of the United States; and cause food when sold to be shipped from warehouses located in the State of New York, to purchasers thereof located in various other States of the United States. Respondents maintain and at all times mentioned herein have maintained a substantial course of trade in said freezers and food in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of freezers, food and freezer-food plans.

PAR. 5. In the course and conduct of their business, respondents have disseminated, and caused the dissemination of, certain advertisements concerning the said food and freezer-food plan by the United States mails and by various means in commerce as "commerce" is defined in the Federal Trade Commission Act, including but not limited to brochures and circulars, for the purpose of inducing, and which were likely to induce the purchase of food, as the term "food" is

defined in the Federal Trade Commission Act; and have disseminated and caused the dissemination of advertisements by various means including those aforesaid, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of food and freezers in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 6. By means of advertisements disseminated, as aforesaid and by the oral statements of respondents' salesmen, representatives and agents, respondents have represented directly or by implication:

1. That purchasers of their freezer-food plan can purchase their food requirements and a freezer for the same or less money than they have been paying for food alone;
2. That purchasers of respondents' freezer-food plan will save enough money on the purchase of their food to pay for the freezer;
3. That the initial food order supplied by the respondents will last the purchaser four months;
4. That "home economists" will assist purchasers of the aforesaid freezer-food plan in planning their food orders;
5. That the freezer and the food are fully and unconditionally guaranteed or insured under the contract;
6. That purchasers of the aforesaid freezer-food plan make one monthly payment which covers both food and freezer;
7. That any money paid by purchasers for freezers or freezer-food plan will be refunded if they are not satisfied.

PAR. 7. In truth and in fact:

1. Purchasers of the aforesaid freezer-food plan do not receive a freezer and their food requirements for the same or less money than they had been paying for food alone.
2. Purchasers of respondents' freezer-food plan do not save enough money on the purchase of their food to pay for the freezer.
3. The initial food order supplied by respondents is not sufficient to last purchasers four months.
4. The individuals sent to help purchasers of the aforesaid freezer-food plan in planning food orders are not "home economists". They have not had sufficient or proper training to warrant calling them "home economists".
5. The freezer and the food are not fully or unconditionally guaranteed or insured under the contract.
6. Purchasers of the aforesaid freezer-food plan are required to make two monthly payments, one for food and one for the freezer.
7. Purchasers of the freezer or the freezer-food plan do not receive a refund of their money if they are not satisfied.

Therefore, the advertisements referred to in Paragraph Five 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, and the statements and representations referred to in Paragraph Six were, and now are, false, misleading and deceptive.

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 freezers, food and freezer-food plans from the respondents by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, including the dissemination by respondents of false advertisements as aforesaid, 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 Sections 5 and 12 of said Act.

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 Deceptive Practices proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; 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 the Federal Trade Commission Act, 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. Seacrest Industries Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the

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State of Delaware, with its office and principal place of business located at 6 Xavier Drive, Yonkers, New York.

Eugene Lissauer, William Lissauer and Sol Feldman are individuals and officers of the corporate respondent and their address is the same as that of said corporation.

Sidney Lissauer and Walter S. Blazer are individuals and their address is the same as that of said corporation.

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

ORDER

PART I

It is ordered, That respondents Seacrest Industries Corporation, a corporation, and its officers, and Eugene Lissauer, William Lissauer and Sol Feldman, individually and as officers of said corporation, and Sidney Lissauer and Walter S. Blazer, individuals, 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 freezers, food or freezer-food plans in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication that:

(a) Purchasers of a freezer-food plan will receive the same or any amount of food and a freezer for the same or less money than they have been paying for food alone;

(b) Purchasers of a freezer-food plan will save enough money on the purchase of their food to pay for the freezer;

(c) Food ordered by purchasers will be sufficient to last such purchasers any stated or specified period of time;

(d) A "home economist" or other formally trained individual will assist purchasers of the aforesaid freezer-food plan in planning their food orders;

(e) Any freezer, or any part thereof, or any food is guaranteed or insured in any manner, unless the nature and extent of the guarantee or insurance and the manner in which the guarantor or insurer will perform thereunder, are clearly and conspicuously disclosed in immediate conjunction with any such representation;

(f) Purchasers of their freezer-food plan make but one monthly payment covering the food and the freezer;

- (g) Money paid by purchasers for a freezer or a freezer-food plan will be refunded if they are not satisfied.
2. Misrepresenting in any manner the savings realized by purchasers of a freezer-food plan, freezer, or food.

PART II

It is further ordered, That respondents Seacrest Industries Corporation, a corporation, and its officers, and Eugene Lissauer, William Lissauer and Sol Feldman, individually and as officers of said corporation and Sidney Lissauer and Walter S. Blazer, individuals, 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 any food or any purchasing plan involving food, do forthwith cease and desist from:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the representations or misrepresentations prohibited in Paragraphs 1 and 2 of PART I of this Order.

2. Disseminating, or causing the dissemination of any advertisement, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of any food, or any purchasing plan involving food in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the representations or misrepresentations prohibited in Paragraph 1 and 2 of PART I of this Order.

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

BEECHAM PRODUCTS INC.

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

Docket C-720. Complaint, Feb. 28, 1964—Decision, Feb. 28, 1964

Consent order requiring a distributor of drug preparations, with headquarters in Clifton, N.J., to cease representing falsely in radio and magazine adver-

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tising and otherwise that the vitamins in its "Scott's Emulsion" and "Scott's Emulsion capsules" were more beneficial than those from synthetic sources, that its said products were more digestible and functioned more quickly than any other cod liver oil preparation, and that their use was of benefit in the prevention and treatment of colds, infections and sickness.

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 Beecham Products Inc., 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 Beecham Products Inc., is a corporation, organized and existing under the laws of the State of New Jersey, with its office and principal place of business located at 65 Industrial South in the city of Clifton, State of New Jersey.

PAR. 2. Respondent is now, and has been for more than one year last past, engaged in the sale and distribution of preparations containing ingredients which come within the classification of drugs as the term "drug" is defined in the Federal Trade Commission Act.

The designations used by respondent for the said preparations, the formulæ thereof and directions for use are as follows:

1. Designation: "Scott's Emulsion" (Liquid)

Formula :	Percent
Cod Liver Oil.....	49.603
Sodium Hypophosphite.....	.199
Citric Acid Monohydrate.....	.099
Sodium Hydroxide Solution.....	.301
Oleic Acid.....	.422
Propyl Gallate.....	.010
Methocel HG 1500.....	.641
Sodium Dihydrogen Phosphate Monohydrate.....	.077
Saccharin.....	.010
Flavoring.....	.245
Demineralized H ₂ O.....	48.393
	<hr/>
	100.000

Directions: Children and Adults—3 or 4 teaspoonfuls per day, preferably at mealtimes

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2. Designation: "Scott's Emulsion Capsules"

Formula :	Percent
Calcium Hypophosphite.....	5.11
Diabasic Calcium Phosphate.....	11.11
Polysorbate 80 (Tween 80).....	38.21
Sorbitan Mono Stearate (Span 60).....	19.10
Corn Oil.....	14.83
Cod Liver Oil Concentrate.....	11.64
	100.00

Directions: 2 capsules per day, after meals

PAR. 3. Respondent causes the said preparations, when sold, to be transported from its place of business in the State of New Jersey and from warehouses in the States of Illinois, Georgia, Texas and California, to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said preparations is commerce, as "commerce" is defined in the Federal Trade Commission Act. The volume of business in such commerce has been and is substantial.

PAR. 4. In the course and conduct of its said business, respondent has disseminated, and caused the dissemination of, certain advertisements concerning the said preparations by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in magazines and other advertising media, and by means of radio broadcasts transmitted by radio stations located in various States of the United States, having sufficient power to carry such broadcasts across state lines, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparations; and has disseminated, and caused the dissemination of, advertisements concerning said preparations by various means, including but not limited to the aforesaid media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act.

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

Nature has a way of doing things that are impossible for science to achieve. While there are many synthetic (or chemical) vitamins, science has yet to match all the benefits of natural vitamins A and D. That's why so many mothers always insist on Scott's Emulsion—the natural vitamin tonic. (Radio)

* * * * *

Scott's Emulsion has all of the benefits of pure, natural cod liver oil—it's even better because it's emulsified! Because it's emulsified it's better than any cod liver oil you've ever seen or tasted. Scott's Emulsion is creamy white and smooth—it's easier to digest—it's easier to be absorbed—it goes to work quicker in your body. Scott's Emulsion is one of the richest sources of natural vitamins A and D. (Magazine)

* * * * *

When your child's cold drags on * * * and on * * * it may be a sign that his resistance is down. You need to build up his cold—fighting strength. That's why many mothers use Scott's Emulsion the *natural* vitamin tonic. (Radio)

* * * * *

Because Scott's Emulsion is a rich source of *natural* vitamins A and D, it helps your child shorten the cold he has—and it also helps build top strength for fighting off *new* colds. (Radio)

* * * * *

This could be another winter when there are more colds than usual. During the cold-catching season it's hard to get enough of the "sunshine" vitamin D and vitamin A to help build your resistance to infections like colds. That's why so many people take Scott's Emulsion—it's the natural vitamin tonic that helps to build your body's cold—fighting strength. (Magazine)

* * * * *

If someone in your family seems to get more than their share of colds—or if colds seem to hang on and on—or if you want to build up resistance so sickness won't keep your family away from work or school so often, start taking Scott's Emulsion now. Give your family a head start on health this winter with Scott's Emulsion.

Now in two forms: Better tasting liquid or New tasteless capsules. (Magazine)

* * * * *

PAR. 6. Through the use of said advertisements, and others similar thereto not specifically set out herein, respondent has represented and is now representing, directly and by implication:

1. That vitamin A and vitamin D from natural sources, as contained in both Scott's Emulsion and Scott's Emulsion Capsules, are more beneficial than vitamin A and vitamin D from synthetic sources;

2. That Scott's Emulsion and Scott's Emulsion Capsules are easier to digest and easier to absorb than any other cod liver oil preparation;

3. That Scott's Emulsion and Scott's Emulsion Capsules function effectively in the body more quickly than any other cod liver oil preparation;

4. That the use of Scott's Emulsion and Scott's Emulsion Capsules is of benefit in the prevention, relief and treatment of colds and infections;

5. That the use of Scott's Emulsion and Scott's Emulsion Capsules is of benefit in the prevention of sickness.

PAR. 7. In truth and in fact:

1. Vitamin A or vitamin D from natural sources, as supplied in either Scott's Emulsion or Scott's Emulsion Capsules, is of no greater benefit than the vitamin A or vitamin D from synthetic sources;

2. Scott's Emulsion Capsules are not easier to digest, easier to absorb and will not function effectively in the body more quickly than any other cod liver oil preparation;

3. Scott's Emulsion is not easier to digest, easier to absorb and will not function effectively in the body more quickly than any other cod liver oil preparation, except when Scott's Emulsion is compared to non-emulsified cod liver oil;

4. Neither Scott's Emulsion nor Scott's Emulsion Capsules will be of benefit in the prevention, relief or treatment of colds or infections;

5. Neither Scott's Emulsion nor Scott's Emulsion Capsules are of value in the prevention of sickness, unless such sickness is due to a deficiency of vitamin A or of vitamin D.

Furthermore, the statements and representations in said advertisements have the capacity and tendency to suggest, and do suggest, to persons reading or hearing such advertisements that in cases of persons of both sexes and all ages who experience sickness there is a reasonable probability that their resistance to sickness will be increased by use of these preparations. In the light of such statements and representations, said advertisements are misleading in a material respect and therefore constitute false advertisements, as that term is defined in the Federal Trade Commission Act, because they fail to reveal the material facts that in cases of persons of both sexes and all ages who experience sickness in the United States, such sickness is rarely caused by a deficiency of vitamin A or vitamin D as provided by Scott's Emulsion or Scott's Emulsion Capsules, and that in such persons the preparations will seldom be of benefit in increasing resistance to sickness.

Therefore, the advertisements referred to in Paragraph Five 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.

PAR. 8. The dissemination by the respondent of the false advertisements, as aforesaid, constituted, and now constitutes, unfair and deceptive acts and practices in commerce, in violation of Sections 5 and 12 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with

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violation of the Federal Trade Commission Act, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

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

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

1. Respondent Beecham Products Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 65 Industrial South, in the city of Clifton, State of New Jersey.

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

ORDER

It is ordered, That respondent Beecham Products Inc., a corporation and its officers, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the preparation designated "Scott's Emulsion" or the preparation designated "Scott's Emulsion Capsules", or any other preparation of substantially similar composition or possessing substantially similar properties, do forthwith cease and desist from directly or indirectly:

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

(a) That either vitamin A or vitamin D from natural sources, as supplied in said preparation, is more beneficial than the vitamin A or vitamin D from synthetic sources;

(b) That Scott's Emulsion Capsules will be easier to digest, easier to absorb or will function effectively in the body more quickly than any other cod liver oil preparation;

(c) That Scott's Emulsion will be easier to digest, easier

to absorb or will function effectively in the body more quickly than any other cod liver oil preparation, unless such advertisement be expressly limited to a comparison with non-emulsified cod liver oil;

(d) That the use of said preparation will be of benefit in the prevention, relief or treatment of colds or infections;

(e) That the use of said preparation will be of benefit in the prevention of sickness, unless such advertisement expressly limits the effectiveness of the preparation to the prevention of sickness due to a deficiency of vitamin A or of vitamin D provided by the preparation, and further, unless the advertisement clearly and conspicuously reveals the facts that in cases of persons of both sexes and all ages who experience sickness in the United States, such sickness is rarely caused by a deficiency of vitamin A or vitamin D as provided by the preparation, and that in such persons the preparation will seldom be of benefit in increasing resistance to sickness.

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

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

IN THE MATTER OF

RADIANT INDUSTRIES CORPORATION ET AL.

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

Docket C-721. Complaint, Feb. 28, 1964—Decision, Feb. 28, 1964

Consent order requiring Brooklyn, N.Y., distributors of water softening and conditioning devices and other merchandise to wholesalers and jobbers, to cease representing falsely in advertisements in magazines, catalog sheets and other promotional materials—which they also furnished their jobbers for use in promoting sales—that all component parts of said water soften-

ing devices were "GUARANTEED FOR LIFE AGAINST CORROSION AND RUST", when the guarantee applied only to the "pressure vessel" portion of the device and had numerous undisclosed conditions.

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 Radiant Industries Corporation, a corporation, and Norman Krisberg and Fred Levitan, 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 Radiant Industries Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 1227 Rockaway Avenue, city of Brooklyn, State of New York.

Respondents Norman Krisberg and Fred Levitan, are individuals and are officers of the corporate respondent. Respondents Norman Krisberg and Fred Levitan 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 water softening and conditioning devices, pump equipment and other merchandise to wholesalers and jobbers for resale to the public.

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

PAR. 4. In the course and conduct of their business and for the purpose of inducing the sale of their water softening devices, respondents have made certain statements and representations in advertisements in magazines, catalog sheets and other promotional materials in respect to the guarantee furnished with their products.

Typical and illustrative of said representations and statements, but not all inclusive thereof, are the following:

Guaranteed for life against corrosion and rust; Lifetime guarantee against corrosion and rust.

PAR. 5. By and through the use of the aforesaid statements and representations, and others of similar import not specifically set out herein, respondents represent, directly or by implication that all component parts of said water softening devices are unconditionally guaranteed against rust and corrosion for the lifetime of the purchaser.

PAR. 6. In truth and in fact, all component parts of said water softening devices are not unconditionally guaranteed for the lifetime of the purchaser. Such guarantee as may be given by respondents is applicable only to the "pressure vessel" portion of said water softening devices, and is honored only if numerous conditions and prerequisites, which are not disclosed in the aforesaid advertising, are met.

Therefore, the statements and representations referred to in Paragraphs Four and Five hereof are false, misleading and deceptive.

PAR. 7. Respondents also provide to distributors, jobbers and others the aforesaid catalog sheets and promotional materials for their use in promoting the sale of respondents' merchandise. By this practice, respondents place in the hands of said distributors, jobbers and others, the means and instrumentalities whereby the purchasing public may be misled and deceived in the aforesaid manner.

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 water softening and conditioning devices, pump equipment and other merchandise 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' products 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 constitutes, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

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DECISION AND ORDER

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

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

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

1. Respondent Radiant Industries Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 1227 Rockaway Avenue, in the city of Brooklyn, State of New York.

Respondents Norman Krisberg and Fred Levitan are officers of said corporation, and their address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents Radiant Industries Corporation, a corporation, and its officers, and Norman Krisberg and Fred Levitan, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of water softening and conditioning devices, pump equipment or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that any of respondents' products are guaranteed unless the nature, duration and extent of the guarantee, the identity of the guarantor, and

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the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed, and the respondents do in fact fulfill all of their requirements under the terms of said guarantee.

2. Furnishing or otherwise placing in the hands of distributors, jobbers and others the means and instrumentalities by and through which they may mislead or deceive the public in the manner or as to the things hereinabove prohibited.

It is further ordered, That 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

FRED ASTAIRE DANCE STUDIO, WASHINGTON, D.C.,
INC., ET AL.

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

Docket 8560. Complaint, Mar. 14, 1963—Decision, Mar. 12, 1964

Order requiring Washington, D.C., operators of dancing schools under licenses from the Fred Astaire Dance Studios Corporation in New York City—components of a chain of dance studios operating under the licensor's name throughout the country to teach the "Fred Astaire Method of Dancing"—to cease using a variety of deceptive practices in advertising and through their agents to induce persons to enroll for their dancing instruction courses.

