

Complaint

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that respondents' business is that of an independent organization engaged in the business of collecting delinquent accounts;

(2) Representing, directly or by implication, that accounts not referred to an independent organization engaged in collecting delinquent accounts have been so referred, or otherwise representing, directly or by implication, that any action not taken to effect the collection of delinquent accounts has been taken;

(3) Using letters, forms, questionnaires or other items of printed or written matter in connection with obtaining information concerning delinquent debtors which do not clearly reveal that the purpose for which the information is sought is that of obtaining information concerning delinquent debtors.

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

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IN THE MATTER OF

CHINCHILLA RANCHERS, INC., ET AL.

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

*Docket C-820. Complaint, Aug. 27, 1964—Decision, Aug. 27, 1964*

Consent order requiring two Evansville, Wisc., sellers of chinchilla breeding stock to cease making exaggerated earning claims, misrepresenting the quality of their stock, deceptively guaranteeing the fertility of their stock, and misrepresenting their services to purchasers.

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 Chinchilla Ranchers, Inc., a corporation, and Marie Roberts, individually and as an officer of said corporation, and National Chinchilla Ranches, Inc., a corporation, and Keith E. Meixell, 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 Chinchilla Ranchers, 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 Route 1, Evansville, Wisconsin.

Respondent Marie Roberts is an individual and is an officer of Chinchilla Ranchers, Inc., and its sole stockholder. She formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Her address is the same as that of the corporate respondent.

Respondent National Chinchilla Ranches, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its principal office and place of business located at Route 1, Evansville, Wisconsin.

Respondent Keith E. Meixell is an individual and is an officer of National Chinchilla Ranches, Inc. He, together with Marie Roberts, formulates, directs and controls the acts and practices 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 chinchilla breeding stock to the public.

PAR. 3. In the course and conduct of their aforesaid businesses, respondents now cause, and for some time last past have caused, their said chinchillas 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 commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid businesses, and for the purpose of obtaining the names of prospective purchasers and inducing the purchase of said chinchillas, the respondents make numerous statements and representations in direct mail advertising and through the oral statements and display of promotional material to prospective purchasers by their salesmen with respect to the breeding of chinchillas for profit without previous experience, the rate of reproduction of said animals, the expected return from the sale of their pelts, the market value of said animals as breeding stock, their quality, their hardiness and freedom from disease, the selection of producers by area and the limitation of the number of animals sold,

and the training, assistance and organization of breeders to be made available to purchasers by respondents.

Typical and illustrative, but not all inclusive of the said statements made in respondents' direct mailing advertising and promotional literature are the following:

There is no experience needed in order to succeed.

**FINANCIAL INDEPENDENCE**

**YOU CAN BE YOUR OWN BOSS**—by starting with three (3) mated pair of top quality CHINCHILLAS on our warranted plan, and it would not be unnormal for them in 4 years to produce approximately 50 mated pair of top quality breeding stock. If you'll multiply this by \$25 per pelt it will amount to quite a comfortable annual income.

**THESE ARE CONSERVATIVE FACTS THAT ARE ACTUALLY HAPPENING EVERY DAY!!!**

To purchasers of our breeding stock we offer a complete advisory service, housing, diets, etc., and the benefits of our experience throughout the years.

**WITHOUT OBLIGATION**, your **FREE** illustrated Booklet explaining the facts of the CHINCHILLA industry.

PAR. 5. By and through the use of said statements and representations made by respondents in advertising and promotional literature and in the oral presentations made by their salesmen, respondents represent directly or indirectly that:

1. The breeding of chinchillas for profit requires no previous experience.
2. Chinchillas sold by respondents are top quality breeding stock and have a market value ranging from \$800 to \$3500 a pair.
3. Every mated pair of chinchilla breeding stock offered for sale or sold by respondents will produce 22 pairs of chinchilla breeding stock in three years; that three pairs of chinchillas purchased from respondents will within four years produce at least fifty mated pairs of top quality breeding stock; and that such fifty pairs of chinchillas will produce two hundred or more chinchillas with top quality pelts for the pelting market each year thereafter.
4. Pelts from the offspring of respondents' breeding stock generally sell for \$25 to \$80 per pelt.
5. That the fifty pairs of chinchillas raised from breeding stock purchased from respondents will produce an annual net income of \$5,000 within four years and of \$25,000 within five years.
6. Purchasers of respondents' chinchillas would receive from the sale of offspring as breeding stock from \$150 to \$400 for a single chinchilla or from \$300 to \$800 per pair of chinchillas depending upon the quality of the animals.

7. It is practicable to raise chinchillas in the home and large profits can be made in this manner.

8. Chinchillas are free from disease and are not affected by high temperature and humidity.

9. Respondents will buy offspring from chinchillas purchased from them for pelting and for breeding purposes; and that purchasers would receive from respondents \$25 per animal purchased for pelting and \$150 per animal purchased for breeding.

10. Respondents will buy back chinchillas from persons who are dissatisfied with their purchase.

11. That the Willard H. George Grading System used by respondents is an accepted standard in the chinchilla industry for determining the quality of chinchilla breeding stock; and that score sheets recording the grading of animals under that system are generally accepted by the chinchilla industry as proof of the quality of the chinchillas purchased from respondents.

12. Respondents' chinchilla breeding stock is sold only to a few persons in each county or locality.

13. Purchasers of respondents' breeding stock have been selected to breed chinchillas for resale by respondents.

14. Purchasers of respondents' chinchilla breeding stock by virtue of their purchase would become members of an association of chinchilla breeders under respondents' leadership.

15. Specialized training in the breeding and care of chinchillas would be given to purchasers of respondents' chinchilla breeding stock.

16. Purchasers of respondents' breeding stock would receive the benefit of respondents' experience in breeding chinchillas acquired over the years.

PAR. 6. In truth and in fact:

1. The breeding of chinchillas for profit requires specialized knowledge in the feeding, care and breeding of said animals much of which must be acquired through actual experience.

2. Chinchillas sold by respondents are not top quality breeding stock and do not have a market value ranging from \$800 to \$3,500 a pair.

3. In most cases mated pairs of respondents' chinchillas will not produce 22 pairs of chinchilla breeding stock in three years; and three pairs of chinchillas purchased from respondents will not, in most cases, produce fifty mated pairs of top quality chinchilla breeding stock within four years; and said fifty pairs of offspring will rarely, if ever, produce as many as two hundred top quality pelts each year.

4. A purchaser of respondents' chinchillas could not expect to receive from \$25 to \$80 for each pelt produced since some pelts are not



marketable at all and others would not sell for \$25 but for substantially less than that amount.

5. Fifty pairs of chinchillas raised from respondents' breeding stock will not produce a net annual income of \$5,000 within four years and of \$25,000 within five years.

6. Purchasers of respondents' chinchillas would not receive from the sale of offspring as breeding stock from \$150 to \$400 for a single chinchilla or from \$300 to \$800 for a pair of chinchillas except, perhaps, in a rare or exceptional case.

7. It is not practicable to raise chinchillas in the home and large profits cannot be made by raising chinchillas in such manner.

8. Domesticated chinchillas are susceptible to pneumonia and other diseases and they do not tolerate high temperature and humidity.

9. Respondents will seldom buy offspring from chinchillas purchased from them for breeding or pelting purposes; and in those exceptional instances where such chinchillas are purchased respondents do not pay \$25 for each animal purchased for pelting or \$150 for each animal purchased for breeding.

10. Respondents will not buy back chinchillas from purchasers who are dissatisfied with their purchase.

11. The Willard H. George Grading System is not an accepted standard in the chinchillas industry for determining the quality of chinchilla breeding stock and score sheets recording the grading of animals under that system are not generally accepted by the chinchilla industry as proof of the quality of chinchillas purchased from respondents.

12. Sales of respondents' chinchilla breeding stock is not limited to a few persons in each county or locality.

13. Purchasers of respondents' chinchillas have not been selected to breed chinchillas for resale by respondents.

14. Purchasers of respondents' breeding stock do not become part of an association of chinchilla breeders by virtue of their purchase nor do respondents have such an association under their leadership.

15. Purchasers of respondents' breeding stock are not given specialized training in the care and breeding of chinchillas.

16. Purchasers of respondents' breeding stock do not receive the benefit of respondents' experience in breeding chinchillas.

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

PAR. 7. 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 chinchilla breeding stock.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements representations, and practices has had, and now has, the tendency and capacity 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' chinchillas by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

PAR. 9. The aforesaid acts and practices of the respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition 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 Chinchilla Ranchers, 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 Route 1, Evansville, Wisconsin.

Respondent Marie Roberts is an officer of Chinchilla Ranchers, Inc., and her address is the same as that of the corporation.

Respondent National Chinchilla Ranches, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana with its office and principal place of business located at Route 1, Evansville, Wisconsin.

Respondent Keith E. Meixell is an officer of National Chinchilla Ranches, Inc., and his address is the same as that of the 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 Chinchilla Ranchers, Inc., a corporation and its officers, and Marie Roberts, individually and as an officer of said corporation, and National Chinchilla Ranches, Inc., a corporation, and its officers, and Keith E. Meixell, individually and as an officer of said last named 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 chinchilla breeding stock in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that breeding chinchillas for profit can be undertaken without previous knowledge or experience in the feeding, care and breeding of such animals.

2. Representing, directly or by implication, that chinchillas sold by respondents are top quality stock or that they have a market value of from \$800 to \$3,500 a pair; or misrepresenting in any manner the quality or market value of chinchillas sold by respondents.

3. Representing, directly or by implication, that any given number of mated pairs of chinchillas purchased from the respondents or the offspring of said chinchillas will produce during a stated period of time breeding stock or pelts of a certain quality in any number or quality in excess of that usually and customarily produced by chinchillas sold by respondents or the offspring of said chinchillas.

