any purchaser from respondent of such products bought for resale, unless such services or facilities are offered and otherwise made available on proportionally equal terms to all purchasers competing in the distribution or resale of such products.

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

By the Commission, Commissioners Anderson and Elman concurring in the result.

IN THE MATTER OF

IDEAL TOY CORPORATION

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

Docket 8530. Complaint, Sept. 12, 1962—Decision, Jan. 20, 1964

Order requiring a distributor of toys in Hollis, N. Y., to cease representing falsely by means of television commercials that its toy "Robot Commando" would perform acts as directed by vocal commands, including moving forward, turning, firing a "missile" and firing a "rocket".

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 Ideal Toy 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 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 184-10 Jamaica Avenue, Jamaica, Long Island, 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 toys and related products, including toys designated "Robot Commando" and "Thumbelina" doll, to distributors and retailers for resale to the public.

224-069—70——20

PAR. 3. In the course and conduct of its business, respondent now causes, and for some time last past has caused, its said toys and related products, including its said "Robot Commando" and "Thumbelina" doll, 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 in the District of Columbia, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the conduct of its business, at all times mentioned herein, respondent has been in substantial competition, in commerce, with other corporations, firms and individuals in the sale of toys and related products.

PAR. 5. In the course and conduct of its business and for the purpose of inducing the purchase in commerce of the said "Robot Commando" and "Thumbelina" doll respondent made certain statements, representations and pictorial presentations with respect thereto by means of commercials transmitted by television stations located in various States of the United States and in the District of Columbia having sufficient power to carry such broadcasts across State lines.

PAR. 6. Through the use of aforesaid advertisements, and others containing statements and representations of the same import not specifically set forth herein, respondent has represented, directly and by implication:*

1.(a) That "Robot Commando" will perform an act and a series of acts as directed by commands given vocally (See exhibits "A" and "B"). These acts include:

(1) Moving forward;
(2) Turning (See exhibits "C" and "D");
(3) Firing a "missile" (See exhibit "E");
(4) Firing a "rocket" (See exhibit "F"); and

(b) That "Robot Commando" as packaged and sold to the purchasing public is operable in the manner depicted in the television advertising, without additional components.

2. That "Thumbelina" doll moves from one side to the other (See exhibits "G" and "H"), and moves its arms apart while lying on its side (See exhibits "I" and "J").

PAR. 7. Enlargements of individual frames extracted from said television commercials, illustrating typical representations with re-

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* Pictorial exhibits "A", "B", "C", "D", "E", "F", "G", "H", "I", and "J" are omitted in printing.

spect to the manner in which the said "Robot Commando" and "Thumbelina" doll purport to perform, as alleged in Paragraph 6 above, are attached hereto, marked exhibits "A" to "J", inclusive, and incorporated herein by reference.*

PAR. 8. In truth and in fact:

1. Each act performed by "Robot Commando" is governed by the manual setting of a control on the said toy. The toy will perform only that act for which the controlling device has been manually set. The initial action of the toy is commenced by blowing into a microphone. The sound of the voice, unless accompanied by the action of blowing into the microphone, will not commence the toy's action. Furthermore, the control must be manually changed after the performance of any one act before the toy will perform a different act and the sound of the voice itself, or as part of the action of blowing, will not cause the toy to change from one action to another.

"Robot Commando" is not, as depicted, a moving toy, and is not operable in the manner depicted in the television advertising, unless batteries, which are not included in the toy as packaged and sold to the purchasing public, are separately obtained and added thereto.

2. "Thumbelina" doll does not move from one side to the other and does not move its arms apart while lying on its side in the manner depicted.

Therefore, the statements, representations and depictions referred to in Paragraphs 5 and 6 are false, misleading and deceptive.

PAR. 9. Respondent's toys, including the "Robot Commando" and "Thumbelina" doll, are designed primarily for children, and are bought either by or for the benefit of children. Respondent's false, misleading and deceptive advertising claims thus unfairly exploit a consumer group unqualified by age or experience to anticipate or appreciate the possibility that the representations may be exaggerated or untrue. Further, respondent unfairly plays upon the affection of adults, especially parents and other close relatives, for children, by inducing the purchase of toys and related products through false, misleading and deceptive claims of their performance, which claims appeal both to adults and to children who bring the toys to the attention of adults. As a consequence of respondent's exaggerated and untrue representations, toys are purchased in the expectation that they will have characteristics or perform acts not substantiated by the facts. Consumers are thus misled to their disappointment and competing advertisers who do not engage in false, misleading or deceptive advertising are unfairly prejudiced.

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* Pictorial exhibits "A" to "J" are omitted in printing.

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

PAR. 11. The aforesaid acts and practices of respondent, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

Mr. Berryman Davis and *Mr. Walter T. Evans* of Washington, D.C., for the Commission.

Regan, Goldfarb, Powell & Quinn of New York, N.Y., by *Mr. Sidney P. Howell, Jr.*, of counsel, for the respondent.

INITIAL DECISION BY HERMAN TOCKER, HEARING EXAMINER

JANUARY 20, 1964

The respondent, Ideal Toy Corporation, is engaged in the manufacture, sale and distribution of toys. It is charged under Section 5 of the Federal Trade Commission Act with having engaged in false, misleading and deceptive representations in its television advertising of two toys:—one, a somewhat complex apparatus having, generally, the appearance of a strangely grotesque mechanical man with moving arms and opening head or turret on a rolling and legless base, called Robot Commando; the other, a doll, Thumbelina, rather life-like in texture or appearance to the touch, and in design or form like a baby.

The alleged deceptive practices as far as Robot Commando is concerned are three, (1) that the respondent represented falsely that Robot Commando would perform certain acts to which reference will be made below when instructed so to do vocally, that is to say, merely by use of the voice, (2) that the advertising deceptively made it to appear that the toy was autonomous by showing it in operation and not disclosing that batteries were necessary to provide the power necessary for its operation, and (3) by failing to disclose that the batteries had to be purchased separately from and in addition to the purchase of the package in which the toy was contained.

As to the doll, it is charged that the television presentation advertising Thumbelina made it appear that it moves from one side

to the other and moves its arms apart while lying on its side, when, in fact, Thumbelina "does not move from one side to the other and does not move its arms apart while lying on its side in the manner depicted".

Robot Commando is controlled and operated from a device which resembles a microphone connected to the toy by a flexible insulated cable. It is intended that this device be held in the hand like a microphone. The following illustration of the device is from the literature accompanying the toy.*

In addition to this manual device, batteries must be installed in the toy itself. The first step necessary to initiate any movement is to push from right to left (or from "Off" to "On") the horizontal control bar which is within the device just under the instruction, "Push Control Bar". The mere pushing of this bar from "Off" to "On" is not sufficient to cause movement because an additional electrical contact must be made. This contact is made when a blast of breath is blown in the direction of and at a diaphragm located within the device behind the ornamental grillwork. Once this contact is made, the toy will operate and perform,—turning left, moving forward, turning right, firing missiles or firing a rocket,—each performance being effectuated by moving another control, this time the button, which, by turning on a vertical ratcheted track in a slot, moves up or down to any of the indicated positions,—"Turn Left", "Forward-Forward", "Turn Right", "Fire Missile", or "Fire Rocket".

It is necessary to blow only once. Once the final contact is made, no additional blowings are necessary, provided that the horizontal slide control bar is not pushed back to the right side, on "Off".

The toy is quite attractive and striking to the imagination, particularly to that of children and possibly adults as well. The commands, when activated as related, are obeyed and executed by Robot Commando in that it will move forward, it will move to the left, it will move to the right, and it will fire missiles and a rocket (provided, of course, that the person or child using it remembers to put the missiles and rocket into the receptacles designated for them). On the other hand, the voice command has nothing at all to do with these activities. This is only "window dressing" which serves to give the child a feeling of power or control or mastery. It is a sort of play-acting or fantasy, not uncommon to children or even some if not many adults.

Missiles resembling cannon balls are caused to be propelled through the air in a sort of upward course until their apogee is reached, from which they then descend toward the floor continuing on their

* Illustration of the device is omitted in printing.

course until they hit or happen to strike something which intercepts their movement. This propulsion is caused by the jerky turning and complete revolution of each of the arms of Robot Commando. The missiles or balls are inserted in the arms at the shoulders. At the tip of each of the arms there is an open-end box or receptacle into which the missiles or balls then fall. As the arms make their complete and jerky revolution, the centrifugal force of the turning ejects the balls or missiles at about the time that the turn-arounds point the arms upward.

The rocket (provided of course, that it has been set into the head or top portion of Robot Commando) is propelled upward until it reaches its apogee and then it, too, follows the curved course started and ultimately drops to the floor, unless it strikes an article which happens to get in or is placed in its way.

Respondent has advertised this toy extensively on television. The alleged deceptive representations are contained in an audio-video transcription which was run from about September 16, 1961 until about November 20, 1961, at which time there was a change. It is possible that this particular transcription could have been used by some television stations for a fringe period after November 20, 1961. The evidence is that complete replacement would have been accomplished everywhere by December 1961 (Tr. pp. 15, 16). The entire country was pretty well covered by this broadcasting on television. About 20 or 25 major cities were the subject of concentrated coverage and it was carried on or in connection with two network programs (Tr. p. 17).

The hearing examiner viewed and heard this transcription several times during the hearing. He is of the opinion, and therefore finds, that the television script and picture definitely gave the viewer the impression that only the childs' voice command is necessary to cause the toy to perform the acts mentioned and that it was offered for sale as a complete operating unit because, not only did it not make clear the need for batteries, it failed to disclose that the toy would not operate without the batteries which had to be purchased separately. These findings are made because it cannot be said that a toy is controlled merely by the voice when the real control is first the sliding of a bar from right to left to make the connection with the battery power, then the activation of the power by a fairly strong blowing or gust of breath against a diaphragm, and finally the sliding up or down of the button to the various command positions on the manual device. And, even if the viewer has caught the announcer's casual reference to Robot Commando as being "battery-operated" and thus knows that battery power is necessary, it is rea-

sonable to assume that the necessary batteries come along with the toy on purchase.[1] An advertiser is not required, as expostulated by respondent's attorney, to choose between advertising all acts or none, if the time limitation of the broadcast does not permit a complete demonstration. He is required only to refrain from depicting falsely or inadequately those acts which he chooses to show in the limited time available for the broadcast.

It seems hardly necessary to comment on the difference between a toy which can operate only on reception of a child's voice and a toy which has to be operated by a combination of electric power activated by batteries plus blowing and plus mechanical setting in the preset places for obtaining the desired action. Imagine the disappointment of both a parent or friend and the child, particularly the child who cannot read, who gets the toy either with or without the batteries and then says "Forward", "Left", "Right", "Fire" and nothing happens. Imagine the additional disappointment when it is found necessary to make another trip away from home to buy the batteries, if one had not, by the time of purchase, become aware that batteries were not included in the purchase.

Advertising such as this is deceptive. *Carter Products, Inc.* v. *F.T.C.*, 186 F. 2d 821. It ought not to be practiced by companies doing such a tremendous business as this respondent did all over the United States,[2] particularly when it was done just before Christmas, in September, October and November, November and December being the two months when 60 percent of the entire year's sales to consumers are made (Tr. p. 44).

To the credit of the respondent, it must be noted that it prepared new advertising promptly after it became aware of the deceptive

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[1] The casual reference, "battery-operated to obey your command", is entirely lost to the viewer amidst the noise and vividness of the video presentation. As a matter of fact, the hearing examiner was completely unaware of it until his attention was directed to it by respondent's attorney in a post-hearing brief.

The entire audio with the changes in picture sequences indicated by the word "pause", was:

"MUSICAL SOUND EFFECTS (pause) *ANNCR:* (V.O.) Ideal's Robot Commando is *here* (to help you.) He's your one man army. (pause) No enemy can destroy him. He fights off tanks * * * (pause) hurls missiles * * * one after another * * * (pause) even a squadron of planes can't stop him. (pause) Robot Commando fires his secret weapon. (pause) He takes orders from no one except * * * (pause) you! (pause) *BOY*: (DIRECT) Forward! (pause) *ANNCR:* (V.O.) Ideal's Robot Commando is battery-operated to obey your command. (pause) Adjust the control * * * speak into the microphone. *BOY:* (DIRECT) Left! Fire! Fire! *ANNCR:* (V.O.) Ideal's Robot Commando is here (to help you.) (pause) Look for your Robot Commando. He's looking for *you*! (CX 1a 1b)".

[2] This should not be read as condoning deceptive advertising by small businessmen or those operating only locally: it is to be read as a factor showing large public interest. To paraphrase and distinguish the remark in *Exposition Press, Inc.* v. *F.T.C.*, 295 F. 2d 869, 873, this is not a case involving a toy at which the Commission's dynamite is aimed; it is a case involving a potentially vast deception at a critical buying time.

nature of this advertising.[3] This was done either simultaneously with or within days before or after the first communication from the Federal Trade Commission indicative of the Commission's interest in the practice and its probable disapproval. (The precise time cannot be fixed because the testimony is to the effect that revision of this advertising, because of complaints, was already under way but not completed at the time when the Commission's investigating attorney first came to the respondent and made known the Commission's interest [Tr. pp. 134, 135, 147].) Respondent's new audio and video transcriptions do refer to the need for blowing, manual setting and batteries but this Hearing Examiner expresses no opinion as to the adequacy of these references. It should be observed also that respondent received a negligible number of complaints about the advertising and that, according to its attorney's argument, there may be a good and universally heeded reason for not packing batteries with toys. (He argued that batteries deteriorate with shelf age and any battery operated article always ought to be operated with fresh or live batteries [Tr. pp. 61–63, 152–155].) The fact that a negligible number of complaints was received is not evidence that there was no deception. This is not the test and is not a valid argument. Many people who are deceived or disappointed do not bother to complain. If, in fact, as this Hearing Examiner believes after viewing the evidence, the advertising is deceptive, the mere fact that customers who may have been deceived do not complain is not reason to excuse or condone the advertising.

The case as to the doll, Thumbelina, is not as sharply in focus as it is for Robot Commando. During the hearing, all the lawyers, respondent's vice president and the hearing examiner had ample opportunity to observe Thumbelina's action. It is operated by some sort of spring device which is incorporated in the body and attached inside its head. The spring is wound up by a knob located in the back and made perfectly visible and clear to the viewer. The winding-up of the spring, followed by its slow unwinding, causes the head to move about on a sort of eccentric. This moving about of the head draws up the body in writhings and contortions. By the combination of movement with the normal aid given to any object by gravitational force, Thumbelina, if it happens to be lying on its side, will turn or flop over and land on its back. If the arms are

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[3] This is true also with respect to the doll, Thumbelina. Because her action in the particular advertising under attack was so fortuitously favorable and did raise questions as to veracity, the respondent soon and before the first visit of the Commission's investigating attorney, prepared another film, not so fortuitously striking in doll action (Tr. pp. 124, 147).

first placed together, they tend to and do move apart during the course of the turning or writhing.

The question with which we are here concerned is whether it does these things in the manner in which the television presentation showed that they were done, or, as stated in the complaint, "*in the manner depicted.*" It is the Hearing Examiner's opinion, after both having viewed and heard the television presentation several times and played with the doll that the doll does not quite perform entirely in the manner shown in the television presentation.

As far as the arm movement is concerned, when the arms were together in the television presentation, they moved apart. This is what the doll actually does during its contortions, provided they are first placed together and not locked. Consequently, this particular portion of the complaint will not be sustained.

However, when the doll was lying on its side in the televison presentation, it was shown to turn over. The portion of the presentation to which the charge is directed goes like this: After Thumbelina, the doll, is placed on the princess's bed lying on its right side, the princess lies down on the bed alongside of the doll, the doll then starts to turn off the right side toward the left and, as it approaches the left, it keeps going to a point about 120 degrees on the arc, at which time the princess takes hold of it and clasps it to her body in fond affection, bringing the doll to the full cycle (Tr. pp. 79–82). The advertising is clever and the result fortuitously striking, because it leaves the viewer with the distinct impression that a full 180 degree turn is one of the doll's accomplishments. The critical and analytical viewer will not be in doubt that when the princess lay down on the bed, she created somewhat of an incline which helped along the turning-over process. This was due to the resulting force of gravity, and this is precisely what would happen if a child, playing with the doll, went through the same performance under the same very favorable and carefully arranged conditions.

It is not suggested, and the hearing examiner does not believe, that any special device or "mock-up" was used to cause the doll to do what it would not do under the precise and favorable circumstances depicted in the broadcast. This, however, brings us squarely up against the situation suggested by the Court of Appeals in *Colgate-Palmolive Company* v. *Federal Trade Commission*, 310 F. 2d 89 at 91, where the Court said: "But, equally, should he (the advertiser) be allowed to use his own (dairy) cream if he knows that by the normal photographic process its color would be changed so as to appear substantially better on the screen than it was? We suspect the Commission would think it clear he could not." Although the

Court asked the question, it indicated approval of the probable action which it suggested the Commission could take by saying "We suspect the Commission would think it clear he could not." In this case, we now have reached the type of screen depiction anticipated by the Court. That this sort of deception was correctly anticipated is borne out by the facts of this case to which respondent's own vice president testified after being asked how he came to approve the broadcast if the doll did not, in fact, "move from its back to its left shoulder":

When I saw this commercial—and it is a lovely commercial—I was so impressed with the charm and the appeal that I think the commercial did portray, which the doll deserved, frankly, I just fell in love with it and I thought it would be the right thing for that particular doll. *I did question the last sequence because, as I explained, it would not do that turn on the table top.* When I was told about that by all who were involved at the commercial that the doll actually did do that, I accepted it. I was told by all who were there that I trust that the doll made this additional turn because the doll was in a bed and because of no other help. That being the case, I said fine, let's go with it * * * I did approve the commercial and we showed it to many people. We showed it to the National Association of Broadcasters. We showed it to the Columbia Broadcasting System, ABC, NBC and all the networks. Everyone approved the commercial. In fact, they all loved the commercial. They loved the doll. *There were questions asked about that last scene and I explained it just as I explained it here* and they accepted the explanation as being authentic. (Tr. pp. 102–104, emphasis added.)

In fairness to the respondent, it should be repeated here that this awareness of the deceptive nature of the telecast prompted the respondent ultimately to change the telecast of its own volition. Even though, as noted above, no special device or mock-up was used to cause the doll to do what it did in the telecast, the telecast gave the false impression that the doll could make a complete 180 degree turn. The temptation to take advantage of the accidentally favorable impression proved too great for the respondent, despite its high standards. This demonstrates the need for governmental sanctions to strengthen the will not to deceive. There is just as much a duty on the part of an advertiser not to create false impressions by failing to correct them when they accidentally are caused by fortuitous circumstances in the photographing process as it is his duty to refrain from creating the special circumstances or photographic props and mock-ups in a television presentation which will result in a false representation. To the extent, therefore, that it is charged that the doll was falsely depicted as making a complete turn from one side to the other, that portion of the charge will be sustained.

Respondent argues that, in any event, even if false representations are found, no order should be entered. In support, it lays great stress on (1) its complete cooperation with the Federal Trade Commission in its investigation, (2) its prompt correction on its own

initiative of the offensive or "doubtful' portions of the broadcasts and (3) its leadership and participation in self-policing activities by a special toy review board of the National Association of Broadcasters.[4] These should not be minimized. In another situation this hearing examiner might have felt that an order to cease and desist ought not to be entered herein in view of all the considerations just mentioned. This would be particularly so if Federal Trade Commission orders were penal, which they are not.[5] The hearing examiner is very much concerned with the fact that the toy industry is a most "sensitive to the Christmas season" industry. It does not take more than a few days in the short period before Christmas to grab off a proportionately large amount of business by just a little bit of deceptive television broadcasting. This sort of raid on susceptible buyers at a critical gift buying time must be eliminated. The Federal Trade Commission must not take a position in a "hard" case like this that a "one-shot" deception will be tolerated. "Hard cases make good law" and this is one of them. It is for this reason that in this particular case, bearing in mind the remedial nature of the legislation under which this proceeding is brought and the corrective measure available to stop this type of "hit and run" assault upon the public's buying impulses during critical buying seasons, the Hearing Examiner will enter an order to cease and desist by reason of the practices found to have been deceptive.

For completeness, I shall refer briefly to other arguments made on behalf of respondent. It is argued that the video shows the boy first setting the manual control before every change in Robot Commando's action. This is so but can be comprehended and understood only if the video is carefully analyzed after one's attention is directed to the fact that the boy's manipulation of the control device is not just a jerky movement but an operational activity. The claim "VOICE CONTROLLED" for Robot Commando is sought to be

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[4] An association of television stations, not advertisers.

[5] As far back as the January term, 1845, Mr. Justice Story, in *Taylor v. United States,* 3 How. 197 at 210, 11 L. Ed. 559, 565, pointing to the fact that remedial legislation should be given liberal construction to effectuate its objectives said, "In one sense, every law imposing a penalty or forfeiture may be deemed a penal law: in another sense, such laws are often deemed and truly deserve to be called remedial. The judge was therefore strictly accurate when he stated that 'It must not be understood that every law which imposes a penalty is, therefore, legally speaking, a penal law, that is, a law which is to be construed with great strictness in favor of the defendant. Laws enacted for the prevention of fraud, for the suppression of a public wrong, or to effect a public good, are not, in the strict sense, penal acts, although they may inflict a penalty for violating them.' and he added, 'It is in this light * * * I would construe them so as most effectually to accomplish the intention of the legislature in passing them.' The same distinction will be found recognized in the elementary writers, as for example in Blackstone's Commentaries * * * and Bacon's Abridgment * * * and Comyns' Digest * * * and it is abundantly supported by the authorities."

justified by the strained argument that the electrical contact is made when the diaphragm is caused by a sharp blowing of breath to make the contact and, since breath is a component of voice, "voice must include the delivery of breath" and so the toy is voice controlled! By resorting to this argument, the respondent is pressing the processes of logical illation a little too far and, by doing so, it tends to obscure another element in this case,—the necessary manual setting of the button for each operation.