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 Fred Astaire Dance Studio, Washington, D.C., Inc., a corporation, and Patrick W. Arabia, Eugene T. Valentine, and Lea W. Pelet, individually and as officers of said corporation, and George J. Strombos, individually and as Manager of said corporation, and Fred Astaire Dance Studios Corporation, a 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 Fred Astaire Dance Studio, Washington, D.C., Inc., is a corporation organized, existing and doing busi-

ness under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 1221 G Street, N.W., in the city of Washington, D.C.

Respondents Patrick W. Arabia and Eugene T. Valentine of 2030 Central Avenue, St. Petersburg, Florida, and Lea W. Pecket of 1221 G Street, N.W., Washington, D.C., are officers of the above-named corporate respondent.

Respondent George J. Strombos is Manager of the said corporate respondent and also participates in the control of its daily activities. His address is the same as that of the corporate respondent.

All of the aforesaid respondents cooperate with the corporate respondent Fred Astaire Dance Studios Corporation, hereinafter referred to, in formulating the policies and in the direction and control of the acts and practices of the said Washington, D.C. corporate respondent, including the acts and practices hereinafter set forth.

PAR. 2. The aforesaid respondents are now, and for some time last past have been, engaged in conducting dancing schools wherein courses of instruction in various types of dancing are offered to the public in Washington, D.C., and surrounding areas.

PAR. 3. Respondent Fred Astaire Dance Studios Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 487 Park Avenue, in the city of New York, State of New York.

The aforesaid New York corporation grants licenses to various corporations and individuals in cities throughout the United States, including the aforesaid Washington, D.C. corporation, to operate dance studios wherein the "Fred Astaire Method of Dancing" is taught. In return for said license privilege, among other things, such licensees pay said licensor, in addition to the initial amount paid for the license, a percentage of the gross monetary receipts realized by such licensees from the operation of said schools. Also said licensor exercises certain control over said licensees' business operations involved in the conduct of the studios' activities, such as reserving the right to approve all advertising matter used by said licensees in the conduct of their schools, authority to send dance instructors to train licensees' instructors, the cost thereof to be borne by said licensees, and to require said licensees to recognize that they are component parts of a chain of dance studios operating under licensor's name throughout the country.

PAR. 4. In the course and conduct of the aforesaid business, advertising matter, contracts, letters, checks, written instruments and other communications are and have been sent and received between

the respondent New York corporation and the Washington, D.C. respondents at their respective places of business in New York, New York, and in Washington, D.C. In addition thereto, the Washington, D.C., respondents are now, and have been for several years last past, engaged in the advertising and promotion of the aforesaid business by means of radio broadcasts, newspaper advertisements, telephone solicitations, and in various other ways within the District of Columbia and in surrounding areas. As a result thereof all of said respondents are now and have been at all times mentioned herein engaged in extensive commercial intercourse in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of their aforesaid business, and for the purpose of attracting prospective students to their studios and for the ultimate purpose of selling them a course or a series of courses of dancing instruction, the respondents have offered many inducements and made many statements and employed various tactics by means of radio broadcasts, telephone calls, oral representations, use of newspaper advertisements and in various other ways.

Such inducements consisted of appeals to lonely and/or aged people, among others, who wished to become good dancers, enjoy parties, enlarge their circle of friends and acquaintances and, in some instances, to find employment as dancing instructors.

PAR. 6. Illustrative and typical of respondents' aforesaid practices are the following: (1) They conduct telephone quizzes in which they state to prospects that the winners of such quizzes will be eligible for a given number of free dancing lessons; (2) in other representations made over the radio and thru other media, respondents state that (a) a given number of dancing lessons will be given at a reduced price, (b) that "Gold awards" and various other awards denoting various degrees of dancing proficiency are obtainable by persons taking their said dance courses, without disclosing the pertinent facts and conditions surrounding the winning of such awards, and (c) that persons who purchase their courses of instruction will be invited as free guests to certain parties given by respondents where they will meet many interesting people and enlarge their circle of acquaintances and friends.

PAR. 7. In truth and in fact (1) winners of the aforesaid quizzes and persons responding to said special offers of free dance lessons or lessons at a reduced rate are not, as a rule, furnished a full time or bona fide course of dance instruction, as promised. On the contrary, a substantial portion of the time promised by respondents to be devoted to dance instruction is devoted instead to efforts on the part of respondents, or their agents, to sell said students additional

dancing lessons. In the event said students refuse to purchase additional courses of instruction, thereafter they are ignored, embarrassed and treated as unwelcomed persons. (2) In some instances, part of the dancing instruction promised is furnished only upon the previously undisclosed condition that additional lessons must be purchased. (3) The "Gold Awards" are given only upon the completion of a three-year course of instruction in respondents' dance courses, a fact not disclosed in their initial advertising. (4) Some students who enroll in respondents' said courses are not invited to respondents' parties, as promised. Therefore, the respondents' aforesaid statements and representations as described and referred to in Paragraph Six hereof are false, misleading and deceptive.

PAR. 8. In the course and conduct of their business, the respondents announce in radio broadcasts currently in use that they will give "free" a \$100 Government Bond to the person calling a given telephone number.

In truth and in fact, to the person calling such number it is announced that the answerer is a representative of the Fred Astaire Dance Studio. When queried about the \$100 Government Bond gift, the caller is advised that in order to qualify for such a "gift" it will be necessary for the caller to come down to the studio and sign a contest entry blank. The contest entry blank turns out to be a contract for the purchase of a course of dancing instruction and the "free" Government bond is to be applied on the tuition fee charged for the dancing course. Therefore the respondents' aforesaid representation is false, misleading and deceptive.

PAR. 9. In the course and conduct of their aforesaid business, respondents have, for the purpose of selling initial and supplemental courses of dance instruction, employed other unfair, misleading and coercive tactics, among which are the following:

1. The use of "relay salesmanship", involving successive efforts of a number of different representatives who, by force of numbers and unremitting sales talks, and aided by hidden listening devices monitoring conversation with the prospect or pupil, attempt to persuade and do persuade a lone prospect or pupil to sign a contract for dancing instruction.

2. The use of blank or partially filled out contract forms whereby the pupil or prospective pupil is led to believe his financial obligation is substantially less than what respondents or their representatives consider due and payable.

PAR. 10. In their efforts to procure dancing instructors and for the further purpose of selling their courses of dancing instruction, the respondents advertised in the "Help Wanted" sections of Wash-

ington, D.C. daily newspapers that they were offering to pay \$3 per hour for dancing instructors.

In truth and in fact, upon answering such advertisements, applicants are informed that the \$3 per hour referred only to instructors who hold respondents' "Gold Award" which takes three years of respondents' training to obtain. Some of such applicants are offered a job at \$1.50 per hour; others are promised such jobs only upon certain conditions, among which is the purchase of a course or courses of respondents' instruction in the Fred Astaire Method of Dancing and the satisfactory completion of same. The aforesaid representation was therefore false, misleading and deceptive.

PAR. 11. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition in commerce with corporations, firms and individuals likewise engaged in the sale of dancing instruction courses.

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

PAR. 13. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

Mr. DeWitt T. Puckett, Mr. Roy B. Pope and Mr. Guy E. Yelton,
for the Commission.

Mr. Courts Oulahan, Washington, D.C., for *Mr. Eugene T. Valentine* and *Fred Astaire Dance Studios Corporation.*

Mr. George J. Strombos, pro se and for *Fred Astaire Dance Studio,* Washington, D.C., Inc.

Mr. Patrick W. Arabia, pro se.

Mr. Lea W. Prelet, pro se.

INITIAL DECISION BY WILMER L. TINLEY, HEARING EXAMINER

The Federal Trade Commission, on March 14, 1963, issued and subsequently served its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act by the use of false, misleading and deceptive statements,

representations and practices for the purpose of attracting prospective students to their studios and for the ultimate purpose of selling them a course or a series of courses of dancing instruction.

On April 19, 1963, through their attorney, all of the respondents filed answers denying generally the essential allegations of the complaint. Various extensions were thereafter granted, largely for the purpose of allowing negotiations between counsel in an effort to resolve or narrow the issues. The progress and results of such negotiations were considered at prehearing conferences on June 12, June 17, and September 13, 1963, and on January 15, and January 21, 1964. The prehearing conferences were stenographically reported, but, at the request of respondents, were not public. The parties understand that, although not public, the transcripts of the prehearing conferences constitute a part of the record for consideration by the hearing examiner and any reviewing authority in connection with this proceeding. (Tr. 169, 221, 224. Page references herein are to the prehearing transcript.)

During the prehearing procedures there were certain changes in counsel representing the parties, and in the answers which were originally filed. Such changes are not set out in detail herein, it being considered sufficient for present purposes to show in the foregoing listing by whom the several parties were represented, and to discuss herein the status of the answers, at the time the matter was submitted to the hearing examiner for initial decision.

At the final prehearing conference, a motion was submitted to the hearing examiner by or on behalf of all of the respondents to withdraw their answers, and to substitute the answer submitted therewith. Counsel supporting the complaint consented to said motion (Tr. 210-211).

The proposed substitute answer, "solely for purposes of this proceeding and for no other purposes" admitted "all material allegations of the Complaint" pursuant to Section 3.5(b)(2) of the Commission's Rules of Practice. It also contained a waiver of "all further procedure in this proceeding including findings and conclusions of the hearing examiner". In response to questions by the hearing examiner, the parties made it clear that the proposed substitute answer was not submitted on condition that the initial decision would omit "appropriate findings and conclusions", but that the waiver was submitted for consideration and action within the discretion of the hearing examiner (Tr. 213-215). In these circumstances, the motion was granted, with the result that the answers of all of the respondents then in the record were withdrawn, and the substitute answer was received as the answer to the complaint by all of the respondents (Tr. 216).

It is the opinion of the hearing examiner that, when an admission answer is filed, Section 3.5(b)(2) of the Commission's Rules grants no discretion to the hearing examiner to omit appropriate findings and conclusions from his initial decision, and that the inclusion of such findings and conclusions is mandatory. It is also the opinion of the hearing examiner that, even if he had authority to do so under the rule, the considerations which have been presented, including a statement by one of the respondents concerning extenuating circumstances with respect to failure to utilize the consent procedure (Tr. 226-231), do not provide a persuasive basis for omitting findings and conclusions from the initial decision in this case.

There was also submitted to the hearing examiner at the final pre-hearing conference a stipulation between counsel supporting the complaint and all of the respondents, in which it was agreed that a proposed order, submitted with the stipulation, "is appropriate and that it be submitted to the Hearing Examiner for his consideration in connection with the disposition of this case". Said proposed order is *in haec verba* the order contained in the Notice portion of the complaint, except that it omits the words "or through any licensee" from the phrase ordering the respondents "and respondents' agents, representatives and employees, directly or through any corporate or other device, or through any licensee", to cease and desist from specified practices. Counsel supporting the complaint stated that, in their opinion, the order thus modified will adequately protect the public interest (Tr. 212).

The hearing examiner interprets the stipulation as a recommendation by all of the parties that the proposed order be adopted; and it is his opinion that such recommendation was one of the considerations which resulted in the filing of the admission answer by all of the respondents. It is clear, however, that the answer was not submitted or received on the condition that the order proposed by the stipulation would be adopted by the hearing examiner. On the contrary, the proposed order was specifically submitted to the hearing examiner only "for his consideration in connection with the disposition of this case". In the event the hearing examiner or the Commission should consider that the proposed order is not appropriate, it may be rejected and an appropriate order entered.

Careful consideration has been given to the order proposed by the stipulation between the parties. The form of order in the complaint would require the respondents "and respondents' agents, representatives and employees, directly or through any corporate or other device, or through any licensee," to cease and desist from the specified practices. The hearing examiner is unable to envision cir-

cumstances in which respondents may engage in any such practice through a licensee, which would not also amount to engaging in such practice through an "agent", a "representative" or an "employee", or directly or indirectly through some "corporate or other device". It is the opinion of the hearing examiner, therefore, that omission of the words "or through any licensee" from the quoted phrase will not result in narrowing the order in any way which will materially lessen the protection which it will afford to the public interest. Accordingly, the order proposed by the stipulation of the parties will be adopted by the hearing examiner as an appropriate order disposing of the proceeding.

Following the submission of the substitute answer and the stipulation of the parties, the record was closed for the reception of evidence. None of the parties desired to submit proposals to the hearing examiner, and the matter was thereupon submitted for initial decision (Tr. 215-216, 221). The hearing examiner, accordingly, issues this initial decision, finding the facts to be as alleged in the complaint, with such modifications as are necessary to conform with facts disclosed during the prehearing procedures, and to avoid inconsistencies, and containing appropriate conclusions and order.

FINDINGS OF FACT

1. Respondent Fred Astaire Dance Studio, Washington, D.C., Inc. (hereinafter referred to as the Washington, D.C. corporate respondent), is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 1221 G Street, N.W., in the City of Washington, D.C.

2. Respondent Patrick W. Arabia of 150 Palm Avenue, Palm Island, Miami Beach, Florida (Consent to Withdrawal of Counsel, filed 11-18-63), and Eugene T. Valentine of 2030 Central Avenue, St. Petersburg, Florida, were officers of the Washington, D.C. corporate respondent until March 2, 1962; and Lea W. Pelet of 1221 G Street, N.W., Washington, D.C., was an officer of the Washington, D.C. corporate respondent until February 15, 1963. (Answers filed 4-19-63, and Tr. 72-74). There is no showing, however, that the respondents named in this paragraph no longer cooperate with the other respondents as hereinafter found, and such cooperation is admitted by the present answer (also see Tr. 232-235).

3. Respondent George J. Strombos is Manager of the Washington, D.C. corporate respondent and also participates in the control of its daily activities. His address is the same as that of said corporate respondent.

4. All of the aforesaid respondents cooperate with the corporate respondent Fred Astaire Dance Studios Corporation, hereinafter referred to, in formulating the policies and in the direction and control of the acts and practices of the Washington, D.C. corporate respondent, including the acts and practices hereinafter set forth.

5. The Washington, D.C. corporate respondent is now, and for some time has been, engaged in conducting dancing schools wherein courses of instruction in various types of dancing are offered to the public in Washington, D.C., and surrounding areas.

6. Respondent Fred Astaire Dance Studios Corporation (hereinafter referred to as the respondent New York corporation) is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 304 Lincoln Road, Miami Beach, Florida. (Answers filed 4-19-63 and 8-26-63.)

7. The respondent New York corporation grants licenses to various corporations and individuals in cities throughout the United States, including the Washington, D.C. corporate respondent, to operate dance studios wherein the "Fred Astaire Method of Dancing" is taught. In return for said license privilege, among other things, such licensees pay said licensor, in addition to the initial amount paid for the license, a percentage of the gross monetary receipts realized by such licensees from the operation of said schools. Also said licensor exercises certain control over said licensees' business operations involved in the conduct of the studios' activities, such as reserving the right to approve all advertising matter used by said licensees in the conduct of their schools, authority to send dance instructors to train licensees' instructors, the cost thereof to be borne by said licensees, and to require said licensees to recognize that they are component parts of a chain of dance studios operating under licensor's name throughout the country.

8. In the course and conduct of the aforesaid business, advertising matter, contracts, letters, checks, written instruments and other communications are and have been sent and received between the respondent New York corporation and the other respondents at their respective places of business in New York, New York, and in Washington, D.C. In addition thereto, the Washington, D.C. corporate respondent is now, and has been for several years, engaged in the advertising and promotion of the aforesaid business by means of radio broadcasts, newspaper advertisements, telephone solicitations, and in various other ways within the District of Columbia and in surrounding areas. As a result thereof all of the respondents are

now and have been at all times mentioned herein engaged in extensive commercial intercourse in commerce as "commerce" is defined in the Federal Trade Commission Act.

9. In the course and conduct of their aforesaid business, and for the purpose of attracting prospective students to their studios and for the ultimate purpose of selling them a course or a series of courses of dancing instruction, the respondents have offered many inducements and made many statements and employed various tactics by means of radio broadcasts, telephone calls, oral representations, use of newspaper advertisements and in various other ways.

10. Such inducements consisted of appeals to lonely and to aged people, among others, who wished to become good dancers, enjoy parties, enlarge their circle of friends and acquaintances and, in some instances, to find employment as dancing instructors.

11. Illustrative and typical of respondents' aforesaid practices are the following:

(a) They conduct telephone quizzes in which they state to prospects that the winners of such quizzes will be eligible for a given number of free dancing lessons.

(b) In other representations made over the radio and thru other media, respondents state that:

(1) a given number of dancing lessons will be given at a reduced price,

(2) "Gold awards" and various other awards denoting various degrees of dancing proficiency are obtainable by persons taking their said dance courses, without disclosing the pertinent facts and conditions surrounding the winning of such awards, and

(3) persons who purchase their courses of instruction will be invited as free guests to certain parties given by respondents where they will meet many interesting people and enlarge their circle of acquaintances and friends.

12. In truth and in fact:

(a) Winners of the aforesaid quizzes and persons responding to said special offers of free dance lessons or lessons at a reduced rate are not, as a rule, furnished a full time or bona fide course of dance instruction, as promised. On the contrary, a substantial portion of the time promised by respondents to be devoted to dance instruction is devoted instead to efforts on the part of respondents, or their agents, to sell said students additional dancing lessons. In the event said students refuse to purchase additional courses of instruction, thereafter they are ignored, embarrassed and treated as unwelcomed persons.