4. Representing, directly or by implication that chinchilla pelts produced from respondents' breeding stock will be worth any

amount in excess of that usually received by other purchasers of respondents' breeding stock for pelts of like grade and quality.

5. Representing, directly or by implication that fifty pairs of chinchillas will produce an annual net income of \$5,000 within four years or \$25,000 within five years; or that the net earnings or profits which may be derived from raising chinchillas is any amount in excess of the amount usually and customarily earned by breeders of chinchillas purchased from respondents.

6. Representing, directly or by implication that purchasers of respondents' chinchilla breeding stock will receive from the sale of offspring as breeding stock from \$150 to \$400 for a single chinchilla or from \$300 to \$800 per pair of chinchillas or any other amount in excess of that usually and customarily received for animals sold as breeding stock by purchasers of respondents' chinchillas.

7. Representing, directly or by implication, that it is practicable to raise chinchillas in the home or that large profits can be made in this manner.

8. Representing, directly or by implication, that chinchillas are free from disease or that they are not affected by high temperature and humidity.

9. Representing, directly or by implication, that respondents in other than exceptional instances will buy offspring from chinchillas purchased from them for breeding or pelting purposes; or that respondents will pay \$25 for each animal purchased for pelting or will pay \$150 for each animal purchased for breeding or will pay any other amount or amounts in excess of that generally paid by respondents for animals of like grade and quality.

10. Representing, directly or by implication, that respondents will buy back chinchillas from persons who are dissatisfied with their purchases.

11. Representing, directly or by implication, that the Willard H. George Grading System is an accepted standard in the chinchilla industry for determining the quality of chinchilla breeding stock; or that score sheets recording the grading of animals under that system are generally accepted by the chinchilla industry as proof of the quality of the chinchillas purchased from respondents.

12. Representing, directly or by implication that sales by respondents of their chinchilla breeding stock are limited to a few persons in each locality or area.

13. Representing, directly or by implication, that purchasers

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of respondents' chinchillas have been selected to breed chinchillas for resale by respondents.

14. Representing, directly or by implication, that purchasers of respondents' breeding stock will become members of an association of chinchilla breeders under respondents' leadership; or that respondents have any such association under their leadership.

15. Representing, directly or by implication, that purchasers of respondents' chinchilla breeding stock are given specialized training in the care and breeding of chinchillas or are furnished advice by respondents as to the breeding of chinchillas; provided however, that it shall be a defense in any enforcement proceeding for violation hereof for respondents to establish that such training and advice is actually furnished.

*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

## BELMONT PRODUCTIONS, INC., ET AL.

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

*Docket 8613. Complaint, Jan. 10, 1964—Decision, Aug. 23, 1964*

Order requiring New York City distributors of paperback books to cease issuing any abridged or condensed books without disclosing the fact on the title page, substituting a new title for the original on a reprint without disclosing the fact on the title page, and misrepresenting by use of his name on the title page that any person is the author of an entire book when such is not the case.

## 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 Belmont Productions, Inc., a corporation, John L. Goldwater, Louis H. Silberkleit, Stanley P. Morse, and Maurice Coyne, 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 Belmont Productions, 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 66 Leonard Street in the city of New York, State of New York.

Respondents John L. Goldwater, Louis H. Silberkleit, Stanley P. Morse and Maurice Coyne 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 offering for sale, sale and distribution of paper-backed books to distributors and retailers for resale to the public.

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

PAR. 4. Among the books sold by respondents, as aforesaid, are reprints of books from which portions of the text have been deleted; and there are certain other reprints sold as aforesaid which bear different titles from those under which such books were originally published. Respondents in some cases have disclosed the fact of such abridgment by printing such legends as "Uncensored Abridgment," "Authorized Abridgment" and "Authorized Condensation" in small, inconspicuous letters on the lower right corner of the front covers of the aforesaid books.

Respondents do not give any notice of abridgment on the title page of the said books.

In the case of reprints bearing new titles, the new titles are printed in large letters on contrasting backgrounds on the front covers and the original title is printed in small, inconspicuous type either on the lower right or left corner of the front cover or under the new title without sufficient disclosure to indicate the significance and meaning of the original title.

Through the use of the new titles in place of the original titles, in the manner aforesaid, respondents thereby represent or imply, contrary

to the facts, that said books are new books published under the titles set out thereon.

Therefore, the aforesaid statements and representations contained in this paragraph were and are false, misleading and deceptive.

PAR. 5. The said disclosures on the front cover of respondents' said books that such books are abridged, and the manner in which the new titles are set out in relation to the original titles, do not constitute adequate notice of such abridgment or the fact that said books are reprints under a new name, in that such disclosures are not noticeable to prospective purchasers and are not displayed in such a manner or position as readily to attract the attention of prospective purchasers. Moreover, the appearance of the original title in small inconspicuous type, as aforesaid, has the tendency and capacity to lead some members of the purchasing public into the mistaken belief that said title is a subtitle and not the title under which the same book was published originally.

PAR. 6. Among the books sold by respondents, as aforesaid, are certain books which contain essays, articles or short stories written by well known authors. Respondents print the name or names (usually one name) of the popular author or authors on the front cover, spine and title page of a given book in such manner as to indicate at first glance that the well known author has written or authors have written either the entire contents or a substantial portion of the book.

Typical of this practice is the respondents' publication, *L506*. At the top of the front cover of the said book in large and conspicuous capital letters is the name, "HEMINGWAY." Directly below the aforesaid name in smaller and less conspicuous capital letters is the legend, "THE SECRET AGENT'S BADGE OF COURAGE." At the bottom of the front cover in still smaller and less conspicuous capital and lower case letters is the following legend, "The world's greatest spy stories edited by Kurt Singer with Eric Ambler, Pearl Buck, Joseph Conrad and others." The title page of the aforesaid book bears the following legend in the following manner, "THE SECRET AGENT'S BADGE OF COURAGE Ernest Hemingway." The spine of the aforesaid book bears the following legend in the following manner, "HEMINGWAY The Secret Agent's Badge of Courage."

In truth and in fact, "The Secret Agent's Badge of Courage" is a one page essay written by the well known author, the late Ernest Hemingway; said essay appears on page 158 of the aforesaid book. The said book contains 158 pages and the remaining 157 pages contain essays, articles and short stories written by other authors.

Another example of the aforesaid practice is the respondents' publication, 232. At the top of the front cover of the said book in large and conspicuous capital letters is the name, "IRWIN SHAW." Directly below the aforesaid name in equally large and conspicuous capital letters is the legend, "THE DAY THE WAR ENDS." Directly below this and as a part of or continuation of the aforesaid legend in smaller and less conspicuous lower case letters is the following, "and other exciting battlefield stories." At the bottom of the front cover in small and inconspicuous type is the following legend, "Selected from the \$3.95 best-seller *Civilians Under Arms*. Edited by Herbert Mitgang." The title page of the aforesaid book bears the following legend in the following manner, "THE DAY THE WAR ENDS IRWIN SHAW." The spine of the aforesaid book bears the following legend in the following manner, "THE DAY THE WAR ENDS IRWIN SHAW."

In truth and in fact, "THE DAY THE WAR ENDS" is a two page article written by the well known author, Irwin Shaw; said article appears on pages 120 and 121 of the aforesaid book. The book contains 140 pages and the remaining 138 pages contain essays, articles and short stories written by other authors.

Respondents also publish certain books which feature the name of a well known person on the front cover, spine and title page, in such manner as to indicate at first glance that the well known person has written or authored either the entire contents or a substantial portion of the book.

Typical of the practice is the respondents' publication L519. At the top of the front cover of said book is the legend, "The Threatening Prelude to World War III . . . Authentic Soviet Blueprint For World Conquest." Directly below the aforesaid legend in large and conspicuous type is the title, "KHRUSHCHEV'S MEIN KAMPF." At the bottom of the said front cover in conspicuous, contrasting type is the following statement, "With Background By Pulitzer Prize Winner HARRISON E. SALISBURY Specialist in Soviet Affairs, The New York Times." The title page of the aforesaid book bears the following legend in the following manner, "KHRUSHCHEV'S MEIN KAMPF' with Background by Pulitzer Prize Winner HARRISON E. SALISBURY, Specialist in Soviet Affairs for The New York Times."

Said statements and misrepresentations thereby represent, directly or by implication, that this publication is either written or authored by Nikita Khrushchev, Soviet Premier and Chairman of the Council of Ministers for the Soviet Union. Said statements and representations are further enhanced by the back cover, which contains a picture of Nikita Khrushchev, and the following statement beneath his picture:



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No chapter of Hitler's MEIN KAMPF ever spelled out a dictator's goal more clearly.—Time Magazine

In truth and in fact, said publication is not written or authored by Nikita Khrushchev. In fact, the main body or text of the book is a "draft" of the "Program of the Soviet Communist Party." This disclosure appears inconspicuously on the unnumbered page 3 of the publication wherein it states:

This Belmont paperback contains the complete text of the draft program of the Soviet Communist Party, an exclusive background published by special arrangement with Harrison E. Salisbury, and the authentic Rules of the Communist Party—as given by the Party itself—stating plainly what it means to be a member of the Communist Party.

By and through the use of the names of well known authors and persons, as aforesaid, respondents thereby represent contrary to the fact, that said books are written in whole or in substantial part by the well known authors or persons whose names are featured on the front covers, spines and title pages.

Therefore, the aforesaid statements and representations contained in this paragraph were and are false, misleading and deceptive.

PAR. 7. The respondents' said acts and practices further serve to place in the hands of others the means and instrumentalities through which the purchasing public may be misled with respect to the abridgement, prior publication and authorship of respondents' books.