Careful consideration has been given to the proposed findings and conclusions submitted by counsel supporting the complaint and arguments, both written and oral, by counsel for the respondent. Many of the proposals have not been accepted or are considered by the Examiner to be substantially the same as findings above and ultimately made herein. To the extent that any proposed finding, conclusion or argument is not adopted, either directly or in substance, the same has been rejected because of irrelevance, immateriality, lack of support in the evidence, or as contrary to law or unnecessary. Any motion, the granting of which would be inconsistent with this decision, is denied.

The following are my ultimate

FINDINGS OF FACT

1. Respondent, Ideal Toy Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

2. The principal office and place of business of the respondent is 184–10 Jamaica Avenue, Hollis, New York.

3. Respondent is now, and for some time last past, has been, engaged in the advertising, offering for sale, sale and distribution of toys and related products to distributors and retailers for resale to the public. Among these toys are included those named "Robot Commando", a mechanical warrior, and "Thumbelina", a doll.

4. Respondent's gross sales for the year 1961 exceeded $30,000,000, of which almost 10% were attributable to Robot Commando and more than 10% were attributable to Thumbelina. Sixty percent of respondent's total sales are made in November and December while the remaining forty percent are spread over the other ten months of the year.

5. In the course and conduct of its business, respondent now causes, and for some time last past has caused, its toys and related products, including Robot Commando and Thumbelina, 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 in the District of Columbia, and maintains, and at all

times mentioned herein has maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

6. In the conduct of its business, at all times mentioned herein, respondent has been in substantial competition, in commerce, with other corporations, firms and individuals in the sale of toys and related products.

7. In the course and conduct of its business and for the purpose of inducing the purchase in commerce of Robot Commando and Thumbelina, respondent made certain representations and pictorial presentations with respect thereto by means of commercial advertisements transmitted by television stations located in various States of the United States and in the District of Columbia.

8. Through use, during the time hereafter mentioned, of one of the aforesaid advertisements respondent represented, directly or by implication that:

(a) Robot Commando would perform various acts when directed alone by commands given vocally. These acts included (1) moving forward, (2) turning, (3) firing a "missile", (4) firing a "rocket".

(b) Robot Commando, as packaged and sold to the purchasing public, is operable in the manner depicted in the television advertising, without components other than those shown or disclosed.

9. Through use, during the time hereafter mentioned, of one of the aforesaid advertisements respondent represented, directly or by implication that Thumbelina doll moves from one side to the other, and moves its arms apart while lying on its side.

10. The enlargements of individual film frames, copies of which are attached to the complaint as exhibits, are extracted from actual television films utilized by the respondent in its advertising, and illustrate typical representations with respect to the manner in which Robot Commando and Thumbelina doll purport to perform.*

11. Each act performed by Robot Commando is governed by the manual setting of a control on the said toy. The toy will perform only that act for which the controlling device has been manually set. The initial action of the toy is commenced by setting an "On" switch, then blowing upon a metal diaphragm set within the microphone appearing control device. The sound of the voice, unless preceded or accompanied by the action of blowing on the diaphragm, will not cause the toy's action, it being necessary for the completion of the electrical connection that a contact be effected by the depressing of the diaphragm. Furthermore, the control must be changed manually after the performance of any one act before the toy will perform

* Pictorial exhibits are omitted in printing.

a different act and the sound of the voice itself, or as part of the action of blowing, will not cause the toy to change from one action to another.

12. Robot Commando is not, as depicted, a moving and autonomous toy, and is not operable in the manner depicted in the television advertising, unless batteries, which are not included in the toy as packaged and sold to the purchasing public, are separately obtained and inserted therein.

13. Thumbelina doll does not move from one side to the other but does move its arms apart while lying on its side in the manner depicted.

14. The film demonstrating Robot Commando, which contained the representations found, was broadcast over two nation-wide television networks and by numerous independent television stations between September 16, 1961, and November 21, 1961, and the time of the day at which and the programs in connection with which it was broadcast were calculated so that it would be seen by children and actually was so seen.

15. The film demonstrating Thumbelina, containing the representations found, was broadcast over two nation-wide television networks and numerous independent television stations between September 16, 1961, and November 7, 1961, and the time of the day at which and the programs in connection with which it was broadcast were calculated so that it would be seen by children and actually was so seen.

And the following are my

CONCLUSIONS

I. The representations and depictions set forth in Finding 8 are false, misleading and deceptive, but only the representation of movement from one side to the other set forth in Finding 9 is false, misleading and deceptive.

II. Respondent's toys, including the Robot Commando and Thumbelina doll, are designed primarily for children. False, misleading and deceptive advertising claims beamed at children tend to exploit unfairly a consumer group unqualified by age or experience to anticipate or appreciate the possibility that representations may be exaggerated or untrue. Further, the use of such advertising plays unfairly upon the affection of adults for children, especially parents and other close relatives. By subjecting such persons to importuning and demands on the part of children who have been entranced by imaginative and deceptive properties claimed for such toys, which importuning and demands can be resisted even by adults not deceived

only upon pain of having dissatisfied, unhappy, hating or rebellious children, respondent tends to create disturbed home and family relationships.

III. When such toys are purchased in the expectation that they will have characteristics or perform acts not substantiated by the facts, the purchasers are misled to their disappointment and competing advertisers who do not engage in false, misleading or deceptive advertising are unfairly prejudiced.

IV. The use by respondent of the aforesaid false, misleading and deceptive representations has had the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that the representations were true and into the purchase of substantial quantities of the products of respondent, by reason of such erroneous and mistaken belief.

V. The aforesaid acts and practices of respondent were all to the prejudice and injury of the public and of respondent's competitors and constituted 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.

VI. This proceeding is in the public interest and the Federal Trade Commission has jurisdiction of the subject matter and of the respondent.

Upon the entire record, and considering the purposes and objectives of the law, it is my further conclusion that, in order to achieve effective enforcement of the law, it is necessary and appropriate to enter the following

ORDER

It is ordered, That respondent, Ideal Toy Corporation, its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of toys or related products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Advertising any toy manufactured, sold or distributed by it by presenting a visual demonstration represented as or appearing to be but not being the manner in which the toy performs, functions or acts, when the visual demonstration is, in fact, presented under circumstances helped or induced by undisclosed attachments, aids, factors or arrangements.

2. Failing to disclose clearly and conspicuously in any advertisement that elements, attachments, aids or batteries are necessary for the performance of any such toy in the manner

depicted unless such elements, attachments, aids or batteries are packed and sold with the toy and payment therefor is included in and a part of the price charged for such toy; or, if any such element, attachment, aid or battery is not so included, failing to disclose clearly and conspicuously in such advertisement both the necessity for such attachment, aid or battery and the fact that it must be purchased and paid for separately.

Opinion of the Commission

By Elman *Commissioner:*

The complaint in this matter charges respondent with false advertising of two toys made by it, "Robot Commando" and "Thumbelina", in violation of Section 5 of the Federal Trade Commission Act. The hearing examiner in his initial decision upheld the complaint and entered an order to cease and desist, and respondent has appealed. Complaint counsel has also appealed, challenging the scope of the examiner's order.

"Robot Commando" is a battery-operated toy that performs certain motions. It is controlled by a device resembling a microphone, attached to the "robot" by a cable. The "microphone" has a mouthpiece, and also a knob that can be set to any one of the following positions: "Turn Left", "Forward Forward", "Turn Right", "Fire Missile", "Fire Rocket". To make the toy perform, one must first blow into the microphone, then move the knob to one of the five positions. Although one can, if one wishes, speak the appropriate command into the mouthpiece—the expulsion of breath that occurs in speaking will activate the mechanism—the toy is not controlled by, or responsive to, vocal commands as such. Thus, if one says "Turn Left" and then does not set the knob to one of the five positions, nothing will happen, while if one says "Turn Left" and then sets the knob to "Turn Right", the robot will turn right, not left.

The examiner found that respondent had advertised "Robot Commando" as being voice-controlled, and also had failed to disclose in its advertising that the toy requires batteries and that batteries are not sold with the toy. The members of the Commission have viewed the television commercial upon which the findings are based, and on the basis of this first-hand examination we agree that respondent has misrepresented "Robot Commando" as being voice-controlled and that such misrepresentation is unlawful.

The commercial shows a child operating the toy seemingly by speaking into the microphone; the legend "voice controlled" appears on the screen; and the announcer states: "[Robot Commando] takes

orders from no one except * * * you! Ideal's Robot Commando is battery-operated to obey your command. Adjust the control * * * speak into the microphone." The net impression of the commercial—on adult viewers, let alone on the young children to whom the advertising message is primarily directed—is that "Robot Commando" obeys spoken commands;[1] whereas in fact voice or speaking as such plays no role whatever in the control of the toy.

This false impression is a material inducement to the purchase of the toy. Obviously, a toy that obeys spoken commands is more marvelous and thrilling to a child than one that responds only to a combination of mechanical controls, i.e., blowing into a mouthpiece and then moving a knob. Since the fact of voice control appears to be an important element in the desirability of a toy such as "Robot Commando" to children and to the adults who purchase toys for them, respondent's misrepresentation is an unlawful deception.

On the other hand, we do not think it necessary in this case to take corrective action with respect to respondent's failure to make clear disclosure in its advertising that "Robot Commando" is battery-operated and that batteries are not supplied by respondent with the toy. It does not appear that a substantial segment of the purchasing public to whom respondent's television advertising is directed believes, in the absence of some affirmative representation to that effect, that a toy such as "Robot Commando" is not battery-operated or that batteries, if necessary, are supplied by the manufacturer. Disclosure of these facts is made by respondent on the carton in which "Robot Commando" is sold to the consumer, and on the instruction sheet enclosed in the carton.

"Thumbelina", the other toy involved in this case, is a wind-up doll which performs writhings and contortions intended to simulate a baby's movements. The television commercial upon which the charge of false advertising of "Thumbelina" is based shows the doll, which is lying on a bed, turn over from the doll's right to its left side. This movement is possible only because the surface of the bed in the commercial is somewhat inclined, due to the weight of a child who is lying next to the doll in the bed. The doll will not perform such a movement on a level surface.

Although the commercial gives a somewhat exaggerated impression of the doll's capabilities, we do not think that an actionable deception has been established. The doll will in fact turn over under the

[1] Although in the commercial the child is shown manipulating the microphone before each new motion of the Robot, and although the announcer says, at one point, "Adjust the control", the significance of the child's hand motions and of the announcer's statement is lost on the viewer. The hand motions are jerky and appear accidental, while the announcer's remark makes no distinct impression on the viewer.

conditions depicted in the commercial, and those conditions—the weight of the child causing the incline in the bed's surface—are clearly disclosed to the viewer. At most, in the words of the hearing examiner, the performance of the doll in the commercial is "fortuitously striking", respondent having taken "advantage of the accidentally favorable impression" created by the conditions of the telecast (initial decision, pp. 305, 306). Moreover, it is not clear that the commercial's exaggerated impression was such as to significantly enhance the desirability of the toy in the eyes of many viewers.

We turn now to the issue of relief. Respondent contends that no cease and desist order should be entered, owing to its "abandonment" of the challenged practice. Complaint counsel contends that the examiner's order is too narrow. As has been pointed out many times, the purpose of adjudicative proceedings before the Commission is not to enter broad or narrow, general or specific, affirmative or negative, or tough or easy orders, as such; it is to prevent the future occurrence of the unlawful practice. See, e.g., *All-Luminum Products, Inc.*, F.T.C. Docket 8485 (decided November 7, 1963) [63 F.T.C. 1268]. This guiding principle, not mechanical rules or formulas, should determine the form of relief appropriate in a particular case.

There are cases in which the probability of the recurrence of the unlawful practice is so remote that no cease and desist order at all is warranted. This is not such a case, however, even though respondent withdrew the "Robot Commando" commercial that is the basis of our finding of deception prior to the commencement of this action. It is not clear that the representation that the toy is voice-controlled has been completely eliminated in respondent's revised advertising. Moreover, respondent withdrew the commercial in question only after it had been broadcast repeatedly throughout the nation for more than two months in the late fall—the critical pre-Christmas buying season [2] of 1961, a year in which respondent's gross sales of "Robot Commando" amounted to almost $3,000,000. Deceptive advertising on such a scale cannot be dismissed as a merely technical, insignificant, isolated or inadvertent violation of law, promptly abandoned, and not warranting entry of a formal order to cease and desist.[3]

We also reject respondent's argument—which is advanced obviously as a makeweight and has not been developed in any detail on

[2] Sixty percent of respondent's total annual sales take place in the months of November and December.

[3] For these reasons, we also reject respondent's contention that the present proceeding is not in the public interest because it does not involve a substantial violation of law.

this appeal—that its advertising practices are adequately supervised and regulated by the National Association of Broadcasters, a private group, so as to obviate all need for a formal order. Respondent concedes that the Association cannot apply formal sanctions for violations of its rules, and respondent has not even shown that the Association's rules effectively preclude the kind of advertising that we have found to be deceptive and unlawful. On the contrary, respondent states that the Association approved the particular "Robot Commando" commercial involved in this case.

The order which we deem appropriate to prevent repetition of respondent's unlawful practice differs somewhat from the proposed orders submitted by the parties, and also from that contained in the initial decision. The unlawful practice is the misrepresentation of the performance of a toy, and there is no rational basis for distinguishing, in the order, among various kinds of toys, advertising media, or techniques of misrepresentation. On the other hand, the record does not justify a blanket prohibition of all false and misleading advertising by respondent. Our order neither is confined to the specific acts of deception upon which the finding of unlawfulness is based, nor extends to all possible forms of deceptive conduct in which respondent might engage. Rather, it forbids the deceptive practice in which respondent has been found to have engaged.

Commissioner Anderson did not participate for the reason he did not hear oral argument.

Final Order

Upon consideration of the cross-appeals of the parties from the initial decision of the hearing examiner, and for the reasons stated in the accompanying opinion,

It is ordered, That:

(1) The findings of fact and conclusions of law contained in the initial decision are adopted by the Commission to the extent consistent with the accompanying opinion, and rejected to the extent inconsistent therewith.

(2) The complaint is dismissed with respect to the allegations concerning the "Thumbelina" toy and the failure to disclose in respondent's advertising that the "Robot Commando" toy is battery-operated.

(3) Respondent, Ideal Toy Corporation, a corporation, and its officers, representatives, employees, successors and assigns, directly or under any name or through any corporate or other device, in con-

nection with the offering for sale, sale and distribution of toys, in commerce, shall forthwith cease and desist from:

Stating, implying, or otherwise representing, by words, pictures, depictions, demonstrations or any combination thereof, or otherwise, that any toy performs in any manner not in accordance with fact.

(4) Respondent shall, within sixty (60) days after service of this order upon it, file with the Commission a written report setting forth in detail the manner and form of its compliance with the terms of the order.

By the Commission, Commissioner Anderson not participating for the reason he did not hear oral argument.

IN THE MATTER OF

AMERICAN CEMENT CORPORATION

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 7 OF THE CLAYTON ACT

Docket C-681. Complaint, Jan. 20, 1964—Decision, Jan. 20, 1964

Consent order requiring a portland cement manufacturer in Los Angeles—one of the ten largest in the United States, operating seven cement manufacturing plants in Pennsylvania, Michigan, California, Arizona and Hawaii, and a principal supplier in the New York City area herein concerned—to divest itself within 9 months of all the stock, assets and tangible and intangible properties, rights and privileges acquired in its acquisition of a manufacturer operating four ready-mixed concrete plants in the New York City area, one of the five largest consumers of portland cement in that area.

COMPLAINT

The Federal Trade Commission has reason to believe that the above-named respondent has acquired the assets and stock of another corporation in violation of Section 7 of the Clayton Act (U.S.C. Title 15, Sec 18), as amended; and therefore, pursuant to Section 11 of said Act, it issues this complaint, stating its charges in that respect as follows:

PARAGRAPH 1. (A) American Cement Corporation (American), respondent herein, is a corporation organized and existing under the laws of the State of Delaware, with its principal office located at 2404 Wilshire Boulevard, Los Angeles, California.

(B) American is, and for many years has been, engaged in the business of manufacturing and selling portland cement, one of the two lines of commerce relevant herein.

(C) Prior to and since January 29, 1960, in the course and conduct of its business, American has been engaged in commerce (as "commerce" is defined in the Clayton Act, as amended), having sold and shipped portland cement, or having caused it to be sold and shipped, from the State in which it was manufactured to purchasers located in other States.

PAR. 2. (A) For many years prior to and until about January 29, 1960, M. F. Hickey Company, Inc. (Hickey), was a corporation organized and existing under the laws of the State of New York, with its principal office located at 1301 Metropolitan Avenue, Brooklyn, New York.

(B) Hickey was engaged in the business of manufacturing and selling ready-mixed concrete, the other line of commerce relevant herein.

(C) In the regular course and conduct of its business, Hickey was engaged in commerce (as "commerce" is defined in the Clayton Act, as amended), having purchased and caused to be shipped into the State of New York portland cement manufactured in other States of the United States.

PAR. 3. On or about January 29, 1960, respondent acquired all of the outstanding capital stock of Hickey, by exchanging therefor 164,300 shares of American common stock, valued at approximately $3,645,400.

PAR. 4. (A) Ninety-five percent, more or less, of all cement produced in the United States is portland cement. Portland cement is an essential ingredient in the manufacture of ready-mixed concrete.

(B) Ready-mixed concrete is so called because it is delivered from a central plant by mixer trucks to the job site ready to pour. Substantially all concrete sold for construction purposes is ready-mixed concrete. In the New York City area, ready-mixed concrete producers account for more than fifty percent of all portland cement used.

PAR. 5. (A) American is among the ten largest producers and sellers of portland cement in the United States. It has seven wholly owned cement manufacturing plants, located in Pennsylvania, Michigan, California and Arizona, and has a partial interest in the Hawaiian Cement Corporation, a Hawaiian cement producer.

(B) For calendar years 1957 through 1962, the sales, net income, and total assets of respondent stated in millions of dollars, were approximately as follows:

Year	Sales	Income	Assets
*1962	$82.7	$5.8	$112.0
*1961	74.6	4.4	107.4
*1960	71.1	4.0	114.6
1959	56.8	6.8	93.7
1958	51.8	6.7	88.6
1957	55.6	8.4	73.3

*Includes Hickey and other subsidiaries.

PAR. 6. (A) Hickey's sales, net income and total assets for the fiscal years ending April 30, were approximately as follows:

Year	Sales	Income	Assets
1959	$6,912,480	$305,445	$2,937,442
1958	5,696,827	275,116	2,510,863
1957	5,581,951	248,206	2,319,484

(B) Prior to and at the time it was acquired by respondent, Hickey owned and operated four ready-mixed concrete plants; three of which were located in Brooklyn, New York and one in Flushing, Queens, New York.

PAR. 7. (A) For many years prior to its acquisition, Hickey sold substantially all of its ready-mixed concrete in the New York City area, the section of the country relevant herein, which consists of the boroughs of Manhattan, Bronx, Brooklyn and Queens of the city of New York.

(B) Prior to, and at the time of the acquisition, Hickey was one of the five largest consumers of portland cement in the New York City area.

PAR. 8. For many years prior to and since January 29, 1960, American, from its plant at Stockertown, Pennsylvania, in competition with other cement producers, has been a principal supplier of portland cement in the New York City area.

At the time of the acquisition of Hickey, none of respondent's competitors in the sale of portland cement in the New York City area

owned or controlled in said area a significant consumer of portland cement, such as a ready-mixed concrete producer.

PAR. 9. In the following ways, among others, the effect of respondent's acquisition of Hickey may be substantially to lessen competition or tend to create a monopoly in either the manufacture and sale of portland cement or in the manufacture and sale of ready-mixed concrete, or in both of these lines of commerce, in the New York City area:

(1) Present and future competitors of respondent, have been or may be precluded from selling portland cement to a substantial consumer to the detriment of actual and potential competition;

(2) Actual and potential competitors of respondent, have been or may be foreclosed from, and respondent has been assured of, a substantial share of the market for portland cement;

(3) The entry of new sellers of portland cement has been or may be inhibited or prevented;

(4) The competitive position of respondent in the sale of portland cement has been or may be substantially enhanced;

(5) Further integration of suppliers and consumers of portland cement may result, in that competitors of respondent in the manufacture and sale of portland cement have been or may be encouraged, or feel a necessity to merge or otherwise become affiliated with manufacturers of ready-mixed concrete; likewise, competitors of respondent in the manufacture and sale of ready-mixed concrete have been or may be encouraged, or feel a necessity to merge or otherwise become affiliated with manufacturers of portland cement;

(6) As an integrated manufacturer and seller of portland cement and ready-mixed concrete, respondent has achieved or may achieve a decisive competitive advantage over its competitors engaged only in the manufacture and sale of ready-mixed concrete; and

(7) The entry of new sellers of ready-mixed concrete has been or may be inhibited or prevented.