(b) In some instances, part of the dancing instruction promised is furnished only upon the previously undisclosed condition that additional lessons must be purchased.

(c) The "Gold Awards" are given only upon the completion of a three-year course of instruction in respondents' dance courses, a fact not disclosed in their initial advertising.

(d) Some students who enroll in respondents' said courses are not invited to respondents' parties, as promised. Therefore, the respondents' aforesaid statements and representations as described and referred to in Paragraph 11 hereof are false, misleading and deceptive.

13. In the course and conduct of their business, the respondents announce in radio broadcasts currently in use that they will give "free" a \$100 Government Bond to the person calling a given telephone number.

14. In truth and in fact, to the person calling such number it is announced that the answerer is a representative of the Fred Astaire Dance Studio. When queried about the \$100 Government Bond gift, the caller is advised that in order to qualify for such a "gift" it will be necessary for the caller to come down to the studio and sign a contest entry blank. The contest entry blank turns out to be a contract for the purchase of a course of dancing instruction and the "free" Government bond is to be applied on the tuition fee charged for the dancing course. Therefore the respondents' representation referred to in Paragraph 13 hereof is false, misleading and deceptive.

15. In the course and conduct of their aforesaid business, respondents have, for the purpose of selling initial and supplemental courses of dance instruction, employed other unfair, misleading and coercive tactics, among which are the following:

(a) The use of "relay salesmanship", involving successive efforts of a number of different representatives who, by force of numbers and unrelenting sales talks, and aided by hidden listening devices monitoring conversation with the prospect or pupil, attempt to persuade and do persuade a lone prospect or pupil to sign a contract for dancing instruction.

(b) The use of blank or partially filled out contract forms whereby the pupil or prospective pupil is led to believe his financial obligation is substantially less than what respondents or their representatives consider due and payable.

16. In their efforts to procure dancing instructors and for the further purpose of selling their courses of dancing instruction, the respondents advertised in the "Help Wanted" sections of Washing-

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ton, D.C. daily newspapers that they were offering to pay \$3 per hour for dancing instructors.

17. In truth and in fact, upon answering such advertisements, applicants were informed that the \$3 per hour referred only to instructors who held respondents' "Gold Award" which took three years of respondents' training to obtain. Some of such applicants were offered a job at \$1.50 per hour; others were promised such jobs only upon certain conditions, among which was the purchase of a course or courses of respondents' instruction in the Fred Astaire Method of Dancing and the satisfactory completion of same. The representation referred to in Paragraph 16 hereof was therefore false, misleading and deceptive.

18. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition in commerce with corporations, firms and individuals likewise engaged in the sale of dancing instruction courses.

CONCLUSIONS

1. 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' courses of dance instructions by reason of said erroneous and mistaken belief.

2. The aforesaid acts and practices of respondents, as herein found, 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.

ORDER

It is ordered, That respondent Fred Astaire Dance Studio, Washington, D.C., Inc., a corporation, and its officers, and respondents Patrick W. Arabia, Eugene T. Valentine, and Lea W. Peclet, individually and as officers of said corporation, and George J. Strombos, individually and as Manager of said corporation, and respondent Fred Astaire Dance Studios Corporation, a corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the solici-

tation, advertising or sale of lessons or courses of dancing instruction in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, by means of radio broadcasts, newspaper advertisements, telephone quizzes, or by any other means, that a course of dancing instruction or a specified number of dancing lessons, or any other service or thing of value, will be furnished free of charge, at a reduced price, or for any price, unless the period or periods of bona fide dancing instruction or other service or thing of value is in fact furnished as represented.

2. Refusing to honor the terms and provisions of any offer or promise.

3. Failing or refusing to disclose the terms and conditions of any offer of prizes, awards, gifts or invitations to parties.

4. Requesting pupils or prospective pupils to sign uncompleted contracts or agreements or misrepresenting to pupils or prospective pupils what is or will be due or payable.

5. Using in any single day "relay salesmanship," that is, consecutive sales talks or efforts of more than one representative, with or without the employment of hidden listening devices, to induce the purchase of dancing instruction.

6. Representing in any manner that dancing instructor jobs are obtainable at their studio where the purpose of such offer is to induce applicants to purchase respondents' courses of instruction or representing that such instructors will be paid \$3 per hour, or any other amount, unless such is the fact.

7. Falsely representing to or assuring pupils or prospective pupils that a given course of dancing instruction will enable him or her to achieve a given standard of dancing proficiency.

8. Contracting with a pupil or prospective pupil for a specific course of dancing instruction and thereafter, prior to the completion of the given course, subjecting such pupil or prospective pupil to sales effort toward the purchase of additional lessons, unless (a) any contract for additional lessons is subject to cancellation by such pupil or prospective pupil, with or without cause, at any time up to and including one week after the completion of the units of dancing instruction previously contracted for, without cost or obligation, except that a charge may be made for not in excess of two additional lessons furnished during such week and (b) all of such units previously contracted for shall be used or completed prior to the commencement of the additional lessons.

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9. Using any technique or practice similar to those set out in Paragraphs 4 through 8 hereof to mislead, coerce, or induce by other unfair or deceptive means the purchase of dancing instruction.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF
COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, effective August 1, 1963, the initial decision of the hearing examiner shall on the 12th day of March, 1964, 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

CENTRAL LINEN SERVICE CO., INC. *

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

Docket 8558. Complaint, Mar. 6, 1963—Decision, Mar. 13, 1964

Order requiring a corporation engaged in the linen supply business in the District of Columbia, Maryland, and Virginia, to cease cooperating with 12 other linen suppliers in the same area to allocate and trade customers among themselves, to refuse to service competitors' customers except with such competitors' permission and to notify competitors when certain of their accounts had asked for service, and to falsely disparage competitors and their operations.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (38 Stat. 717, 15 U.S.C.A. Sec. 41, et seq., 52 Stat. 111), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the party listed in the caption hereof, and hereinafter more fully described, has violated the provisions of Section 5 of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public

* The Commission accepted a consent order, docket No. 8559, to cease and desist against the other alleged conspirators in this proceeding, p. 1356 herein.

interest, hereby issues its complaint against the party named herein as respondent, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Central Linen Service Co., Inc., 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 2149 Queens Chapel Road, N. E., Washington, D. C. Said respondent is engaged in the linen supply business in the District of Columbia, Maryland and Virginia and in 1957 had an approximate volume for linen rentals of \$300,000.

PAR. 2. Various corporations not made respondents herein participated as co-conspirators with the respondent in the conspiracy, combination and agreement charged herein and performed acts and made statements in furtherance of said conspiracy, combination and agreement. Said co-conspirators included among them the following:

American Linen Service Co., Inc., a corporation organized, and existing under the laws of the District of Columbia with offices in Washington, D. C. C & C Linen Service, Inc., a corporation organized and existing under the laws of the State of Maryland, with offices in Washington, D. C. Capitol Towel Service Company, Inc., a corporation organized and existing under the laws of the State of Maryland with offices in Washington, D. C. District Linen Service Company, Incorporated, a corporation organized and existing under the laws of the District of Columbia, with offices in Washington, D. C. Elite Laundry Company of Washington, D. C., Incorporated, a corporation organized and existing under the laws of the State of Virginia with offices in Washington, D. C. Modern Linen Service, Inc., a corporation organized and existing under the laws of the State of Maryland, with offices in Washington, D. C. National Laundry and Linen Service, Inc., a corporation organized and existing under the laws of the District of Columbia, with offices in Washington, D. C. Palace Laundry, Inc., a corporation organized and existing under the laws of the State of Delaware, with offices in Arlington, Virginia. Palace Linens, Inc. and Standard Linen Supply, Inc., both wholly-owned subsidiaries of Palace Laundry Inc., are corporations organized and existing under the laws of the State of Virginia with offices in Arlington, Virginia. Quick Service Laundry Company, a corporation organized and existing under the laws of the State of Delaware, with offices in Washington, D. C. The Tolman Laundry, doing business as the Washington Linen Service, a corporation organized and existing under the laws of the District of Columbia, with offices in Washington, D. C.

PAR. 3. The linen supply business consists of leasing and delivering clean linens at recurrent intervals, generally of one week or less

by respondent, and the above-named corporations not made respondents herein, to users located in the States of Maryland and Virginia and the District of Columbia in connection with the users' trade, business or profession. Part of the service consists in the removal of soiled linens for which the clean linens are replacements. The respondent linen supplier regularly causes such soiled linens to be transported from its customers' places of business located in the States of Maryland and Virginia and the District of Columbia to laundries, and after laundering they are again regularly caused to be transported by the respondent linen supplier from the laundries to its customers for reuse. Accordingly, there has been and is now a constant and continuous current and flow in interstate commerce of such linen supplies between respondent and its customers located in the States of Maryland and Virginia and the District of Columbia. Respondent, therefore, is engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. The linen supply market in the Washington, D.C., metropolitan area, which consists of the District of Columbia, the Cities of Alexandria and Falls Church, Virginia, the Counties of Arlington and Fairfax, Virginia and the Counties of Montgomery and Prince Georges, Maryland, is dominated by the various corporations not made respondents herein and by respondent herein, who are the major suppliers in this market.

PAR. 5. For many years, and continuing to the present time, respondent and the various corporations not made respondents herein, have maintained, effectuated and carried out, and maintain, effectuate, and carry out a conspiracy, combination, agreement and understanding in the rental of linen supplies in the metropolitan area of Washington, D.C. as more fully set out below. The respondent and the various corporations not made respondents herein entered this conspiracy at varying times and contributed to carrying it out and to its effect by different means and methods.

PAR. 6. As a part of, pursuant to and in furtherance of the aforesaid agreement, understanding, combination and conspiracy, respondent and the various corporations not named respondents herein, have for many years past and continuing to the present time, combined, conspired, agreed, and cooperated between and among themselves and others to control the solicitation and allocation of customers by various means and methods of which the following are typical, but not all inclusive:

1. Agreed among themselves and with others not to solicit the customers of certain of their competitors.

2. Instructed their salesmen not to solicit the accounts of certain competitors.

3. Refused to service customers of certain competitors even though such accounts requested their service.

4. Requested and secured permission of certain of their competitors to service the customers of such competitors.

5. Traded customers between and among themselves.

6. Warned competitors that certain of their accounts had approached respondent for service in order that such competitors could take measures to hold such accounts.

7. Made or caused to be made false and disparaging remarks concerning the financial standing, business integrity, and quality of service of new competitors attempting to enter the metropolitan Washington, D.C. linen supply market.

8. Offered the customers or prospective customers of new competitors in the metropolitan Washington, D.C. area free service or rentals below cost for the purpose of impairing the ability of newcomers to compete in the linen supply business.

PAR. 7. Further contributing to the elimination of competition between and among respondent and the various corporations not made respondents herein and to the effects of the agreement, understanding, combination and conspiracy, has been the utilization by respondent and certain of the various corporations not made respondents herein of requirements contracts. Such contracts requiring customers to take all their linen supplies from one supplier are characterized by unreasonably long term contracts and lengthy automatic renewal after the expiration date, with inadequate provision for cancellation by customers of respondent and the various corporations not made respondents herein.

PAR. 8. Commencing on or about 1953, American Linen Service Co., Inc., Elite Laundry Company of Washington, D.C., Incorporated and National Laundry and Linen Service, Inc., either directly or indirectly acquired fifty percent of the preferred and the voting common stock of the C & C Linen Service, Inc. Said corporations not made respondents herein, at that time constituted four of the five largest of the eleven major linen suppliers in the metropolitan Washington, D.C. area. As a result of such stock acquisition, the related voting arrangement and the use of interlocking directors and officers, competition that normally would have existed and did exist to a certain extent between and among these particular corporations not made respondents herein was restrained, hindered and substantially eliminated, thus further contributing to the deterioration of compe-

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tition in this market. The foregoing relationship was not dissolved until on or about March of 1961.

PAR. 9. New entrants to the linen supply market in the metropolitan, Washington, D.C. area, have been hindered, handicaped and prevented from competing successfully in the linen supply business because of the unfavorable competitive climate present in this market and brought about by the unfair practices and conditions hereinbefore described.

Some of these concerns have been acquired by corporations not made respondents herein, thus removing them as competitive factors in this market. The purchase agreement placed these linen supply operators under restrictive covenants, prohibiting a return to the linen supply business, in many cases, for periods exceeding five years. These acquisitions coupled with the unreasonable length of the restrictive covenants have been an important factor in contributing to the anti-competitive practices in this market and facilitated these corporations not made respondents herein in placing in effect and carrying out the agreement, understanding, and conspiracy as herein alleged.

For example, in June 1953, the linen supply business of Columbia Linen Service, Inc., was purchased by National Laundry and Linen Service, Inc., then operating as National Laundry Company; in December 1955, the linen supply business of Union Linen Service, Inc., was purchased by Palace Laundry, Inc.; in April 1956, the linen supply business of Capital Laundry, Inc. was purchased by C & C Linen Service; in April 1959, the stock of Lovely Linens, Inc., was acquired by the C & C Linen Service, Inc.

PAR. 10. The agreement, understanding, combination and conspiracy, and the acts and practices of respondent and the corporations not made respondents herein pursuant to and in furtherance of, or in contribution to same, as alleged herein, have had and do now have the effect of hindering, lessening, restricting, restraining, destroying and eliminating competition, actual and potential, in the rental of linen supplies; have deprived customers of the benefits of full and free competition and seriously hampered their exercising free choice in the selection of their suppliers; have had and do now have a tendency to unduly hinder competition or to create a monopoly in respondent and the corporations not made respondents herein; have constituted an attempt to monopolize; have foreclosed markets and access to markets to competitors or potential competitors in the linen supply business; and are all to the prejudice and injury of competitors of respondent and the corporations not named respondents

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herein and to the public; and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Mr. Henry I. Lipsky, Miss Deanna Burger, supporting the complaint.

Mr. Hyman Ginsberg, of Baltimore, Md., for respondent.

INITIAL DECISION BY ELDON P. SCHRUP, HEARING EXAMINER

JANUARY 31, 1964

STATEMENT OF PROCEEDINGS

The Federal Trade Commission on March 6, 1963, issued its complaint charging Central Linen Service Co., Inc., with violation of Section 5 of the Federal Trade Commission Act. The complaint alleges the respondent to be engaged in the linen rental supply business in the District of Columbia, Maryland and Virginia, and to have participated in a conspiracy, combination, understanding and agreement with various other linen rental suppliers so engaged, to the effect of hindering, lessening, restricting, restraining, destroying and eliminating competition, actual and potential, in the linen rental supply business in the said market area.

Respondent and these various other linen rental suppliers so engaged but not named as respondents in the instant complaint¹ are alleged to be the major suppliers in and to dominate the linen rental supply business in the aforesaid market area and to have combined, conspired, agreed and cooperated between and among themselves to control the solicitation and allocation of linen rental customers in the said area by the following means and methods:

1. Agreed among themselves and with others not to solicit the customers of certain of their competitors.
2. Instructed their salesmen not to solicit the accounts of certain competitors.

¹These other alleged co-conspirator linen rental suppliers not named as respondents in the instant complaint include the respondents in Docket No. 8559, *In the Matter of American Linen Service Co., Inc.*, [p. 1356 herein] a corporation; C & C Linen Service, Inc., a corporation; Capitol Towel Service Company, Inc., a corporation; District Linen Service Company, Incorporated, a corporation; Elite Laundry Company of Washington, D. C., Incorporated, a corporation; Modern Linen Service, Inc., a corporation; National Laundry and Linen Service, Inc., a corporation; Palace Linens, Inc., a corporation; Quick Service Laundry Company, a corporation; Standard Linen Supply, Inc., a corporation; The Tolman Laundry, a corporation, doing business as Washington Linen Service.

The respondent linen rental suppliers in Docket No. 8559 are presently subject to a March 6, 1963 Commission order accepting consent agreement and deferring service of decision and order to cease and desist pending issuance of the Commission decision in the instant matter.

3. Refused to service customers of certain competitors even though such accounts requested their service.
4. Requested and secured permission of certain of their competitors to service the customers of such competitors.
5. Traded customers between and among themselves.
6. Warned competitors that certain of their accounts had approached respondent for service in order that such competitors could take measures to hold such accounts.
7. Made or caused to be made false and disparaging remarks concerning the financial standing, business integrity, and quality of service of new competitors attempting to enter the metropolitan Washington, D. C. linen supply market.
8. Offered the customers or prospective customers of new competitors in the metropolitan Washington, D. C. area free service or rentals below cost for the purpose of impairing the ability of newcomers to compete in the linen supply business.

The complaint in the instant matter additionally alleges that further contributing to the elimination of competition between and among the respondent and the aforesaid other linen rental suppliers is the mutual utilization of customer requirement contracts of unreasonably long terms and lengthy automatic renewals with inadequate cancellation provisions tending to tie a customer to a particular supplier. It is also alleged that certain acquisitions of business competitors by some of the said other suppliers, together with the ensuing restrictive covenants not to compete exacted in such connection, acted to create an unhealthy competitive climate operating both to bar new business entrants into the aforesaid market area as well as furthering the aforesaid alleged anti-competitive practices of the respondent and its alleged co-conspirators therein.

Respondent and its said alleged co-conspirators are charged to have thus deprived linen rental customers of the benefits of full and free competition and to have seriously hampered the exercise of free choice in their selection of linen rental suppliers, and, further, to have foreclosed the aforesaid market area and access thereto by actual or potential competitors engaged in the linen rental supply business and attempting to do business in the said market.