PAR. 8. The failure of respondents to make adequate disclosure that certain of their books are abridgements, and that certain of their books to which they have given new titles are not different from the books of which they are reprints, and that certain of their books are not written in whole or in substantial part by the authors or persons whose names are featured has had, and now has, the tendency and capacity to lead a substantial portion of the purchasing public into the mistaken and erroneous belief that said books are complete and unabridged, or are new and original publications, or that said books are written in whole or in substantial part by the authors or persons whose names are featured, and to induce a substantial portion of the public to purchase respondents' books by reason of said mistaken and erroneous belief.

PAR. 9. In the course 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 books of the same general nature and kind as that sold by respondents.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and

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## Initial Decision

of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

*Mr. Thomas J. Whitehead* for the Commission.

*Mr. Benjamin E. Winston* of New York, N.Y., for the respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER  
JULY 13, 1964

In the complaint issued by the Commission on January 10, 1964, the respondents are charged with violating the Federal Trade Commission Act by failing to adequately disclose that certain of the paper-backed books, which they sell and distribute in commerce, are abridgements, that new titles are given to certain books which are reprints, and that substantial parts of certain books are not written by the persons whose names are featured thereon. It is alleged that such acts have "the tendency and capacity to lead a substantial portion of the purchasing public into the mistaken and erroneous belief that said books are complete and unabridged, or are new and original publications, or that said books are written in whole or in substantial part by the authors or persons whose names are featured, \* \* \*."

The respondents filed an answer on February 14, 1964, admitting in part and denying in part the allegations of the complaint, and asked that the complaint be dismissed. On order of the hearing examiner, a pre-hearing conference was scheduled to be held on March 18, 1964. At the request of counsel for the parties, the pre-hearing conference was cancelled to permit such counsel to negotiate with the view of disposing of the proceeding without hearings. On June 23, 1964, the respondents filed a motion for leave to withdraw their original answer to the complaint and to file a substitute answer submitted with the motion. The substitute answer reads:

COME NOW, personally, the undersigned respondents in the above-mentioned proceeding and answering the complaint, state as follows, in the interest of an expeditious termination of the proceeding and solely for the purposes of this proceeding and for no other purposes:

1. That they elect not to further contest the allegations of fact set forth in the Complaint and that, pursuant to Section 3.5(b)(2) of the Commission's Rules of Practice, they admit all the material allegations of the Complaint.<sup>1</sup>

<sup>1</sup> Section 3.5(b)(2) of the Commission's Rules reads:

"(2) If allegations of complaint are admitted.—If the respondent elects not to contest the allegations of fact set forth in the complaint, his answer shall consist of a statement

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An order was entered granting leave to respondents to file the substitute answer. Along with the aforementioned motion, there was submitted to the hearing examiner a stipulation executed by counsel supporting the complaint and the respondents, together with their attorney, which was received in the record, setting forth a proposed order that they considered appropriate to be entered in connection with the disposition of this case. The proposed order is identical with the form of order set forth in the complaint "which the Commission has reason to believe should issue if the facts are found to be as alleged in the complaint."

## FINDINGS OF FACT

Upon consideration of the record herein, the hearing examiner makes the following findings of fact and conclusions:

Respondent Belmont Productions, 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 66 Leonard Street in the city of New York, State of New York.

Respondents John L. Goldwater, Louis H. Silberkleit, Stanley P. Morse and Maurice Coyne 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.

Respondents are now, and for some time last past have been engaged in the offering for sale, sale and distribution of paper-backed books to distributors and retailers for resale to the public.

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

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that he admits all of the material allegations to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint, and together with the complaint will provide a record basis on which the hearing examiner shall file an initial decision containing appropriate findings and conclusions and an appropriate order disposing of the proceeding. In such an answer the respondent may, however, reserve the right to submit proposed findings and conclusions and the right to appeal the initial decision to the Commission under § 3.22".

Among the books sold by respondents, as aforesaid, are reprints of books from which portions of the text have been deleted; and there are certain other reprints sold as aforesaid which bear different titles from those under which such books were originally published. Respondents in some cases have disclosed the fact of such abridgment by printing such legends as "Uncensored Abridgment," "Authorized Abridgment" and "Authorized Condensation" in small, inconspicuous letters on the lower right corner of the front covers of the aforesaid books.

Respondents do not give any notice of abridgment on the title page of the said books.

In the case of reprints bearing new titles, the new titles are printed in large letters on contrasting backgrounds on the front covers and the original title is printed in small, inconspicuous type either on the lower right or left corner of the front cover or under the new title without sufficient disclosure to indicate the significance and meaning of the original title.

Through the use of the new titles in place of the original titles, in the manner aforesaid, respondents thereby represent or imply, contrary to the facts, that said books are new books published under the titles set out thereon.

Therefore, the aforesaid statements and representations contained in this paragraph were and are false, misleading and deceptive.

The said disclosures on the front cover of respondents' said books that such books are abridged, and the manner in which the new titles are set out in relation to the original titles, do not constitute adequate notice of such abridgment or the fact that said books are reprints under a new name, in that such disclosures are not noticeable to prospective purchasers and are not displayed in such a manner or position as readily to attract the attention of prospective purchasers. Moreover, the appearance of the original title in small inconspicuous type, as aforesaid, has the tendency and capacity to lead some members of the purchasing public into the mistaken belief that said title is a subtitle and not the title under which the same book was published originally.

Among the books sold by respondents, as aforesaid, are certain books which contain essays, articles or short stories written by well known authors. Respondents print the name or names (usually one name) of the popular author or authors on the front cover, spine and title page of a given book in such manner as to indicate at first glance that the well known author has written or authors have written either the entire contents or a substantial portion of the book.

Typical of this practice is the respondents' publication, *L506*. At the top of the front cover of the said book in large and conspicuous capital letters is the name, "HEMINGWAY." Directly below the aforesaid name in smaller and less conspicuous capital letters is the legend, "THE SECRET AGENT'S BADGE OF COURAGE." At the bottom of the front cover in still smaller and less conspicuous capital and lower case letters is the following legend, "The world's greatest spy stories edited by Kurt Singer with Eric Ambler, Pearl Buck, Joseph Conrad and others." The title page of the aforesaid book bears the following legend in the following manner, "THE SECRET AGENT'S BADGE OF COURAGE Ernest Hemingway." The spine of the aforesaid book bears the following legend in the following manner, "HEMINGWAY The Secret Agent's Badge of Courage."

In truth and in fact, "The Secret Agent's Badge of Courage" is a one page essay written by the well known author, the late Ernest Hemingway; said essay appears on page 158 of the aforesaid book. The said book contains 158 pages and the remaining 157 pages contain essays, articles and short stories written by other authors.

Another example of the aforesaid practice is the respondents' publication, *232*. At the top of the front cover of the said book in large and conspicuous capital letters is the name, "IRWIN SHAW." Directly below the aforesaid name in equally large and conspicuous capital letters is the legend, "THE DAY THE WAR ENDS." Directly below this and as a part of or continuation of the aforesaid legend in smaller and less conspicuous lower case letters is the following, "and other exciting battlefield stories." At the bottom of the front cover in small and inconspicuous type is the following legend, "Selected from the \$3.95 best-seller *Civilians Under Arms*, Edited by Herbert Mitgang." The title page of the aforesaid book bears the following legend in the following manner, "THE DAY THE WAR ENDS IRWIN SHAW." The spine of the aforesaid book bears the following legend in the following manner, "THE DAY THE WAR ENDS IRWIN SHAW."

In truth and fact, "THE DAY THE WAR ENDS" is a two page article written by the well known author, Irwin Shaw; said article appears on pages 120 and 121 of the aforesaid book. The book contains 140 pages and the remaining 138 pages contain essays, articles and short stories written by other authors.

Respondents also publish certain books which feature the name of a well known person on the front cover, spine and title page, in such manner as to indicate at first glance that the well known person has written or authored either the entire contents or a substantial portion of the book.

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## Initial Decision

Typical of the practice is the respondents' publication *L519*. At the top of the front cover of said book is the legend, "The Threatening Prelude to World War III \* \* \* Authentic Soviet Blueprint For World Conquest." Directly below the aforesaid legend in large and conspicuous type is the title, "KHRUSHCHEV'S MEIN KAMPF." At the bottom of the said front cover in conspicuous, contrasting type is the following statement, "With Background By Pulitzer Prize Winner HARRISON E. SALISBURY Specialist in Soviet Affairs, The New York Times." The title page of the aforesaid book bears the following legend in the following manner, "KHRUSHCHEV'S MEIN KAMPF with Background by Pulitzer Prize Winner HARRISON E. SALISBURY, Specialist in Soviet Affairs for The New York Times."

Said statements and misrepresentations thereby represent, directly or by implication, that this publication is either written or authored by Nikita Khrushchev, Soviet Premier and Chairman of the Council of Ministers for the Soviet Union. Said statements and representations are further enhanced by the back cover, which contains a picture of Nikita Khrushchev, and the following statement beneath his picture:

No chapter of Hitler's MEIN KAMPF ever spelled out a dictator's goal more clearly.—Time Magazine

In truth and in fact, said publication is not written or authored by Nikita Khrushchev. In fact, the main body or text of the book is a "draft" of the "Program of the Soviet Communist Party." This disclosure appears inconspicuously on the unnumbered page 3 of the publication wherein it states:

This Belmont paperback contains the complete text of the draft program of the Soviet Communist Party, an exclusive background published by special arrangement with Harrison E. Salisbury, and the authentic Rules of the Communist Party—as given by the Party itself—stating plainly what it means to be a member of the Communist Party.