PAR. 10. Prior to its acquisition of Hickey, respondent had, it now has, and, after the divestiture of Hickey which is sought in this proceeding, will continue to have, such a significant competitive position in the sale of portland cement in the New York City area and in every other section of the country in which American is engaged in the sale of portland cement, that the effect of any acquisition by it of any of the stock or assets of any corporation engaged in commerce, and engaged in the sale of ready-mixed concrete, in any of the sections of the country where respondent produces or sells portland cement or ready-mixed concrete, may be substantially to lessen competition or tend to create a monopoly as alleged in Paragraph 9.

PAR. 11. The acquisition of Hickey constitutes a violation by respondent of Section 7 of the Clayton Act (U.S.C. Title 15, Sec. 18), as amended.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of Section 7 of the Clayton Act, as amended, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

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

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

1. Respondent American Cement Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 2404 Wilshire Boulevard, Los Angeles, California.

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

ORDER

It is ordered, That respondent, American Cement Corporation, a corporation, through its officers, directors, agents, representatives and employees shall, within nine months from the date of service upon it of this Order, divest itself, in good faith, and in so far as reasonably possible as a unit, and to a purchaser, or purchasers, approved by the Federal Trade Commission, of all stock or of all rights, title and interest in all assets, properties, rights and privileges, tangible and intangible, including but not limited to, all properties, plants, machinery, equipment, raw material reserves, trade names, contract rights, trademarks and good will acquired by respondent as a result of its acquisition of the stock and assets of the M. F. Hickey Company, Inc., together with all plants, machinery, buildings, land, raw

material reserves, improvements, equipment and other property of whatever description that have been added to or placed upon the premises of the former M. F. Hickey Company, Inc., as may be necessary to restore or continue the M. F. Hickey Company, Inc., insofar as reasonably possible, as a going concern and an effective competitor in the manufacture and sale of ready-mixed concrete.

It is further ordered, That, except in the ordinary course of business pending divestiture, respondent shall not, without prior approval of the Federal Trade Commission, make any changes in any of the plants, machinery, buildings, equipment, or other property of whatever description of the former M. F. Hickey Company, Inc., which shall impair its present capacity for the production, sale and distribution of ready-mixed concrete, or its market value, unless such capacity or value is restored prior to divestiture.

It is further ordered, That, without prior approval of the Federal Trade Commission, the aforesaid assets or stock required to be divested under this Order shall not be sold or transferred, directly or indirectly, to anyone who, at the time of the divestiture, respondent knows or has reason to know is a stockholder, officer, director, employee, or agent, or otherwise is directly or indirectly connected with or under the control of respondent or any of its subsidiaries or affiliated companies, except that the current stockholdings of former owners, Lawrence F. Hickey and family, shall not prevent divestiture to them with the approval of the Federal Trade Commission.

It is further ordered, That, without prior approval of the Federal Trade Commission, in said divestiture, respondent shall not sell or transfer, directly or indirectly, any of the aforesaid stock or assets, to any corporation, or to anyone who, at the time of said divestiture, respondent knows or has reason to know is an officer, director, employee or agent of a corporation, which at the time of such sale or transfer, is a manufacturer or substantial distributor of portland cement anywhere in the United States, or is engaged in the production or sale of ready-mixed concrete in the New York City area, as defined in the complaint.

It is further ordered, That respondent shall, within sixty (60) days after service upon it of this Order, file with the Federal Trade Commission a report, in writing, setting forth in detail its plan for carrying out the provisions of this Order. In the event divestiture has not been accomplished within this sixty day period, respondent will thereafter report each sixty days its progress in carrying out the provisions of this Order.

By the Commission, Commissioner MacIntyre not concurring.

IN THE MATTER OF

CHORI NEW YORK, INC., ET AL.

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

Docket C-682. Complaint, Jan. 21, 1964—Decision, Jan. 21, 1964

Consent order requiring New York City importers to cease violating the Flammable Fabrics Act by importing and distributing in commerce fabrics which were so highly flammable as to be dangerous when worn.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Chori New York, Inc., a corporation, and Shosuke Tanikaga, Kunio Misaki and Akira Utsumi, individually and as officers of the said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts, and the Rules and Regulations promulgated under the Flammable Fabrics Act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Chori New York, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Respondents Shosuke Tanikaga, Kunio Misaki and Akira Utsumi, are president, secretary and treasurer, respectively of Chori New York, Inc., the corporate respondent. The individual respondents together with the Board of Directors of said corporation, participate in the formulation, direction and control of the acts, practices and policies of said corporation. All respondents have their offices and principal place of business located at 350 Fifth Avenue, New York 1, New York.

The respondents are engaged in the importation into the United States and in the sale and distribution of such imported fabrics.

PAR. 2. Respondents, subsequent to July 1, 1954, the effective date of the Flammable Fabrics Act, have sold and offered for sale, in commerce; have imported into the United States; and have introduced, delivered for introduction, transported, and caused to be transported, in commerce; and have transported and caused to be transported for the purpose of sale or delivery after sale, in commerce; as "commerce" is defined in the Flammable Fabrics Act,

fabric, as that term is defined therein, which fabric was, under Section 4 of the Flammable Fabrics Act, as amended, so highly flammable as to be dangerous when worn by individuals.

PAR. 3. The aforesaid acts and practices of respondents were and are in violation of the Flammable Fabrics Act and the Rules and Regulations promulgated thereunder, and as such constitutes unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and the Flammable Fabrics 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 Chori New York, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Respondents Shosuke Tanikaga, Kunio Misaki and Akira Utsumi, are president, secretary and treasurer, respectively of Chori New York, Inc., the corporate respondent. The individual respondents together with the Board of Directors of said corporation, participate in the formulation, direction and control of the acts, practices and policies of said corporation. All respondents have their offices and principal place of business located at 350 Fifth Avenue, New York 1, New York.

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

ORDER

I. *It is ordered*, That the respondent Chori New York, Inc., a corporation, and its officers, and respondents, Shosuke Tanikaga, Kunio Misaki and Akira Utsumi, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from:

(a) Importing into the United States; or

(b) Selling, offering for sale, introducing, delivering for introduction, transporting, or causing to be transported in commerce, as "commerce" is defined in the Flammable Fabrics Act; or

(c) Transporting or causing to be transported, for the purpose of sale or delivery after sale in commerce,

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

Provided, *however*, That nothing contained herein shall affect any rights afforded to the respondents by Section 11 of the Flammable Fabrics Act.

II. *It is further ordered*, That respondents hereinbefore named furnish to the Federal Trade Commission within 5 days after service of this order a special report which:

(a) Contains a list of the names and addresses of all of the corporate respondents' customers to whom shipments were made, since July 1, 1963, of fabric Style AK 7331 and/or of any other fabric which under the provisions of Section 4 of the said Flammable Fabrics Act, as amended, is so highly flammable as to be dangerous when worn by individuals.

(b) Shows that respondents have notified in writing the customers of the corporate respondent to whom any of the shipments referred to in subparagraph (a) above were made, as to the questionable flammable nature of the fabrics contained in such shipments.

(c) Contains copies of the aforesaid notification to each of the customers referred to in subparagraph (a) and copies of any and all responses to the aforesaid notification.

III. *It is further ordered*, That respondents, hereinbefore named, shall forward to the Commission, within two (2) days after receipt thereof, copies of any and all responses to the notification required by Subparagraph (c) of Paragraph II above which are received by respondents after the due date of the aforesaid special report.

IV. *It is further ordered*, That the respondents, hereinbefore named, shall, within five (5) 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 Paragraph I of this order.

IN THE MATTER OF

JOYCETTE FABRICS CORP. ET AL.

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

Docket C-683. Complaint, Jan. 21, 1964—Decision, Jan. 21, 1964

Consent order requiring New York City converters and distributors of imported fabrics, to cease violating the Flammable Fabrics Act by importing or selling flammable fabrics in commerce, and falsely representing to customers that they had a continuing guaranty with the Federal Trade Commission to the effect that tests required under the Act showed certain fabrics not to be dangerously flammable; and requiring them to furnish to the Commission within five days a list of customers to whom flammable fabrics were shipped, along with a showing that such customers were notified of the questionable flammable nature of the fabrics; and further requiring them to cease violating the Textile Fiber Products Identification Act by failing to affix required labels to textile products imported or sold in commerce.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Flammable Fabrics Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Joycette Fabrics Corp., a corporation, and Louis A. Levine and David Sherman, individually and as officers of said corporation, hereinafter referred to as the respondents, have violated the provisions of said Acts, and the Rules and Regulations promulgated under the Flammable Fabrics Act and the Textile Fiber Products Identification Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Joycette Fabrics Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Respondents Louis A. Levine and David Sherman are president and treasurer, respectively, of Joycette

Fabrics Corp., the corporate respondent. The individual respondents together with the Board of Directors of said corporation, participate in the formulation, direction and control of the policies, acts and practices of the said corporate respondent. All respondents have their offices and principal place of business located at 1450 Broadway, New York, New York.

The respondents are engaged in the conversion and sale of imported fabrics.

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

PAR. 3. Respondents, by falsely representing in writing that they have a continuing guaranty under the Flammable Fabrics Act on file with the Federal Trade Commission, have furnished their customers with a false guaranty with respect to certain of the fabrics, mentioned in Paragraph 2 hereof, to the effect that reasonable and representative tests made under the procedures provided in Section 4 of the Flammable Fabrics Act, as amended, and the Rules and Regulations promulgated thereunder, show that said fabrics are not, in the form delivered by respondents, so highly flammable under the provisions of the Flammable Fabrics Act as to be dangerous when worn by individuals. There was reason for respondents to believe that the fabrics covered by such guaranty might be introduced, sold, or transported in commerce in violation of Section 8(b) of the aforesaid Act and Rule 10(d) of the Rules and Regulations promulgated under such Act.

Said guaranty was false in that respondents did not have such a continuing guaranty on file with the Federal Trade Commission.

PAR. 4. The aforesaid acts and practices of respondents were and are in violation of the Flammable Fabrics Act and the Rules and Regulations promulgated thereunder, and as such constitute unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

PAR. 5. Subsequent to the effective date of the Textile Fiber Products Identification Act on March 3, 1960, respondents have been and

are now engaged in the introduction, delivery for sale, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, and in the importation into the United States, of textile fiber products; and have sold, offered for sale, advertised, delivered, transported, and caused to be transported, textile fiber products, which have been advertised or offered for sale in commerce; and have sold, offered for sale, advertised, delivered, transported, and caused to be transported, after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products, as the terms "commerce", and "textile fiber products" are defined in the Textile Fiber Products Identification Act.

PAR. 6. Certain of said textile fiber products were misbranded by respondents in that they were not stamped, tagged, labeled or otherwise identified with the information required under Section 4(b) of the Textile Fiber Products Identification Act, and in the manner and form prescribed by the Rules and Regulations promulgated under said Act.

PAR. 7. The aforesaid acts and practices of respondents were and are in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, and as such constitute unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agree-

ment, makes the following jurisdictional findings, and enters the following order:

1. Respondent Joycette Fabrics Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Respondents Louis A. Levine and David Sherman are president and treasurer, respectively, of Joycette Fabrics Corp., the corporate respondent. The individual respondents together with the Board of Directors of said corporation, participate in the formulation, direction and control of the policies, acts and practices of the said corporate respondent. All respondents have their offices and principal place of business located at 1450 Broadway, New York, New York.

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

ORDER

I. *It is ordered*, That the respondent Joycette Fabrics Corp., a corporation, and its officers, and Louis A. Levine and David Sherman, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from:

1. (a) Importing into the United States; or

(b) Selling, offering for sale, introducing, delivering for introduction, transporting, or causing to be transported, in commerce, as "commerce" is defined in the Flammable Fabrics Act; or

(c) Transporting or causing to be transported, for the purpose of sale or delivery after sale in commerce,

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

Provided, however, That nothing contained herein shall affect any rights afforded to the respondents by Section 11 of the Flammable Fabrics Act.

2. Furnishing to any person a guaranty with respect to any fabric which respondents, or any of them, have reason to believe may be introduced, sold or transported in commerce, which guaranty represents, contrary to fact, that reasonable and representative tests made under the procedures provided in Section 4 of the Flammable Fabrics Act, as amended, and the Rules and Regulations thereunder, show and will show that the fabric

covered by the guaranty, is not, in the form delivered or to be delivered by the guarantor, so highly flammable under the provisions of the Flammable Fabrics Act as to be dangerous when worn by individuals: *Provided, however*, That this prohibition shall not be applicable to a guaranty furnished on the basis of, and in reliance upon, a guaranty to the same effect received by respondents in good faith signed by and containing the name and address of the person by whom the fabric was manufactured or from whom it was received.

II. *It is further ordered*, That respondents Joycette Fabrics Corp., a corporation, and its officers, and Louis A. Levine and David Sherman, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, sale, advertising or offering for sale, in commerce, or in the transportation or causing to be transported in commerce, or the importation into the United States of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act do forthwith cease and desist from misbranding textile fiber products by failing to affix labels to such products showing each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

III. *It is further ordered*, That respondents hereinbefore named, furnish to the Federal Trade Commission within five (5) days after service of this order, a special report which:

(a) Contains a list of the names and addresses of all of the corporate respondents' customers to whom shipments were made, since July 1, 1963, of fabric Style AK 7331 and/or of any other fabric which under the provisions of Section 4 of the said Flammable Fabrics Act, as amended, is so highly flammable as to be dangerous when worn by individuals.

(b) Shows that respondents have notified, in writing the customers of the corporate respondent to whom any of the shipments referred to in subparagraph (a) above were made, as to

the questionable flammable nature of the fabrics contained in such shipments.

(c) Contains copies of the aforesaid notification to each of the customers referred to in subparagraph (a) and copies of any and all responses to the aforesaid notification.

IV. *It is further ordered*, That respondents, hereinbefore named, shall forward to the Commission, within two(2) days after receipt thereof, copies of any and all responses to the notification required by Subparagraph (c) of Paragraph III above which are received by respondents after the due date of the aforesaid special report.

V. *It is further ordered*, That the respondents hereinbefore named, shall, within five (5) 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 Paragraph I of this order.

IN THE MATTER OF

NICHIMEN COMPANY, INC., ET AL.

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

Docket C-684. Complaint, Jan. 21, 1964—Decision, Jan. 21, 1964

Consent order requiring a New York City importer to cease violating the Flammable Fabrics Act by importing into the United States and selling in commerce fabric which was so highly flammable as to be dangerous when worn.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Nichimen Company, Inc., a corporation, and Shunji Uyeda, individually and as an officer of the said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts, and the Rules and Regulations promulgated under the Flammable Fabrics Act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Nichimen Company, Inc., is a corporation organized, existing and doing business under and by virtue of

the laws of the State of New York. Repondent Shunji Uyeda is the president of Nichimen Company, Inc., the corporate respondent. The individual respondent formulates, directs and controls the acts, practices and policies of said corporation. The respondents have their offices and principal place of business located at 60 Broad Street, New York, New York.

The respondents are engaged in the importation into the United States of fabrics and in the sale and distribution of such imported fabrics.

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

PAR. 3. The aforesaid acts and practices of respondents were and are in violation of the Flammable Fabrics Act and the Rules and Regulations promulgated thereunder, and as such constitute unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and the Flammable Fabrics 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 agree-

ment, makes the following jurisdictional findings, and enters the following order:

1. Respondent Nichimen Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 60 Broad Street, New York, New York.

Respondent Shunji Uyeda is an officer of said corporation and his 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

I. *It is ordered*, That the respondent Nichimen Company, Inc., a corporation, and its officer, and respondent, Shunji Uyeda, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from:

(a) Importing into the United States; or

(b) Selling, offering for sale, introducing, delivering for introduction, transporting, or causing to be transported, in commerce, as "commerce" is defined in the Flammable Fabrics Act; or

(c) Transporting or causing to be transported, for the purpose of sale or delivery after sale in commerce,

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

Provided, however, That nothing contained herein shall affect any rights afforded to the respondents by Section 11 of the Flammable Fabrics Act.

II. *It is further ordered*, That respondents hereinbefore named, furnish to the Federal Trade Commission within 5 days after service of this order a special report which:

(a) Contains a list of the names and addresses of all of the corporate respondents' customers to whom shipments were made, since July 1, 1963, of fabric Style AK 4100 and/or AK 777 and/or of any other fabric which under the provisions of Section 4 of the said Flammable Fabrics Act, as amended, is so highly flammable as to be dangerous when worn by individuals.

(b) Shows that respondents have notified in writing the customers of the corporate respondent to whom any of the shipments referred to in subparagraph (a) above were made, as to the questionable flammable nature of the fabrics contained in such shipments.

(c) Contains copies of the aforesaid notification to each of the customers referred to in subparagraph (a) and copies of any and all responses to the aforesaid notification.

III. *It is further ordered*, That respondents hereinbefore named shall forward to the Commission, within two (2) days after receipt thereof, copies of any and all responses to the notification required in Subparagraph (c) of Paragraph II above which are received by respondents after the due date of the aforesaid special report.

IV. *It is further ordered*, That the respondents hereinbefore named shall, within five (5) 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 Paragraph I of this order.

IN THE MATTER OF

S. SHAMASH & SONS, INC., ET AL.

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

Docket C-685. Complaint, Jan. 21, 1964—Decision, Jan. 21, 1964

Consent order requiring New York City converters of imported fabrics, etc., to cease violating the Flammable Fabrics Act by importing and selling in commerce fabrics so highly flammable as to be dangerous when worn.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that S. Shamash & Sons, Inc., a corporation, and Jack Shamash, individually and as an officer of the said corporation, hereinafter referred to as the respondents have violated the provisions of said Acts, and the Rules and Regulations promulgated under the Flammable Fabrics Act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public

interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent S. Shamash & Sons., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Respondent Jack Shamash is the president of S. Shamash & Sons., Inc., the corporate respondent. The individual respondent formulates, directs and controls the policies, acts and practices of the said corporate respondent. The respondents have their offices and principal place of business located at 26 Broadway, New York, New York.

The respondents are engaged in the conversion and sale of imported fabrics.

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

PAR. 3. The aforesaid acts and practices of respondents were and are in violation of the Flammable Fabrics Act and the Rules and Regulations promulgated thereunder, and as such constitute unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the Flammable Fabrics 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 S. Shamash & Sons, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 26 Broadway, New York, New York.

Respondent Jack Shamash is an officer of said corporation and his 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

I. *It is ordered*, That respondent S. Shamash & Sons, Inc., a corporation, and its officer and respondent, Jack Shamash, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from:

(a) Importing into the United States; or

(b) Selling, offering for sale, introducing, delivering for introduction, transporting, or causing to be transported, in commerce, as "commerce" is defined in the Flammable Fabrics Act; or

(c) Transporting or causing to be transported, for the purpose of sale or delivery after sale in commerce,

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

Provided, however, That nothing contained herein shall affect any rights afforded to the respondents by Section 11 of the Flammable Fabrics Act.

II. *It is further ordered*, That respondents hereinbefore named, furnish to the Federal Trade Commission within 5 days after service of this order a special report which:

(a) Contains a list of the names and addresses of all of the corporate respondents' customers to whom shipments were made, since July 1, 1963, of fabric Style AK 777, and/or Style AK 4100 and/or of any other fabric which under the provisions of Section 4 of the said Flammable Fabrics Act, as amended, is so highly flammable as to be dangerous when worn by individuals.

(b) Shows that respondents have notified in writing the customers of the corporate respondent to whom any of the shipments referred to in subparagraph (a) above were made, as to the questionable flammable nature of the fabrics contained in such shipments.

(c) Contains copies of the aforesaid notification to each of the customers referred to in subparagraph (a) and copies of any and all responses to the aforesaid notification.

III. *It is further ordered*, That respondents hereinbefore named, shall forward to the Commission, within two (2) days after receipt thereof, copies of any and all responses to the notification required by Subparagraph (c) of Paragraph II above which are received by respondents after the due date of the aforesaid special report.

IV. *It is further ordered*, That the respondents hereinbefore named shall, within five (5) 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 Paragraph I of this order.

IN THE MATTER OF

WALTER STRASSBURGER & CO., INC., ET AL.

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

Docket C-686. Complaint, Jan. 21, 1964—Decision, Jan. 21, 1964

Consent order requiring New York City importers of fabrics to cease violating the Flammable Fabrics Act by importing and selling in commerce fabrics so highly flammable as to be dangerous when worn.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Walter Strassburger & Co., Inc., a corporation, and Walter Strassburger, individually and as an officer of the said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts, and the Rules and Regulations promulgated under the Flammable Fabrics Act and it appearing to the Commission that a proceeding by it in respect thereof would be

in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Walter Strassburger & Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Respondent Walter Strassburger is president and treasurer of Walter Strassburger & Co., Inc., the corporate respondent. The individual respondent participates in the formulation, direction and control of the acts, practices and policies of said corporation. All respondents have their offices and principal place of business located at 180 Madison Avenue, New York, New York.

The respondents are engaged in the importation into the United States of fabrics and in the sale and distribution of such imported fabrics.

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

PAR. 3. The aforesaid acts and practices of respondents were and are in violation of the Flammable Fabrics Act and the Rules and Regulations promulgated thereunder, and as such constitute unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the Flammable Fabrics 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 ad-

mission 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, Walter Strassburger & Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 180 Madison Avenue, in the city of New York, State of New York.

Respondent Walter Strassburger is an officer of said corporation and his 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

I. *It is ordered*, That the respondent Walter Strassburger & Co., Inc., a corporation, and its officers, and respondent Walter Strassburger, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from:

(a) Importing into the United States; or

(b) Selling, offering for sale, introducing, delivering for introduction, transporting, or causing to be transported, in commerce, as "commerce" is defined in the Flammable Fabrics Act; or

(c) Transporting or causing to be transported, for the purpose of sale or delivery after sale in commerce, any fabric which, under the provisions of Section 4 of the said Flammable Fabrics Act, as amended, is so highly flammable as to be dangerous when worn by individuals.