Respondent filed an answer on April 3, 1963. Said answer admits in part and denies in part the various allegations of the complaint and avers that the acts and practices set forth and described in the instant complaint were not participated in by the respondent, but, to the contrary, were done by the other linen rental suppliers named therein for the purpose of injuring the present respondent. Respond-

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ent's answer, in asking dismissal of the complaint, concludes and avers as follows:

That further answering the Complaint, the Respondent says that heretofore, on numerous occasions, the Respondent complained to this Honorable Commission of the various acts and practices done by certain Corporations which are not made respondents in the Complaint, and informed the said Commission that an agreement, understanding, combination and conspiracy existed among certain corporations not made respondents in this Complaint for the purpose of injuring the Respondent by restricting, restraining, destroying and eliminating competition, actual and potential, in the rental of linen supplies in the area referred to in the Complaint and requested the Commission to take action against certain corporations which are not made respondents in this Complaint.²

Following a motion by counsel supporting the complaint, a prehearing conference by agreement of respective counsel was set for Washington, D. C. on May 3, 1963. The prehearing conference was reconvened on May 15, 17, 24, 29 and 31, 1963, and by agreement of the parties made a part of the record herein.³ A hearing on the merits was held in Washington, D. C. on June 3, 1963, through June 7, 1963, and upon the request of the respondent's corporate officials⁴ then adjourned until June 11, 1963.⁵ The hearing was resumed on July 1, 1963, and continuously proceeded through August 9, 1963, when the case was closed on the record.⁶

Respondent, on October 11, 1963, filed a motion to reopen the case for the limited purpose of bringing in certain alleged material matter stated to have been discovered since the case was closed.⁷ This motion

² The above pleading in respondent's answer to the allegations of the complaint was the subject of a motion by counsel supporting the complaint and a ruling on the record that it constituted an admission by respondent of the existence of the conspiracy alleged in the complaint, but that it did not further serve as an admission or proof of the respondent's participation therein, which remained to be shown by the complaint counsel. See discussions by counsel and the Hearing Examiner at Tr. 294-301; 2216-2221; 2240-2241.

³ Tr. 45; 162; 241; 290-291; 293.

⁴ Upon the withdrawal of counsel of record, as hereinafter related, respondent's corporate officials made the showing of adequate authorization required and proceeded to represent the respondent as provided for in Section 4.1, Appearances (2) of the Commission's Rules of Practice.

⁵ Counsel of record for the respondent had withdrawn from the case during the prehearing conference of May 17, 1963, for reason of respondent's officials' election to personally conduct the corporate respondent's defense. A certificate of necessity was certified to the Commission on June 11, 1963, explaining respondent's requested need of again obtaining legal counsel and the asked for postponement of the hearing until July 1, 1963. The Commission, on June 17, 1963, granted leave for such requested holding of a non-continuous hearing and respondent's former counsel re-entered the case on July 1, 1963, to its final closing of record on November 20, 1963.

⁶ Tr. 3020.

⁷ Respondent's counsel, in conjunction with the prior filing of proposed findings, conclusions and brief, had also submitted a document entitled "Petition". Upon being informed that the record was closed and that such document could not be considered, the motion to reopen was filed.

for such limited purpose was granted over the opposition of complaint counsel and a hearing was held on October 24, 1963, and then adjourned until November 20, 1963, to allow complaint counsel the opportunity of presenting a witness in explanation and rebuttal, following which the case was then again closed on the record.

The transcript of testimony consists of 3,114 pages. In addition to the numerous documentary exhibits herein admitted of record, thirty-eight witnesses were called to testify in support of the allegations of the complaint, and respondent presented eighteen witnesses in opposition thereto.⁸

All counsel were afforded full opportunity to be heard, to examine and cross-examine all witnesses presented, and to introduce such evidence as is provided for under Section 3.14(b) of the Commission's Rules of Practice for Adjudicative Proceedings.

Proposed findings of fact, conclusions and briefs, together with various supporting memoranda and replies, were filed by respective counsel, and counsel supporting the complaint submitted a proposed order to cease and desist. Proposed findings and conclusions submitted and not adopted in substance or form as herein found and concluded are hereby rejected.

After carefully reviewing the entire record in this proceeding as hereinabove described, and based on such record and the observation of the witnesses testifying herein, the following Findings of Fact and Conclusions therefrom are made, and the following Order issued:

FINDINGS OF FACT

1. Central Linen Service Co., Inc., hereinafter sometimes referred to as "respondent", 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 2149 Queens Chapel Road, N.E., Washington, D.C. Respondent is engaged in the linen rental supply business in the District of Columbia, Maryland and Virginia. Respondent operates one division which trades as the University Linen Service. The University Linen Service is engaged in the business of renting bed linens, towels, and similar items to students attending nearby colleges and universities.

Respondent was incorporated in the State of Maryland on October 19, 1946, and is owned and operated by the Pear family. Henry Pear, President, Ethel Pear, Vice President, and Edith Pear Plesset, Secretary-Treasurer hold the stock of the corporation and are the

⁸ Some of the witnesses called to testify in support of the allegations of the complaint were later recalled by the respondent in the presentation of its defense.

Directors of the corporation. Sam Pear and Joseph Pear are employees of the corporation.

Respondent has two wholly-owned subsidiaries; Complete Linen Service and Acme Household Linen Rental Service. Complete Linen Service was incorporated in the State of Maryland in 1957 and is engaged in the linen rental supply business in the metropolitan Baltimore, Maryland market area. Respondent's officers and directors are the officers and directors of Complete Linen Service. Acme Household Linen Rental Service was incorporated in the District of Columbia in 1949 and is engaged in the linen supply business at the consumer level and rents linens to homes. The officers and directors of the corporation are as follows: Sam Pear, President, Henry Pear, Vice President, and Edith Pear Plessett, Secretary-Treasurer. Acme Household Linen Rental Service is operated as a division of respondent.⁹

2. American Linen Service Co., Inc., hereinafter sometimes referred to as "American", is a corporation organized and existing under the laws of the District of Columbia, with its office and principal place of business located at 2306 Georgia Avenue, N.W., Washington, D.C. American Linen Service Co., Inc. is engaged in the linen rental supply business in the District of Columbia, Maryland and Virginia.

American Linen Service Co., Inc., was incorporated in the District of Columbia on February 13, 1957. Prior to 1957, American Linen Service Company was the co-partnership of Ben E. Singer and Joseph L. Fradkin and was established in September, 1932. Ben E. Singer was General Manager of the American Linen Service Company and is President of the American Linen Service Co., Inc.

American Linen Service Co., Inc.'s laundry is processed by American Laundries, Inc., 2306 Georgia Avenue, N.W., Washington, D.C. American Linen Service Co., Inc. is its exclusive customer. American Laundries, Inc. is owned and operated by Ben E. Singer and Joseph L. Fradkin.¹⁰

3. C & C Linen Service, Inc., hereinafter sometimes referred to as "C & C", is a corporation organized and existing under the laws of the State of Maryland, with its office and principal place of business located at 14th and R Streets, S.E., Washington, D.C., C & C Linen Service, Inc. is engaged in the linen rental supply business in the District of Columbia, Maryland and Virginia.

C & C Linen Service, Inc., was incorporated in the State of Maryland in 1953 and has one wholly-owned subsidiary corporation, Car-

⁹ Admitted in paragraph one of answer; Tr. 1853-1856; 1862-1866.

¹⁰ Tr. 1001-1004; 1052-1054.

roll Laundry, Inc. Edward J. Clarke is President and Treasurer of C & C and is the operating head of the corporation.

Prior to February, 1963, C & C operated two additional wholly-owned subsidiary corporations known as Clarke Laundries Corporation and Lovely Linens, Inc. In February, 1963, both corporations were dissolved.¹¹

4. Capitol Towel Service Company, Inc., hereinafter sometimes referred to as "Capitol Towel", is a corporation organized and existing under the laws of the State of Maryland, with its office and principal place of business located at 500 Emerson Street, N.E., Washington, D.C. Capitol Towel Service Company, Inc. is engaged in the linen rental supply business in the District of Columbia, Maryland and Virginia.

Capitol Towel Service Company, Inc. is operated by its Vice President and General Manager, Robert H. Wildman. Mr. Wildman has been Vice President and General Manager of Capitol Towel since 1947 and formulates and directs the policies of the company.¹²

5. District Linen Service Company, Incorporated, hereinafter sometimes referred to as "District", is a corporation organized and existing under the laws of the District of Columbia, with its office and principal place of business located at 56 L Street, S.E., Washington, D.C. District Linen Service Company, Incorporated is engaged in the linen rental supply business in the District of Columbia, Maryland and Virginia.

The District Linen Service Company, Inc., was incorporated in the District of Columbia in 1960. Prior to incorporation, the District Linen Service was a partnership trading as George E. Callas and George G. Heon. The partnership was formed in October of 1938. District Linen Service Company, Inc.'s officers and directors are as follows: President, George E. Callas, Vice President (Honorary), Mrs. George E. Callas, Vice President (Honorary), Mrs. George G. Heon, Secretary-Treasurer, George G. Heon.¹³

6. Elite Laundry Company of Washington, D.C., Incorporated, hereinafter sometimes referred to as "Elite", is a corporation, organized and existing under the laws of the State of Virginia, with its office and principal place of business located at 2119 - 14th Street, N.W., Washington, D.C. Elite Laundry Company of Washington, D.C., Incorporated is engaged in the linen rental supply business in the District of Columbia, Maryland and Virginia.

¹¹ Tr. 513-516; 526-527; 696; 1564-1565.

¹² Tr. 891-894.

¹³ Tr. 1499-1505.

Elite Laundry Company of Washington, D.C., Incorporated was incorporated in the State of Virginia in 1907. George Y. Klinefelter is President of Elite Laundry Company of Washington, D.C. Incorporated. He has been President since 1946. Other officers are: George Y. Klinefelter, Jr., Vice President, Brent H. Farger, Jr., Secretary and Herbert M. Day, Treasurer.¹⁴

7. Modern Linen Service, Inc., hereinafter sometimes referred to as "Modern", is a corporation organized and existing under the laws of the State of Maryland, with its office and principal place of business located at 5011 Creston Street, Hyattsville, Maryland. Modern Linen Service, Inc. is engaged in the linen rental supply business in the District of Columbia, Maryland and Virginia.

Modern Linen Service, Inc., was incorporated in the State of Maryland in 1950. George Peter Cokinos is President and Manager of Modern Linen Service, Inc. Other officers are: T. D. Sclavounous, Secretary, Catherine Sclavounous, Treasurer, and Bebe Cokinos, Vice President.

Modern Linen Service, Inc., was a "bobtailer" until January of 1962. A "bobtailer" in the linen supply business is a linen supply service without its own plant facilities. A "bobtailer" must depend on someone else to process its linen.¹⁵

8. National Laundry and Linen Service, Inc., hereinafter sometimes referred to as "National", is a corporation organized and existing under the laws of the District of Columbia, with its office and principal place of business located at 2035 West Virginia Avenue, N.E., Washington, D.C. National Laundry and Linen Service, Inc., is engaged in the linen rental supply business in the District of Columbia, Maryland and Virginia.

National Laundry and Linen Service, Inc. was incorporated in the District of Columbia in 1956. Louis Decker is Treasurer and General Manager of the National Laundry and Linen Service, Inc. Other corporate officers are: Sam Decker, President and Elaine Decker, Vice President and Secretary.¹⁶

9. Palace Laundry, Inc., hereinafter sometimes referred to as "Palace", together with its wholly-owned subsidiaries, Palace Linens, Inc. and Standard Linen Supply, Inc., hereinafter sometimes referred to as "Palace Linen" and "Standard", all doing business as "Linens of the Week", are corporations organized and existing under the laws of the State of Delaware with their office and principal

¹⁴ Tr. 1533-1536.

¹⁵ Tr. 1234-1235; 1250.

¹⁶ Tr. 1257-1260.

place of business located at 1659 North Ft. Myer Drive, Arlington, Virginia. Palace Laundry, Inc. is engaged in the linen rental supply business in the District of Columbia, Maryland and Virginia.

Palace Laundry, Inc., Standard Linen Supply, Inc., and Palace Linens, Inc. were each incorporated in the State of Delaware in approximately 1953. Robert L. Viner is President and Treasurer of Palace Laundry, Inc., and is the operating head of the business. Leonard Viner, Vice President of Palace Laundry, is Robert Viner's brother and is not active in the operation of the business. David Bress, Robert L. Viner's attorney, is Secretary.

Palace Laundry, Inc., together with its wholly-owned subsidiaries, operate under the registered trade name "Linens of the Week". This trade name has been in use since 1956. Palace Laundry, Inc., Standard Linen Supply, Inc., and Palace Linens, Inc., are separate corporations. Standard Linen Supply, Inc., and Palace Linens, Inc., operate as divisions of Palace Laundry, Inc. Each corporation does a different type of linen supply work. Palace Linens, Inc. owns and rents articles such as sheets, pillow cases and bath towels. Standard Linen Supply, Inc. is responsible for all other linen rental items and services.¹⁷

10. Quick Service Laundry Company, hereinafter sometimes referred to as "Quick Service", is a corporation organized and existing under the laws of the State of Delaware, with its office and principal place of business located at 1016 Bladensburg Road, N.E., Washington, D.C. Quick Service Laundry Company is engaged in the linen rental supply business in the District of Columbia, Maryland and Virginia.

Quick Service Laundry Company was incorporated in the State of Delaware in 1935. Quick Service Laundry Company's officers and directors are: President, Penelope Papachrist Choatis, Vice President, George E. Choatis, Treasurer, Stephen J. Demas, and Secretary, Nicholas S. Demas. Nicholas S. Demas is Assistant Manager of Quick Service Laundry Company.¹⁸

11. The Tolman Laundry, doing business as the Washington Linen Service, hereinafter sometimes referred to as "Washington Linen", is a corporation organized and existing under the laws of the District of Columbia with its office and principal place of business located at 5248 Wisconsin Avenue, Washington, D.C. The Tolman Laundry is engaged in the laundry, dry cleaning and linen rental supply business in the District of Columbia, Maryland and Virginia.

¹⁷ Tr. 1315-1326; 1368.

¹⁸ Tr. 1201-1212.

The Tolman Laundry was incorporated in the District of Columbia on October 2, 1902 and operates two divisions: The Washington Linen Service and Tolman Laundry Wholesale Dry Cleaning Service, both located in Silver Spring, Maryland. The Washington Linen Service is engaged in the linen rental supply business in the District of Columbia, Maryland and Virginia. William G. Hawkins is General Manager of The Washington Linen Service. Walter F. Brauns, Treasurer of The Tolman Laundry, is active in the operation of the business.¹⁹

12. The various linen rental suppliers named above, excepting respondent, are sometimes hereinafter referred to collectively as "corporations not made respondents herein."

The geographical market area involved herein is the Washington, D.C. metropolitan area, which consists of the District of Columbia, the cities of Alexandria and Falls Church, Virginia, the counties of Arlington and Fairfax, Virginia and the counties of Montgomery and Prince Georges, Maryland.²⁰ This geographic market area is hereinafter referred to as the Washington, D.C. metropolitan area.

The linen rental supply business consists of leasing and delivering clean linens at recurrent intervals, generally of one week or less by respondent, and the above-named corporations not made respondents herein, to users located in the States of Maryland and Virginia and the District of Columbia in connection with the users' trade, business or profession. Part of the service consists in the removal of soiled linens for which the clean linens are replacements. The respondent and the said named linen suppliers regularly cause such soiled linens to be transported from their customers' places of business located in the States of Maryland and Virginia and the District of Columbia to laundries, and after laundering they are again regularly caused to be transported by the respondent and the said linen suppliers from the laundries to their customers for reuse. Accordingly, there has been and is now a constant and continuous current and flow in interstate commerce of such linen supplies between respondent, the said linen suppliers, and their respective customers located in the States of Maryland and Virginia and the District of Columbia. Respondent and the said linen suppliers, therefore, are engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act.²¹

¹⁹ Tr. 1485-1486; 1497.

²⁰ Admitted in paragraph four of answer; Tr. 193.

²¹ Admitted in paragraph three of answer; Tr. 1003 as to "American"; Tr. 516 as to "C & C"; Tr. 882 as to "Capitol Towel"; Tr. 1500 as to "District"; Tr. 1535-1536 as to "Elite"; Tr. 1235 as to "Modern"; Tr. 1259-1260 as to "National"; Tr. 1319 as to "Linens of the Week"; Tr. 1203-1204 as to "Quick Service"; and Tr. 1486 as to "Washington Linen".

13. The linen rental supply business involved in the instant complaint is to be distinguished from the business of industrial linen supply rental in that the former consists of the rental of various linen articles to commercial users, while the latter consists of the rental of various linen articles to industrial users. Linen rental supply and industrial supply rentals are generally considered to be two separate businesses. The end use of the product is the distinguishing characteristic.