By and through the use of the names of well known authors and persons, as aforesaid, respondents thereby represent contrary to the fact, that said books are written in whole or in substantial part by the well known authors or persons whose names are featured on the front covers, spines and title pages.

Therefore, the aforesaid statements and representations contained in this paragraph were and are false, misleading and deceptive.

The respondents' said acts and practices further serve to place in the hands of others the means and instrumentalities through which the purchasing public may be misled with respect to the abridgment, prior publication and authorship of respondents' books.

The failure of respondents to make adequate disclosure that certain of their books are abridgments, and that certain of their books to which they have given new titles are not different from the books of which they are reprints, and that certain of their books are not written in whole or in substantial part by the authors or persons whose names are featured has had, and now has, the tendency and capacity to lead a substantial portion of the purchasing public into the mistaken and erroneous belief that said books are complete and unabridged, or are new and original publications, or that said books are written in whole or in substantial part by the authors or persons whose names are featured, and to induce a substantial portion of the public to purchase respondents' books by reason of said mistaken and erroneous belief.

In the course 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 books of the same general nature and kind as that sold by respondents.

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

ORDER

*It is ordered.* That respondents, Belmont Productions, Inc., a corporation, and its officers, and John L. Goldwater, Louis H. Silberkleit, Stanley P. Morse and Maurice Coyne, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of paperbacked books, or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale or selling any abridged copy of a book unless one of the following words, "abridged," "abridgement," "condensed" or "condensation," or some other word or phrase stating with equal clarity that said book is abridged, appears in clear, conspicuous type upon the front cover and upon the title page of the book, either in immediate connection with the title or in another position adapted readily to attract the attention of a prospective purchaser.
2. Using or substituting a new title for, or in place of, the original title of a reprinted book unless a statement which re-

veals the original title of the book and that it has been previously published thereunder appears in clear and conspicuous type upon the front cover and upon the title page of the book, either in immediate connection with the title or in another position adapted readily to attract the attention of a prospective purchaser.

3. Representing, through the manner in which the name of any person is set forth on the front cover or title page of a book, that such person is the author of all or of a substantial part of the book unless a statement which discloses the actual contribution to the book made by the person whose name is so used appears in immediate conjunction with such person's name upon the front cover and title page of the book or in another position readily adapted to attract the attention of a prospective purchaser.

4. Disseminating advertising pertaining to any abridged copy of a book unless such advertising discloses the fact of abridgment in clear, conspicuous type either in immediate connection with the title under which the book is sold or in another position readily adapted to attract the attention of a prospective purchaser.

5. Disseminating advertising pertaining to a book reprint having a substitute title unless such advertising contains a statement revealing the original title and that the book has been published thereunder in clear, conspicuous type either in immediate connection with the title under which the book is sold or in another position readily adapted to attract the attention of a prospective purchaser.

6. Disseminating advertising which represents in any manner contrary to fact that a person is the author of all or a substantial part of a book unless such advertising contains a statement disclosing the actual contribution of the person in clear, conspicuous type either in immediate connection with the title under which the book is sold or in another position readily adapted to attract the attention of a prospective purchaser.

7. Placing in the hands of others any means or instrumentalities by or through which they may mislead the public as to any of the matters and things set out in Paragraphs 1 through 6 inclusive.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF  
COMPLIANCE

The Commission having determined that the initial decision of the hearing examiner filed July 13, 1964, should be modified by striking therefrom certain paragraphs which are unnecessary and confusing,



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and that said initial decision as so modified should be adopted as the decision of the Commission :

*It is ordered,* That the initial decision be, and it hereby is, modified by striking therefrom the penultimate paragraph on page four, beginning with the word "Therefore" and the last paragraph on page seven, also beginning with the word "Therefore."

*It is further ordered,* That the initial decision as so modified be, and it hereby is, adopted as the decision of the Commission, effective August 28, 1964.

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

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IN THE MATTER OF

HOBART LABORATORIES, INC.

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

*Docket C-821. Complaint, Aug. 28, 1964—Decision, Aug. 28, 1964*

Consent order requiring Chicago distributors of a drug preparation designated "Nuzine," offered for the treatment of piles or hemorrhoids, to cease misrepresenting in newspaper and magazine and other advertising, the therapeutic effects of their product.

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 Hobart Laboratories, Inc., 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 Hobart Laboratories, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oklahoma with its principal office and place of business located at 900 North Franklin Street in the city of Chicago, State of Illinois.

PAR. 2. Respondent Hobart Laboratories, Inc., is now and for some time last past has been, engaged in the sale and distribution of a prep-

aration offered for the treatment of piles or hemorrhoids and coming within the classification of drugs as the term "drug" is defined in the Federal Trade Commission Act.

The designation used by respondent Hobart Laboratories, Inc., for said preparation, the formula thereof and directions for use are as follows:

*Designation.*—Nuzine.

*Formula.*—The active ingredients for "Nuzine" are as follows:

Guaiacol—U.S.P., 1.66; Oxyquinoline Sulphate, 0.42; Zinc Oxide, 2.50; Glycerine—C.P., 1.66; Lanum (anhyd.), 48.76; Petrolatum, 50.00.

*Directions.*—NUZINE does not contain narcotics, thus it may be used as often as needed to relieve pain and discomfort.

1. The affected parts should be cleansed with warm water and soap.
2. Remove cap and replace with special rectal applicator.
3. Lubricate the nozzle of the tube before inserting it into the rectum, by pressing out a small amount of the NUZINE into the palm of the hand and rotating the applicator nozzle therein. A small amount applied to external hemorrhoids will help to relieve soreness and inflammation.

NUZINE should be used after bowel movement and before retiring or as directed by the physician.

If ointment is difficult to expel, place tube in warm water for a few minutes before application.

PAR. 3. Respondent Hobart Laboratories, Inc., causes the said preparation, when sold, to be transported from its place of business located at 900 North Franklin Street, Chicago, Illinois, to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act. The volume of business in such commerce has been and is substantial.

PAR. 4. In the course and conduct of its said business, respondent has disseminated, and caused the dissemination of, certain advertisements concerning the said preparation by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in newspapers, magazines and other advertising media in various States of the United States, and in the District of Columbia, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparation; and has disseminated, and caused the dissemination of, advertisements concerning said preparation by various means, including but not limited to the aforesaid media for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act.

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

NUZINE Rectal Ointment STOPS Itching Torture

Acts to SHRINK Painful HEMORRHOID SWELLING

Amazing new NUZINE is a special formula that acts to shrink painfully inflamed swollen tissue \* \* \* soothe the soreness and pain \* \* \* stop itching \* \* \* gives FAST, comforting relief.

HEMORRHOIDS?

Quick Comfort \* \* \*

NUZINE OINTMENT

- Stops Itching
- Soothes Pain
- Reduces Swelling
- Aids Healing

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

1. Reduce or shrink piles;
2. Eliminate all itch due to or ascribed to piles;
3. Relieve all pain attributed to or caused by piles.

PAR. 7. In truth and in fact the use of "Nuzine" will not:

1. Reduce or shrink piles;
2. Eliminate all itch due to or ascribed to piles;
3. Relieve all pain attributed to or caused by piles;
4. Afford any relief or have any therapeutic effect upon the condition known as piles or upon any of the symptoms or manifestations thereof in excess of affording temporary relief of minor pain or minor itching associated with piles.

Therefore, the advertisements referred to in Paragraph Five were and are misleading in material respects and constituted and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act.

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

#### DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with 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 Hobart Laboratories, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oklahoma, with its office and principal place of business located at 900 North Franklin Street, in the city of Chicago, State of Illinois.

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 Hobart Laboratories, Inc., a corporation, and its officers, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of "Nuzine," or any other preparation of substantially similar composition or possessing substantially similar properties, do forthwith cease and desist from directly or indirectly:

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

- (a) Reduce or shrink piles;
- (b) Eliminate all itch due to or ascribed to piles;
- (c) Relieve all pain attributed to or caused by piles;
- (d) Afford any relief or have any therapeutic effect upon

the condition known as piles or upon any of the symptoms or manifestations thereof in excess of affording temporary relief of minor pain or minor itching associated with piles.

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

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

IN THE MATTER OF  
VICTOR CASUALS, INC., ET AL.

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

*Docket C-822. Complaint, Aug. 31, 1964—Decision, Aug. 31, 1964*

Consent order requiring New York City manufacturers of wool products to cease violating the Wool Products Labeling Act by such practices as labeling skirts as "85% reprocessed cashmere, 15% nylon" when they contained substantially different amounts of fibers than thus represented, failing to label certain skirts with the required information, and using the word "cashmere" in lieu of "wool" on labels without setting forth the correct percentage of cashmere.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939 and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Victor Casuals, Inc., a corporation, and Shirley Bergman, individually and as an officer of said corporation and Victor Bergman, individually and as an employee of said corporation, hereinafter referred to as respondents, have violated the provisions of the said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, 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 Victor Casuals, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York.

Individual respondent Shirley Bergman is an officer of said corpora-

tion. Individual respondent Victor Bergman is an employee of said corporation. They cooperate in formulating, directing and controlling the acts, policies and practices of the corporate respondent including the acts and practices hereinafter referred to.

Respondents are manufacturers of wool products with their office and principal place of business located at 810 Broadway, Brooklyn, New York.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, respondents have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, shipped and offered for sale in commerce as "commerce" is defined in said Act, wool products as "wool product" is defined therein.

PAR. 3. Certain of said wool products were misbranded by respondents within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled or otherwise identified with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products but not limited thereto, were skirts stamped, tagged, labeled or otherwise identified as containing 85% reprocessed cashmere, 15% nylon, whereas in truth and in fact, said skirts contained substantially different amounts of fibers than represented.