Provided, *however*, That nothing contained herein shall affect any rights afforded to the respondents by Section 11 of the Flammable Fabrics Act.

II. *It is further ordered*, That respondents hereinbefore named, furnish to the Federal Trade Commission within 5 days after service of this order a special report which:

(a) Contains a list of the names and addresses of all of the corporate respondents' customers to whom shipments were made,

since July 1, 1963, of fabric Style AK 777 and/or of any other fabric which under the provisions of Section 4 of the said Flammable Fabrics Act, as amended, is so highly flammable as to be dangerous when worn by individuals.

(b) Shows that respondents have notified in writing the customers of the corporate respondent to whom any of the shipments referred to in subparagraph (a) above were made, as to the questionable flammable nature of the fabrics contained in such shipments.

(c) Contains copies of the aforesaid notification to each of the customers referred to in subparagraph (a) and copies of any and all responses to the aforesaid notification.

III. *It is further ordered*, That respondents hereinbefore named shall forward to the Commission, within two (2) days after receipt thereof, copies of any and all responses to the notification required by Subparagraph (c) of Paragraph II above which are received by respondents after the due date of the aforesaid special report.

IV. *It is further ordered*, That the respondents hereinbefore named shall, within five (5) 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 Paragraph I of this order.

IN THE MATTER OF

KABAT TEXTILE CORPORATION ET AL.

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

Docket C-687. Complaint, Jan. 21, 1964—Decision, Jan. 21, 1964

Consent order requiring New York City distributors of imported fabrics to cease violating the Flammable Fabrics Act by importing and selling in commerce fabrics so highly flammable as to be dangerous when worn.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Kabat Textile Corporation, a corporation, and Milton J. Adelman, individually and as an officer of the said corporation, hereinafter referred to as respondents, have violated the pro-

visions of said Acts, and the Rules and Regulations promulgated under the Flammable Fabrics Act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Kabat Textile Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Respondent Milton J. Adelman is president of Kabat Textile Corporation, the corporate respondent. The individual respondent formulates, directs and controls the acts, practices and policies of said corporation. The respondents have their offices and principal place of business located at 215 West 40th Street, New York, New York.

The respondents are engaged in the sale and distribution of imported fabrics.

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

PAR. 3. The aforesaid acts and practices of respondents were and are in violation of the Flammable Fabrics Act and Rules and Regulations promulgated thereunder, and as such constitute unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and the Flammable Fabrics 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. Kabat Textile Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 215 West 40th Street, New York, New York.

Respondent Milton J. Adelman is an officer of Kabat Textile Corporation and his address is the same as that of the 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

I. *It is ordered*, That the respondent Kabat Textile Corporation, a corporation, and its officer and respondent, Milton J. Adelman, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from:

(a) Importing into the United States; or

(b) Selling, offering for sale, introducing, delivering for introduction, transporting, or causing to be transported, in commerce, as "commerce" is defined in the Flammable Fabrics Act; or

(c) Transporting or causing to be transported, for the purpose of sale or delivery after sale in commerce,

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

Provided, however, That nothing contained herein shall affect any rights afforded to the respondents by Section 11 of the Flammable Fabrics Act.

II. *It is further ordered*, That respondents hereinbefore named, furnish to the Federal Trade Commission within five (5) days after service of this order a special report which:

(a) Contains a list of the names and addresses of all of the corporate respondents' customers to whom shipments were made,

since July 1, 1963, of fabric Style AK 777 and/or Quality 745 or 748 and/or of any other fabric which under the provisions of Section 4 of the said Flammable Fabrics Act, as amended, is so highly flammable as to be dangerous when worn by individuals.

(b) Shows that respondents have notified in writing the customers of the corporate respondent to whom any of the shipments referred to in subparagraph (a) above were made, as to the questionable flammable nature of the fabrics contained in such shipments.

(c) Contains copies of the aforesaid notification to each of the customers referred to in subparagraph (a) and copies of any and all responses to the aforesaid notification.

III. *It is further ordered*, That respondents shall forward to the Commission, within two (2) days after receipt thereof, copies of any and all responses to the notification required by Subparagraph (c) of Paragraph II above which are received by respondents after the due date of the aforesaid special report.

IV. *It is further ordered*, That the respondents herein shall, within five (5) 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 Paragraph I of this order.

IN THE MATTER OF

NEW YORK SANKYO SEIKO CO., LTD., ET AL.

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

Docket C-688. Complaint, Jan. 21, 1964—Decision, Jan. 21, 1964

Consent order requiring New York City importers of fabrics to cease violating the Flammable Fabrics Act by importing and selling in commerce fabrics so highly flammable as to be dangerous when worn.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that New York Sankyo Seiko Co., Ltd., a corporation, and Takizo Miki, Takamori Kono and Tamotsu Ohara, individually and as officers of the said corporation, hereinafter referred to

as respondents, have violated the provisions of said Acts, and the Rules and Regulations promulgated under the Flammable Fabrics Act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent New York Sankyo Seiko Co., Ltd., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Respondents Takizo Miki, Takamori Kono, and Tamotsu Ohara are president, vice president and treasurer and secretary, respectively of New York Sankyo Seiko Co., Ltd., the corporate respondent. The individual respondents participate in the formulation, direction and control of the acts, practices and policies of said corporation. All respondents have their offices and principal place of business located at 303 Fifth Avenue, New York, New York.

The respondents are engaged in the importation into the United States of fabrics and in the sale and distribution of such imported fabrics.

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

PAR. 3. The aforesaid acts and practices of respondents were and are in violation of the Flammable Fabrics Act and the Rules and Regulations promulgated thereunder, and as such constitute unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission.

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 Flammable Fabrics 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. New York Sankyo Seiko Co., Ltd., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 303 Fifth Avenue, New York, New York.

Respondents Takizo Miki, Takamori Kono and Tamotsu Ohara are officers of New York Sankyo Seiko Co., Ltd., and their address is the same as that of the 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

I. *It is ordered*, That the respondent New York Sankyo Seiko Co., Ltd., a corporation, and its officers, and respondents, Takizo Miki, Takamori Kono and Tamotsu Ohara, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from:

(a) Importing into the United States; or

(b) Selling, offering for sale, introducing, delivering for introduction, transporting, or causing to be transported, in commerce, as "commerce" is defined in the Flammable Fabrics Act; or

(c) Transporting or causing to be transported, for the purpose of sale or delivery after sale in commerce,

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

Provided, *however*, That nothing contained herein shall affect any rights afforded to the respondents by Section 11 of the Flammable Fabrics Act.

II. *It is further ordered*, That respondents hereinbefore named furnish to the Federal Trade Commission within 5 days after service of this order a special report which:

(a) Contains a list of the names and addresses of all of the corporate respondents' customers to whom shipments were made, since July 1, 1963, of fabric style AK 777 and/or quality 745 or 748 and/or of any other fabric which under the provisions of Section 4 of the said Flammable Fabrics Act, as amended, is so highly flammable as to be dangerous when worn by individuals.

(b) Shows that respondents have notified in writing the customers of the corporate respondent to whom any of the shipments referred to in subparagraph (a) above were made, as to the questionable flammable nature of the fabrics contained in such shipments.

(c) Contains copies of the aforesaid notification to each of the customers referred to in subparagraph (a) and copies of any and all responses to the aforesaid notification.

III. *It is further ordered*, That respondents shall forward to the Commission, within two (2) days after receipt thereof, copies of any and all responses to the notification required by Subparagraph (c) of Paragraph II above which are received by respondents after the due date of the aforesaid special report.

IV. *It is further ordered*, That the respondents herein shall, within five (5) 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 Paragraph I of this order.

IN THE MATTER OF

THE SCHWARZENBACH HUBER CO., INC., ET AL.

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

Docket C-689. Complaint, Jan. 21, 1964—Decision, Jan. 21, 1964 *

Consent order requiring New York City distributors of imported fabrics to cease violating the Flammable Fabrics Act by importing and selling in commerce fabrics so highly flammable as to be dangerous when worn.

* Amended April 24, 1964, herein by eliminating Michael F. Kopec as a party respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that The Schwarzenbach Huber Co., Inc., a corporation, and Robert Schwarzenbach, Walter J. Braun, Kurt O. Trueb, Jerold P. Elden, Michael F. Kopec and Samuel I. Mandel, individually and as officers of the said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts, and the Rules and Regulations promulgated under the Flammable Fabrics Act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent The Schwarzenbach Huber Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey. Respondents Robert Schwarzenbach, Walter J. Braun, Kurt O. Trueb, Jerold P. Elden, Michael F. Kopec and Samuel I. Mandel are officers of The Schwarzenbach Huber Co., Inc., the corporate respondent. The individual respondents participate in the formulation, direction and control of the acts, practices and policies of said corporation. All respondents have their offices and principal place of business located at 470 Fourth Avenue, New York 1, New York.

The respondents are engaged in the sale and distribution of imported fabrics.

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

PAR. 3. The aforesaid acts and practices of respondents were and are in violation of the Flammable Fabrics Act and the Rules and Regulations promulgated thereunder, and as such constitute unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

Decision and Order

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the Flammable Fabrics 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. The Schwarzenbach Huber Co., 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 470 Fourth Avenue, New York, New York.

Respondents Robert Schwarzenbach, Walter J. Braun, Kurt O. Trueb, Jerold P. Elden, Michael F. Kopec, and Samuel I. Mandel 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

I. *It is ordered*, That the respondent The Schwarzenbach Huber Co., Inc., a corporation, and its officers, and respondents, Robert Schwarzenbach, Walter J. Braun, Kurt O. Trueb, Jerold P. Elden, Michael F. Kopec, and Samuel I. Mandel, individually, and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from:

(a) Importing into the United States; or

(b) Selling, offering for sale, introducing, delivering for introduction, transporting, or causing to be transported, in com-

merce, as "commerce" is defined in the Flammable Fabrics Act; or

(c) Transporting or causing to be transported, for the purpose of sale or delivery after sale in commerce,

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

II. *It is further ordered*, That respondents hereinbefore named, furnish to the Federal Trade Commission within 5 days after service of this order a special report which:

(a) Contains a list of the names and addresses of all of the corporate respondents' customers to whom shipments were made, since July 1, 1963, of fabric Style AK 777 and/or 4958 and/or of any other fabric which under the provisions of Section 4 of the said Flammable Fabrics Act, as amended, is so highly flammable as to be dangerous when worn by individuals.

(b) Shows that respondents have notified in writing the customers of the corporate respondent to whom any of the shipments referred to in subparagraph (a) above were made, as to the questionable flammable nature of the fabrics contained in such shipments.

(c) Contains copies of the aforesaid notification to each of the customers referred to in subparagraph (a) and copies of any and all responses to the aforesaid notification.

III. *It is further ordered*, That respondents hereinbefore named, shall forward to the Commission, within two (2) days after receipt thereof, copies of any and all responses to the notification required by Subparagraph (c) of Paragraph II above which are received by respondents after the due date of the aforesaid special report.

IV. *It is further ordered*, That the respondents hereinbefore named shall, within five (5) 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 Paragraph I of this order.

ORDER GRANTING PETITION TO AMEND DECISION AND ORDER ISSUED JANUARY 21, 1964

APRIL 24, 1964

Michael F. Kopec, an individual respondent in the above-captioned matter has filed a petition for amendment of the consent order to cease and desist issued on January 21, 1964, so as to delete all ref-

erence to him as a respondent. Good cause having been shown for this relief and it appearing that complaint counsel has no objection,

It is ordered, That the consent order issued January 21, 1964, be, and it hereby is, amended by eliminating Michael F. Kopec as a party respondent and by deleting all reference to him.

IN THE MATTER OF

HALSAM PRODUCTS COMPANY

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

Docket C–690. Complaint, Jan. 21, 1964—Decision, Jan. 21, 1964

Consent order requiring a Chicago distributor of toys and related products, to cease misrepresenting the component parts in its toy construction set "American Logs," in pictorial representations, labeling, and advertisements in catalogs.

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 Halsam Products Company, 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 Halsam Products Company is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 3610 Touhy Avenue, in the city of Chicago, State of Illinois.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of toys and related products, including a toy designated "American Logs", to distributors and retailers for resale 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 toys and related products, including its said "American Logs", when sold, to be shipped from its place of business in the State of Illinois to purchasers thereof located in various other States of the United

States and in the District of Columbia, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business, and for the purpose of inducing the purchase of its product designated "American Logs", respondent has made certain pictorial representations with respect thereto in labeling and in advertisements published in catalogs of interstate circulation. Typical, but not all inclusive, of such representations is the use of a picture of a western cabin in the labeling on the containers and the use of a picture of said western cabin in advertisements in catalogs. (See exhibits A and B.)*

PAR. 5. Through the use of the aforesaid pictorial representations, and others of similar import but not specifically referred to herein, respondents have represented, directly or by implication:

(1) That the component parts in the containers of said "American Logs" include a ridge pole and include roof planks which are grooved.

(2) That from the component parts in the containers of said "American Logs" there may be made a western cabin as pictured on the containers and in the advertisements.

PAR. 6. In truth and in fact:

(1) The component parts in the containers of said "American Logs" do not include a ridge pole nor do they include roof planks which are grooved.

(2) In certain sized containers of said "American Logs" there are not sufficient or adequate parts to make the western cabin as pictured on the containers and in the advertisements.

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

PAR. 7. In the conduct of its business at all times mentioned herein, respondent Halsam Products Company has been in substantial competition, in commerce, with corporations, firms and individuals in the sale of toys and related products of the same general kind and nature as that sold by respondent.

PAR. 8. The use by respondent of the aforesaid false, misleading and deceptive 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 representations were, and are, true and into the purchase of substantial quantities of the aforesaid product by reason of said erroneous and mistaken belief.

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* Pictorial exhibits A and B are omitted in printing.

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 the 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 Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent 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 respondent with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the 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 respondent 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 respondent has 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. Respondent Halsam Products Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 3610 Touhy Avenue, in the city of Chicago, State of Illinois.

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

ORDER

It is ordered, That respondent Halsam Products Company, a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of toys or related products,

in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing, by use of any illustration or depiction purporting to illustrate, depict or demonstrate any toy or related product, or the performance thereof, or representing in any other manner, directly or by implication, that any toy or related product contains a component or performs in any manner not in accordance with fact.

It is further ordered, That the repondent 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

ASSOCIATED SEWING SUPPLY CO. ET AL.

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

*Docket C-689. Complaint, Jan. 21, 1964—Decision, Jan. 21, 1964**

Consent order requiring retailers of sewing machines in St. Paul, Minn., to cease using bait advertising, false pricing and savings claims and other deceptive practices to sell their sewing machines.

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 Associated Sewing Supply Co., a corporation, and Russell Hamilton, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Associated Sewing Supply Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its principal office and place of business located at 139 North Concord Street in the city of South St. Paul, State of Minnesota.

Respondent, Russell Hamilton, is an officer of the corporate respondent. He formulates, directs and controls the acts and prac-

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

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

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

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the purchase of their product, respondents have made statements and representations with respect thereto in direct mail advertising and through other advertising media. By and through the use of such statements and representations, and others of similar import but not specifically set forth herein, and through oral statements made by their salesmen, respondents have represented, directly or by implication:

(1) That they were making a bona fide offer to sell repossessed sewing machines at the prices and on the terms stated.

(2) That sewing machines or other product or products would be awarded as prizes to persons declared winners in contests conducted by respondents and described on cards sent through the mails.

(3) That a 1962 Heavy Duty Sewing Machine would be given to a person selected to receive such machine, and that the machine would cost such person absolutely nothing, with the condition that the person must purchase a cabinet for it at respondent's wholesale price in order to receive said machine free.

(4) That sewing machines offered for sale by respondents were made and manufactured by the Hamilton Sewing Machine Company.

(5) That the said Hamilton Sewing Machine Company was affiliated and associated with the Hamilton Beach Appliance Co., thereby representing and implying that such affiliation and association was with a well-known, reputable company of high standing in the business community.

(6) That the prices they represented to be retail prices were the prices at which the sewing machines had been usually and customarily sold by respondents at retail in the recent regular course of business and that the differences between said prices and the

lower prices at which such sewing machines were sold by respondents represented savings to purchasers from respondents' usual and customary retail prices.

(7) That Associated Sewing Supply Co. had 32 years of sewing machine history, thereby representing that respondents had been in the sewing machine business for thirty-two years.

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

(1) The offers to sell repossessed sewing machines at the prices and on the terms stated in said statements and representations were not genuine or bona fide offers but were made for the purpose of obtaining leads to persons interested in purchasing said products. After obtaining such leads, respondents or their salesmen called upon such persons at their homes, and then and there disparaged the advertised product and instead attempted to sell and did sell different and more expensive sewing machines.

(2) Respondents did not conduct contests or award prizes to persons declared winners in contests conducted by respondents. Such contests were merely schemes to obtain leads. Almost everyone entering such contests was awarded a discount on the purchase of a new sewing machine. These discounts were valueless as the recipients were charged the usual and regular price by the respondent for any sewing machine they may have purchased. In fact, in many instances the salesman calling would notify such persons they had "won" a prize in order to gain entry but would subsequently notify them that they had merely won a discount off the purchase price of a new sewing machine.

(3) Respondents did not offer to give, or give, a sewing machine to a person selected to receive such machine so as to cost absolutely nothing, with the condition that the person must purchase a cabinet for it to receive said machine free. Respondents made such offer only to secure leads. Upon exhibiting the machine to be given on condition that a cabinet be purchased, respondents' salesmen disparaged such machine, and attempted to and did sell different and more expensive sewing machines.

(4) Sewing machines offered for sale by respondents were not made and manufactured by the Hamilton Sewing Machine Company.

(5) The Hamilton Sewing Machine Company which was represented to be the maker or manufacturer of sewing machines offered for sale by respondents is nonexistent, and therefore was not, and could not be, associated or affiliated with Hamilton Beach Appliance Co., or any other company.

(6) The prices represented to be retail prices were in excess of the prices at which the sewing machines had been usually and cus-

tomarily sold by respondents in the recent regular course of business and the differences between the prices represented to be retail prices and the lower prices at which such sewing machines were sold by respondents did not represent savings to purchasers from respondents' usual and customary retail prices.

(7) Associated Sewing Supply Co. did not have 32 years of sewing machine history, and respondents have not been in the sewing machine business for thirty-two years. Respondents had not been in business for more than seven years in 1962.

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

PAR. 6. 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 products of the same general kind and nature as those sold be respondents.

PAR. 7. The use by respondents of the aforementioned false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead 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. 8. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

in such complaint, and waivers and provisions as required by the Commission's rules; and

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

1. Respondent Associated Sewing Supply Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its office and principal place of business located at 139 North Concord Street in the city of South St. Paul, State of Minnesota.

Respondent Russell Hamilton is an officer of said corporation, and his 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 Associated Sewing Supply Co., a corporation, and its officers, and Russell Hamilton, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of sewing machines or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using in any manner, a sales plan, scheme or device wherein false, misleading or deceptive statements or representations are made in order to obtain leads or prospects for the sale of merchandise or services.

2. Discouraging the purchase of, or disparaging, any merchandise or services which are advertised or offered for sale.

3. Representing, directly or indirectly, that any merchandise or services are offered for sale when such offer is not a bona fide offer to sell said merchandise or services.

4. Representing, directly or indirectly, that sewing machines offered for sale by respondents are made or manufactured by any persons, firm or corporation other than the true manufacturer.

5. Representing, directly or indirectly, that respondents, or any business company or organization owned or controlled by them, is affiliated or associated with any other business com-

pany or organization with which the respondents are not actually associated or affiliated.

6. Representing, directly or indirectly, that:

(a) Any amount is respondents' usual and customary retail price of merchandise when it is in excess of the price or prices at which such merchandise is usually and customarily sold by respondent at retail in the recent, regular course of their business.

(b) Any saving from respondents' usual and customary retail price is afforded to the purchasers of respondents' merchandise unless the price at which it is offered constitutes a reduction from the price or prices at which said merchandise has been usually and customarily sold by respondents in the recent, regular course of their business.

7. Misrepresenting, by means of comparative prices, or in any other manner, the savings available to purchasers of respondents' merchandise.

8. Representing, directly or indirectly, that respondents had been in the sewing machine business prior to the year 1955.

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

CARTWRIGHT'S TOWN HOUSE, INC., TRADING AS THE TOWN HOUSE, INC., ET AL.

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

Docket C-692. Complaint, Jan. 21, 1964—Decision, Jan. 21, 1964

Consent order requiring the operators of a ladies specialty shop in Rome, Ga., to cease violating the Textile Fiber Products Identification Act, the Wool Products Labeling Act and the Fur Products Labeling Act by failing to label and invoice products as required by the applicable Acts and removing labels or other identification prior to ultimate sale.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Textile Fiber Products Identification Act, the Wool Products

Labeling Act of 1939 and the Fur Products Labeling Act and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Cartwright's Town House, Inc., a corporation trading as The Town House, Inc., and its officers and Joyce R. Lovell, individually and as manager of The Town House, Inc., hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Textile Fiber Products Identification Act, the Wool Products Labeling Act of 1939 and the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Cartwright's Town House, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia with its office and principal place of business located at 104 East Second Avenue, Rome, Georgia. Respondent Cartwright's Town House, Inc., operates a ladies specialty shop under the trade name of The Town House, Inc., at 104 East Second Avenue, Rome, Georgia.