Linen rental supply, the subject of the instant complaint, is the rental of such linen articles as sheets, pillow cases, bath towels, hand towels, wash cloths, bath mats, table linens, napkins, aprons, bibs, frocks, jackets, coats, shirts, pants and dresses to commercial users. Linen rental supply products are standard linen articles interchangeable among customers. Standard articles on occasion became special articles for the use of one customer by virtue of the requirement of the customer that its name, trademark or other identifying mark be placed on its linen articles. Commercial users include such businesses as restaurants, hotels, motels, barber shops, beauty parlors, professional offices, business offices, stores and markets. Linen rental supply companies, in addition to renting linens to commercial users, process laundry for commercial concerns that own their own linens. The processing of laundry for businesses owning their own linens is termed "wholesale laundry" and is a minor portion of the business of linen rental supply. The conversion of concerns owning their own linen to rentals of linen is one source of new business for the linen supply industry. Industrial linen supply rental consists of the rental of such linen articles as towels, coveralls, overalls, shirts, pants and other garments to industrial users. Processing and handling of the soiled linen is different. Special formulas are required to remove oil and grease stains from industrial garments. Industrial users include such businesses as gasoline stations, factories, meat packing houses, printing houses and industrial-type concerns.

Some linen articles, such as certain garments, are common to both the commercial and industrial linen industries. The linen rental supplier from whom such garments would be obtained would depend upon the use to which the garment is put by the customer. For example garments used by a gasoline station where they are doing work with grease, like greasing cars and changing oil, would be serviced by an industrial linen supplier. The same blue shirt and pants, originating from the same manufacturer, may be used by a porter or department store where he only sweeps floors and the like. In the latter

case, the customer would be serviced by a commercial linen supplier.²²

14. Respondent Central Linen Service Co., Inc., and the various other aforementioned linen rental suppliers not made respondents herein²³ have been and are the major suppliers²⁴ in, and dominate, the Washington, D. C. metropolitan area linen rental supply market. Respondent and the aforementioned linen suppliers not made respondents herein have continuously accounted for over 90% of the total linen rental supply sales in the said market during the time period 1955 through 1961, as the following tabulation²⁵ graphically shows:

Year	Washington area sales— all companies	Sales by Baltimore and other companies	Sales by Washington companies ¹	Washington companies' percentage of Washington area market
1955-----	\$2,973,598	\$217,428	\$2,756,170	92.69
1956-----	3,416,022	230,083	3,185,939	93.26
1957-----	4,418,978	269,519	4,149,459	93.90
1958-----	5,111,862	282,676	4,829,186	94.47
1959-----	5,293,637	336,901	4,956,736	93.64
1960-----	5,761,391	428,393	5,332,998	92.56
1961-----	6,295,162	574,175	5,720,987	90.88

¹ Includes sales figures of about \$14,000 yearly by 1 small Washington, D.C., based company (Andrew's Linen Service) not named in the complaint as a co-conspirator.

Contributing to the collective domination of the Washington, D. C. metropolitan area linen rental supply market shown by the above tabulation to be held by the respondent and the aforementioned linen rental suppliers, was the acquisition of rival linen rental supply businesses outside the alleged conspiracy but competing with the respondent and the aforementioned co-conspirators in the said market

²² Tr. 513; 539-540; 607; 730; 892; 1003; 1085-1086; 2303-2305; 2372-2377; 2382-2383.

²³ See footnote 1, page 2, *supra*.

²⁴ Respondent's linen rental sales, for example, ranged from \$263,108 for 1955 on up to \$460,666 for 1961. Respondent as a result, usually held a company sales rank of fifth or sixth in the Washington, D. C. metropolitan area market. Compare tables 1 and 2 hereinafter attached to and made part of this initial decision. Tables 1 and 2 are based on exhibits of record in this proceeding and are taken from Appendix A, Proposed Findings of Fact, Conclusions and Order by complaint counsel.

²⁵ From hereinafter attached tables 1 and 2 adopted and made part of this initial decision as set forth in the preceding footnote.

area.²⁶ While the record does not show the additional annual linen rental sales made to customers and potential customers as a result of these acquisitions, or in what amount such acquisitions contributed to the collective market dominance shown on the preceding tabulation,²⁷ it would appear clear that the elimination of this existent competition and the thwarting of its potential growth would to that extent remove an obstacle or threat to the effectiveness and purpose of any conspiracy directed to the obtaining and the holding of the potential or actual linen rental supply customers of the acquired suppliers present in such market. This is particularly so where, as here, pursuant to each acquisition, a covenant not to compete was exacted, which prevented further competition by the seller of the linen rental supply business not only with regard to the seller's customer list then being purchased, but potential customers of such seller as well.²⁸

In the linen rental supply business the securing of a restrictive covenant not to compete in the acquisition or purchase of a rival business appears to be a particularly effective guard against the renewal of additional and further competition in the market concerned. Pertinent to the foregoing is the following testimony herein of record:

Q. Now, the purchase of Union by your company, sir, how much of that involved consideration for assets such as trucks, linen, etc.?

²⁶ The record also discloses instances of various acquisitions, stock or property exchanges or relationships between and among the members or family of the alleged co-conspirators. While such are not shown to have enlarged the aggregate of the conspiracy or to have subsequently increased the over-all share of its collective market domination, it would appear obvious that any consolidation of market power as between co-conspirators would act to further insure the success of a conspiracy to eliminate competition. For example, the relationship challenged in Paragraph Eight of the instant complaint between "American", "Elite", "National" and "C & C", entered into in 1953 and dissolved in early 1961. (See, Tr. 195-197; CX nos. 209, 210)

²⁷ These acquisitions included, as alleged and set forth in Paragraph Nine of the instant complaint, (CX no. 346) the linen supply business of Columbia Linen Service, Inc., by National Laundry and Linen Service, Inc., then operating as National Laundry Company; (CX no. 407) Union Linen Service, Inc., purchased by Palace Laundry, Inc.; (CX no. 462) the linen supply business of Capitol Laundry, Inc. and (CX no. 211) the stock of Lovely Linens, Inc., purchased and acquired by C & C Linen Service, Inc.

²⁸ Among other examples, the sellers of Columbia Linen Service, Inc., signed a 10-year restrictive covenant (CX no. 345) not to engage in the linen rental supply business within a 50 mile radius from the Washington Monument located in Washington, D.C.; the sellers of Union Linen Service, Inc., signed a seven-year restrictive covenant (CX no. 407) not to engage in the linen rental supply business in Silver Spring, Maryland and the metropolitan area of greater Washington, D.C.; the sellers of Capitol Laundry, Inc., signed a ten-year restrictive covenant not to engage in the linen supply business within a 50 mile radius from the White House (CX no. 462), and the sellers of Lovely Linens, Inc., signed a five-year restrictive covenant covering an area within a 25 mile radius of the Washington Monument (CX no. 211). The instant respondent, Central Linen Service Co., Inc., purchased the Neway Towel Supply Co. (CX no. 502) and, in such connection, required the sellers to sign a five-year restrictive covenant not to engage in the linen rental supply business in Washington, D.C., Alexandria, Virginia, or Fairfax or Arlington counties, Virginia.

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A. I recall reading last night that \$35,000 of it was for restrictive covenant, so that the remainder of some \$60,000 (purchase price) would have gone toward trucks, merchandise, new merchandise, and goodwill of customers.

Q. Now, as to the purchase of Standard Linen by your company—How much of that is involved—involved consideration for restrictive covenant?

A. I think—say about \$300,000 of the purchase price.

* * * * *

Hearing Examiner Schrup: I presume the reason you pay that price for the restrictive covenant is to protect the goodwill you are purchasing?

The Witness: Yes, sir. In other words, the linen supply business is usually a personalized business and usually the owner of the business knows his customers very well. He has been down there, gotten the customers, he has settled complaints for them. When the business is sold, if he wanted to, he could go back in business and take half your business right away if he wanted to, because a lot of them are even personal social friends."

* * * * *

Q. Does the restrictive covenant itself, once it is signed, apply to customers of the seller?

A. Plus his going into business in that area again.

Q. For any customers?

A. Any customer; yes, sir.²⁹

It will also be noted in the foregoing connection that attached tables 1 and 2, on which the preceding tabulation is based, show the Washington D.C. metropolitan area linen rental supply market during the time period presented to have been a market relatively closed to concerns other than the respondent and the aforementioned linen rental suppliers not made respondents in the instant proceeding. These tables show 17 linen rental supply companies doing business in the said market from and including 1955 through the year 1961. Twelve of these companies were based in the Washington, D.C. metropolitan area, four in nearby Baltimore, Maryland, and one in the adjacent State of Virginia. Only one of these five companies based outside the Washington metropolitan area and making substantial sales elsewhere was able to successfully penetrate the metropolitan Washington, D.C. market to any sizeable degree.³⁰

An illuminating and vivid testimonial description of the competitive conditions being then confronted in the metropolitan Washington, D.C. area linen rental supply market is found in the record

²⁹ Tr. 2822-2825.

³⁰ The National Linen Service Corporation, d/b/a the Richmond Linen Service and the Fairfax Linen Service, has its office and principal place of business in Atlanta, Georgia. In 1958 it opened a depot in Fairfax, Virginia; in 1962 it opened a plant in Alexandria, Virginia. Prior to 1958, linen supply customers located in the part of Virginia within the Washington, D.C. metropolitan area were served from Richmond, Virginia. It did not engage in business in the District of Columbia until 1963 (CX no. 497; Tr. 1664-1670).

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of this proceeding at Tr. 1409-1469. This uncontroverted testimony by a former owner of one of the linen rental supply companies acquired in this market³¹ deals with attempted bribery, intimidation and reprisals, as well as the frustration of a customer attempting to change suppliers. Pertinent excerpts from this testimony are the following:

Q. Would you explain, Mr. Katz, how you began to serve O'Donnell's Restaurant?

A. Mr. Thomas O'Donnell had an ad in the paper. He had trouble with his linen. He couldn't go to another linen supply, they wouldn't take him, and there was no one else.

Q. Was there any linen supplier supplying O'Donnell's Restaurant?

A. There was only one supplying O'Donnell's and that was Standard Linen.³²

* * * * *

Hearing Examiner Schrup: Do you want to correct your testimony?

The Witness: It is no correction of testimony. The testimony is all right; but with one exception in there. We are already now doing linen with O'Donnell's, but there is one thing there before we took the O'Donnell account.

Q. Go ahead, Mr. Katz.

A. That we had visitors in our plant that tried to stop us from taking the account.

Q. What visitors were they, Mr. Katz?

A. We had Loewinger from the National Linen Supply.

Q. Here in Washington?

A. That is right. He owned National Linen and he was with a man by the name of—oh, I remember him as Archie Zinnamon.

Q. Did they come together?

A. They both came together.

Q. What did they come for?

A. When they walked in, I didn't know what they came for. But the first question is, "How far are you from the O'Donnell account?"

I told him, "As far as this telephone."

He said, "Well, if you want to use this telephone", he said, "I will give you \$5,000."

Q. For what?

A. Not to take the account.

Q. Who said that?

A. Mr. Zinnamon.³³

³¹ Columbia Linen Service, Inc., was acquired by the named non-respondent co-conspirator (CX no. 346) National Laundry and Linen Service, Inc., formerly National Laundry Company, Inc. "Better Linens", a partnership between the witness and the O'Donnell Restaurant, formed to service only the said restaurant, was not involved in this acquisition (Tr. 1416; 1419-1420; 1435).

³² Tr. 1417-1418.

³³ Mr. Zinnamon was one of the owners of Standard Linen Service, Inc., which firm was later acquired by the named non-respondent co-conspirators Palace Laundry, Inc. and Modern Silver Linen Supply Co., Inc. (CX no. 405) subject to a restrictive covenant not to compete (CX no. 406). See (6) at page 1342 following.

Q. Go ahead.

A. And Mr. Loewinger butted in and said "I will give you five on top of that; make it ten thousand dollars to stay away from that account."

As soon as they left, I made a telephone call to Mr. Tom O'Donnell and I told him that I just had visitors in my place and he asked me who they were and I told them—

He said, "What did you tell them?"

I said "If it is worth ten thousand dollars to them not to take the account, I will take the account."

He said, "Good for you, Milton. They just offered me six months free linen if I didn't change."³⁴

* * * * *

Q. Did Mr. Singer ask you to call him when one of American's customers called for services?

A. He told me if I got a call, the nicest thing would be to call him up and let him know and then they would send down a representative to see—if I call him, to tell him, send a representative to straighten the account out before I took it.

Q. And did you ever do that?

A. One time.

Q. Do you remember what account it was?

A. I know the account. It was the Uptown Restaurant.

Q. Where is that?

A. On Connecticut Avenue, near the Uptown Theater. He called me up and I asked him who you are dealing with, and he told me "The American Linen."

I will be frank, I was afraid. They didn't have to worry about me, I worried about them.

Q. When you say "them", who is that?

A. By them I mean the whole Association, I never had a chance, I never—

Q. You mean the big companies?

A. The big companies. It was not one; it was all of them.

Q. Go ahead.

A. I called up immediately Ben Singer.

Q. Did you talk to Mr. Singer?

A. It was Mr. Singer, he said "Thank you, Mr. Katz; we will send somebody out to straighten it out."

* * * * *

Q. Mr. Katz, were you ever threatened with reprisal in the linen supply business, when you were in the linen supply business?

A. I don't know how to answer that. They just almost put me out of business.

Q. Did you ever, were you ever—

A. No bodily harm, if that is what you mean.

Q. No, no; a reprisal. Did you ever have any reprisal against you?

A. Well, they followed my trucks. My driver came in—

Q. When you say "they", who—

A. I don't know. Somebody. My driver came in, he was afraid. He was afraid to leave the truck go when he made a delivery. And that was not even linen, that was a laundry truck.

³⁴ Tr. 1424-1426.

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I had visitors in my plant and they put their hands on my back and I was big enough just to get buried into the ground when I saw those people.

Q. But after being in this business so long, you knew how to handle these little altercations or threats?

A. That is wrong. Nobody can handle them. No, sir. You just don't play with stick. It is dynamite.

Q. Were you on a friendly basis with the Pears?

A. Always on a friendly basis.

Q. Was this the same thing, "you don't take my customers and I don't take your customers"?

A. Well, that is a general rule for the whole Association unless some outside step from the Association, they want to make personal contact with the people that are going into the business. You know, it was a holy rule for the Association, that if a man goes inside, they will bury him one way or another.

But in some cases, like I never knew who Ben Singer was. I was told to go and meet Ben Singer. I never knew who Loewinger was and I met Loewinger. To my dismay, I met a guy from the Elite Linen, too, who stole me blind.

Q. Well, as far as the operations with the Pears and Central Linen, was there this same friendly situation where you don't take my customers and I don't take yours?

A. I left everybody alone. I didn't bother much with anybody. I wanted to be left alone. As far as they were concerned, if they could have taken my customers, they would have taken they came up soliciting in my territories and I never said nothing, I couldn't say anything. I couldn't buck them or anybody.

But with all due respect, I was afraid.³⁵

* * * * *

Under cross-examination, the witness testified in part as follows:

Q. And you said that Mr.—I just want to—we talked about a boiler incident. We got off the track. I would like you to clear that up. I don't quite understand that.

A. The boiler they blew up in my place?

Q. Yes; I would like to have that cleared up. Who blew it up?

A. You tell me and we will both collect.

We had a visitor. I said before that we had a big man. I really mean that. I am not scared. I am a little guy and I don't scare from nobody, never did in my whole life. But we had Natie Brown—do you remember Natie Brown, a wrestler?

THE WITNESS: Do you remember, your Honor?

HEARING EXAMINER SCHRUP: I think I have heard the name.

THE WITNESS: Natie Brown and I think Louie Kraus. Two of the lowest-down gangsters you ever saw in your life. They came up to me and put their hands on my back and said "You wash our back and we will wash your back."

By Mr. Ginsberg:

Q. That is the time of the boiler incident?

A. My boiler blew up that night. But I can't name the people who did it.³⁶

* * * * *

³⁵ Tr. 1437-1438; Tr. 1442-1444.

³⁶ Tr. 1457-1458.

Q. Now, I want you to explain to me what you mean by receiving threats from various people. Explain that a little further.

A. Well, I didn't tell you in the first place that I received threats. I said my truck was being followed and I said two people came into my plant and they came in. I never saw them before in my life and I saw there was something wrong there. They wanted me to buy advertising in Baltimore from them and stuff like that.

They did some work for the National. I knew they were in for that purpose. And that night my boiler blew up.

Q. Did you know where these people came from?

A. We had the police department tracking them. They had a Pennsylvania car. I didn't keep quiet, neither.

Q. That is what I wanted to know.

A. We had the police in Montgomery County. We have a record of that. There was a Pennsylvania car and they were watching that and didn't catch them in time.

The same Pennsylvania car was there that night that the officers saw.⁸⁷

* * * * *

Q. Now, you said that you had— they were following your trucks, your truck, and that your place was blown up.

A. I didn't say by whom. I don't know.

Q. You don't know by whom?

A. No, sir. We didn't catch them. I can't say by whom, sir. I wish I could have.⁸⁸

* * * * *

Q. You said that you met a Mr. Lipscomb and I just couldn't get straight, when you mentioned that. Who is Mr. Lipscomb?

A. I don't know whether it is Lipscomb or not. It was in the Elite Laundry. When I did the work for O'Donnell's on the Better Linen, I told you he didn't pull my tongue on that, he should have. We did work for other people. We took the Atlas Club, the Five O'Clock Club. Do you remember testifying on that?

Q. Yes.

A. When I came and delivered beautiful, brand-new linen to the Atlas Club and we came down to make another delivery in there to pick up our other linen, we found all our linen was stolen. They robbed us. They robbed us of the Five O'Clock Club.

That was the linen people because we found our linen in the Elite Laundry.