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

Among such misbranded wool products, but not limited thereto, were certain skirts with labels on or affixed thereto which failed to disclose the percentage of the total fiber weight of the wool product, exclusive of ornamentation, but not exceeding five per centum of said total fiber weight of: (1) woolen fibers; (2) each fiber other than wool if said percentage by weight of such fiber is five per centum or more; (3) the aggregate of all other fibers.

PAR. 5. Certain of said wool products were misbranded in violation of the Wool Products Labeling Act of 1939, in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder, in that the term "cashmere" was used in lieu of the word "wool" in setting forth the required fiber content information on labels

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affixed to wool products without setting forth the correct percentage of the cashmere, in violation of Rule 19 of the Rules and Regulations under the Wool Products Labeling Act of 1939.

PAR. 6. The acts and practices of the respondents as set forth above 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.

## 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 Wool Products Labeling Act of 1939, 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 Victor Casuals, 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 810 Broadway, Brooklyn, New York.

Respondent Shirley Bergman is an officer of said corporation and respondent Victor Bergman is an employee of said corporation. Their address is the same as that of said corporation.

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

## ORDER

*It is ordered*, That respondent Victor Casuals, Inc., a corporation and its officers, and Shirley Bergman individually and as an officer

of said corporation, and Victor Bergman individually and as an employee of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the offering for sale, sale, transportation, distribution or delivery for shipment, or shipment in commerce, of skirts or other wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from:

Misbranding such products by:

1. Falsely and deceptively stamping, tagging, labeling or otherwise identifying such products as to the character or amount of constituent fibers contained therein.
2. Failing to securely affix to, or place on, each such 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.
3. Using the term "cashmere" in lieu of the word "wool" in setting forth the required fiber content information on labels affixed to wool products without setting forth the correct percentage of the cashmere present.

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

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IN THE MATTER OF

JOSEPH YEZZI DOING BUSINESS AS  
YEZZI ETC.

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

*Docket C-823. Complaint, Sept. 2, 1964—Decision, Sept. 2, 1964*

Consent order requiring a Pittsfield, Mass., retail clothier to cease misbranding his wool, fur and textile fiber products and failing to keep required records.



Complaint

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## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Fur Products Labeling Act, the Wool Products Labeling Act of 1939, 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 Joseph Yezzi, an individual doing business as Yezzi and as Lord & Tann, hereinafter referred to as respondent, has violated the provisions of the said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, the Wool Products Labeling Act of 1939, and the Textile Fiber Products Identification Act, and it appears 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 Joseph Yezzi is an individual trading under the name of Yezzi and the name Lord & Tann.

Respondent is a retailer of fur products, wool products, and textile fiber products, with his office and principal place of business located at 404 Fulton Street, Troy, New York, where the retail operation is conducted under the trade name "Lord & Tann." A second retail store is operated under the trade name Yezzi at Pittsfield, Massachusetts.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 2, 1952, respondent has been and is 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 has sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of furs which have been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were misbranded in that they were falsely and deceptively labeled or otherwise falsely and deceptively identified with respect to the name or designation of the animal or animals that produced the fur from which the said fur products had been manufactured, in violation of Section 4(1) of the Fur Products Labeling Act.

Among such misbranded fur products, but not limited thereto, were fur products labeled as "Black Broadtail Jkt.," thereby implying that the furs contained therein were entitled to the designation "Broadtail Lamb," when in truth and in fact they were not entitled to such designation.

PAR. 4. Certain of said fur products were misbranded in that they were not labeled as required under the provisions of Section 4(2) of

the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

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

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

PAR. 5. Certain of said fur products were misbranded in violation of the Fur Products Labeling Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the respect that information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was mingled with non-required information, in violation of Rule 29(a) of said Rules and Regulations.

PAR. 6. Respondent in introducing, selling, advertising, and offering for sale, in commerce, and in processing for commerce, fur products; and in selling, advertising, offering for sale and processing fur products which have been shipped and received in commerce, has misbranded such fur products by substituting thereon, labels which did not conform to the requirements of Section 4 of the Fur Products Labeling Act, for the labels affixed to said fur products by the manufacturer or distributor pursuant to Section 4 of said Act, in violation of Section 3(e) of said Act.

PAR. 7. Respondent, in substituting labels as provided for in Section 3(e) of the Fur Products Labeling Act, has failed to keep and preserve the records required, in violation of Section 3(e) and Rule 41 of the Rules and Regulations promulgated under the said Act.

PAR. 8. The acts and practices of respondent as set forth above, were and are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce under the Federal Trade Commission Act.

PAR. 9. Subsequent to the effective date of the Wool Products Labeling Act of 1939, respondent has introduced into commerce, sold, transported, distributed, delivered for shipment, shipped and offered for sale in commerce, as "commerce" is defined in said Act, wool products as "wool product" is defined therein.

PAR. 10. Certain of said wool products were misbranded by respondent in that they were not stamped, tagged, labeled or otherwise

identified with any of the information required under Section 4(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. 11. Respondent with the intent of violating the provisions of the Wool Products Labeling Act of 1939 has 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. 12. The acts and practices of the respondent as set forth above in Paragraphs Ten and Eleven 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. 13. Subsequent to the effective date of the Textile Fiber Products Identification Act on March 3, 1960, respondent has been and is 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 has 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 has 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. 14. Certain of said textile fiber products were misbranded by respondent in that they were not stamped, tagged, or labeled with any of the information required under the provisions of Section 4(b) of the Textile Fiber Products Identification Act, or in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

PAR. 15. After certain textile fiber products were shipped in commerce, respondent has removed or caused or participated in the removal of, prior to the time such textile fiber products were sold and delivered to the ultimate consumer, the stamp, tag, label or other identification required by the Textile Fiber Products Identification Act to be affixed to such products, in violation of Section 5(a) of said Act.

PAR. 16. The acts and practices of respondent 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.

#### 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 Textiles and Furs 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, the Fur Products Labeling Act, the Wool Products Labeling Act of 1939, and the Textile Fiber Products Identification 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 said Acts, 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 Joseph Yezzi is an individual with his office and principal place of business located at 404 Fulton Street, Troy, New York, where his retail operation is conducted under the trade name Lord & Tann. A second retail store is operated under the trade name Yezzi at Pittsfield, Massachusetts.

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 Joseph Yezzi, an individual, trading as Yezzi or as Lord & Tann, or under any other trade name, and respondent's representatives, agents and employees, directly or through

any corporate or other device, in connection with the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from misbranding fur products by:

1. Falsely or deceptively labeling or otherwise identifying such fur products as to the name or designation of the animal or animals that produced the fur contained in the fur product.
2. Failing to affix labels to fur products showing in words and in figures plainly legible all of the information required to be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act.
3. Setting forth information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder mingled with non-required information on labels affixed to fur products.

*It is further ordered.* That respondent Joseph Yezzi, an individual, trading as Yezzi or as Lord & Tann, or under any other trade name, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, sale, advertising or offering for sale, in commerce, or the processing for commerce, of fur products; or in connection with the selling, advertising, offering for sale, or processing of fur products which have been shipped and received in commerce, do forthwith cease and desist from:

1. Misbranding such fur products by substituting thereon labels which do not conform to the requirements of Section 4 of the Fur Products Labeling Act, for the labels affixed to said products by the manufacturer or distributor pursuant to Section 4 of said Act, in violation of Section 3(e) of said Act.
2. Failing to keep and preserve the records required by the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in substituting labels as permitted by Section 3(e) of the said Act.

*It is further ordered.* That respondent Joseph Yezzi, an individual, trading as Yezzi or as Lord & Tann, or under any other trade name, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduc-

tion into commerce, sale, transportation, distribution, delivery for shipment, shipment, or offering for sale in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products as "wool product" is defined therein, 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 respondent Joseph Yezzi, an individual trading as Yezzi or as Lord & Tann, or under any other trade name, and respondent's representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from removing, or 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 respondent Joseph Yezzi, an individual trading as Yezzi or as Lord & Tann, or under any other trade name, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, sale, advertising or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from misbranding textile fiber products by failing to affix labels to such products showing in a clear, legible and conspicuous manner each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

*It is further ordered,* That respondent Joseph Yezzi, an individual, trading as Yezzi or as Lord & Tann, or under any other trade name, and respondent's representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from removing, or causing or participating in the removal of, the stamp, tag, label or other identification required by the Textile Fiber

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Products Identification Act to be affixed to any textile fiber product, after such textile fiber product 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 the respondent herein shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

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IN THE MATTER OF

M. RAPPAPORT'S FUR SHOP, INC., ET AL.

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

*Docket C-824. Complaint, Sept. 2, 1964—Decision, Sept. 2, 1964*

Consent order requiring Chicago retail furriers to cease violating the Fur Products Labeling Act by affixing fictitious price labels to fur products and representing falsely thereby that prices were reduced from former higher prices and the amount of such reductions constituted savings to purchasers.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that M. Rappaport's Fur Shop, Inc., and Herman Seeman, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent M. Rappaport's Fur Shop, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois.

Respondent Herman Seeman is an officer of the corporate respondent and formulates, directs and controls the acts, practices and policies of the said corporate respondent, including those hereinafter set forth.

Respondents are retailers of fur products with their office and prin-

cipal place of business located at 2032 W. 95th Street, Chicago, Illinois.

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

PAR. 3. Certain of said fur products were misbranded in violation of Section 4(1) of the Fur Products Labeling Act in that they were falsely and deceptively labeled or otherwise falsely and deceptively identified in that labels affixed to fur products, contained representations, either directly or by implication that the prices of such fur products were reduced from respondents' former prices and the amount of such purported reductions constituted savings to purchasers of respondents' fur products. In truth and in fact, the alleged former prices were fictitious in that they were not actual, bona fide prices at which respondents offered the products to the public on a regular basis for a reasonably substantial period of time in the recent regular course of business and the said fur products were not reduced in price as represented and savings were not afforded purchasers of respondents' said fur products, as represented.