Individual respondent, Joyce R. Lovell, is manager and controls, directs and formulates the acts, practices, and policies of The Town House, Inc. Her office and principal place of business is located at 104 East Second Avenue, Rome, Georgia.

PAR. 2. Subsequent to the effective date of the Textile Fiber Products Identification Act on March 3, 1960, respondents have been and are now engaged in the introduction, delivery for introduction, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, and in the importation into the United States, of textile fiber products; and have sold, offered for sale, advertised, delivered, transported, and caused to be transported, textile fiber products, which have been advertised or offered for sale in commerce; and have sold, offered for sale, advertised, delivered, transported, and caused to be transported, after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products, as the terms "commerce", and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

PAR. 3. Certain of said textile fiber products were misbranded by respondents in that they were not stamped, tagged, labeled or otherwise identified with the information required under Section 4(b) of the Textile Fiber Products Identification Act, and in the manner and form prescribed by the Rules and Regulations promulgated under said Act.

PAR. 4. After certain textile fiber products were shipped in commerce, respondents have removed, or caused or participated in the removal of, the stamp, tag, label or other identification required by the Textile Fiber Products Identification Act to be affixed to such products prior to the time such textile fiber products were sold and delivered to the ultimate consumer, in violation of Section 5(a) of said Act.

PAR. 5. The acts and practices of respondents as set forth above were, and are, in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

PAR. 6. Subsequent to the effective date of the Wool Products Labeling Act of 1939, respondents have introduced into commerce, sold, transported, distributed, delivered for shipment, and offered for sale in commerce, as "commerce" is defined in said Act, wool products as "wool product" is defined therein.

PAR. 7. Certain of said wool products were misbranded by respondents in that they were not stamped, tagged, labeled or otherwise identified with the information required under Section 4(a)(2) of the Wool Products Labeling Act of 1939 and in the manner and form as required by the Rules and Regulations promulgated under said Act.

PAR. 8. Respondents with the intent of violating the provisions of the Wool Products Labeling Act of 1939 have removed or caused or participated in the removal of the stamp, tag, label or other identification required by the Wool Products Labeling Act of 1939 to be affixed to wool products subject to the provisions of such Act, prior to the time such wool products were sold and delivered to the ultimate consumer, in violation of Section 5 of said Act.

PAR. 9. The acts and practices of the respondents as set forth above in Paragraphs 6, 7, and 8 were, and are, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constituted and now constitute, unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

PAR. 10. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents have been and are now engaged in the introduction into commerce and in the sale, advertising, and offering for sale, in commerce, and in the transportation and distribution, in commerce, of fur products; and have sold, adver-

tised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce as the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 11. Certain of said fur products were misbranded in that they were not labeled with the information required under the provisions of Section 4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 12. Certain of said fur products were falsely and deceptively invoiced by respondents in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act, and in the manner and form prescribed by the Rules and Regulations promulgated thereunder, in that respondents failed to issue invoices to purchasers of said fur products containing all the information required under said Act and in the manner and form prescribed by the Rules and Regulations promulgated under said Act.

PAR. 13. Respondents have removed or caused or participated in the removal of, prior to the time fur products subject to the provisions of the Fur Products Labeling Act were sold and delivered to the ultimate consumer, labels required by the Fur Products Labeling Act to be affixed to such products, in violation of Section 3(d) of said Act.

PAR. 14. The acts and practices of respondents as alleged in Paragraphs 10, 11, 12 and 13 are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices under the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, the Textile Fiber Products Identification Act, the Wool Products Labeling Act of 1939, and the Fur Products Labeling Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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, Cartwright's Town House, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business located at 104 East Second Avenue, in the city of Rome, State of Georgia.

Respondent Joyce R. Lovell is manager of The Town House, Inc., and her 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 Cartwright's Town House, Inc., a corporation trading as The Town House, Inc., or under any other trade name, and its officers, and Joyce R. Lovell, individually and as manager of The Town House, Inc., and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, sale, advertising or offering for sale, in commerce, or in the transportation or causing to be transported in commerce, or the importation into the United States of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act do forthwith cease and desist from misbranding textile fiber products by failing to affix labels to such products showing each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

It is further ordered, That the respondents Cartwright's Town House, Inc., a corporation, trading as The Town House, Inc., or

under any other trade name and its officers, and Joyce R. Lovell, individually and as manager of The Town House, Inc., and respondents' agents, representatives and employees, directly or through any corporate or other device, do forthwith cease and desist from removing, causing or participating in the removal of, the stamp, tag, label, or other identification required by the Textile Fiber Products Identification Act to be affixed to any textile fiber product, after such textile fiber has been shipped in commerce and prior to the time such textile fiber product is sold and delivered to the ultimate consumer.

It is further ordered, That respondents Cartwright's Town House, Inc., a corporation, trading as The Town House, Inc., or under any other trade name, and its officers, and Joyce R. Lovell, individually and as manager of The Town House, Inc., and respondents' agents, representatives and employees, directly or through any corporate or other device in connection with the introduction into commerce, or the offering for sale, sale, transportation or delivery for shipment, in commerce of any wool products as "wool product" and "commerce" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from failing to securely affix to or place on each product, a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

It is further ordered, That respondents Cartwright's Town House, Inc., a corporation, trading as The Town House, Inc., or under any other trade name, and its officers, and Joyce R. Lovell, individually and as manager of The Town House, Inc., and respondents' agents, representatives, and employees, directly or through any corporate or other device, do forthwith cease and desist from removing, causing or participating in the removal of any stamp, tag, label, or other means of identification affixed to any wool product subject to the provisions of the Wool Products Labeling Act of 1939 with intent to violate the provisions of the said Act.

It is further ordered, That respondents Cartwright's Town House, Inc., a corporation trading as The Town House, Inc., or under any other trade name, and its officers, and Joyce R. Lovell, individually and as manager of The Town House, Inc., and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the offering for sale, sale, advertising, transportation or distribution in commerce, of any fur product; or in connection with the sale,

advertising, offering for sale, transportation or distribution of any fur product which has been made in whole or in part of fur which has been shipped and received in commerce; as "commerce", "fur", and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

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

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

It is further ordered, That respondents Cartwright's Town House, Inc., a corporation, trading as The Town House, Inc., or under any other trade name, and its officers, and Joyce R. Lovell, individually and as manager of The Town House, Inc., and respondents' agents, representatives, and employees, directly or through any corporate or other device, do forthwith cease and desist from removing, or causing, or participating in the removal of, prior to the time any fur product subject to the provisions of the Fur Product Labeling Act is sold and delivered to the ultimate consumer, any label required by the said Act to be affixed to such fur product.

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

AMERICAN SERVICE, INC., ET AL.

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

Docket C-693. Complaint, Jan. 21, 1964—Decision, Jan. 21, 1964

Consent order requiring Milwaukee, Wis., sellers of a correspondence course, to cease representing falsely, in advertisements in the "Help Wanted" or "Job Opportunities" columns of newspapers, that specific positions described and a large number of other law enforcement positions were immediately available to qualified applicants at starting salaries of up to

$6,900 a year, and that respondents were affiliated with government agencies and the United States Civil Service Commission, along with other false representations.

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 American Service, Inc., a corporation, and Robert Runte and Dennis Lee Roberts, 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 American Service, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business located at 5810 West Oklahoma Avenue in the city of Milwaukee, State of Wisconsin.

Respondents Robert Runte and Dennis Lee Roberts are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

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

PAR. 4. In the course and conduct of their business, and for the purpose of obtaining leads to prospective enrollees, and for the purpose of inducing the sale of their said course of instruction, respondents have made certain statements and representations in advertisements which they caused to be published in newspapers of interstate circulation. Frequently, these advertisements were caused to be placed under the "Help Wanted", "Employment" or "Job

Opportunities" columns of the classified sections. Typical, but not inclusive, of such advertisements are the following:

LAW ENFORCEMENT
WORK

MEN WANTED

MEN 18 TO 49
Up to $6,900 first year

APPLICANTS TO TRAIN FOR LAW ENFORCEMENT POSITIONS IN THIS AREA

Radio patrol officer, border patrolman, highway patrol, custom service officer, security officer, corrections officer, private investigator. Many others available

RIGHT NOW.

NO EXPERIENCE NECESSARY

DO NOT DELAY

For free information write to American Peace Officer, Box B80 Sentinel. Out-of-town inquiries invited.

* * * * * * *

MEN-WOMEN NEEDED

Age 18 to 59 to train for
CIVIL SERVICE JOBS

Grammar School education usually sufficient.
Thousands of jobs open. NO EXPERIENCE NECESSARY.
Start as high as $5300 or more. No lay-offs—Security.
Preparatory training guaranteed until appointed.

DO NOT DELAY

For free information write:
AMERICAN SERVICE
Box 4, Calumet News

PAR. 5. By and through the use of such statements and representations, and others of similar import not specifically set forth herein, respondents have represented, and now represent, directly or by implication, that:

1. Inquiries are solicited for the ultimate purpose of tendering offers of employment to qualified applicants.

2. The specific positions described as well as a large number of other law enforcement positions are immediately available in the area in which the representation is made.

3. The specific positions described as well as a large number of other law enforcement positions are regularly offered to applicants who have had no prior educational or occupational experience.

4. The specific positions described as well as a large number of other law enforcement positions are regularly offered to applicants between the ages of thirty-five and forty-nine.

5. Applicants are regularly appointed to law enforcement positions generally, and to the particular positions described, at starting salaries of $6,900 per year.

6. Respondents are affiliated with governmental agencies and private firms in which law enforcement positions, including the specific positions described, are presently available.

7. Respondents are affiliated with the United States Civil Service Commission.

8. Thousands of civil service positions are immediately available in the area in which the representation is made.

9. Inexperienced applicants with no more than a grammar school education are regularly appointed to civil service positions at starting salaries of $5,300 per year.

10. Civil service employees are never laid-off.

11. Respondents will furnish specific information regarding the location, terms and conditions of employment of the particular positions described and many other presently available positions.

Par. 6. In truth and in fact:

1. Inquiries are not solicited for the ultimate purpose of tendering offers of employment to qualified applicants but for the purpose of obtaining leads to prospective purchasers of respondents' course of instruction.

2. Neither the specific positions described nor a large number of other law enforcement positions are immediately available in the area in which the representation is made.

3. Neither the specific positions described nor a large number of other law enforcement positions are regularly offered to applicants who have had no prior educational or occupational experience.

4. Neither the specific positions described nor a large number of other law enforcement positions are regularly offered to applicants between the ages of thirty-five and forty-nine.

5. Applicants are not regularly appointed to law enforcement positions generally, or to the particular positions described, at starting salaries of $6,900 per year.

6. Respondents are not affiliated with any governmental agency nor are they affiliated with any private firm in which law enforcement positions are presently available.

7. Respondents are not affiliated with the United States Civil Service Commission.

8. Thousands of civil service positions are not immediately available in the area in which the representation is made.

9. Inexperienced applicants with no more than a grammar school education are not regularly appointed to civil service positions at starting salaries of $5,300 per year.

10. Civil service employees are sometimes laid-off.

11. Respondents do not furnish specific information regarding the location, terms or conditions of employment of the particular positions described or any other presently available positions.

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

PAR. 7. In the course and conduct of their business, and for the purpose of inducing the sale of their course of instruction, respondents cause an authorized field representative to call on prospective enrollees in their own homes. At such times and places, respondents' authorized field representative makes oral statements and representations with respect to respondents' business. In addition, respondents have made certain statements and representations in letters and promotional material which they caused to be mailed to prospective enrollees, or which they otherwise caused to be read or exhibited to prospective enrollees. Typical, but not all inclusive, of such statements and representations are the following:

Milwaukee Association of Commerce—Founded 1861

American Service is a private educational institution devoted to preparing ambitious and honest men in the 17 to 49 age group for Peace Officer work through manual training in their spare time in their own home. We are nationally famous for our training program and are considered to be the leaders in this particular field.

Our purpose is to supply you with all available information and advice, and if you are sincerely interested in this type of work, to determine your qualifications. In order to determine whether or not you are qualified, our Authorized Representative will call on you. He will probably be limited to one interview with you due to the many, many inquiries and the necessity to adhere to a strict schedule, so please be prepared to make your decision at that time. You will find this Representative to be courteous, helpful, and thoroughly trained in his duties. He will give you his frank opinion whether or not you can qualify, and if approved, you would be on the first step to being a Peace Officer. Please present this letter to our Representative so he may return it to this office, explaining why you were accepted or rejected.

The only way, basically, to get a Civil Service position is to pass a Civil Service examination. These Civil Service examinations appear to be 'tricky' to one who is not prepared; 4 people out of 5 fail to pass in many instances. SO, BE PREPARED. Enroll in a course of study that covers several positions. Increase your chances for a quick appointment.

"During the month of February I enrolled in your school to train in the field of police work * * * I have received the appointment." G.F. (Note: Enrolled Feb. 1962—received appointment Summer 1962)

PAR. 8. By and through the use of oral and written statements, as aforesaid, and others of similar import and meaning not specifically set forth herein, respondents have represented, and now represent, directly or by implication, that:

1. Respondents' business is endorsed or accredited by the Milwaukee Association of Commerce.

2. Enrollment in respondents' course is limited to persons who may reasonably expect to obtain employment in the positions they have selected.

3. By virtue of special training, respondents and their agents are qualified to determine whether or not prospective enrollees possess the requirements necessary to obtain employment in specific positions.

4. Prospective enrollees will receive a frank and unbiased opinion as to whether or not respondents' course will be of substantial assistance to them in obtaining employment.

5. A test administered by respondents' agents provides a reliable indication as to whether or not a prospective enrollee will be materially benefited in obtaining employment as a result of respondents' course.

6. In most cases respondents' course will enable graduates to pass examinations which they would otherwise fail.

7. Civil service examinations are tricky and require special preparation.

8. Respondents offer separate and distinct courses for the various positions in which enrollees are seeking employment.

9. Respondents' course is designed to teach the basic subject matter of a particular occupational field, as distinguished from a course in general examination preparation.

10. Respondents will furnish authoritative textbooks and other source materials covering the basic subject matter of the occupational field for which the student is enrolled.

11. One of respondents' enrollees completed the entire law enforcement course in about seven months and obtained an appointment in the position for which he was preparing.

12. The time of respondents' agent is limited and prospects who do not contract for the course at the time of his visit must forego indefinitely the opportunity to enroll.

13. All persons who are present at the time respondents' agent interviews a prospective enrollee are required to sign the enrollment contract.

14. Respondents are nationally famous and are considered leaders in the field of law enforcement instruction.

15. Respondents receive advance information regarding civil service openings.

Par. 9. In truth and in fact:

1. Respondents' business is not endorsed or accredited by the Milwaukee Association of Commerce.

2. Enrollment in respondents' course is not limited to persons who may reasonably expect to obtain employment in the positions they have selected.

3. Neither respondents nor their agents are qualified, by virtue of special training or otherwise, to determine whether or not prospective enrollees possess the requirements necessary to obtain employment in specific positions.

4. Prospective enrollees do not receive a frank and unbiased opinion as to whether or not respondents' course will be of substantial assistance to them in obtaining employment.

5. The test administered by respondents' agent does not provide a reliable indication as to whether or not a prospective enrollee will be materially benefited in obtaining employment as a result of respondents' course.

6. Respondents' course will not usually or customarily enable graduates to pass examinations which they would otherwise fail.

7. Civil service examinations are not tricky and do not require special preparation.

8. Respondents do not offer separate and distinct courses for the various positions in which enrollees are seeking employment.

9. Respondents' course is not designed to teach the basic subject matter of a particular occupational field, as distinguished from a course in general examination preparation.

10. Respondents do not furnish authoritative textbooks or other source materials covering the basic subject matter of the occupational field for which the student is enrolled.

11. None of respondents' enrollees has completed the entire law enforcement course.

12. The time of respondents' agent is not limited and prospects need not contract for the course at the time of his visit or forego indefinitely the opportunity to enroll.

13. All persons who are present at the time respondents' agent interviews a prospective enrollee are not required to sign the enrollment contract.

14. Respondents are not nationally famous and are not considered leaders in the field of law enforcement instruction.

15. Respondents do not receive advance information regarding civil service openings.

Therefore the statements and representations as set forth in Paragraph 8 hereof were and are false, misleading and deceptive.

PAR. 10. 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 a course of instruction of the same general kind and nature as that sold by respondents.

PAR. 11. 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' course of instruction by reason of said erroneous and mistaken belief.

PAR. 12. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The 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. Respondent American Service, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the

State of Wisconsin, with its office and principal place of business located at 5810 West Oklahoma Avenue in the city of Milwaukee, State of Wisconsin.

Respondents Robert Runte and Dennis Lee Roberts 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 American Service, Inc., a corporation, and its officers, and Robert Runte and Dennis Lee Roberts, 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 a course of instruction or any other product or service, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Advertising in any manner or using any sales presentation which does not clearly, conspicuously and specifically disclose the nature of the business with respect to which the advertisement or presentation is made and the identity of the product or service which is being sold.

2. Representing, directly or by implication, that:

(a) Employment is being offered unless such employment is in fact being offered.

(b) Any employment opportunity exists, or is expected to exist, without disclosing the nature of the position, the identity of the prospective employer, the specific location of the employment, the salary which is being offered or which is expected to be offered, as well as any consideration with respect to age, sex, physical condition, education, training, veterans' status, marital status or other factor which would tend to materially reduce the number or class of persons who might reasonably expect to obtain such employment.

(c) Any person, product, service or business is affiliated with or endorsed, approved or accredited by any person, firm, organization, government or government agency without specifically disclosing the nature and extent of the affiliation, endorsement, approval or accreditation.

(d) Any person, product, service or business is affiliated with or endorsed, approved or accredited by the United States Civil Service Commission.

(e) Enrollment in respondents' course of instruction is limited or restricted to persons who may reasonably expect to obtain employment in any position or class of positions.

(f) Any of the respondents or any of their agents are qualified, by virtue of special training or otherwise, to determine whether or not any person possesses the requirements necessary to obtain employment in any position.

(g) Any opinion or recommendation with respect to the enrollment of any person is conditioned upon or influenced by a frank or unbiased determination that respondents' course of instruction will be of substantial assistance to such person in obtaining employment.

(h) Any test administered by respondents or any of their agents provides a reliable indication that any person will be substantially benefited in obtaining employment as a result of respondents' course of instruction.

(i) Respondents offer more than one course of instruction, or that respondents' course of instruction encompasses the body of knowledge of any particular occupational field, as distinguished from a course in general examination preparation, or that any study material is furnished unless the nature and extent of the materials which are actually furnished are fully and specifically disclosed.

(j) Civil Service employees are never laid-off, or otherwise misrepresenting the job security of civil service employees.

(k) Respondents furnish specific information regarding the location, terms or conditions of employment of any available position unless in every instance such information is actually furnished.

(l) Respondents' course will usually or customarily enable graduates to pass an examination which they would otherwise fail, or that any improvement in the grade or score that any particular person may reasonably expect to achieve as a result of respondents' course is greater than the true such improvement.

(m) Civil Service examinations are tricky or that special preparation is ordinarily required to pass a civil service examination.

(n) Any person has completed respondents' course of instruction, unless such person was a bona fide enrollee who did in fact complete respondents' course.

(o) The time of respondents' agent is limited or that prospects who do not enroll at the time of his visit must forego indefinitely the opportunity to enroll.

(p) Any person other than the enrollee or the husband, wife or legal guardian of an enrollee is customarilly expected to sign a contract of enrollment.

(q) Respondents are nationally famous or are considered leaders in the field of law enforcement instruction or any other type of instruction.

(r) Respondents receive any information regarding civil service positions which is not generally available.

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

BEARINGS, INC., ET AL.

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

Docket 7134. Complaint, Apr. 29, 1958—Decision, Jan. 22, 1964

Order dismissing without passing on the merits because the record was composed of "cold and stale evidence"—the alleged violations having taken place as long as 14 years ago—complaint charged respondents with (1) using their purchasing power as an economic weapon against various bearings manufacturers to prevent the establishment of new distributorships and to bring about the cancellation of certain already existing competitive distributorships, (2) trying to create a monopoly in the bearings replacement market by excluding and limiting potential and actual competition through coercive tactics, and (3) conspiring among themselves to use economic pressure to suppress competition.

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 respondents named in the caption hereof and more particularly described herein-

after, have violated the provisions of said Act, and it appearing that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in respect thereto as follows:

COUNT I

PARAGRAPH 1. Bearings, Inc. (Delaware), is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 3634 Euclid Avenue, Cleveland 15, Ohio.

All of the following corporations are wholly owned subsidiaries of Bearings, Inc. (Delaware), and are named herein as separate corporate respondents:

Balanrol Corp. is a corporation organized and existing under the laws of the State of Ohio, with its principal office and place of business located at 313 Niagara Street, Buffalo, New York.

Bearings, Inc. (Maryland), is a corporation organized and existing under the laws of the State of Maryland, with its principal office and place of business located at 1901 North Howard Street, Baltimore, Maryland.

Dixie Bearings, Incorporated, is a corporation organized and existing under the laws of the State of Tennessee, with its principal office and place of business located at 276 Memorial Drive, S.W., Atlanta, Georgia.

Kentucky Ball & Roller Bearing Co. is a corporation organized and existing under the laws of the State of Kentucky, with its principal office and place of business located at 3634 Euclid Avenue, Cleveland 15, Ohio.

Tennessee Bearings, Inc., is a corporation organized and existing under the laws of the State of Tennessee, with its principal office and place of business located at 3634 Euclid Avenue, Cleveland 15, Ohio.