Q. That is what I wanted to know. You found it in the Elite?

A. They robbed the Atlas Club of the linen. Zinnamon robbed the Five O'Clock Club of the linen and he took Compact linen from me.

You shouldn't cross examine me. I couldn't help you, sir."⁸⁹

15. The uncontroverted and substantial weight of the probative testimony of record in the instant proceeding conclusively establishes that an agreement, understanding, combination and conspiracy, as charged in the complaint, existed between and among the co-con-

⁸⁷ Tr. 1459-1460.

⁸⁸ Tr. 1461.

⁸⁹ Tr. 1465.

spirators not named as respondents herein to control the solicitation and allocation of linen rental supply customers in the Washington, D. C. metropolitan area linen rental supply market.⁴⁰ The substantial weight of this testimony⁴¹ also establishes that the respondent Central Linen Service Co., Inc., with knowledge of the existence and purpose of the said conspiracy, entered and participated therein, and acted to promote the purpose for which it was formed.

This is not to say that the respondent Central Linen Service Co., Inc., during the course of the existent conspiracy, was not at various times at competitive odds with other of its member co-conspirators in the endeavor to protect and further enhance the individual competitive status of the respondent within the said market area.⁴² These instances of business conflict occurring during the course of the conspiracy, and respondent's resultant actions directed to its own protection and competitive self-preservation, do not, however, serve to prove the non-existence of a conspiracy or respondent's non-participation therein. The law as to this is clear for, as stated by the United States Supreme Court: * * * we reject, as a question of law, the court's inference that the attitude of suspicion, wariness and self-preservation of the parties negated a conspiracy." *United States v. Singer Manufacturing Co.* (1963), 374 U.S. 174 at 193.

Further in the above *Singer Mfg. Co.* decision, the court cites with approval from its former decisions in *Federal Trade Commission v. Beech-Nut Packing Co.* (1922), 257 U.S. 441; *United States v. Bausch & Lomb Optical Co.* (1944), 321 U.S. 707; *United States v. Parke, Davis & Co.* (1960), 362 U.S. 29 to the following effect: "Both cases teach that judicial inquiry is not to stop with a search of the record for purely contractual arrangements * * * Whether the conspiracy was achieved by agreement, by tacit understanding,

⁴⁰ See footnote 1, page 2, *supra*.

⁴¹ Other than on some peripheral matters not necessary of resolution to the decision to be made in this proceeding, there is no substantial testimonial dispute as to the actual occurrence of the factual acts and practices relating to the allocation and solicitation of linen rental supply customers among and between the various co-conspirators herein shown of record. Co-conspirator witnesses called by complaint counsel and in part again also recalled as witnesses by counsel for the respondent all testified in substantial accord and agreement in such regard. Respondent Central Linen Service Co., Inc.'s testimonial disclaimer as to entering into and participating in the said conspiracy does not therefore involve a test of comparative credibility as between opposing witnesses but rather is to be treated as a legal conclusion on the record facts not within the province of the respondent to make. This legal determination is one before, and is properly to be made, only by the trier of the facts after and following full and due consideration of all the relevant and material probative facts of record as well as the meaning and significance to be thereunto attached in the light of the applicable case law.

⁴² For example, see arrangements between respondent Central Linen Service Co., Inc., and co-conspirator C & C Linen Service, Inc., at Tr. 600-606 and Tr. 1472-1485; between respondent Central Linen Service Co., Inc., and co-conspirator American Linen Service Company, Inc., at Tr. 1026-1032; 1092; 2339-2349; 2387-2394.

or by acquiescence * * * coupled with assistance in effectuating its purpose is immaterial * * * ”⁴³ “Thus, whether an unlawful combination or conspiracy is proved is to be judged by what the parties actually did rather than by the words they used.”⁴⁴

Another and further guide in the instant proceeding is the following from *United States v. Consolidated Laundries Corporation, et al.* (1961) wherein the appellate court stated “an expression of our views may be helpful to the trial court”:⁴⁵ “Assuming that customers were allocated in the case at bar, no more need be proved; we agree that the *per se* rule should be applied. We fail to see any significant difference between an allocation of customers and an allocation of territory. See *United States v. American Linen Supply Co.*, D.C.N.D. Ill., 141 F. Supp. 105, 115. Suppose for illustration that appellants had allocated the Bronx to Consolidated, Brooklyn to General, and Queens to Modern Silver, reserving the right to compete with each other in Manhattan. Clearly this hypothetical division of markets would be unreasonable *per se*, notwithstanding the open competition in Manhattan. Similarly their agreement to suppress all competition as to one phase of their business, i.e., old customers, should be *per se* illegal irrespective of their competition for new customers. And when, as here, the allocation is coupled with predatory practices against independent linen suppliers in order to compel them to join the conspiracy or be put out of business, there is even more reason not to permit the conspirators to justify their activities on the ground that business expediency makes them reasonable.”⁴⁶

“Consolidated Laundries Corporation contends that it withdrew from the conspiracy prior to the five year limitation period prescribed by 18 U.S.C.A. § 3282, i.e., before January 31, 1952. It argues that the prosecutor’s failure to connect it with any conspiratorial activities after that date would justify an inference of withdrawal. However, it is clear that a confederate, once shown to have been such, has the burden of satisfying the trier of fact that he had withdrawn from the enterprise. *United States v. Cohen*, 2 Cir., 145 F. 2d 82, 90, certiorari denied 323 U.S. 799, 65 S. Ct. 553, 89 L. Ed. 637; *United States v. Compagna*, 2 Cir., 146 F. 2d 524, 527, certiorari denied 324 U.S. 867, 65 S. Ct. 912, 89 L. Ed. 1422. We can-

⁴³ From the *Singer* decision at page 193 citing the *Beech-Nut* and *Bausch & Lomb* decisions.

⁴⁴ From the *Parke, Davis* decision at page 44, also citing the *Beech-Nut* and *Parke, Davis* decisions.

⁴⁵ 291 F. 2d 563 at page 572.

⁴⁶ Pages 574-575.

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not hold erroneous Judge Palmieri's conclusion that Consolidated had not carried this burden."⁴⁷

In the light of the foregoing case law, the record in this proceeding would appear to indisputably establish the existence of a conspiracy, and the entry and the participation therein by the respondent Central Linen Service Co., Inc., as charged in the complaint. A few pertinent testimonial excerpts, among many other like examples of record to such effect, are as follows:

(1) Q. Did you hold—What if any office did you hold in the Linen Supply Association?

A. I held the office of president.

Q. During what year or years?

A. From 1949 to 1950, for a one-year period.

Q. Are you acquainted with who were the members of the association at the time you were president?

A. The American Linen Service; C & C Linen Service; Central Linen Service; Quick Service; District Linen Service; National Linen Service; Elite; Tolman's Laundry, to the best of my recollection. (After pause) One addition—Capitol Towel.

* * * * *

Q. Do you recall whether Standard—

A. You are correct.

Q. —Linen?

A. Yes, Standard Linen.

* * * * *

Q. You stated that you were sales manager of Elite of Washington from 1946 to 1950. What if any arrangements existed between Elite of Washington and other Linen Supply companies in the Washington, D.C. metropolitan area?

A. The arrangement was this. When the account, or an account of a competing linen service would phone us for service claiming dissatisfaction we would in turn telephone the competing company and give that company an opportunity to straighten out the account. If a competing company received a telephone call from one of Elite's customers, the same would apply, they would call us and give us an opportunity to straighten out the account.

* * * * *

Q. Did you receive any instructions not to solicit customers of competitors?

A. Yes, I did. We would not knowingly solicit customers of a cooperative concern.

* * * * *

Q. What instructions if any did you receive which concerned dissatisfied customers of companies that were engaged in the Linen Supply rental business?

A. To call that company, give them an opportunity to straighten out the cause of dissatisfaction.

Q. Prior to making any effort to obtain that account?

A. That is correct.

Q. In what area, in what geographic area was this done, sir?

A. The greater Washington area.

⁴⁷ Page 573.

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Q. And the greater Washington area—what did the greater Washington area include?

A. Nearby—D.C. and nearby Maryland and Virginia.

Hearing Examiner Schrup: Did these instructions cover every linen supplier who did business in the area?

The Witness: No, they covered members of the Linen Supply Association and any other linen supplier with whom we happened to be on a cooperative basis.

* * * * *

Q. During this period that you stated of 1946 to 1956 was this arrangement in existence during this period of time?

A. Yes, it was, but not for the entire period with some companies.

Q. And during this time, what contacts did you have with any of the companies in the Metropolitan D.C. area?

A. I would call by telephone a principal of the company. I would dial it or I would put the call through the switchboard and then when the competing company answered the phone, I would ask for the person whom I wanted to call, the principal, and discuss the situation with him.

* * * * *

Q. Mr. Russell, you stated that certain of these companies were parties to this arrangement. What companies, if any, were not parties to this arrangement?

A. I know of no companies in the group that I mentioned that were not parties to this agreement.⁴⁸

* * * * *

Q. Mr. Russell, you had stated yesterday that you had contact regarding customers. You had contact with Henry Pear of Central Linen?

A. That is correct.

* * * * *

Q. During what period of time?

A. I remember distinctly, conversations around 1948 and 1949 regarding the Linen Supply accounts.

Q. Did you call Mr. Pear or did he call you?

A. Both. I called him. On occasion, he would call me.

* * * * *

Q. Mr. Russell, on what if any occasions did Elite—through you—and Central—through Mr. Pear—not follow this practice that you just described?

A. When we were at odds with Central. There was a war, so to say, going on. We were not in agreement, not in cooperation with them, which happened over periods of time. Then this practice would not be followed. We would take their accounts; then they in turn, would take ours, without preliminary call.

* * * * *

Q. Was there any particular reason why you remember that, Mr. Russell?

A. Yes, I remember it because it was for one year during '49 to '50, I was President of the Linen Supply Association Exchange, and it was during that time, or just prior to that time, that we cooperated with Central. There was a subsequent period, a later period, oh, maybe some three—two or three years

⁴⁸ Tr. 389-399.

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after this—a period of war, then a period of peace after that. The length of that period, I do not recall, Mr. Lipsky.⁴⁹

* * * * *

Q. Mr. Russell, you stated that there were times when Central was in disagreement with this arrangement concerning dissatisfied customers. Is that correct?

A. That is correct.

Q. What caused Central to be in disagreement with this procedure?

THE WITNESS: Central would complain that Elite had disregarded the agreement; had taken accounts from them without prior notice, or Elite would claim that Central had done the same thing. This would lead to disagreement and for a period of time, there would be no cooperation between the two companies.

* * * * *

Q. How did Central and Elite then get together following this period of disagreement?

A. Normally, it would be by one or the other parties making telephone contact and saying, "This is not doing either of us any good. Let's talk about it."

* * * * *

Q. To what companies did such instructions apply?

A. To the members of the Linen Supply Association and at times, to Central, when they were not in the Association, provided we were on a cooperative basis at the time.

Q. During what period of time was this, sir?

A. This was—the general instruction—over ten years that I was in Washington from 1946 to 1956.⁵⁰

* * * * *

(2) Q. Mr. Gray, you stated that the telephone calls made to certain individuals which you testified to in the certain companies with whom these individuals were connected with, and the calls received from these individuals of these companies which were made with regard to customers and the problems concerning these customers and their supply, and that the purpose of this was to straighten out these problems with these customers.

Now, when you could not straighten out the accounts, what did you do?

A. Well, usually we expected to be repaid for the volume, either by calling on their customer and getting back the volume that we had lost.

Q. This would apply to all of the companies?

A. At most of the times, yes.

HEARING EXAMINER SCHRUP: Would these companies consent to that?

The Witness: Yes, sir.

* * * * *

Q. What arrangement, if any, was there between C & C and Central Linen covering customers?

A. Well, part of the time we protected customers and he protected ours. Part of the time he didn't, nor did we.

Q. What was the nature of this protection of customers?

⁴⁹ Tr. 404-408.

⁵⁰ Tr. 429-430.

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A. Well, the same arrangements that we had with other companies that we would let him know if he was having difficulty with a customer and he would do the same for us.

* * * * *

Q. When was this? When did this meeting take place?

A. In 1955.

* * * * *

Q. Were there any other agreements that were made at that time?

A. Well, other accounts were discussed as to accounts that he had taken from us and accounts that we had taken from him and the one that I just mentioned that was because of the meeting at that particular time, namely, Wagon Wheel.

Q. What other accounts were there involved?

A. I don't recall all of them. I think Miller's Motel was involved that we had lost to him and we were balancing out the various volume that each of us had either lost to the other or were about to lose.

* * * * *

Q. Was there a commitment, if any, for the future behavior of the companies?

A. Yes, we agreed that he could call on certain accounts of ours and regain the volume that he felt that we had taken from him.

Q. And what, if anything, had C & C, that is you and Mr. Clarke could agree to with regard to those accounts that were solicited in that fashion?

A. We agreed that we gave him our prices that we were charging to various customers and we agreed that we would make no attempt to hold them.

* * * * *

Q. During the meeting between you, Mr. Clarke and Henry Pear, did you reaffirm the arrangement between Central Linen and C & C Linen, the arrangement not to solicit?

A. I don't believe that it was reconfirmed at that time except by inference, since we were willing to repay the volume, why I think the arrangement could be considered to be still in effect.

Q. And to be in effect for some future time?

A. Yes, sir.⁵¹

* * * * *

Q. Mr. Gray, you testified that the agreements between C & C and certain other linen supply companies in the Washington metropolitan area, ceased to operate?

A. Yes, sir.

Q. What was the reason for the termination of these arrangements?

A. Well, the investigation by the Federal Trade Commission.⁵²

* * * * *

(3) Q. What is the company policy in regard to soliciting linen customers? At the present time, Mr. Wildman.

A. There are no restrictions at the present time on soliciting any linen supply customers.

⁵¹ Tr. 597-606.

⁵² Tr. 757.

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Q. Were there any restrictions at any time?

A. There were.

* * * * *

Q. During the time of from 1947 through to about '58 what was the policy of your company?

The Witness: The policy I adopted with respect to my routemen and salesmen at that time was not to, as I used the term, poach on the other fellow's preserves, not to actively solicit any customers that were taking service from someone else in the industry.

Generally speaking, if we had a call from a customer of a competitor, it was my policy to call and say that we had such a call, and that unless they could straighten out the account, we were going to take the business. But I usually gave them a matter of a few days to try to straighten the account out. I say a few days. There were definite time limitations on that. I would give them a specific length of time to straighten out the difficulties with the customer, which apparently were very obvious; otherwise we would not have gotten a call from the customer.

* * * * *

Q. What was the reason for discontinuing this policy?

A. The Federal Trade Commission investigation. I just realized that it was a policy that was not strictly according to Hoyle, so to speak.

* * * * *

Q. In connection with the policy which you have testified to as being in operation since 1947 through to about 1958, was there any occasion that you had to contact companies that were in the linen supply rental business in the Washington, D.C. area?

A. Yes, sir.

Q. In your contacts with such linen supply rental companies, what, if any, procedures did you follow?

The Witness: Normally, my service manager or one of the salesmen would tell me that we had either received a call or they had been approached by someone that wanted us to serve them, which was being served by another company. I personally would then call someone who I felt was an authority at the other company and tell them very frankly that we had received a call, or one of my salesmen had been approached or one of my routemen had been approached, and what was the trouble.

The answer might be "I don't know of any trouble."

"Well, you had better find out, because evidently there is some source of dissatisfaction on the part of your customer; otherwise they wouldn't have contacted us. We are going to take the business if you don't get it straightened out. I would appreciate it if you would call me back and tell me whether you have gotten it straightened out or not."

That would be my normal procedure. I don't say, Mr. Lipsky, I followed the exact phraseology in every instance, but that generalizes my position in connection with those instances with my competitors.

* * * * *

Q. Would you name the companies, Mr. Wildman?

A. American Linen; C & C; National; Elite; Central Linen; District; Modern; Quick Service. I have had some of these situations with each one of the companies that I have named, either one or more instances.

Q. In your contacts with each of these companies, were these with regard to dissatisfied customers?

A. I can't—when you say dissatisfied customers, I was not—I could not in every instance be aware that the customer was dissatisfied. I assumed that the customer was dissatisfied because of the fact that we had been approached. It could have been in some instances a question of trying to get a better price or something.⁵³

Under cross-examination, this witness testified:

Q. You said in your original testimony, you made some statement in talking about American, C. and C., National, Elite, and so on, and then you said Central was different, as I got it and then you stopped. What did you mean by that?

A. Oh, no. During that whole period, I said there were laps during that period when this relationship did not exist between Capital and Central, and that was a period when we were feuding, and when a war was on.

Q. Weren't you feuding with Central practically all the time?

A. No, sir, we were not. There was peace, wonderful peace, for a while.

Q. Going back to '47, when you say you came out to Washington, for what period of time didn't you feud?

A. Well, I would say that we were not feuding in the year '47, '48, and how long the feud lasted during the year, the latter part of '49 and '50, I can't say specifically by months, Mr. Ginsberg. And then there was peace and quiet for quite a while thereafter from 1950 on.

* * * * *

Q. And during the entire period of time, from '47 until the present time, Central Linen took your customers and you took their customers?

A. There was a period when we didn't. That is what I am trying to stress.⁵⁴

* * * * *

Q. Will you tell me specifically what conversations, if any, you had with Henry Pear, and when the first conversation, if any, took place.