PAR. 4. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that certain advertisements intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of such fur products were not in accordance with the provisions of Section 5(a) of the said Act.

Among and included in the aforesaid advertisements, but not limited thereto, were labels which were affixed to the aforesaid fur products and by means of which the respondents falsely and deceptively advertised such fur products, in violation of Section 5(a)(5) of the Fur Products Labeling Act by representing either directly or by implication, that the prices of such fur products were reduced from respondents' former prices and the amount of such purported reductions constituted savings to purchasers of respondents' fur products. In truth and in fact, the alleged former prices were fictitious in that they were not actual, bona fide prices at which respondents offered the products to the public on a regular basis for a reasonably substantial period of time in the recent regular course of business and the said fur products were not reduced in price as represented and savings



were not afforded to purchasers of respondents' said fur products as represented.

PAR. 5. In advertising fur products for sale as aforesaid, respondents made pricing claims and representations of the types covered by subsections (a), (b), (c) and (d) of Rule 44 of the Regulations under the Fur Products Labeling Act. Respondents in making such claims and representations failed to maintain full and adequate records disclosing the facts upon which such pricing claims and representations were based, in violation of Rule 44(e) of the said Rules and Regulations.

PAR. 6. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce under the Federal Trade Commission Act.

#### DECISION AND ORDER

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

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 M. Rappaport's Fur Shop, Inc., 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 2032 W. 95th Street, in the city of Chicago, State of Illinois.

Respondent Herman Seeman 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 respondents M. Rappaport's Fur Shop, Inc., a corporation and its officers, and Herman Seeman, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

1. Representing, directly or by implication on labels, that any price, whether accompanied or not by descriptive terminology, is the respondents' former price of a fur product when such amount is in excess of the actual, bona fide price at which respondents offered such fur product to the public on a regular basis for a reasonably substantial period of time in the recent regular course of business.

2. Misrepresenting in any manner on labels or other means of identification the savings available to purchasers of respondents' products.

3. Falsely or deceptively representing in any manner, directly or by implication, on labels or other means of identification that prices of respondents' fur products are reduced.

B. Falsely or deceptively advertising fur products through the use of any advertisement, representation, public announcement or notice which is intended to aid, promote or assist, directly or indirectly, in the sale or offering for sale of any fur product and which:

1. Represents directly or by implication that any price, whether accompanied or not by descriptive terminology, is the respondents' former price of a fur product when such amount is in excess of the actual, bona fide price at which respondents offered such fur product to the public on a regular basis for a reasonably substantial period of time in the recent regular course of business.

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2. Misrepresents in any manner the savings available to purchasers of respondents' fur products.

3. Falsely or deceptively represents in any manner that prices of respondents' fur products are reduced.

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

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

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IN THE MATTER OF

REPUBLIC NOVELTY CO., INC., ET AL.

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

*Docket C-825. Complaint, Sept. 8, 1964—Decision, Sept. 8, 1964*

Consent order requiring three associated retailers of ladies' garments with stores in New York City and Los Angeles to cease misbranding and falsely invoicing their wool products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Republic Novelty Co., Inc., Cellini Imports, Inc., New York corporations, and Republic Novelty Co., Inc., a California corporation, and Herman Katz and Samuel R. Cohen, individually and as officers of said corporations, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939 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. Respondents Republic Novelty Co., Inc., and Cellini Imports, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of New York with their

principal place of business located at 39 West 37th Street, New York, New York. Respondent Republic Novelty Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its principal place of business located at 1200 South San Pedro Street, Los Angeles, California. Individual respondents, Herman Katz and Samuel R. Cohen are officers of the corporate respondents. Said individual respondents cooperate in formulating, directing and controlling the acts, policies and practices of the corporate respondents including the acts and practices hereinafter referred to. The addresses of the individual respondents are the same as that of Republic Novelty Co., Inc., and Cellini Imports, Inc., 39 West 37th Street, New York, New York.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939 and more especially since 1963, respondents have introduced into commerce, sold, transported, distributed, delivered for shipment, shipped and offered for sale, in commerce, wool products as the terms "commerce" and "wool product" are defined in the said Act.

PAR. 3. Certain of said wool products were misbranded by the respondents within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively labeled or tagged with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products, but not limited thereto, were ladies' slacks labeled or tagged by respondents as "Ladies' Wool Slack," thereby representing that such products were composed entirely of wool, whereas, in truth and in fact, said products contained substantially different fibers and quantity of fibers from that shown on the labels.

PAR. 4. Certain of said wool products were misbranded in violation of the Wool Products Labeling Act of 1939 in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Non-required information and representations used on the said products and on the labels affixed thereto were false, deceptive and misleading as to the fiber content of said products and were set forth, and used in such a manner as to interfere with the required information, in violation of Rule 10(b) of the aforesaid Rules and Regulations.

(b) The required stamp, tag, label or mark of identification was so placed on said wool products as likely to be unnoticed or unseen by purchasers and purchaser-consumers when said wool products were offered or displayed for sale or sold to purchasers or the consuming public, in violation of Rule 11 of said Act.

PAR. 5. The acts and practices of the respondents as set forth above 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. 6. Respondents are now, and for some time last past, have been engaged in the offering for sale, sale and distribution of wool products, namely, ladies' slacks to retailers and chain stores located throughout the United States. The respondents maintain, and at all times mentioned herein, have maintained a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 7. Respondents in the course and conduct of their business as aforesaid have made statements on their invoices and shipping memoranda to their customers misrepresenting the character and amount of the constituent fibers present in such products.

Among such misrepresentations, but not limited thereto, were statements representing certain ladies' slacks to be "Wool Capris" and "Solid Wool Capris," thereby representing that such wool products were composed entirely of wool, whereas, in truth and in fact, the said wool products contained substantially different fibers and quantities of fibers than were represented.

PAR. 8. The acts and practices of the respondents set out in Paragraph Seven were, and are, all to the prejudice and injury of the public and constituted and now constitute 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 Wool Products Labeling Act of 1939, 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

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respondents that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

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

1. Respondents Republic Novelty Co., Inc., and Cellini Imports, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of New York with their principal place of business located at 39 West 37th Street, New York, New York.

Respondent Republic Novelty Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its principal place of business located at 1200 South San Pedro Street, Los Angeles, California.

Respondents, Herman Katz and Samuel R. Cohen are officers of all of the above corporations. The addresses of the individual respondents are the same as that of Republic Novelty Co., Inc., and Cellini Imports, Inc., 39 West 37th Street, 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

*It is ordered*, That respondents Republic Novelty Co., Inc., Cellini Imports, Inc., New York corporations, and Republic Novelty Co., Inc., a California corporation, and their officers and Herman Katz and Samuel R. Cohen, individually and as officers of said corporations, 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, delivery for shipment, shipment, or distribution in commerce, of ladies' slacks or other wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from:

Misbranding wool products by:

1. Falsely or deceptively stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers included therein.
2. Using non-required information and representations on wool products or on labels affixed thereto in such a manner

as to be false, deceptive or misleading as to the fiber content of the wool products or so as to interfere with the information required by the said Act and the Rules and Regulations promulgated thereunder.

3. Affixing or placing the stamp, tag, label or mark of identification required under the said Act or the information required by said Act and the Rules and Regulations promulgated thereunder on wool products in such a manner as to be minimized, rendered obscure or inconspicuous or so as to be unnoticed or unseen by purchasers and purchaser-consumers, when said wool products are offered or displayed for sale or sold to purchasers or the consuming public.

*It is further ordered,* That respondents Republic Novelty Co., Inc., Cellini Imports, Inc., New York corporations, and Republic Novelty Co., Inc., a California corporation, and their officers and Herman Katz and Samuel R. Cohen, individually and as officers of said corporations, 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 or distribution of ladies' slacks or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act do forthwith cease and desist from misrepresenting the character or amount of constituent fibers contained in such products on invoices or shipping memoranda applicable thereto, or in any other manner.

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

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IN THE MATTER OF

THE CLINTON WATCH COMPANY ET AL.

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

*Docket C-826. Complaint, Sept. 8, 1964—Decision, Sept. 8, 1964*

Consent order requiring Chicago, Ill., distributors of watches and watchbands to cease and desist from selling watches of base metals with a precious metal veneer without disclosing their true metal composition, selling watches of foreign origin without proper disclosure, misrepresenting that their watches are "Shock Protected," misrepresenting the number of jewels therein, using

the term "Ruby Jewels" or any other term of similar meaning unless descriptive of natural ruby stones, and using the term "gold filled" or other words of similar import to describe watchbands unless the term is immediately preceded by the correct designation for the karat fineness.

## 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 Clinton Watch Company, a corporation, and Irving L. Wein, 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 The Clinton Watch 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 1104 South Wabash Avenue, in the city of Chicago, State of Illinois.

Respondent Irving L. Wein is the president of the corporation respondent. He formulates, directs and controls the acts and practices 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 watches and watch bands to wholesalers and to retailers for resale to the public, under the trade names "Clinton," "Hampden," "Wolbrook" and "Douglas."

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

PAR. 4. The cases of certain of the watches offered for sale and sold by respondents consist of two parts, that is, a back and a bezel. The back part has the appearance of stainless steel and is marked "stainless steel back." The bezel is composed of base metal other than stainless steel which has been treated or processed to simulate or have



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the appearance of precious metal or stainless steel. Some of the bezels are finished in a color which simulates silver or silver alloy or stainless steel. Some of the bezels are finished in a color simulating gold or gold alloy. Said watch cases are not marked to disclose that the bezels are composed of base metal or metal other than stainless steel.