Carolina Bearings, Inc., is a corporation organized and existing under the laws of the State of North Carolina, with its principal office and place of business located at 3634 Euclid Avenue, Cleveland 15, Ohio.

Joseph M. Bruening and William J. Scully are president and vice president, respectively, of each of the respondent corporations, and are named as respondents herein, both individually and as officers of said corporations. Their principal office and place of business is 3634 Euclid Avenue, Cleveland 15, Ohio.

John F. Raymond is vice president of respondent Bearings, Inc. (Delaware), and respondent Kentucky Ball & Roller Bearing Co., and is named as a respondent herein, individually and as an officer

of said corporations. His principal office and place of business is 3634 Euclid Avenue, Cleveland 15, Ohio.

Edward F. Brown is vice president of respondent Dixie Bearings, Incorporated, and is named as a respondent herein, individually and as an officer of said corporation. His principal office and place of business is 276 Memorial Drive, S.W., Atlanta, Georgia.

The conduct of the affairs of all of the aforementioned corporate respondents with respect to their business practices and policies are now, and have been during all the times mentioned herein, under the control, direction, domination, and supervision of the individual respondent officers, named and described herein.

PAR. 2. The corporate respondents, collectively and individually, are now and for a number of years last past, have been engaged in the business of purchasing ball, roller, anti-friction, anti-thrust, and thrust bearings, transmission units, bearing specialities, accessories, and other related bearing products, for resale and distribution to users thereof, including manufacturers and various repairers of machinery, vehicles, and other industrial equipment which utilize said bearing products. Said business is carried on through approximately 42 store outlets located in Indiana, Ohio, Pennsylvania, New York, New Jersey, Kentucky, West Virginia, Maryland, Delaware, Tennessee, North Carolina, Louisiana, Georgia, South Carolina and Florida.

PAR. 3. The corporate respondents, in the course and conduct of the aforesaid business, are now making, and have continued to make, purchases of the aforesaid bearing products from different manufacturing suppliers located in the several States of the United States, and, after purchase, said bearing products are now, and have been, transported from the said States where manufactured to the places of business of the corporate respondents, located in other States of the United States, from whence such bearing products are now being, and have been, offered for sale, sold, and distributed to purchasers thereof in commerce, as "commerce" is defined in the Federal Trade Commission Act, and at all times mentioned herein the corporate respondents are now and have been engaged in a constant current and course of trade in said commerce between and among various States of the United States. The volume of trade in said commerce of the corporate respondents is substantial.

PAR. 4. At all times mentioned herein the corporate respondents, collectively and individually, are now and have been in direct and substantial competition with each other and with other individuals, corporations, partnerships and firms engaged in the sale and distribution of said bearing products in commerce, except to the extent that

such competition has been restrained, lessened, or eliminated by the unlawful acts and practices hereinafter alleged.

PAR. 5. Respondent Joseph M. Bruening organized the Ohio Ball Bearing Company in 1922, which subsequently was incorporated in the State of Ohio during 1925. In May 1952, respondent Bruening and other individuals caused the combination and merger of the Ohio Ball Bearing Company with Indiana Bearings, Inc., West Virginia Bearings, Inc., and Pennsylvania Bearings, Inc., into a new and separate corporation, Bearing Specialists, Inc., incorporated in the State of Delaware. In February 1953, Bearing Specialists, Inc., combined and merged with Jim Brown Stores, a corporation of the State of Delaware, retaining the name Bearing Specialists, Inc. In June 1953, Bearing Specialists, Inc., combined and merged with Bearings, Inc., a corporation of the State of Pennsylvania, and by assuming that corporation's name became Bearings, Inc. (Delaware), respondent herein. In July 1957, respondent Dixie Bearings, Incorporated, was acquired by respondent Bearings, Inc. (Delaware), as a wholly owned subsidiary. Prior to that time respondent Bruening possessed a substantial financial interest in and performed an active managerial role with respect to respondent Dixie Bearings, Incorporated, and its predecessor corporations. In September 1957, respondent Dixie Bearings, Incorporated, purchased certain assets of Southern Bearings Company of Jacksonville, Florida, for the use of respondent Bearings, Inc. (Delaware), and its wholly owned subsidiaries in their aforesaid business activities.

Respondent Bearings, Inc. (Delaware), respondent Dixie Bearings, Incorporated, and the other five wholly owned subsidiaries of Bearings, Inc. (Delaware), collectively maintain a volume of trade amounting to approximately $25,000,000 per year in aggregate sales. Respondent Bearings, Inc. (Delaware), singly or in combination with its wholly owned subsidiaries, serves as the largest distributor in the United States for many of the major manufacturers of the aforesaid bearing products. The corporate respondents, acting collectively, are the largest distributors of said bearing products in the fifteen-state area in which they operate, and as a result thereof, are able to, and do exercise sufficient economic power and control upon the manufacturing suppliers of said bearing products to cause the exclusion of some potential, and the limitation of some actual, competition in the sale and distribution of such products; and such exclusion and limitation cannot be solely attributed to the ability, business acumen, or natural economic and other advantages of the corporate respondents, or to their adaptation to inevitable economic laws.

PAR. 6. From time to time, as hereinafter alleged, respondent Bearings, Inc. (Delaware), acting individually or through its wholly owned subsidiaries, has engaged in certain acts and practices for the purpose and with the objective of monopolizing, or attempting to monopolize, the sale and distribution of the aforesaid bearing products, and of eliminating and suppressing, or attempting to eliminate and suppress, the competition of others engaged in the sale and distribution of the same or similar products, and of otherwise furthering the leading and dominant position of the corporate respondents in the sale and distribution of the aforesaid products in commerce.

Pursuant to and in order to effectuate and carry out such purposes and objectives in the sale and distribution of such products in commerce, respondents from time to time have engaged in, performed, and carried out, by various means and methods, the following acts and practices:

Coerced, intimidated, or otherwise compelled certain manufacturing suppliers of the aforesaid bearing products (a) to refuse to deal with or otherwise supply such bearing products to some of the corporate respondents' competitors; (b) to cancel certain franchises given by such manufacturing suppliers to some of the corporate respondents' competitors to sell, distribute, and market such bearing products; and (c) to refrain from offering or giving such franchises to some of the corporate respondents' competitors.

PAR. 7. The acts and practices, as hereinbefore alleged, have had and now have the tendency and capacity unlawfully to restrain, lessen, and eliminate competition in the sale and distribution of the aforesaid bearing products, in commerce; unreasonably to restrain competition among the manufacturing suppliers of such products: to coerce such suppliers to deal on respondents' terms; to prevent the corporate respondents' competitors from obtaining, in commerce, at competitive and non-discriminatory prices, supplies of certain nationally recognized, popular lines of the aforesaid bearing products: and to create in the respondent corporations a monopoly in the sale and distribution of such products, in commerce, within the intent and meaning of Section 5 of the Federal Trade Commission Act.

COUNT II

PAR. 8. The allegations of Paragraph 1 through 5, inclusive, of Count I of this complaint are hereby adopted, and incorporated herein by reference and made a part of this Count II as if they were repeated herein verbatim.

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PAR. 9. From time to time, as hereinafter alleged, the corporate respondents, acting through their corporate officers, entered into, maintained, and effectuated an understanding, agreement, combination, and conspiracy to pursue, and they have pursued, a planned common course of action between and among themselves to adopt and adhere to certain practices and policies to restrain, lessen, and eliminate competition between and among themselves and with others in the sale and distribution of the aforesaid bearing products, in commerce; to monopolize the sale and distribution of such products, in commerce; and otherwise to further the leading and dominant position of the corporate respondents in the sale and distribution of the aforesaid products, in commerce.

Pursuant to, and in furtherance of, said understanding, agreement, combination, conspiracy, and planned common course of action, respondents from time to time have engaged in, performed, and carried out, by various means and methods, the following acts and practices:

Persuaded, induced, coerced, intimidated, compelled, caused, or otherwise influenced, or attempted to influence, certain manufacturing suppliers of the aforesaid bearing products (a) to refuse to deal with or otherwise supply such bearing products to some of the corporate respondents' competitors; (b) to cancel certain franchises given by such manufacturing suppliers to some of the corporate respondents' competitors to sell, distribute, and market such bearing products; and (c) to refrain from offering or giving such franchises to some of the corporate respondents' competitors.

PAR. 10. The acts, practices, understandings, agreements, combinations, conspiracies, and planned common courses of action, as alleged in Paragraph 9 of Count II, have had and now have the tendency and capacity unlawfully to restrain, lessen, and eliminate competition in the sale and distribution of the aforesaid bearing products, in commerce; unreasonably to restrain competition among the manufacturing suppliers of such products; to coerce, persuade, or otherwise influence such suppliers to deal on respondents' terms; to prevent the corporate respondents' competitors from obtaining, in commerce, at competitive and nondiscriminatory prices, supplies of certain nationally recognized, popular lines of the aforesaid bearing products; and to create in the respondent corporations, a monopoly in the sale and distribution of such products in commerce, within the intent and meaning of Section 5 of the Federal Trade Commission Act.

PAR. 11. The acts and practices of the respondents, all and singularly, as hereinabove alleged in Count I and Count II, are to the

prejudice and injury of the public and constitute unfair methods of competition and unfair acts and practices, in commerce, within the intent and meaning of Section 5 of the Federal Trade Commission Act.

Mr. Rufus E. Wilson, Mr. Thomas A. Sterner, Mr. Americo M. Minotti and *Mr. Daniel R. Kane* for the Commission.

Gregg, Fillion, Fillenwarth & Hughes, by *Mr. John D. Hughes*, Indianapolis, Ind., for respondent *Mr. John F. Raymond*; *Falsgraf, Kundtz, Reidy and Shoup*, by *Mr. Wendell A. Falsgraf* and *Mr. William H. Talmage*, Cleveland, Ohio, for all other respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

MARCH 6, 1962

I. THE COMPLAINT

1. The complaint herein was issued on April 29, 1958; contains two counts; and charges as follows:

A. *Count I*

a. That Bearings, Inc. (Delaware), and the six wholly owned subsidiaries thereof, named above, have been engaged for a number of years in the business of purchasing ball, roller, anti-friction, anti-thrust, and thrust bearings, transmission units, bearing specialties, accessories and other related products for resale in commerce through approximately forty-two store outlets, variously located in New Jersey, Kentucky, West Virginia, Maryland, Delaware, Tennessee, North Carolina, Louisiana, Georgia, South Carolina and Florida, respondents' collective yearly sales aggregating approximately $25,000,000;

b. That respondent Bearings, Inc. (Delaware), singly or in combination with its wholly owned subsidiaries, serves as the largest distributor in the United States for many of the major manufacturers of the aforesaid bearing products;

c. That the corporate respondents have been, collectively and individually, in direct and substantial competition with each other and with other firms and individuals engaged in the sale and distribution of bearing products, except to the extent that such competition has been restrained, lessened or eliminated by the unlawful acts alleged in the complaint;

d. That respondent Bearings, Inc. (Delaware), acting individually or through its wholly owned subsidiaries, has engaged in certain acts and practices for the purpose of monopolizing or attempting to

monopolize the sale and distribution of bearing products, and of eliminating and suppressing, or attempting to eliminate and suppress, the competition of others engaged in the sale and distribution of the same or similar products;

e. That respondents, particularly, have coerced, intimidated or otherwise compelled certain manufacturing suppliers of bearing products:

(1) To refuse to deal with or otherwise supply bearing products to some of respondents' competitors;

(2) To cancel certain franchises given by such manufacturing suppliers to some of the corporate respondents' competitors; and

(3) To refrain from offering or giving such franchises to some of respondents' competitors;

f. That the business practices and policies of all of the aforementioned corporate respondents are now, and during all the times relevant hereto have been, conducted under the control, direction, domination and supervision of the individual respondent officers named above; and

g. That the above-described acts and practices have the tendency and capacity unlawfully to restrain, lessen and eliminate competition in the sale and distribution of bearing products in commerce; unreasonably to restrain competition among the manufacturing suppliers of such products; to coerce such suppliers into dealing on respondents' terms; to prevent the corporate respondents' competitors from obtaining in commerce, at competitive and non-discriminatory prices, supplies of certain nationally-recognized, popular lines of bearing products; and to create in the corporate respondents a monopoly in the sale and distribution of such products, in violation of § 5 of the Federal Trade Commission Act;

B. *Count II*

a. That the unlawful acts and practices charged in Count I have been promoted by the corporate respondents, acting through their corporate officials, entering into an agreement, combination and conspiracy to effectuate such unlawful acts and practices, in violation of § 5 of the Federal Trade Commission Act.

II. The Answers

2. Respondents other than John F. Raymond, in their answer, admit:

A. That the identity of the various corporations and of the corporate officials named is as alleged, except that they allege that John F.

Raymond was dismissed as a vice president of both Bearings, Inc. (Delaware), and Kentucky Ball & Roller Bearing Co. on January 16, 1958;

B. That Bearings, Inc. (Delaware), Bearings, Inc. (Maryland), Balanrol Corp. and Dixie Bearings, Incorporated, are in substantial competition in commerce with others engaged in the sale of bearing products in commerce;

C. That Bearings, Inc. (Delaware), Bearings, Inc. (Maryland), Balanrol Corp. and Dixie Bearings, Incorporated, maintained a gross sales volume of approximately $25,000,000 for the fiscal year ending June 30, 1957.

3. Respondents other than John F. Raymond, in their answer, deny:

A. That Kentucky Ball & Roller Bearing Co., Tennessee Bearings, Inc., and Carolina Bearings, Inc., are engaged in competition in commerce;

B. That any of the respondent corporations have been engaged in any substantial competition with each other;

C. That Kentucky Ball & Roller Bearing Co., Tennessee Bearings, Inc., and Carolina Bearings, Inc., maintained any gross sales volume whatsoever during 1957 or any other year;

D. That respondent Bearings, Inc. (Delaware), singly or in combination with its wholly owned subsidiaries, is the largest distributor of bearing products in the United States;

E. That respondents have sufficient economic power over the manufacturing suppliers of bearing products to cause any of the injury to competition alleged in the complaint; and

F. That they have at any time engaged in the acts or practices alleged in Counts I and II of the complaint, or that they have engaged in any acts or practices to the prejudice or injury of the public or in violation of § 5 of the Federal Trade Commission Act.

4. Respondent John F. Raymond answered separately that he was no longer associated with the other respondents, and prayed for dismissal of the complaint against him.

III. Hearings and Proposed Findings As To The Facts

5. Hearings for the reception of evidence in support of the case-in-chief, in defense, and in rebuttal were held intermittently from September 17, 1958, to and including December 18, 1961. The testimony of forty-five witnesses and many exhibits were received in evidence. In addition, the testimony of six additional witnesses was stipulated on the record. Consideration has been given to the entire record herein, including proposed findings as to the facts, proposed

conclusions, and written arguments in support thereof. Each of those proposals which has been accepted has been, in substance, incorporated into this initial decision. All proposals not so incorporated are hereby rejected.

IV. The Issues

6. The pleadings raise a number of subordinate issues, but only one controlling issue appears in each of the two counts of the complaint.

7. In Count I, as correctly stated by counsel supporting the complaint, the respondents "* * * are considered as a single economic unit, which, by itself, has unilaterally threatened at various times to refuse to deal with certain manufacturers unless each of them performs certain acts beneficial to respondents, * * *".

8. Counsel supporting the complaint also correctly states, however, that in Count II the "* * * respondents are to be considered as separate legal entities which have combined their economic power and concertedly threatened to refuse to deal with certain manufacturers unless each of those manufacturers performed some of the aforementioned acts for the benefit of the intra-enterprise conspirators".

9. The controlling issues thus appear as follows:

A. Has respondent Bearings, Inc. (Delaware), acting individually or through its wholly owned subsidiaries, coerced, intimidated, or otherwise compelled manufacturing suppliers of bearing products to:

a. Refuse to deal with other otherwise supply bearing products to some of the corporate respondents' competitors;

b. Cancel certain franchises given by such manufacturing suppliers to some of the corporate respondents' competitors; and

c. Refrain from offering or giving such franchises to some of the corporate respondents' competitors, resulting in unlawful restraint, lessening, or elimination of competition in the sale and distribution of bearing products in commerce, and creating in the respondents a monopoly in the sale and distribution of such products, in violation of § 5 of the Federal Trade Commission Act?

B. Did the corporate respondents, acting through their corporate officers, enter into, maintain and effectuate an understanding, agreement, combination and conspiracy to pursue, and have they pursued, a planned common course of action between and among themselves for the purpose of restraining, lessening or eliminating competition, and creating in themselves a monopoly in the sale and distribution of such products in commerce, in violation of § 5 of the Federal Trade Commission Act?

V. Identification of Respondents

10. The respondents admit their identity, as follows:

A. *The parent corporation*: Respondent Bearings, Inc. (Delaware), hereinafter referred to as Bearings, Inc., is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 3634 Euclid Avenue, Cleveland 15, Ohio.

B. *Active wholly owned subsidiaries:*

a. Respondent Balanrol Corp., a wholly owned subsidiary of Bearings, Inc., is a corporation organized and existing under the laws of the State of Ohio, with its principal office and place of business located at 313 Niagara Street, Buffalo, New York.

b. Respondent Bearings, Inc. (Maryland), a wholly owned subsidiary of Bearings, Inc., was, until its dissolution on August 12, 1960, a corporation organized and existing under the laws of the State of Maryland, with its principal office and place of business located at 1901 North Howard Street, Baltimore, Maryland.

c. Respondent Dixie Bearings, Incorporated, a wholly owned subsidiary of Bearings, Inc., is a corporation organized and existing under the laws of the State of Tennessee, with its principal office and place of business located at 276 Memorial Drive, S.W., Atlanta, Georgia.

C. *Inactive wholly owned subsidiaries:* Respondents Kentucky Ball & Roller Bearing Co., Tennessee Bearings, Inc., and Carolina Bearings, Inc., all wholly owned subsidiaries of Bearings, Inc., and organized, respectively, under the laws of the States of Kentucky, Tennessee, and North Carolina, are inactive corporations not engaged in business. According to the testimony of respondents William J. Scully and Joseph M. Bruening, these presently-existing corporations using those names are "dummy" corporations maintained only for the purpose of preserving certain trade names.

D. *Individual Respondents:*

a. Respondents Joseph M. Bruening and William J. Scully are president and vice president, respectively, of each of the respondent corporations, and the principal office and place of business of each of them is 3634 Euclid Avenue, Cleveland 15, Ohio.

b. Respondent Edward F. Brown is vice president of respondent Dixie Bearings, Incorporated, and his principal office and place of business is 276 Memorial Drive, S.W., Atlanta, Georgia.

11. Respondent John F. Raymond was, for a considerable period of time prior to January 1958, a vice president of Bearings, Inc. (Delaware), and Kentucky Ball & Roller Bearing Co., with his

principal office and place of business located in Indianapolis, Indiana. On or about January 16, 1958, however, he was relieved of all duties in this capacity, and since then he has not been associated in any capacity with the other respondents herein.

VI. Control of The Corporate Respondents

12. The conduct of the affairs of the aforementioned corporate respondents with respect to their business practices and policies is now, and has been during all the times mentioned in the complaint, under the control, direction, domination and supervision of the individual respondent officers mentioned above, excepting that respondent Edward F. Brown, subject to the final authority of respondent Joseph M. Bruening, has control, direction, domination and supervision only of respondent Dixie Bearings, Incorporated, and excepting further that respondent John F. Raymond has had no affiliation since January 16, 1958, with any of the corporate respondents.

VII. Line of Commerce—Interstate Commerce

13. It is found that the active corporate respondents, collectively and individually, are now, and for a number of years last past have been, engaged in the business of purchasing ball, roller, anti-friction, anti-thrust and thrust bearings, transmission units, bearing specialties, accessories, and other related bearing products, for resale and distribution in commerce to users thereof, including manufacturers and various repairers of machinery, vehicles, and other industrial equipment which utilize said bearing products; and that said business, at all times set forth in the complaint, was carried on through approximately forty-two store outlets located in Indiana, Ohio, Pennsylvania, New York, New Jersey, Kentucky, West Virginia, Maryland, Delaware, Tennessee, North Carolina, Louisiana, Georgia, South Carolina and Florida.

VIII. Competition With Others

14. Respondents Bearings, Inc. (Delaware), Balanrol Corp., Bearings, Inc. (Maryland), and Dixie Bearings, Incorporated, have been in direct and substantial competition with other individuals, corporations, partnerships and firms engaged in the sale and distribution of bearing products in commerce. On August 12, 1960, Bearings, Inc. (Maryland), was dissolved, and since that time its business has been carried on in Baltimore, Maryland, by respondent Bearings, Inc. (Delaware), under a special permit from the State of Maryland.

15. Respondents Kentucky Ball & Roller Bearing Co., Tennessee Bearings, Inc., and Carolina Bearings, Inc., are not now, nor have they ever been, engaged in such competition.

16. None of the respondent corporations are now, nor have they ever been, engaged in any substantial competition with each other.