A. I cannot answer the latter part of the question. I can't tell you exactly when the conversation took place. Henry Pear was in my office subsequent to the settlement, so to speak, or the suspension of hostile activities. If I can use that expression the price war, which I place to be around 1950, and at that time, we shook hands and said that we were glad everything has been settled amicably, and that the hostilities would cease. That was one of the conversations in my office with Henry Pear.

* * * * *

Q. But there was no understanding that was a contract or an agreement, verbal or otherwise?

A. Simply an implied understanding. I said before, nothing in writing. It was understood that we were to show each other that courtesy, which we did, and I would say that there was an exchange of phone calls both pro and con with respect to customers while we were not feuding.⁵⁵

⁵³ Tr. 895-902.

⁵⁴ Tr. 964-965.

⁵⁵ Tr. 978-980.

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Upon recall as a witness on behalf of the respondent, Mr. Wildman testified:

Q. Hasn't the Central Linen Service always been a very active competitor of your company?

A. No, sir.

Q. It has not?

A. No, sir.

Q. When hasn't it been?

A. I can't give you the specific dates, sir.

Q. Has it been a very active competitor?

A. At what point?

Q. At all points.

A. No, sir.

Q. At what points hasn't it been?

A. When there was a tacit understanding that we were no longer feuding and that we would respect each other's customers.

* * * * *

Q. Now, was there an agreement or understanding between Capitol and Central Linen Service whereby each refused to service the customers of each other even though such accounts requested their service?

A. Yes, sir.

Q. What agreement was that?

A. The same agreement that I spoke of before, Mr. Ginsberg. When Mr. Pear was in my office and we declared a truce and agreed to protect each other's customers.

* * * * *

Q. When you say you refused service to certain customers, what do you mean by that?

A. Well, the customer would call us and ask to be served, and we would in turn call Central Linen or in the reverse Central Linen would call us if one of our customers called them, and we were told specifically that they would straighten out the difficulties with their customer and not under any circumstances to put our service in.

Q. Will you explain the procedure that you adopted with reference to refusing service to customers of Central Linen Service?

The Witness: If we received a call from a customer whom we knew to be a customer of Central Linen, during a certain period when, as I say, we were at peace with Central Linen, we would proceed to call, and I myself would usually make the call. I say I. Usually, I think almost invariably, I would make the call, and I would call and generally I spoke to Miss Ethel Pear. I have also spoken to Henry Pear and told them that we had received a call from such and such a customer; that we would suggest that they get in touch with them and find out what the trouble was unless they already knew the reason why the customer had called us for service.

* * * * *

Q. What did you do?

A. I explained that these were calls that we would receive from customers of Central Linen, and when our man would go out and would find out that there was a Central Linen customer, he would deliberately stall and avoid taking

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the specific order until we had had a chance to call Central Linen and give them an opportunity to straighten out whatever difficulty there was.

Now, it was not always a question of a dissatisfied customer. We wouldn't know whether the customer was dissatisfied or whether they had simply called us for service. It was a matter of receiving a call from a customer who we knew to be a customer of Central Linen, and we would proceed to stall. My salesmen were instructed not to put the service in until they had reported back to me.⁵⁶

* * * * *

Q. Was there a tacit understanding between Capitol Towel and Central not to solicit each other's customers?

A. Yes, sir.

Q. And in following that procedure you called on the telephone to Central, and Central called you; is that correct?

A. Yes.

Q. And when you said that there was some difference between agreement and understanding, does an agreement mean something in writing to you?

A. That is my understanding, yes, sir.

Q. There is nothing in writing as far as this understanding is concerned?

A. No.

Q. But there was an understanding?

A. Yes, sir.

Q. And was there an understanding between the other companies and Capitol, as well?

A. Yes, sir.

Q. And the same understanding?

A. The same understanding.

Q. When there was that understanding operating between Capitol and Central and the telephone calls were made between the two companies, was that understanding given some binding effect?

MR. GINSBERG: That is objected to. That is for the Examiner.

* * * * *

Hearing Examiner Schrup: Well, I think the Hearing Examiner might clear this up here. Was this understanding respected that you have testified to by your company?

The Witness: Yes, sir.

Hearing Examiner Schrup: And why, sir?

The Witness: Because that was the understanding, and we thought that it behooved us to carry out our part of the understanding and in kind expected and received such courtesy from our competitors.⁵⁷

* * * * *

(4) Q. Mr. Singer, what understanding, if any, was there between American Linen and other companies which you named not to solicit each others customers?

The Witness: Using the word "understanding" in a broad sense, at varying times we had understandings with all of the named companies.

Q. What was the nature of that understanding?

⁵⁶ Tr. 2410-2417.

⁵⁷ Tr. 2448-2451.

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The Witness: In the sense that it was an understanding or a practice, I think that I would describe it as a courtesy that was mutually extended between any two companies of which we were one of the parties, and by reason of which we did not make active solicitation of their business.⁶⁸

* * * * *

Q. Have you had occasion to meet with Mr. Pear personally concerning customers?

The Witness: Yes.

Q. During what period of time, Mr. Singer, have you met with Mr. Pear, over what period of years?

The Witness: I have met many times with Mr. Pear over the years until the last five or six years.

* * * * *

Q. When did you meet with Mr. Pear and several other parties?

A. A meeting that I recall took place in which others were present, took place at 2400 16th Street.

Q. In what year, sir?

A. I believe in '56 or '7.

Q. Who was present?

A. Besides Henry Pear and myself, George Cokinos, Edward Clark, and, I believe, two others who I cannot recall.

Q. What was the purpose of the meeting?

A. To discuss and find remedies for some of the cutthroat practices that were prevalent then in the market.

Q. What were some of these cutthroat practices?

A. Giving customers gratuities in one form or another, free service, money, prices below cost.

Q. What, if any, statement did you make concerning the practices that were discussed?

A. In effect, I stated that we were destroying ourselves, and that we should remedy the conditions.

* * * * *

Q. When did you meet with Henry Pear again?

A. I have met many times with Henry Pear, and over the years, it is pretty hard to recollect the date and the occasion.

* * * * *

Q. Mr. Singer, I call your attention to the year 1955. Did you meet with Mr. Pear in that year?

A. I believe I did.

* * * * *

Q. What was the competitive, the existing competitive condition between your company and Central at that time?

A. Very high tempo of activity on the part of both companies.

Q. What did this high tempo of activity include, Mr. Singer?

A. Some of the general bad practice on the part of both companies that I have made reference to before.

Q. How long did such condition exist before the meeting?

A. Nine or ten months or possibly longer.

⁶⁸ Tr. 1013-1014.

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Q. How long after the meeting did such conditions exist?

A. They stopped as a result of the meetings.⁵⁹

* * * * *

Q. Mr. Singer, Mr. Ginsberg asked you whether you had an understanding in the form of a contract not to solicit the business of Central Linen and you responded that there was no contract.

Was there an understanding, written or unwritten, with Central not to solicit the business, the linen supply business?

A. At varying times, there was a practice that amounted to that.

Q. During the cross examination in response to questions from Mr. Ginsberg, Mr. Singer, you also stated that the communications between American Linen and other companies, linen supply companies, had stopped after a certain period of time.

What, if anything, brought about the cessation of the communications between American Linen and other companies, linen supply companies?

A. The FTC investigation that was started about that time.⁶⁰

Upon being recalled as a witness on behalf of the respondent, Mr. Singer further testified:

Q. My question is specifically again, did you have an understanding or an agreement with—when I say "you", I mean the American Linen—with the Central Linen Company whereby you were to trade customers between and among yourselves as companies?

The Witness: I can only vaguely recall one instance of what might be described as an exchange or trade.

Q. One instance. When?

A. Well, that was subsequent to a suit filed by Central on or about 1955.

Mr. Lipsky: Objection, Your Honor.

Hearing Examiner Schrup: It appears to be relevant to the question of trading of customers charged in the complaint so let us find out.

Q. What business—what accounts? What specific business are you referring to?

Mr. Lipsky: I object.

Hearing Examiner Schrup: Was this a judgment or a compromise settlement, Mr. Singer?

A. This was a settlement arranged independently between Mr. Henry Pear and myself.

Hearing Examiner Schrup: Overruled.

You can answer.

(The record was read.)

Mr. Ginsberg: The question that has not been answered was the one before all the conversation took place. What account are you referring to specifically?

A. I can only describe it in this way. That part of the agreement under which Henry Pear would withdraw his suit was that we compensate him for any difference in volume between what we may have taken from him and the volume that he may have taken from us during the course of the fight.

Q. Now, how were you going to compensate him?

I do not quite understand the terminology of your compensation.

⁵⁹ Tr. 1026-1032.

⁶⁰ Tr. 1092-1093.

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The Witness: Well, by giving his company full freedom to recover that volume of business from our customer list with no effort on our part to retain or hold the business that he attended himself to.

Q. Well, wasn't Central Linen going out for your customers anyhow?

A. Well, when?

Q. During this period of time that you are talking about.

A. During the course of the fight, yes, and during the truce, as it were, it could be so described, perhaps not.⁶¹

* * * * *

(5) Q. What is your present occupation?

A. I am President of the C & C Linen Service.

Q. I direct your attention to the year 1955. Have you had occasion to meet with Mr. Henry Pear in that year?

A. Yes, sir.

Q. Where was the meeting?

A. In my office at 2120 L Street, Northwest.

Q. Who was present during the meeting, sir?

A. Mr. Pear, Mr. Gray and myself.

Q. Who is Mr. Gray?

A. Mr. Gray is the General Manager of C & C Linen Service.

Q. What was the purpose of this meeting?

A. Well, we had had some problems between the two companies. We had a meeting to straighten the difficulties out.

Q. Between what companies, sir?

A. Between Central Linen—Mr. Pear and our company.

Q. What was the nature of the problem?

A. As I recall it, we had taken or solicited a motel account over in Virginia.

Q. What account was that, sir?

A. Wagon Wheel, as I recall.

Q. And what occurred?

A. We discussed the fact that this account had been taken by us and that we owed Central an equal amount of volume back for it.

Q. Was that the extent of the discussion, Mr. Clarke?

A. Well, we agreed to straighten it out with them, and allow them to make an arrangement so that they could solicit some of our business to balance the books.

Q. Was such solicitation made by Central?

A. Yes.

Q. Was any effort made by your company to retain such accounts?

A. No.

Q. During this meeting, Mr. Clarke, do you recall the demeanor of Mr. Pear?

A. It was very friendly. It was very amicable.

Q. Have you met with Mr. Pear, Mr. Henry Pear, on any other occasion sir, in 1955?

A. I had a meeting with Mr. Pear and Mr. Robert Viner.

Q. Who is Robert Viner?

A. He is the owner and operator of—at that time, it was known as Palace Linens. I think they have changed their name to Linens of the Week.

Q. When was this meeting, Mr. Clarke?

⁶¹ Tr. 2337-2345.

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A. That was in the late fall of 1955, at the old Arcade Sunshine Laundry on Lamont Street.

Q. In Washington?

A. Yes.

Q. Who was present during this meeting?

A. Mr. Pear, Mr. Viner and myself.

Q. And what was the purpose of this meeting?

A. Well, most of the conversation was about motel work. We were having—we had just gone through a price—rather, a wage increase in the fall of '55 under the Federal Minimum Wage Law, and we wanted to be sure that if we raised any prices, that although there was no mention of what the prices would be, that we would protect one another's business.

Q. What arrangement was made to protect each other's business?

A. Well, we just agreed to not solicit one another's business. If we got a call from a customer, we would find some way to avoid taking that account.

Q. Do you mean, if your company got a call from a customer that was being served by either Mr. Viner's firm or Mr. Pear's firm?

A. Yes.

Q. Is that correct?

A. Yes, that is right.

Q. Would the same pertain to any calls received by Mr. Viner or Mr. Pear?

A. Yes.⁶²

* * * * *

Q. Why would there be a meeting with Mr. Pear?

A. Because Mr. Pear and Mr. Viner and my company did most of the work for motels in the Washington area.

Q. And what about the American Linen. Did they not do work?

A. They did not do, or don't do, motel work.

Q. Were any other companies in the Washington area doing motel work?

A. Perhaps one or two.

Q. Who were they?

A. Well, I think National Laundry had some motel work. I think Capitol Towel probably had one account.

Q. Why would you call Henry Pear and not the others? * * * Go ahead, sir. Why did you not call the other people? Why did you call Henry Pear?

A. Well, the other people weren't a big factor in the motel business.

Q. Well, how big a factor would you say Henry Pear was? Was he not a little concern?

A. He was about the same size as my concern. I would say.⁶³

* * * * *

Hearing Examiner Schrup: Why did you agree with Mr. Pear to give him an equal amount of volume back?

The Witness: So that the two companies would operate on a friendly basis.⁶⁴

* * * * *

(6) Q. How long were you employed by Standard Linen, sir?

A. Approximately ten years.

Q. From what year until you left?

A. From 1947 until July of 1957.

⁶² Tr. 1564-1568.

⁶³ Tr. 1578-1580.

⁶⁴ Tr. 1584.

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Q. Who was your immediate supervisor?

A. Arthur Zinnamon.

Q. Who was he?

A. One of the owners of Standard Linen.

Mr. Lipsky: What instructions, if any, did you receive from Mr. Zinnamon, concerning dissatisfied customers?

The Witness: Of competitors?

Q. Dissatisfied customers of competitors, sir?

A. Well, I was instructed to call the company that was at this time either serving, or selling this customer, and give these people an opportunity to straighten it out.

Q. Straighten out the account?

A. The account.

Q. Were these instructions received by you from Mr. Zinnamon?

A. When I first went there, yes, I was made acquainted with the people that I should call.

Q. Did Mr. Zinnamon identify the people that you should call?

A. He told me their names.

Q. Did Mr. Zinnamon inform you of the companies at which these people were employed?

A. Yes.

* * * * *

Q. What companies—what linen supply companies in the Washington Metropolitan area did you call concerning dissatisfied customers of theirs?

A. It seems to me I called all of them.

Q. Did you call anyone at Central Linen?

A. Yes, I did.

Q. Who was that?

A. It could have been Mr. Henry Pear; it could have been Mr. Sam Pear. I remember I had some occasion to talk with Edith and Ethel, too.⁶⁵

* * * * *

Q. Mr. Bucco, was there any arrangement between your company and all the linen companies in this area—the Washington, D.C. metropolitan area not to solicit each other's customers?

A. I would say so.

Q. Do you know of your own knowledge, sir?

A. Yes, I do.

Q. Do you know—how do you know?

A. From the procedure that I followed while I was employed by Standard Linen.

Q. The procedure which you testified to, sir?

A. Yes, sir.⁶⁶

The foregoing testimony of the witness Bucco was further corroborated by the witness Jacobs, a former customer route supervisor for Standard Linen Service, at Tr. 1160 and following:

Hearing Examiner Schrup: Am I correct in my understanding that all the times that you got these complaints and you called a competitor, you would then report to Mr. Bucco?

⁶⁵ Tr. 1830-1833.

⁶⁶ Tr. 1837-1838.

The Witness: Yes.

Hearing Examiner Schrup: And he would be the one to take the action?

The Witness: That is right; because I couldn't do it myself.

By Mr. Lipsky:

Q. Mr. Jacobs, you stated that you called Central Linen. To whom did you talk at Central Linen?

A. I can't answer that. I really don't know. I might have spoken to Miss Ethel or to Sam or to Joe. I don't know. But I left the message and that is it.⁶⁷

In attempted defense to the aforequoted testimonial excerpts and other testimony of record given by the co-conspirators named in the complaint but not made respondents in the instant proceeding, respondent's corporate president was called by respondent's counsel to serve as its principal final witness in dispute of the acts and practices set forth and challenged in the complaint. Mr. Pear's testimony extends from page 2845 to page 2907 of the record herein and, in the main, consists of a conclusory denial usually expressed by the witness in the form of the single word "no" given in response to each of a series of identical prepared questions, posed by the respondent's counsel, with relation to and covering the acts and practices alleged by the complaint to have occurred by and between the respondent Central Linen Service Co., Inc., and each of the co-conspirators named in the instant complaint.⁶⁸

In conclusion, and based on the more substantial weight of the acceptable probative testimony and evidence of record in this proceeding, as hereinbefore set forth and discussed, it must accordingly be found that the respondent Central Linen Service Co., Inc., with knowledge of its existence and purpose, entered into and participated in a conspiracy, combination, understanding and agreement, and performed acts and practices in furtherance of the said conspiracy's purpose as set forth and charged in the instant complaint. It must be herein also found in such connection that the said respondent Central Linen Service Co., Inc., has further failed to adequately demonstrate, show or prove of record herein that it had at any time completely withdrawn and removed itself from the said conspiracy and that from such time of final removal and withdrawal, it did not resume any of its prior conspiratorial acts and practices with any of its former co-conspirators during the course and the existence of the said conspiracy.

16. In addition to challenging the hereinbefore described acquisitions and the restrictive covenants not to compete exacted from the

⁶⁷ Tr. 1171-1172.

⁶⁸ "HEARING EXAMINER SCHRUP: As I understand, Mr. Ginsberg is now going down the list of charges in the complaint with relation to each one of the competitors.

"MR. GINSBERG: That is correct.

"MR. LIPSKY: That is correct." (Tr. 2860-2861.)