The practices of respondents in offering for sale and selling watches the cases of which incorporate bezels composed of base metal which have been treated or processed to simulate or have the appearance of precious metal or stainless steel, as aforesaid, without disclosing the true metal composition of said bezels, is misleading and deceptive and has a tendency and capacity to lead members of the purchasing public to believe that said bezels are composed of precious metal or stainless steel.

PAR. 5. The cases of certain of respondents' watches have bezels which have the appearance of being rolled gold plate, gold filled or solid gold, and respondents do not disclose that these bezels are composed of a stock of base metal to which has been electrolytically applied a flashing or coating of precious metal of a very thin and unsubstantial character. This practice is deceptive and confusing to the consuming public unless the thin and unsubstantial character of the flashing or coating is disclosed by an appropriate marking.

PAR. 6. The cases of certain of respondents' watches are imported from Hong Kong and France and this is not disclosed except by marking on the inside of the cases, which cannot be seen after the watch movements have been assembled into the cases. These watch cases house movements which are imported from Switzerland, and when delivered to respondents' customers for resale, the watches are marked "Swiss" on the dials.

In the absence of an adequate disclosure that the aforesaid watch cases are of Hong Kong or French origin, the public believes and understands that they are of domestic or Swiss origin, a fact of which the Commission takes official notice.

As to such watch cases, a substantial portion of the purchasing public has a preference for domestic or Swiss products, of which fact the Commission also takes official notice. Respondents' failure clearly and conspicuously to disclose the country or place of origin of said watch cases is, therefore, to the prejudice of the purchasing public.

PAR. 7. Certain of the watches offered for sale and sold by respondents are manufactured in and imported from West Germany. The watch movements and the inside of the cases are marked "Germany," but such markings are not visible after the watch movements have been assembled into the cases. The dials of these watches are marked

"Germany" in letters of minute size located below the numeral "6" at the extreme bottom of the dials, and such marking is not readily visible to the prospective consumer purchaser.

In the absence of an adequate disclosure that the aforesaid watches are of West German origin, the public believes and understands that they are of domestic or Swiss origin, a fact of which the Commission takes official notice.

As to such watches, a substantial portion of the purchasing public has a preference for domestic or Swiss products, of which fact the Commission also takes official notice. Respondents' failure clearly and conspicuously to disclose the country or place of origin of said watches is, therefore, to the prejudice of the purchasing public.

PAR. 8. In the course and conduct of their business, respondents have caused to have imprinted on the backs and on the dials of certain of their watches, and on tags affixed to certain of their watches, the words "Shock Protected."

Respondents thereby represent, directly or by implication, that the entire watch is protected against damage from any type or amount of shock.

PAR. 9. In truth and in fact, the entire watch is not protected against damage from any type or amount of shock. Therefore, the statement and representation as set forth in Paragraph Eight hereof was and is false, misleading and deceptive.

PAR. 10. Respondents sell watches containing 17 jewel movements made in and imported from Switzerland, to which movements are added synthetic stones. Respondents advertise said watches in catalog inserts and in other advertising material, and cause to be imprinted on said watches and on tags affixed to said watches, statements of which the following are typical and illustrative, but not all inclusive:

"110 JEWELS LIFETIME"

"CLINTON 110"

"110-Jewel Calendar"

The One Ten. Clinton's Finest! \* \* \* Has 110 RUBY JEWELS \* \* \*"

By means of the above-quoted statements, and others of similar import and meaning not specifically set out herein, respondents represent, directly or by implication, that said watches contain 110 jewels, each of which serves a mechanical purpose as a frictional bearing, that is, each jewel provides a mechanical contact with a moving part at a point of wear, and that the jewels are natural rubies.

PAR. 11. In truth and in fact, the jewels added to the 17-jewel movements do not serve a mechanical purpose as frictional bearings, the

watches are not 110-jewel watches, but are 17-jewel watches, and the jewels added to said movements are not natural rubies, but are made of synthetic material. Therefore, the statements and representations as set forth in Paragraph Ten hereof were and are false, misleading and deceptive.

PAR. 12. Respondents disseminate catalog inserts upon which, among other things, appear the term "gold filled" in the body of the copy describing metallic watchbands. At the top or the bottom of the catalog insert, far removed from the term "gold filled," appears the following language, which is illustrative and not all inclusive:

Gold Filled Watch Bands—1/20-10K.

The practice of using the term "gold filled" without disclosing the karat fineness of the gold alloy of the metallic watchbands in immediate conjunction therewith, is deceptive and confusing to the consuming public.

PAR. 13. By and through the acts and practices hereinabove set forth, respondents place in the hands of retailers and others the means and instrumentalities whereby retailers and others may mislead the public as to the metal composition of their watch cases and watchbands; the country or place of origin of their watches and watch cases; the amount or degree that their watches are protected from shock; and the number and the composition of the jewels in their watches.

PAR. 14. 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 watches and watchbands of the same general kind and nature as those sold by respondents.

PAR. 15. 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' watches and watchbands by reason of said erroneous and mistaken belief.

PAR. 16. 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 The Clinton Watch 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 1104 South Wabash Avenue, in the city of Chicago, State of Illinois.

Respondent Irving L. Wein 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 respondents, The Clinton Watch Company, a corporation, and its officers, and Irving L. Wein, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of watches, watchbands, or any other products, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale or selling watch cases

(a) which are in whole or in part composed of base metal that has been treated to simulate precious metal or stainless steel, or

(b) which are in whole or in part composed of base metal that has been treated with an electrolytically applied flashing or coating of precious metal of less than  $1\frac{1}{2}$  of one thousandths of an inch over all exposed surfaces after completion of all finishing operations,

without clearly and conspicuously disclosing on such cases or parts the true metal composition in a form consistent with the Trade Practice Conference Rules for the Watch Case Industry (set forth in the Code of Federal Regulations, Title 16, Chapter 1, Part 174).

2. Offering for sale or selling:

(a) watch cases which are in whole or in substantial part of foreign origin, or

(b) watches, the cases or movements of which are in whole or in substantial part of foreign origin,

without affirmatively disclosing the country or place of foreign origin thereof on the exterior thereof on an exposed surface or on a label or tag affixed thereto of such degree of permanency as to remain thereon until consummation of consumer sale of the watches or watch cases and of such conspicuousness as likely to be observed and read by purchasers and prospective purchasers.

3. Representing that their watches are "Shock Protected"; or otherwise representing, directly or by implication, that their watches possess greater shock resistance than is the fact.

4. Representing in any manner, directly or by implication, including any use of a number in the name or names of their watches, that watches offered for sale or sold by them contain a designated number of jewels, unless such watches actually contain the stated number of jewels, each and every one of which serves a purpose of protecting against wear from friction by providing a mechanical contact with a moving part at a point of wear.

5. Using the term "Ruby Jewels" or any other term of similar import or meaning unless descriptive of natural ruby stones, or using the name of any other precious or semi-precious stone unless descriptive of natural stones: *Provided, however*. That the word "Ruby" or the name of any other precious or semi-precious stone may be used to refer to or describe a synthetic stone if such word or name is immediately preceded, with equal conspicuousness, by the word "synthetic" or some other word or term of like meaning.

6. Using the term "gold filled" or any other word or term of

similar import or meaning to describe watchbands, unless the term is immediately preceded, with equal conspicuousness, by a correct designation of the karat fineness of the alloy.

7. Supplying to, or placing in the hands of, any dealer or other purchaser means or instrumentalities by or through which he may deceive and mislead the purchasing public in respect to practices prohibited in paragraphs one through six above.

*It is further ordered*, That insofar as respondents' labeling practices are governed by prohibitions 1 and 4 above, the following labeling practices shall be accepted as satisfactory compliance therewith with respect to merchandise offered for sale or distributed during the period from date of service upon respondents of the Commission's decision to and including December 31, 1964, *Provided* such merchandise was in respondents' inventory at the time of service of the Commission's decision:

Paragraph 1.—Use of a label or tag affixed to watch cases or parts thereof to disclose the true metal composition thereof;

Paragraph 4.—Use of a label or tag affixed to watches marked "110" on the dials to disclose the true number of jewels contained therein.

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

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IN THE MATTER OF

THE ACADIA COMPANY, INC., ET AL.

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

*Docket C-827. Complaint, Sept. 9, 1964—Decision, Sept. 9, 1964*

Consent order requiring New York City manufacturers and converters of textile fabrics to cease violating the Wool Products Labeling Act by such practices as labeling fabrics falsely as containing "85% reprocessed cashmere, 15% nylon," failing to disclose on wool fabric labels the percentage of the total fiber weight of the constituent fibers, and using the word "cashmere" in lieu of "wool" on labels without setting forth the correct percentage of the cashmere.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939 and by virtue of the

authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that The Acadia Company, Inc., a corporation and Archie I. Thurman, Harry Rosenzweig and Marvin Weissman, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of the said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, 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 Acadia Company, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York.

Individual respondents, Archie I. Thurman, Harry Rosenzweig and Marvin Weissman are officers of said corporation. They cooperate in formulating, directing and controlling the acts, policies and practices of the corporate respondent including the acts and practices hereinafter referred to.

Respondents are converters and distributors of fabrics with their office and principal place of business located at 229 West 36th Street, New York, New York.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, respondents have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, shipped and offered for sale in commerce as "commerce" is defined in said Act, wool products as "wool product" is defined therein.

PAR. 3. Certain of said fabrics were misbranded by respondents within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled or otherwise identified with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products but not limited thereto, were fabrics stamped, tagged, labeled or otherwise identified as containing 85% reprocessed cashmere, 15% nylon, whereas in truth and in fact, said fabric contained substantially different amounts of fibers than represented.