IX. History of Respondents' Organization

17. It is found that respondent Joseph M. Bruening organized the Ohio Ball Bearing Company in 1922, which subsequently was incorporated in the State of Ohio during 1925. In May 1952, respondent Bruening and other individuals caused the combination and merger of the Ohio Ball Bearing Company with Indiana Bearings, Inc., West Virginia Bearings, Inc., and Pennsylvania Bearings, Inc. (all of which had been organized by respondent Bruening), into a new and separate corporation, Bearing Specialists, Inc., incorporated in the State of Ohio. In February 1953, Bearing Specialists, Inc., combined and merged with Jim Brown Stores, Inc., a corporation of the State of Delaware, retaining the name Bearing Specialists, Inc. In June, 1953, Bearing Specialists, Inc. combined and merged with Bearings, Inc., a corporation of the State of Pennsylvania, and by assuming that corporation's name became Bearings Inc., a Delaware corporation, respondent herein. In August 1957, respondent Dixie Bearings, Incorporated, was acquired by respondent Bearings, Inc., as a wholly owned subsidiary. Prior to that time respondent Bruening possessed the controlling financial interest in and was the chief executive officer of respondent Dixie Bearings, Incorporated, and its predecessor corporations. In September 1957, respondent Dixie Bearings, Incorporated, purchased certain assets of Southern Bearings Company of Jacksonville, Florida.

X. Size of Respondents' Business

18. Respondents Bearings, Inc., Balanrol Corp., and Dixie Bearings, Incorporated, maintained a gross sales volume of approximately $25,000,000 for the fiscal year ended June 30, 1957, but respondents Kentucky Ball & Roller Bearing Co., Tennessee Bearings, Inc., and Carolina Bearings, Inc., maintained no gross sales volume whatever during that year or any other year. Respondent Bearings, Inc. (Delaware), singly or in combination with its wholly owned subsidiaries, serves as the largest distributor in the United States for many of the major manufacturers of the aforesaid bearing products. The corporate respondents, acting collectively, are the largest distributors of said bearing products in the fifteen-state area in which they operate.

XI. Respondents' Manufacturing Suppliers

19. The annual report for 1955 of the corporate respondent Bearings, Inc. (Delaware), and its wholly owned subsidiaries represents Bearings, Inc., as the "World's Largest Authorized Distributor * * *" for twenty-nine manufacturers of bearings, and twenty-two manufacturers of bearing specialties. Among those manufacturers of bearings with which we are here concerned are the following:

A. Norma-Hoffman Bearing Company, Stamford, Connecticut;
B. McGill Manufacturing Company, Inc., Valparaiso, Illinois;
C. Stephens-Adamson Manufacturing Company, Aurora, Illinois;
D. Fafnir Bearings, Inc., New Britain, Connecticut;
E. Bunting Brass & Bronze Company, Toledo, Ohio;
F. SKF Industries, Inc., Philadelphia, Pennsylvania;
G. Rollaway Bearings Company, Syracuse, New York;
H. Martin Rockwell Corporation, Jamestown, New York; and
I. Link-Belt Company, Chicago, Illinois.

XII. Examples of Respondents' Intimidation Tactics

20. In 1956 Palmer Bearings Company of Cleveland, Ohio, a competitor of Bearings, Inc., applied to Norma-Hoffman for a distributorship. There is considerable evidentiary confusion as to exactly what occurred between Mr. Sargent, the representative of Norma-Hoffman in the Cleveland area, and Messrs. Bruening and Scully, respectively president and vice president of Bearings, Inc., of Cleveland, concerning Palmer's application for distributorship. It is clear, however, that Mr. Sargent, in conferring with Max G. Palmer, president of Palmer Bearings, informed him that Norma-Hoffman intended to grant him a distributorship, but that before awarding it, he would, by way of business courtesy, confer with Mr. Bruening. Thereafter Mr. Sargent visited with Mr. Bruening and Mr. Scully. It is clear that one or the other of those officials expressed displeasure at the prospect of having Palmer Bearings appointed a distributor in the Cleveland area. It is also clear that they suggested the appointment of Bearings Distributors, Inc., of Cleveland, a larger bearings distributor, instead of Palmer Bearings. Mr. Sargent testified that Mr. Bruening stated during the conference, "Well, don't forget that if you do appoint him, we have retaliatory methods that we can use." Mr. Sargent also testified that before he left, Mr. Bruening walked out of the office and left the conference. Following this conference, Mr. Sargent, who is described as having been at that time emotionally and physically ill, informed Mr.

Palmer that because of the disapproval of Mr. Bruening, he must defer granting the distributorship. It appears that Mr. Sargent was afraid that the respondent corporation might purchase fewer bearings from his company if a distributorship were granted to the Palmer Bearings Company. Approximately six months later Mr. Sargent resigned his position with Norma-Hoffman. Shortly thereafter the Norma-Hoffman Bearings Corporation did in fact grant the desired distributorship to the Palmer Bearings Company.

21. Mr. Bruening and Mr. Scully, in expressing to the representative of Norma-Hoffman their displeasure at the possibility that Norma-Hoffman might appoint Palmer Bearings Company as a distributor, would have been within their legal rights, had they been speaking for themselves alone, or for a small corporation. The Supreme Court held in *Federal Trade Commission* v. *Raymond Company*, 263 U.S. 565, that a buyer "* * * may lawfully make a fixed rule of conduct not to buy from a producer or manufacturer who sells to consumers in competition with himself. * * * Likewise a wholesale dealer has the right to stop dealing with a manufacturer 'for reasons sufficient to himself'." The Court added, however, the explanatory qualification that:

The present case discloses no elements of monopoly or oppression. So far as appears the Raymond Company has no dominant control of the grocery trade, and competition between it and the Stores Company is on equal terms. Nor do we find that the threatened withdrawal of its trade from the Snider Company was unlawful at the common law, or had any dangerous tendency unduly to hinder competition.

The above qualification was, in substance, reaffirmed by the Supreme Court in the case of *Lorain Journal* v. *U.S.*, 342 U.S. 143, wherein the Court held that a publisher who was engaged in an attempt to monopolize advertising in interstate commerce, in violation of § 2 of the Sherman Antitrust Act, was properly enjoined under § 4 of that Act from continuing such attempt. The Court stated:

Unless protected by law, the consuming public is at the mercy of restraints and monopolizations of interstate commerce at whatever points they occur. Without the protection of competition at the outlets of the flow of interstate commerce, the protection of its earlier stages is of little worth.

22. Mr. Bruening and Mr. Scully, when they expressed their displeasure to the representative of Norma-Hoffman concerning the appointment of a competitor, were not speaking merely for themselves, nor for a small corporation, but for the largest and most economically powerful bearings-distributing organization within a fifteen-state area, an organization with five active wholly owned subsidiary corporations and forty-two store outlets under its con-

trol. Because of this real and potential economic power over the sale and distribution of bearing products, the displeasure expressed by the respondents carried too much weight to be ignored. At least, Mr. Sargent thought so, and feared that if he granted a dealership to Palmer Bearings Company in the face of such displeasure, he might expect economic retaliation in the form of smaller bearing orders from the respondents. Under the circumstances, such a conclusion on his part appears to have been reasonable. Accordingly, Norma-Hoffman did not grant the distributorship to Palmer until about eight months later, after Mr. Sargent had left its employ.

23. We are not here concerned with the question of whether Palmer Bearings Company was a good choice as a distributor for Norma-Hoffman, or whether Mr. Bruening and Mr. Scully considered that company worthy of appointment. We are concerned with the fact that Mr. Bruening and Mr. Scully, as spokesmen for a dominant segment of the bearings industry, possessed sufficient economic power to constrain a manufacturing company to withhold a distributorship at their pleasure, thereby depriving a competing company, for nearly a year, of a distributorship which it would otherwise have sooner enjoyed, and interfering with the manufacturer's exercise of free will in its choice of distributors. Acts not unlawful in themselves become unlawful when combined with such economic power that their impact upon others is injurious. An expression of displeasure which carries an implied threat of reprisal by reason of the economic power of the displeased entity is unlawful, because its end result is intimidation and coercion. Thus the respondents' acts constituted an unlawful interference with competition in commerce, to the injury of both Norma-Hoffman, the manufacturer, and Palmer Bearings Company, respondents' competitor, as well as general injury to the public.

24. Mr. Sargent gave a further example of respondents' coercive tactics in its dealings with Norma-Hoffman. He testified that he had promised, in 1956, at the instance of respondent John F. Raymond, president of respondents' wholly owned subsidiary in Indianapolis, Indiana, that Norma-Hoffman would not grant a distributorship to Aero Bearing Corporation, respondents' competitor in that city. Mr. Kelley, salesman for Norma-Hoffman, in a report to his company, sums up the situation and expresses the effect of the intimidation exercised against his company as follows:

To sum up, I think we would be foolish to seriously consider the disturbance of this account at this time. It adds up to our risking a potential $50,000 per year account to take a chance on picking up an additional $15,000.00 per year at the outside. I assured Bud [respondent Raymond] that I would report the

facts to Mr. Sargent as I saw them and that I felt sure that no changes would be made in this area at this time. However, I made sure that he understood that we will expect his continued support as he indicated and that any sharp fall-off would cause us no end of concern. Bud was optimistic and said he could see no reason to expect any decrease and again pledged his continued support.

25. Bearings Service Company of Pittsburgh, Pennsylvania, is a bearing specialist with annual sales in excess of one million dollars. This distributor of bearings has been in business in that same location since January 1933. In 1953 it applied to Norma-Hoffman for a distributorship, and the granting thereof was delayed for approximately five years because of respondents' opposition. Mr. Chase, president of Bearings Service Company, testified that he was in Sargent's office at Norma-Hoffman's plant in Stamford, Connecticut, in 1953, renewing his request for a distributorship. He testified further that on that occasion Mr. Sargent left the office for a few minutes, and then returned and informed him that "Joe [Bruening] says nothing doing". The conclusion is obvious.

26. In 1953 the above-named distributor, Bearings Service Company of Pittsburgh, had its franchise with McGill Manufacturing Company, Inc., cancelled. Mr. William F. Chase, president of Bearings Service Company, testified that:

The notice of cancellation was brought to me personally by Mr. V. J. Brownell who was at that time Sales Manager for McGill. While the notice stated that they had appointed Pennsylvania Bearings as the exclusive distributor. Mr. Brownell's remarks were that the buying power of the combination of Pennsylvania Bearings, Ohio Ball Bearings, Indiana Bearings, and West Virginia Bearings, at that time, was such that he had no alternative except to cancel us.

27. In 1953 McGill Manufacturing Company, Inc., also cancelled the authorized distributorship of Kentucky Bearing Service of Louisville, Kentucky. A letter written by John F. Raymond, then president of Indiana Bearings, Division of Bearings Specialties, Inc., reveals the pressure he brought to bear on the manufacturer to disfranchise this competitor. He wrote in part as follows:

This will in turn prove to you that with the cooperation you have given us in Louisville by "canning" one distributor, that a job can be done * * *, and we hope that sometime in the future you will find reason to "can" the other account that you have in Louisville, because they are very sharp with their pencil and have many ways of getting prices to the user. We have not been able to get definite information on McGill price irregularities, but we will, and will let you know in detail.

28. Excerpts from correspondence between officials of McGill Manufacturing Company and respondent Edward F. Brown, vice president of Tennessee Bearings, Inc., show that McGill cancelled the distributorship of Volunteer Bearings and Transmission Com-

pany, Inc., Chattanooga, Tennessee, one of respondents' competitors, at the insistence of the respondents. Part of this correspondence is as follows:

Keith Brownell asked that I write to you in reply to your letter of January 5, after his telephone conversation of January 14, regarding your store in Chattanooga.

We are removing Volunteer Bearings and Transmission Company, Inc., at Chattanooga as one of our jobbers and have requested that they no longer advertise that they are an authorized distributor of our bearings.

This letter was forwarded by respondent Brown in Knoxville, Tennessee, to respondent Bruening in Cleveland, Ohio, who noted thereon: "Very good. J.M.B.".

29. The evidence shows that in 1952 the distributorship of Bearings, Inc., Louisville, Kentucky, a competitor of the respondents in that area, was cancelled by SKF Industries, Inc., after 35 years as its distributor. Two years later, in an interoffice memorandum from Mr. Bruening to Mr. Raymond, Mr. Bruening states:

As for Bearings, Inc. * * * Sometimes I think we should have let 'em have SKF—they couldn't make as much on 'em when they chiseled as they now make on two off brands. * * * J.M.B.

We think this is clear evidence that respondents were responsible for this cancellation also.

30. In 1955 Max Lammers, the manager of respondent Dixie Bearings, Inc., in New Orleans, Louisiana, requested the Rollaway Bearing Company to cancel the distributorship of respondents' competitor, Industrial Bearings Company. Shortly thereafter, Mr. Bruening, president of the respondent company in Cleveland, joined the effort by writing to Rollaway Bearings Company, Inc., himself, suggesting that they should have just one bearings distributor in New Orleans, and that he would like for that distributor to be Dixie Bearings, Inc. Soon thereafter Rollaway made the requested change of distributors.

31. The evidence also shows that respondents' officials endeavored to persuade Fafnir Bearings, Inc., to prevent its authorized distributors, other than respondents, from shipping Fafnir bearings to unauthorized distributors competing with respondents in the Louisiana area. Excerpts from correspondence between respondent Raymond and officials of Fafnir reveal very clearly the respondents' efforts to eliminate this type of competition. On May 4, 1953, respondent Raymond wrote to Fafnir, attention of Ray M. Page, in part as follows:

Week before last I was in Louisiana working with Dixie Bearings, Inc., at New Orleans and Baton Rouge. It "burns me up" when I learn of the loose

distribution that Fafnir has in the South, and I think something should be done about it immediately.

* * * * * * *

Will you please check into this situation immediately and see that Bearings Chain and Supply stop "bootlegging" Fafnir bearings into New Orleans and Baton Rouge territories.

On May 8, 1953, respondent Raymond again wrote to Fafnir, as follows:

Thanks very much for your letter of May 6, in reply to the carbon copy of our letter of May 4, regarding the "bootlegging" of Fafnir bearings in Baton Rouge.

We appreciate your support in this matter, and you can count on us to carry this thing through to some conclusion.

This letter (Commission's Exhibit 78) bears the hand-written notation: "Did Ray Page answer? J.M.B.". This notation by respondent Bruening, especially, as well as the testimony of respondent Raymond, shows that respondents were working together as corporations and individuals in following a planned common course of action designed to eliminate competition. On June 29, 1954, Mr. Page of Fafnir wrote to J. M. O'Connell of corporate respondent Dixie Bearings, Incorporated, of New Orleans, Louisiana, as follows:

Thanks for your letter of June 22nd calling to our attention that Baton Rouge is doing an infinitely better job for Fafnir on radial bearings for the first five months of this year as against the same period last year. Naturally, we are pleased to see this increase, * * *.

Please be assured that we will immediately go to work on drying up Louisiana Bearings' source on Fafnir bearings.

These exhibits prove beyond question that respondents were making a joint and concerted effort to eliminate competition.

XIII. Conclusions on Count I

32. From such evidence, we must find that from time to time, respondent Bearings, Inc. (Delaware), acting individually or through its wholly owned subsidiaries, has engaged in acts and practices for the purpose and with the objective of monopolizing, or attempting to monopolize, the sale and distribution of bearing products, and of eliminating or suppressing, or attempting to eliminate or suppress, the competition of others engaged in the sale and distribution of the same or similar products, and of otherwise furthering the leading and dominant position of the corporate respondents in the sale and distribution of bearing products in commerce.

33. We further find that respondents have coerced, intimidated, or otherwise compelled certain manufacturing suppliers of the afore-

said bearing products (a) to refuse to deal with or otherwise supply such bearing products to some of the corporate respondents' competitors; (b) to cancel certain franchises given by such manufacturing suppliers to some of the corporate respondents' competitors; and (c) to refrain from offering or giving such franchises to some of the corporate respondents' competitors, resulting in unlawful restraint, lessening or elimination of competition in the sale and distribution of bearing products in commerce, in violation of § 5 of the Federal Trade Commission Act.

XIV. Summary and Conclusions on Count II

34. As heretofore pointed out, Count II charges that the corporate respondents, acting through their corporate officers, conspired to pursue and did pursue a planned common course of action between and among themselves, for the purpose of restraining, lessening or eliminating competition and creating in themselves a monopoly in the sale and distribution of bearing products, in violation of § 5 of the Federal Trade Commission Act.

35. The evidence shows that during the period of time here involved, there was a continuous exchange of business information between the officers of the respondents' subsidiary corporations and those of the parent corporation, with the officers of the parent corporation directing the overall policies and practices of all the respondent corporations. The evidence shows, moreover, that the officers of the parent corporation were specifically informed by Mr. Brown, vice president of respondent Dixie Bearings, Inc., and by Mr. John F. Raymond, vice president of respondent Kentucky Ball & Roller Bearing Co., of competitive problems in their areas. There is also evidence that there were exchanges of information concerning such problems, and their efforts to eliminate objectionable competition, between Mr. Brown and Mr. Raymond, as well as between them and Mr. Bruening, president of the parent corporation. All of the respondents, individuals as well as corporations, followed a common pattern of business and a common policy designed to hinder or eliminate certain competitors. The Supreme Court, in *United States* v. *Paramount Pictures, Inc.*, *et al.*, 334 U.S. 131, stated:

> It is not necessary to find an express agreement in order to find a conspiracy. It is enough that a concert of action is contemplated and that the defendants conform to the arrangement.

36. The fact that respondents are a close-knit group does not immunize them against their responsibility for intra-enterprise conspiracy which they create, just as their manufacturer-suppliers and

their competitors were not immunized against the injurious result of such conspiracy. The Supreme Court found conspiracy within the so-called "single enterprises" in the "movie cases". In *United States* v. *Crescent Amusement Company*, 323 U.S. 173 (1944), and in *United States* v. *Griffith*, 334 U.S. 100 (1948), the conspiracies included affiliated corporations and their officers. In *Chine Chain Theaters* v. *United States*, 334 U.S. 110 (1948), the conspiracy was found to exist between parent and subsidiary corporations, together with their officers, the Court stating in part as follows:

> * * * The concerted action of the parent company, its subsidiaries, and the named officers and directors in that endeavor was a conspiracy which was not immunized by reason of the fact that the members were closely affiliated rather than independent.

37. The above decisions are exactly in point when considered in conjunction with the facts of the present proceeding, and we are therefore compelled to conclude that the corporate respondents, acting through their corporate officers, entered into, maintained, and effectuated an understanding, agreement, combination and conspiracy to pursue, and they have pursued, a planned common course of action between and among themselves to adopt and adhere to certain practices and policies to restrain, lessen, and eliminate competition between themselves and with others in the sale and distribution of the aforesaid bearing products, in commerce; and otherwise to further the leading and dominant position of the corporate respondents in the sale and distribution of the aforesaid products in commerce.

38. We further find that the acts and practices, as hereinbefore set forth, have had and now have the tendency and capacity unlawfully to restrain, lessen and eliminate competition in the sale and distribution of the aforesaid products, in commerce; unreasonably to restrain competition among the manufacturing suppliers of such products; to coerce such suppliers to deal on respondents' terms; and to prevent the corporate respondents' competitors from obtaining in commerce, at competitive and nondiscriminatory prices, supplies of certain nationally recognized popular lines of the aforesaid bearing products, all in violation of § 5 of the Federal Trade Commission Act.

39. Individual respondent John F. Raymond has moved that the complaint be dismissed as to him because he has not, since January 16, 1958, been associated with any of the other respondents herein, nor has he, since that time, participated in the acts and practices herein found to be violative of law. His participation with the other respondents in the past, however, and the existing reasonable possi-

bility of a resumption of such acts and practices by him in the future, require that his motion be, and it hereby is, denied.

40. It is obvious that in the interest of the public, the practices herein found to be violative of law should be terminated, and their repetition prohibited. Accordingly,

It is ordered, That respondents Bearings, Inc. (Delaware), Balanrol Corp., Dixie Bearings, Incorporated, Kentucky Ball & Roller Bearing Co., Tennessee Bearings, Inc., and Carolina Bearings, Inc., all corporations, and their respective officers, agents, representatives and employees; Joseph M. Bruening and William J. Scully, individually and as officers of said corporations; John F. Raymond, individually and as a former officer of corporate respondents Bearings, Inc. (Delaware) and Kentucky Ball & Roller Bearing Co.; and Edward F. Brown, individually and as an officer of corporate respondent Dixie Bearings, Incorporated, directly or through any corporate or other device, in connection with the purchase, resale and distribution of ball, roller, anti-friction, anti-thrust, and thrust bearings, transmission units, bearing specialties, accessories, and other related bearing products, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly:

1. Coercing, intimidating, or otherwise compelling, or attempting to compel, manufacturing suppliers of the aforementioned bearing products:

   a. To refuse to deal with or otherwise supply such bearing products to respondents' competitors;

   b. To cancel franchises given by such manufacturing suppliers to respondents' competitors to sell, distribute, or otherwise market such bearing products;

   c. To refrain from offering or giving such franchises to respondents' competitors;

2. Preventing, or attempting in any way to prevent, their competitors from obtaining, in commerce, at competitive and non-discriminatory prices, supplies of certain nationally-recognized, popular lines of the aforesaid bearing products;

3. Devising, entering into, continuing, cooperating in, or carrying out any planned common course of action, mutual agreement, understanding, combination, or conspiracy between and among any two or more of said respondents, or between any one or more of said respondents and others not parties hereto, to do or perform any of the acts and practices prohibited by Paragraphs 1 and 2 hereof.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed insofar as it relates to respondent, the former corporation, Bearings, Inc. (Maryland).

OPINION OF THE COMMISSION

By DIXON, *Commissioner:*

The respondents are charged with violating Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45 (1958), 38 Stat. 719 (1914), as amended, 52 Stat. 111 (1938), and they have appealed from an order to cease and desist entered by the hearing examiner.