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sellers of the said linen rental supply firms,⁶⁹ the complaint also alleges the uniform use by the respondent and its co-conspirators of what are described as requirement contracts compelling linen rental supply customers to deal with only one supplier in the concerned market area. It is alleged that these contracts are characterized by unreasonably long terms with lengthy automatic renewal on expiration date and inadequate cancellation provisions afforded to the rental customer.⁷⁰ These contracts, like the acquisitions and restrictive covenants not to compete, are, in short, alleged to be tools used by the respondent and its co-conspirators to tie up the market place and thereby eliminate and restrict competition in their favor.⁷¹

The percentage of contract sales to Washington, D.C. metropolitan area linen rental sales for the years 1955 to 1961 are as follows:

Year	Total contract sales	Percentage of contract sales to total area sales ⁷²
1955	\$642, 843	21. 62
1956	758, 924	22. 22
1957	1, 159, 661	26. 24
1958	1, 663, 068	32. 53
1959	1, 727, 832	32. 64
1960	1, 818, 265	31. 56
1961	1, 945, 879	30. 91

⁶⁹ Footnotes 27 and 28 at pages 15-16, *supra*.

⁷⁰ CX 3-17B, respondent; CX 155-163, 469, 470, American; CX 183, 185, 186, 457, 459-461; C & C; CX 212-215, District; CX 325-343, National; CX 348, 350, 357, 361-414 and 484, Palace; CX 409, 411-413, Quick Service; CX 414, Washington Linen; CX 216 and 492, Elite.

⁷¹ CX no. 464 is a letter from one of the named co-conspirators herein under date of July 17, 1957 to a rival linen rental supply firm outside the conspiracy with relation to a requirements contract. This letter concerns a customer of the co-conspirator known as Lowes Safeway Barber Shop, Washington, D.C., and warns as follows:

"Andrews Linen Service,
805 Florida Ave., N.W.
Washington, D.C.

"Dear Sirs:

"We have been advised that your firm has been in contact with the above customer in an effort to solicit its linen service business.

"This is to place you on notice that we have a current written contract to furnish this customer with all of its linen service requirements. You are hereby advised that in the event you take any action which induces this customer to breach its contract with our Company, appropriate legal proceedings will be instituted against you.

Yours sincerely,
AMERICAN LINEN SERVICE CO., INC."

⁷² Taken from attached table 1 as described in footnote 24, page 14, *supra*.

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The utilization of such requirement contracts by respondent and the co-conspirators contributed to the elimination of competition by respondent and the co-conspirators and to the purpose and effects of the conspiracy in the Washington, D.C. metropolitan area linen rental supply market.⁷³

The notice attached to the instant complaint served on the respondent Central Linen Service Co., Inc., contains an order to cease and desist which is stated to be the form of order which the Commission has reason to believe should issue if the facts are found to be as alleged in the complaint. This order to cease and desist is identical in its provisions with that contained in the complaint in Docket No. 8559 directed to the named respondents in that matter which includes the co-conspirator linen rental supply companies not named as respondents in this proceeding.⁷⁴

The Commission on March 6, 1963 entered its order in Docket No. 8559 accepting consent agreement and deferring service of decision and order to cease and desist on the named respondents therein until issuance of the Commission's decision in Docket No. 8558, which is the instant matter. Docket No. 8559 was unlitigated and the consent agreement therein was for settlement purposes only and did not constitute admissions by the named respondents that they had violated the law. What is pertinent to the instant proceeding, however, is that the provisions of the order to cease and desist issued under the consent agreement in Docket No. 8559 were accepted by the Commission and involved the same issues and the same conspiracy that is the subject of the instant proceeding. The respondent herein having been now found to have likewise entered and to have participated in this same conspiracy, it would appear but fair and reasonable that the order to cease and desist to be entered against the instant respondent in this proceeding should be no more or no less in its scope⁷⁵ and in keeping with the order to cease and desist entered against the balance of its co-conspirators in Docket No. 8559.

⁷³ "HEARING EXAMINER SCHRUP: Mr. Viner, there is one question I have here on the document. Would you direct your attention to the first paragraph?

There is something X'd out there and something printed in there. What is the explanation for that?

"THE WITNESS: These pads of contracts were purchased in November 1955, according to the notation in the bottom left-hand corner. After the consent decree was signed, my attorney advised me that even though the consent decree was not final until after this case, in a spirit of we—we should live up to the spirit of it immediately. Under the consent decree, they requested that no contract be written for no period of over six months unless it was special merchandise." (Tr. 1344-1345.)

⁷⁴ Footnote 1, page 2, *supra*.

⁷⁵ *Federal Trade Commission v. Ruberoid Co.* (1952) 343 U.S. 470; *Federal Trade Commission v. National Lead Company, et al.* (1957) 352 U.S. 429.

The foregoing procedure creates no problems as regards Part I of complaint counsels' proposed order to cease and desist, which is the same as that set forth in the notice in the instant complaint. Part II of said order, however, does not, in its preamble, base its various following prohibitions contingent upon the respondent's entering into and carrying out such prohibited acts and practices pursuant to a conspiracy, understanding, combination or agreement between the respondent and co-conspirator linen rental suppliers as is set forth and contained in Part I of said order. While Part II of the instant proposed order to cease and desist is identical in its provisions to Part II of the order in Docket No. 8559, the latter order to cease and desist, as aforesaid, was unlitigated and the agreement therein on which it was based admitted no law violation. The provisions of Part II of such order in Docket No. 8559, while adopted and followed in the instant matter, would appear to be here valid only if based upon respondent's entering into and carrying out the prohibited acts and practices pursuant to entry and participation in an illegal conspiracy, understanding, combination or agreement between it and one or more co-conspirators.⁷⁰ To such extent the order to cease and desist to be entered herein is so changed.

CONCLUSIONS

1. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.
2. The complaint herein states a cause of action and this proceeding is in the public interest.
3. It is concluded from the foregoing findings of fact that the agreement, understanding, combination, conspiracy and common course of action, and the acts and practices, methods, systems and policies of respondent and the corporations not made respondents herein pursuant to and in furtherance of, or in contribution to the agreement, understanding, common course of action, combination and conspiracy, as shown herein, have had the effect of hindering, lessening, restricting, restraining, destroying and eliminating competition, actual and potential, in the rental of linen supplies; have deprived customers of the benefits of full and free competition and seriously hampered their exercising free choice in the selection of

⁷⁰ Individually considered and standing alone without more, acquisitions, covenants not to compete and requirements contracts separately arrived at might not be considered or found violative of the law. When done in the context of and in furtherance of a conspiracy to restrict or eliminate competitors, as is shown by the record in the instant proceeding, such acts and practices are clearly within the ambit of the conspiracy and hence are to be prohibited as illegal.

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their suppliers; have had a tendency to unduly hinder competition or to create a monopoly in respondent and the corporations not made respondents herein; have constituted an attempt to monopolize; have foreclosed markets and access to markets to competitors or potential competitors in the linen rental supply business; and are all to the prejudice and injury of competitors of respondent and the corporations not named respondents herein and to the public; and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning, and are in violation of, the Federal Trade Commission Act.

ORDER

It is ordered, That Central Linen Service Co., Inc., its subsidiaries and successors and its officers, representatives, agents and employees, directly, indirectly, or through any corporate or other device in connection with the furnishing of linen supplies in the metropolitan Washington, D.C. area, do forthwith cease and desist from entering into, cooperating in, carrying out or continuing any conspiracy, understanding, combination or agreement between it and one or more of the corporations not made respondents herein or between it and others not a party hereto, to do or perform any of the following acts, practices or things:

1. Controlling the solicitation and allocation of customers.
2. Agreeing not to solicit the customers of their competitors.
3. Instructing salesmen not to solicit the accounts of competitors.
4. Refusing to service customers of competitors even though such customers requested their services.
5. Requesting and securing permission of certain of their competitors to service the customers of such competitors.
6. Trading customers between and among themselves.
7. Warning competitors that certain of their accounts had approached respondent for service in order that such competitors could take measures to hold such accounts.
8. Offering or granting price concessions for the purpose of taking reprisals against linen suppliers not adhering to agreements relating to the control of solicitation and allocation of customers or for the purpose of impairing the ability of other linen suppliers to compete.
9. Making statements falsely disparaging a competitor's business integrity, quality of service, or ability to stay in business.

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Order

It is further ordered, That Central Linen Service Co., Inc., its subsidiaries and successors, individually, and its officers, representatives, agents and employees, directly, or through any corporate device, in connection with the furnishing of linen supplies in the metropolitan Washington, D.C. area, while cooperating in, carrying out or continuing any conspiracy, combination, understanding or agreement between it and one or more of corporations not made respondents herein or between it and others not a party hereto, do forthwith cease and desist from:

1. Entering into contracts with their customers which require their customers to obtain all of their linen supply requirements generally or all their requirements of the linen supply articles listed on the contract from respondents unless the periods of such contracts do not exceed one year, except contracts which provide for the supplying of special articles (not usable by another customer) in which event such contracts may be for a period of not more than two years, and provided further that all contracts may contain provision for periods of automatic renewal not to exceed six months.

2. Acquiring directly or indirectly, by purchase, lease or otherwise, the business, including customer accounts, good will, capital stock, financial interest or physical assets, or any part thereof, of any competitive linen supplier, located in the metropolitan Washington, D.C. area, for a period of five years from the date of this Order, unless the Commission is given 60 days' notice in writing in advance of the date of the proposed acquisition. Provided, however, that nothing in this paragraph 2 shall apply to accommodation sales (sales occurring when one linen company purchases used linens or surplus inventory of new linens from another linen company) and the acquisitions of such linens do not impair the ability of the seller to compete.

3. Placing under restrictive covenants not to compete in the linen supply business for periods exceeding three years, owners, officers and employees of linen rental concerns, which they have acquired.

4. Placing owners, officers and employees of linen rental concerns which they have acquired under restrictive covenants which prohibit them from soliciting customers formerly served by them for a period in excess of five years.

5. Permitting any of their officers, directors, or employees to serve at the same time as an officer, director or employee of any competitive linen supply concern.

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TABLE 1

Docket 8558.—Central Linen Service Co., Inc. Summary of linen sales in the Metropolitan Washington area for 17 linen companies, based on data submitted in affidavits

Year:	Recapitulation—All companies				
	Total linen sales	Washington area linen sales	Percentage of Washington area linen sales to total linen sales	Total contract sales including Washington sales	Percentage of contract sales to Washington area linen sales
1955.....	\$44,026,953	\$2,973,598	6.75	\$642,843	21.62
1956.....	49,725,092	3,416,022	6.87	758,924	22.22
1957.....	53,648,944	4,418,978	8.24	1,159,661	26.24
1958.....	53,395,154	5,111,862	9.57	1,663,068	32.53
1959.....	55,137,269	5,293,637	9.60	1,727,832	32.64
1960.....	58,201,084	5,761,391	9.90	1,818,265	31.56
1961.....	59,929,281	6,295,162	10.50	1,945,879	30.91

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Gross Linen Sales for Years 1955-61

	1955	1956	1957	1958	1959	1960	1961
Total all Washington companies-----	\$2,756,170	\$3,185,939	\$4,149,459	\$4,829,186	\$4,956,736	\$5,332,998	\$5,720,987
Total Baltimore and other companies-----	41,270,783	46,539,153	49,499,485	48,565,968	50,180,533	52,868,086	54,208,294

Washington Area Linen Sales for Years 1955-61

	1955	1956	1957	1958	1959	1960	1961
Total all Washington companies-----	\$2,756,170	\$3,185,939	\$4,149,459	\$4,829,186	\$4,956,736	\$5,332,998	\$5,720,987
Total Baltimore and other companies-----	217,428	230,083	269,519	282,676	336,901	428,303	574,175
Washington companies' percentage of Washington area market-----	92.69	93.26	93.90	94.47	93.64	92.56	90.88

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TABLE 2
 Docket 6558.—Central Linen Service Co., Inc., Analysis of Linen Sales in the Metropolitan Washington Area for 17 Linen Companies, based on data submitted in affidavits

Companies and Years	Total linen sales	Washington area linen sales	Percentage of Washington area linen sales to total linen sales	Percentage of linen sales in Washington area to total 17 company sales	Total contract sales include Washington area sales	Percentage of contract sales to Washington area linen sales	Percentage of contract sales to total 17 company contract sales	Company rank of total Washington area sales
Bugle Coat, Apron & Linen Service, Inc.: CX 493 A-B:	1955	\$1,839,700						
	1956	1,994,500						
	1957	2,257,500						
	1958	2,302,600						
	1959	2,150,600	\$55,700	1.66	0.67			14
	1960	2,132,900	71,400	3.35	1.23			13
Central Coat, Apron & Linen Service, Inc.: CX 494 A-B:	1955	2,145,500	107,200	5	1.7			13
	1956	2,955,583	58,428	22	1.96			12
	1957	3,003,377	69,083	22	1.63			12
	1958	3,225,085	71,510	22	1.62			13
	1959	3,076,617	67,676	22	1.32			13
	1960	3,116,633	69,659	22	1.32			13
Abbecht Linen Services: CX 496 A-B:	1960	3,116,277	69,581	22	1.21			14
	1961	3,091,262	87,838	22	1.4			14
	1955							
	1956	23,764						
	1957	46,235	5,000	10.81	1			15
	1958	82,219	191,000	23.11	.36			15
The Fish Linen Supply Co.: CX 495 A-C:	1960	89,409	13,000	14.54	.23			17
	1961	123,584	36,000	29.13	.57			16
	1955	330,000						
	1956	387,949						
	1957	358,071						
	1958	341,992						
1960	345,620	2,500	72	.05				17
	380,788	50,400	13.24	.87				15
	423,280	83,200	19.66	1.32				15

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Capitol Towel Service Co., Inc. C.X. 465 A-B:	1955	260,004	260,004	100	8.74	247,004	95	38.42	6
	1956	274,284	274,284	100	8.63	230,570	95	34.33	6
	1957	284,184	284,184	100	8.63	230,975	95	33.28	7
	1958	287,988	287,988	100	8.63	273,880	95	16.45	8
	1959	303,120	303,120	100	8.72	287,904	95	16.67	8
	1960	320,040	320,040	100	8.65	304,038	95	16.72	8
	1961	323,520	323,520	100	8.14	307,344	95	15.79	9
American Linen Service Co., Inc. ¹ C.X. 468 A-B:	1955	155,805	155,805	100	3.53	101,273	65	8.73	10
	1956	914,087	914,087	100	17.88	594,157	65	35.73	1
	1957	899,689	899,689	100	14.00	584,798	65	33.84	1
	1959	902,580	902,580	100	13.67	586,677	65	32.27	1
	1961	937,192	937,192	100	14.89	609,175	65	31.31	1
District Linen Service Co. C.X. 490 A-C:	1955	191,411	191,411	100	6.44	80,600	42.11	12.54	7
	1956	225,497	225,497	100	6.6	80,000	39.47	11.73	7
	1957	231,320	231,320	100	5.23	91,600	39.6	7.9	8
	1958	240,424	240,424	100	4.7	138,400	65.88	9.53	9
	1959	261,643	261,643	100	4.94	232,320	73.5	11.13	9
	1960	304,774	304,774	100	5.29	206,800	67.85	11.37	9
	1961	335,067	335,067	100	5.32	243,350	72.63	12.51	8
Central Linen Service Co., Inc. C.X. 498:	1955	263,108	263,108	100	8.85				5
	1956	322,379	322,379	100	9.44				5
	1957	347,367	347,367	100	7.86				6
	1958	328,905	328,905	100	6.83				7
	1959	374,702	374,702	100	7.08				6
C.X. 498 & C.X. 2:	1960	414,025	414,025	100	7.19	13,155	3.18	.72	6
C.X. 498:	1961	460,666	460,666	100	7.32				5

¹ Estimates in Record of Transcript dated 7/11/63, pages 1330, 1333, 1334, 1335 and 1336.

² Estimates in Record of Transcript dated 7/2/63, page 943.

³ Incorporated in 1957, Transcript dated 7/8/63, page 1002; prior to incorporation, was partnership, Ben E. Singer and Joseph L. Fradkin, Transcript 7/8/63, pages 1003 and 1004.

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DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

MARCH 13, 1964

Pursuant to Section 3.21 of the Commission's Rules of Practice, effective August 1, 1963, the initial decision of the hearing examiner shall on the 13th day of March 1964, become the decision of the Commission; and, accordingly,

It is ordered, That 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.

IN THE MATTER OF

AMERICAN LINEN SERVICE CO., INC., ET AL.

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

Docket 8559. Complaint, Mar. 6, 1963—Decision, Mar. 13, 1964

Consent order requiring 12 corporations engaged in the linen supply business in the District of Columbia, Maryland and Virginia, to cease cooperating among themselves, to allocate and trade customers, refusing to service competitors' customers except with such competitors' permission, notifying competitors when certain of their accounts asked for service, granting price concessions in reprisal against noncooperating linen suppliers, and falsely disparaging competitors and their operations; and

Further requiring said linen suppliers to cease entering into exclusive contracts requiring customers to obtain all their requirements from respondents for a period longer than one year—or for two years in the case of special articles—with provision for automatic renewal for six months; to refrain from acquiring the business of any competitor in the metropolitan Washington, D.C., area for five years without advance notice to the Commission, with the exception of accommodation sales; to refrain from placing owners or employees of acquired linen rental concerns under restrictive covenants not to compete for three years and not to solicit former customers for five years; and to refrain from permitting any officer or employee to serve at the same time as officer or employee of a competitor.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (38 Stat. 717, 15 U.S.C.A. Sec. 41, *et seq.*, 52 Stat. 111), and by virtue of the authority vested in it by said Act, the Federal Trade