The complaint charges the respondents with using their purchasing power as an economic weapon against various bearings manufacturers to prevent the establishment of new distributorships and to bring about the cancellation of certain already existing distributorships with which the respondents were required to compete for sales. The respondents are further charged with trying to create a monopoly in the bearings replacement market by excluding and limiting potential and actual competition through the device of employing coercive tactics, such as threats to withdraw their purchases from bearings manufacturers who did not make distribution decisions to the respondents' liking.

In a separate count, the complaint also charges the respondents with engaging in an "intra-enterprise" conspiracy to bring about the results just described. The charge in this count is that the respondents conspired not with bearings manufacturers or with other bearings distributors, but amongst themselves to use economic pressure to suppress competition.

The hearing examiner found that Section 5 had been violated on both the economic coercion and conspiracy charges and entered an order to cease and desist. Respondents base this appeal primarily on the ground that substantial evidence to support the order is lacking in the record.

The complaint in this case was issued on April 29, 1958. Hearings were shortly thereafter scheduled and the first of these was held in Cleveland, Ohio, on September 17, 1958; this was followed by other hearings in several cities around the country. The taking of evidence was completed and the record closed at the final hearing held in Washington, D.C., on November 21, 1961. The hearing examiner then commenced consideration of the record that had been compiled and on March 7, 1962, filed his initial decision and order to cease and desist.

On April 13, 1962, respondents filed a petition for review of the initial decision, which petition we granted on May 10, 1962. Both

sides then filed briefs and we heard oral argument on September 20, 1962.

During the course of our detailed examination of the record on appeal, we could not fail to be impressed by the fact that the vast majority of the evidence has to do with incidents, events and conversations, the most recent of which took place in 1957. Moreover, that portion of the evidence most relevant to the charges of the complaint, upon which the hearing examiner relied and upon which we must also rely if we are to adopt the initial decision, relates to the years 1952–1956.

In effect what we are faced with is a record in which the alleged violations of Section 5 took place as much as fourteen years ago. We have no way of knowing from this record what the current business practices of the respondents are or, assuming *arguendo* that what the respondents did was violative of the Federal Trade Commission Act, whether they have continued their oppressive tactics against their competition. It is also noted that there have been several changes in the corporate organization and relationship of the respondents: of the seven named corporate respondents, one has been dissolved and three are totally inactive, their corporate status being retained solely to protect their trade names. Further, respondent Raymond, who is essentially involved in the alleged violations in this case, has not been connected in any capacity with the other respondents for some six years now. Although named in the order entered by the hearing examiner, Raymond took no appeal from that order. Despite the fact that on March 26, 1962, we entered our own order docketing this appeal also as to Raymond, he has not been represented by the counsel who appeared for the other respondents, nor has he personally taken any part in this appeal.

It is well settled that respondents who appear before this Commission cannot preclude us from entering an order by stating that violations once committed have now been discontinued. If the rule were otherwise, the Federal Trade Commission would be rendered impotent for as soon as a complaint was issued, a respondent could defeat its effect by saying "we stopped yesterday." Therefore, even if the respondents here have in fact ceased their alleged anticompetitive practices, this would not be a defense if the record establishes the violations. However, our decision here does not rest upon the defense of discontinuance, which defense it must be acknowledged the respondents do not strongly press upon us, but rather on our belief that it would serve no useful purpose to make an adjudication on a record composed as this one is of cold and stale evidence.

Lest this opinion be misconstrued, we wish to make it clear that we do not in any way pass on the merits of this case one way or the

other. Should facts later present themselves indicating that the respondents are in violation of any statute administered by this Commission, action on our part will not be slow in forthcoming.

For now we hold only that, because of the lapse of time that has occurred since these alleged violations have taken place, the initial decision of the hearing examiner is hereby set aside and the complaint, insofar as the hearing examiner has not already done so, is ordered to be and is hereby dismissed. Rules of Practice § 3.24(a), (b), 28 Fed. Reg. 7080, 7091 (July 11, 1963).

Commissioner Anderson concurred in the result and Commissioner MacIntyre did not concur.

Final Order

This matter having been heard by the Commission upon respondents' appeal from the hearing examiner's initial decision, and briefs and oral argument in support of said appeal and in opposition thereto; and

The Commission, for the reasons stated in the accompanying opinion, having rendered its decision ordering that the initial decision and the complaint, insofar as the hearing examiner has not already done so, be dismissed:

It is therefore ordered, That the initial decision and the complaint be, and they hereby are, dismissed.

By the Commission, Commissioner Anderson concurring in the result and Commissioner MacIntyre not concurring.

In the Matter of

WM. H. WISE & CO., INC.

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

Docket C-694. Complaint, Jan. 22, 1964—Decision, Jan. 22, 1964

Consent order requiring a New York City distributor to retail dealers and directly to the public of electric tools and a volume entitled "Wise Garden Encyclopedia", to cease representing falsely in advertising in periodicals and otherwise that said encyclopedia was newly revised and brought up-to-date, with a "complete new supplement", and included latest developments and methods in garden and lawn care, when the volume had undergone no general revision since its original publication; and to cease representing falsely that its portable electric jig saw was "guaranteed for a full year" when limitations on the guarantee were not disclosed.

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 Wm. H. Wise & Co., 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 Wm. H. Wise & Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 370 Seventh Avenue, New York, New York.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale and distribution, directly to the public and also to retail dealers for resale to the public, of electric tools, including portable electric jig saws, and of various books, including a volume entitled "Wise Garden Encyclopedia".

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

PAR. 4. Respondent, in the course and conduct of its said business, and for the purpose of inducing the purchase of the said book "Wise Garden Encyclopedia" has made many statements and representations concerning the contents and subject matter of said book in advertisements inserted in periodicals and in other advertising material. Typical, but not all inclusive of such statements and representations, are the following:

NOW READY. The world's greatest, most comprehensive Garden Encyclopedia.

EVERYTHING YOU NEED TO KNOW ABOUT ANYTHING YOU WANT TO GROW.

Bigger and Better than Ever.

* * * also a complete new supplement * * *

Include Latest Developments, Methods, etc. You get the latest facts about the miracles of Chemical Gardening, Modern Insecticides and Weed Killers; Plant Hormones. Learn about New Plants and Flowers; Wild Flower Gardening at home; new ways with Indoor Flower Arrangements and House

Plants; all about Rock Gardens and Water Gardens * * * Every word and picture up to date.

PAR. 5. By means of the aforesaid statements and representations, and others of similar import not specifically set forth herein, respondent has represented, and now represents, directly or by implication:

1. That the Wise Garden Encyclopedia has been newly revised and brought up-to-date;

2. That said book contains a complete new supplement;

3. That the Wise Garden Encyclopedia contains information as to the latest developments and methods in garden and lawn care.

PAR. 6. In truth and in fact:

1. The said Wise Garden Encyclopedia was not newly revised and brought up-to-date, as of December 1962;

2. The supplement described as "a complete new supplement" was added in 1951 and had undergone no changes or revisions when so described in advertising material disseminated in 1961 and 1962;

3. Said Garden Encyclopedia did not contain information as to the latest developments and methods in gardening and lawn care. In fact, said encyclopedia had undergone no general revision since its original publication in 1936 through 1962.

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

PAR. 7. Furthermore, in the course and conduct of its business and for the purpose of inducing sales of its portable electric jig saw, respondent made certain statements and representations with respect to the guanantee of said product, of which the following is typical:

FULLY GUARANTEED. Your saw is Underwriters' Approved. It comes with warranty and service card—guaranteed for a full year by the world famous PORTABLE ELECTRIC TOOL COMPANY.

PAR. 8. By and through the use of the representations set forth in Paragraph 7, respondent has represented, directly or by implication, that its said portable electric jig saw is guaranteed in every respect for a year.

PAR. 9. In truth and in fact, the guarantee for respondent's said portable electric jig saw is not unconditional; but is limited in certain respects. These limitations are not disclosed in the advertising and are not made known to the purchaser prior to sale.

Therefore, the representations set forth in Paragraphs 7 and 8 were and are, false, misleading and deceptive.

PAR. 10. In the conduct of its business, and at all times mentioned herein, the respondent has been in substantial competition in commerce with corporations, firms and individuals engaged in the

sale of garden encyclopedias and tools of the same general kind and nature as those sold by respondent.

PAR. 11. The use by the respondent of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondent's products by reason of said erroneous and mistaken belief.

PAR. 12. 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 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.

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 Wm. H. Wise & Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 370-7th Avenue, in the city of New York, State of New York.

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

ORDER

It is ordered, That respondent Wm. H. Wise & Co., 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 and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of the Wise Garden Encyclopedia or any other books or publications, and of portable electric saws or any other products, do forthwith cease and desist from representing, directly or by implication:

1. That the Wise Garden Encyclopedia has been revised when in fact said book has not undergone any material revision and is the same or substantially the same volume previously sold and offered for sale by respondent.
2. That the Wise Garden Encyclopedia contains a new supplement when in fact such supplement is the same or substantially the same supplement previously included with the said garden encyclopedia.
3. That the Wise Garden Encyclopedia contains information as to the latest developments and methods and in gardening and lawn care when in fact said book does not contain such information.
4. That any article of merchandise is guaranteed unless the nature and extent of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

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

NATIONAL ALLIANCE OF TELEVISION AND ELECTRONIC SERVICE ASSOCIATIONS ET AL.

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

Docket C-695. Complaint, Jan. 22, 1964—Decision, Jan. 22, 1964

Consent order requiring a national association of television repair men and its members, including 100 local or state associations, "Affiliate" members and individual servicemen who were "Associate" members, to cease sup-

pressing competition in the repair and service of television and other electronic devices and in the distribution of parts and components used therein, through concertedly refusing to purchase from suppliers who sold directly to consumers or part-time servicemen or who offered warranties or service on devices, equipment and parts so sold; inducing, and entering into agreements with suppliers to refuse to sell to part-time servicemen; and using their "Affiliate" members as instrumentalities to monopolize trade and lessen competition in the repair and servicing of television, radio and electronic devices and equipment.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act, (15 U.S.C. Sec. 41, *et seq.*) and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that the parties hereinafter more particularly named, designated, described and 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 National Alliance of Television and Electronic Service Associations, hereinafter sometimes referred to as NATESA, is a nonprofit trade association organized and existing as a corporation under the laws of the District of Columbia, with its principal office and place of business located at 5908 South Troy Street, Chicago, Illinois with operations in most of the several States of the United States.

Respondent NATESA was ostensibly organized for the purpose of correlating work and progress of regional, state and local television and electronic service associations; of representing servicemen before other segments of the industry and governmental agencies; and of encouraging the formation of local, state and regional associations. It is composed of a membership of three classes:

(a) Affiliate which is composed of approximately 100 local and state television, radio and electronic service associations;

(b) Associate which includes individuals who are members of a local or state Affiliate and are known as Affiliate Associate members and individuals who reside in areas where there is no Affiliate and are known as Non-Affiliate Associate members; and

(c) Honorary which is composed of persons, companies or other entities not actively engaged in the television, radio and electronic service industry, but who are deemed to have rendered exceptional services to respondent NATESA. The said Honorary members have not participated in the acts and practices charged herein as unlawful

and therefore are specifically excluded as respondents in this proceeding.

Respondent NATESA is governed by a Board of Directors consisting of one Director chosen by each Affiliate and an Executive Council consisting of the following officials: the executive director, president, secretary-general, treasurer, eastern vice president, eastern secretary, east central vice president, east central secretary, west central vice president, west central secretary, western vice president, and western secretary. All of said officials except the executive director are elected by the membership for a term of one year. The executive director is selected by the Executive Council each even-numbered year for a term of two years.

The membership of respondent NATESA constitutes a class so numerous and changing as to make it impracticable to specifically name each and all of such members as parties respondent herein. The following, among others, are members of respondent NATESA, are fairly representative of the whole membership and have been responsible, in part, for the direction and control of said respondent. They are named as respondents herein in their individual capacities, as members of respondent NATESA, and as representatives of all members of respondent NATESA, including Affiliate members, Affiliate Associate members and Non-Affiliate Associate members, as a class, including those not herein specifically named, all of whom are made respondents herein:

Frank J. Moch, 5906 South Troy Street, Chicago, Illinois. Respondent Moch has served as executive director of respondent NATESA for the years, among others, 1959 to the present, and has served as publisher of the "NATESA Scope", official magazine of respondent NATESA prior to and from 1959 to the present.

Ralph H. Woertendyke, 235 North Santa Fe Road, Salina, Kansas. Respondent Woertendyke served as president of respondent NATESA from August 1961 to August 1962 and as west central vice president from 1960 to 1961.

Alphonse Benoit, Jr., 2637 Banks Street, New Orleans, Louisiana. Respondent Benoit served as president of respondent NATESA from 1960 to 1961 and as secretary-general from 1959 to 1960.

Valery Metoyer, 6017 Prospect Avenue, Kansas City, Missouri. Respondent Metoyer served as president of respondent NATESA from 1959 to 1960.

PAR. 2. Respondent Television and Electronic Service, Inc., also known as TESA-GREEN BAY, a corporation organized and doing business under the laws of the State of Wisconsin, with its offices and principal place of business located at 109 Garfield Street in

Green Bay, Wisconsin is an association of local television, radio and electronic servicemen or service organizations and is an "Affiliate" member of respondent NATESA.

The membership of respondent TESA-GREEN BAY constitutes a class so numerous and changing as to make it impracticable to specifically name each and all of such members as parties respondent herein. The following, among others, are members of TESA-GREEN BAY, are fairly representative of the whole membership and have been responsible, in part, for the direction and control of said respondent. They are named as respondents herein in their individual capacities, as members of respondent TESA-GREEN BAY, and as representatives of all members of respondent TESA-GREEN BAY, as a class, including those not herein specifically named, all of whom are made respondents herein:

Oliver Davis, 109 Garfield Street, Green Bay, Wisconsin. Respondent Davis has served as secretary of respondent TESA-GREEN BAY since 1956.

Don Beno, 1153 Main Street, Green Bay, Wisconsin. Respondent Beno served as president of respondent TESA-GREEN BAY in 1959, as a member of a committee to negotiate with local distributors in 1959, and as NATESA director in 1960.

Harold Juelich, 312 North Chestnut, Green Bay, Wisconsin. Respondent Juelich served as NATESA's director in 1959, as a member of a committee of respondent TESA-GREEN BAY to negotiate with distributors in 1959, and as treasurer of respondent TESA-GREEN BAY in 1962.

Par. 3. Repondent NATESA, primarily through its excutive director, disseminates to its members and representatives thereof located throughout the United States various communications, including, but not limited to, correspondence, directives, trade publication articles, technical material and other data. Respondent NATESA publishes the "NATESA Scope", a monthly trade magazine, which it has transmitted from the State of Illinois to members of NATESA, including members of respondent TESA-GREEN BAY, and to others located in various States of the United States.

All or virtually all of the members of respondent NATESA, including members of respondent TESA-GREEN BAY, in the course and conduct of repairing and servicing television, radio and electronic devices and equipment purchase various products such as radio and television tubes. Such products are sold and shipped by manufacturers thereof to wholesalers or distributors in States other than the States of manufacture or other than the States where shipment originated who in turn resell said products to members of respondent NATESA and also to ultimate consumers, located

in various States of the United States, and there has been, and now is, a constant current and course of trade in commerce in said products between and among the several States of the United States.

PAR. 4. Except to the extent that competition has been hindered, frustrated, lessened and eliminated by the acts and practices alleged in this complaint, respondents have been in substantial competition with each other in that individual members of local Affiliates compete, and respondents have been in substantial competition with other corporations, firms, partnerships and individuals engaged in the sale and distribution of television, radio and electronic devices, equipment or parts in "commerce" as that term is defined in the Federal Trade Commission Act.

PAR. 5. The said respondents, hereinbefore named and described, and each of them, and others not specifically named herein, during the period of time, to wit, from in or about August 1959, to date of this complaint, have formulated, adopted and placed into effect a plan, scheme, or policy between and among themselves and others not named herein to hinder, frustrate, suppress and eliminate competition in the repair and service of television and other electronic devices and in the distribution and sale of parts and components used in the service and repair of television and other electronic devices in the course of the aforesaid commerce.

Pursuant to, in furtherance of, and in order to make effective the purposes and objectives of the aforesaid plan, scheme or policy, said respondents or some of them with the acquiescence of all others, through combination, conspiracy, understanding, agreement or planned common course of action or course of dealing, between and among and in cooperation with each other, have utilized, among other things, the following policies, methods, acts and practices:

1. Refused, threatened refusal, or attempted to obtain the refusal of independent servicemen, including respondent members and nonmembers, to purchase from manufacturers, distributors or wholesalers who have sold or distributed television, radio or electronic devices, or equipment and parts directly to consumers or part-time servicemen.

2. Refused, threatened refusal, or attempted to obtain the refusal of independent servicemen, including respondent members and nonmembers, to purchase from manufacturers or distributors who, in connection with the offering for sale, distribution, or sale of television, radio and electronic devices, equipment and parts, have offered warranties or service upon such devices, equipment and parts.

3. Induced, influenced, and entered into agreements with, wholesalers or distributors of television, radio and electronic parts or

equipment to refuse to sell such parts or equipment to part-time servicemen.

4. Established and utilized local and state "Affiliate" members, and the officers, directors and members thereof, as instrumentalities in attempting to monopolize trade or lessen competition in the repair and servicing of television, radio or electronic devices and equipment.

PAR. 6. The plan, scheme, policy, combination, conspiracy, mutual understanding, agreement, planned common course of action or course of dealing, and the acts and practices and methods, as hereinabove alleged, are all singularly unfair and to the prejudice of the public and against public policy because of their dangerous tendency unduly to prevent and eliminate part-time servicemen from competing in the repair and service of television, radio or electronic devices and equipment, to limit and restrict channels of distribution of said devices and equipment or component parts thereof, to hinder competition, and to restrain and monopolize trade and commerce, and thereby constitute unfair methods of competition and unfair acts and practices in commerce within the meaning of Section 5 of the Federal Trade Commission Act, as amended.

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 National Alliance of Television and Electronic Service Associations, hereinafter sometimes referred to as NATESA, is a nonprofit trade association organized and existing as a corpora-

tion under the laws of the District of Columbia, with its principal office and place of business located at 5908 South Troy Street, Chicago, Illinois.

Respondent Frank J. Moch is executive director of NATESA and his address is 5906 South Troy Street, Chicago, Illinois.

Respondents Ralph H. Woertendyke, Alphonse Benoit, Jr., and Valery Metoyer are members of and are representatives of all the members of proposed respondent NATESA. The address of Ralph H. Woertendyke is 235 North Santa Fe Road, Salina, Kansas. The address of Alphonse Benoit, Jr. is 2637 Banks Street, New Orleans, Louisiana. The address of Valery Metoyer, is 6017 Prospect Avenue, Kansas City, Missouri.

Respondent Television and Electronic Service Association, Inc., is a nonprofit trade association organized and existing as a corporation under the laws of the State of Wisconsin, with its offices and principal place of business located at 109 Garfield Street, Green Bay, Wisconsin.

Respondents Oliver Davis, Don Beno and Harold Juelich are members of and are representatives of all the members of proposed respondent Television and Electronic Service Association, Inc. The address of Oliver Davis is 109 Garfield Street, Green Bay, Wisconsin. The address of Don Beno is 1153 Main Street, Green Bay, Wisconsin. The address of Harold Juelich is 312 North Chestnut, Green Bay, Wisconsin.

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 National Alliance of Television and Electronic Service Associations, a corporation, its officers, representatives, agents, and members of its Board of Directors, the members of said National Alliance of Television and Electronic Service Associations, their agents, representatives and employees; Television and Electronic Service Association, Inc., a corporation, its officers, representatives, and agents, the members of said Television and Electronic Service Association, their agents, representatives or employees; Frank J. Moch; Ralph H. Woertendyke; Alphonse Benoit, Jr.; Valery Metoyer; Oliver Davis; Don Beno; and Harold Juelich, directly or indirectly, individually and as representatives of all members of National Alliance of Television and Electronic Service Associations, or as members, officers or directors of other respondents, or through any corporate or other device, in connection

with the repair, purchase or sale or with or in connection with the offer to repair, purchase or sell or distribute television, radio and electronic devices, equipment or component parts thereof in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, cooperating in, carrying out or continuing any planned common course of action, understanding, agreement or conspiracy between any two or more of said respondents, or between any one or more of said respondents and others not parties hereto, to do or perform any of the following acts, practices or things:

(1) Refusing, threatening refusal, or attempting to obtain the refusal of persons engaged in the repair and servicing of television, radio or electronic devices or equipment, to purchase from any manufacturer, distributor or wholesaler who sells or distributes such devices or equipment or component parts thereof to part-time repairmen or directly to consumers.

(2) Refusing, threatening refusal, or attempting to obtain the refusal of persons engaged in the repair and servicing of television, radio or electronic devices or equipment, to purchase from manufacturers or distributors who offer warranties or service on such devices or equipment.

(3) Inducing, influencing or entering into agreement with, wholesalers or distributors of television, radio or electronic devices and equipment or component parts thereof to refuse to sell to part-time repairmen or to any competitors of respondents.

(4) Inducing, persuading, coercing or attempting to induce, persuade or coerce any manufacturer, distributor or wholesaler to confine or limit the offering for sale, distribution or sale of television, radio or electronic devices, equipment or component parts thereof, to repairmen who are members of NATESA, including members of NATESA Affiliates, or to those who conform to any standard established by any of respondents.

(5) Utilizing the offices of any local, state or national association, or the officers, directors or members thereof, to do or perform or to aid or abet in doing or performing anything prohibited by any provision 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.