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

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

Among such misbranded wool products, but not limited thereto, were certain fabrics with labels on or affixed thereto which failed to disclose the percentage of the total fiber weight of the wool product, exclusive of ornamentation, but not exceeding five percentum of said total fiber weight of: (1) woolen fibers; (2) each fiber other than wool if said percentage by weight of such fiber is five percentum or more; (3) the aggregate of all other fibers.

PAR. 5. Certain of said fabrics were misbranded in violation of the Wool Products Labeling Act of 1939, in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder, in that the term "cashmere" was used in lieu of the word "wool" in setting forth the required fiber content information on labels affixed to fabrics without setting forth the correct percentage of the cashmere, in violation of Rule 19 of the Rules and Regulations under the Wool Products Labeling Act of 1939.

PAR. 6. The acts and practices of the respondents as set forth above 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.

#### 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 Wool Products Labeling Act of 1939, 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, and 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 The Acadia 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 229 West 36th Street, in the city of New York, State of New York.

Respondents Archie I. Thurman, Harry Rosenzweig and Marvin Weissman are officers of said corporation, and their address is the same as that of said corporation.

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

ORDER

*It is ordered,* That respondent the Acadia Company, Inc., a corporation and its officers, and Archie I. Thurman, Harry Rosenzweig and Marvin Weissman, 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 or manufacture for introduction into commerce, or the offering for sale, sale, transportation, distribution or delivery for shipment, or shipment in commerce, of fabrics or other wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from:

Misbranding such products by:

1. Falsely and deceptively stamping, tagging, labeling or otherwise identifying such products as to the character or amount of constituent fibers contained therein.
2. Failing to securely affix to, or place on, each such 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.
3. Using the term "cashmere" in lieu of the word "wool" in setting forth the required fiber content information on labels affixed to wool products without setting forth the correct percentage of the cashmere present.

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

## Complaint

## IN THE MATTER OF

## PAPERMAKERS FELT ASSOCIATION ET AL.

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

*Docket C-828. Complaint, Sept. 9, 1964—Decision, Sept. 9, 1964*

Consent order requiring a trade association of papermakers felts and its members to cease conspiring to fix and maintain prices and terms of sale, using a zone pricing system, requiring customers to accept shipments within specified times, and engaging in other trade restraints.

## COMPLAINT

The Federal Trade Commission, having reason to believe that the respondents named in the caption hereof, and hereinafter more particularly designated and described, have violated and are now violating Section 5 of the Federal Trade Commission Act (U.S.C., Title 15, Section 45), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Papermakers Felt Association, hereinafter sometimes referred to as the "respondent association," is an unincorporated trade association, with its principal office and place of business located at 1215 Unity Street, Philadelphia, Pennsylvania, having as its members the respondent manufacturers hereinafter described, and has been in continuous existence since the year 1924.

Respondent Albany Felt Company is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 1373 Broadway, Albany, New York, and is, and continuously has been, a member of respondent association since the year 1924.

Respondent Appleton Mills is a corporation organized and existing under the laws of the State of Wisconsin, with its principal office and place of business located at 614 South Oneida Street, Appleton, Wisconsin, and is, and continuously has been, a member of respondent association since the year 1924.

Respondent Draper Brothers Company is a corporation organized and existing under the laws of the State of Massachusetts, with its principal office and place of business located at 23 Draper Lane, Canton, Massachusetts, and is, and continuously has been, a member of respondent association since the year 1924.

Respondent Huyck Corporation is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at Rensselaer, New York, and is, and continuously has been, a member of respondent association since the year 1924.

Respondent The Knox Woolen Company is a corporation organized and existing under the laws of the State of Maine, with its principal office and place of business located at 33 Mechanic Street, Camden, Maine, and is, and continuously has been, a member of respondent association since the year 1924.

Respondent Lockport Felt Company, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at Newfane, New York, and is and continuously has been, a member of respondent association since the year 1924.

Respondent The Orr Felt & Blanket Company is a corporation organized and existing under the laws of the State of Ohio, with its principal office and place of business located at Piqua, Ohio, and is, and continuously has been, a member of respondent association since the year 1924.

Respondent The Philadelphia Felt Company is a corporation organized and existing under the laws of the State of Pennsylvania, with its principal office and place of business located at 1215 Unity Street, Philadelphia, Pennsylvania, and is, and continuously has been a member of respondent association since the year 1929.

Respondent Porritts & Spencer (U.S.A.), Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at Skaneateles Falls, New York, and is, and continuously has been, a member of respondent association since the year 1960. In July 1960, Porritts & Spencer (U.S.A.), Inc., acquired the assets, good will and business of The Waterbury Felt Company, a corporation that had been a member of respondent association from the year 1924 to the year 1960, and continued the membership of the acquired company in said association.

Respondent H. Waterbury & Sons Company is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at Oriskany, New York, and is, and continuously has been, a member of respondent association since the year 1927.

Respondents Paul Benninghofen and Charles C. Shuler are the active general partners of Shuler & Benninghofen, a partnership, with their office and principal place of business located at 2346 Pleasant

Avenue, Hamilton, Ohio. The said partnership and its active general partners are, and continuously have been, members of respondent association since the year 1924.

All of the respondents named herein, other than respondent Papermakers Felt Association, are sometimes collectively referred to hereinafter as "respondent manufacturers".

PAR. 2. Respondent manufacturers, either directly or through operating divisions, are engaged in the manufacture, sale and distribution of papermakers felts.

Papermakers felts are used in the paper, paperboard and related product industries; they may be either needled or woven; they may be made of either wool or synthetic fibers or a combination thereof; and they may or may not be chemically treated. Papermakers felts are used on the wet end of the papermaking machine to remove water from the wet sheet or pulp. No paperboard or related products can be manufactured without the use of papermakers felts.

Papermakers felts are sold by respondent manufacturers directly to paper mills, paperboard mills and manufacturers in related industries. These customers are located throughout the United States. Hereinafter the term "papermakers felts" will be used to include both needled and woven papermakers felts. Total industry sales of papermakers felts in recent years have been substantial with woven papermakers felts constituting about 90% of such total. In the year 1962 sales of papermakers felts amounted to approximately \$50,000,000.

PAR. 3. Respondent Papermakers Felt Association is a trade association whose membership includes all of the aforesaid respondent manufacturers, as well as Drycor Felt Company, Inc., not named herein as a respondent. Respondent association has been and now is engaged through its committees and operating units in a wide range of activities of mutual interest to its members including standardization programs, traffic and transportation problems, tariff problems, collection and distribution of information on wool markets, credit problems, and other manufacturing distribution and sales procedures.

PAR. 4. Respondent manufacturers maintain, and at all times mentioned herein have maintained, either directly or indirectly, a substantial and continuous course of trade in woven papermakers felts in commerce, as "commerce" is defined in the Federal Trade Commission Act, between and among the various States of the United States. Respondent association has been and now is engaged in aiding and abetting respondent manufacturers in placing in effect and carrying out the unlawful methods, acts and practices as alleged herein, which have directly and substantially interfered with and prevented or

tended to prevent competition in such "commerce," between and among said respondent manufacturers and others.

PAR. 5. Respondent manufacturers and Drycor Felt Company, Inc. comprise the entire papermakers felt industry in the United States, and said manufacturers are in substantial competition with each other in the manufacture, sale, processing and distribution of woven papermakers felts, except to the extent that such competition, actual and potential, has been hindered, lessened, restricted and eliminated by the unfair methods of competition and unfair acts and practices hereinafter set forth.

PAR. 6. Respondent manufacturers, either directly or indirectly, acting between and among themselves and through and by means of respondent association, have for many years last past and continuing to the present time, maintained and do now maintain and have placed in effect and are carrying out an understanding, agreement, conspiracy or combination to pursue, and they have pursued, and are now pursuing a planned common course of action between and among themselves to adopt, engage in and carry out certain practices and policies to hinder, lessen, restrict, restrain, suppress or eliminate competition in the manufacture, distribution and sale of woven papermakers felts in the course of the aforesaid commerce.

Pursuant to, and as a part of said agreement, understanding, conspiracy, combination or planned common course of action, and in furtherance thereof, respondents have adopted, engaged in and carried out the following acts, practices, methods, systems and policies, among others:

(a) Fixed or caused to be fixed or maintained or caused to be maintained arbitrary, artificial or rigid prices of woven papermakers felts.

(b) Fixed or caused to be fixed or maintained or caused to be maintained uniform terms and conditions of sale of woven papermakers felts.

(c) Adopted or maintained a uniform single zone delivered price system through the use of which all respondent manufacturers are enabled to and do offer for sale and sell woven papermakers felts at identical or substantially identical prices to any destination in the United States, regardless of the point of origin of shipment of said products.

(d) Adopted, fixed or maintained or caused to be adopted, fixed or maintained standard classifications and weight limits for different types or grades of woven papermakers felts for the purpose or with the effect of fixing, establishing or maintaining identical or substantially identical prices and price quotations, terms or conditions of sale

and delivery affecting prices at which woven papermakers felts are sold or offered for sale.

(e) Fixed or maintained or caused to be fixed or maintained arbitrary or artificial minimum prices for treatments used in connection with the manufacture of woven papermakers felts.

(f) Adopted, maintained and carried out a policy to limit, restrict, control or prevent, and did limit, restrict, control or prevent the development, manufacture, production, offering for sale or sale of woven papermakers felts.

(g) Established or maintained or caused to be established or maintained a policy to require customers to accept shipment of woven papermakers felts within specified periods of time from the date of entry of an order.

Furthermore, as part of, and in order to effectuate and carry out said agreement, understanding, conspiracy, combination or planned course of action and the aforescribed policies:

(1) Respondent manufacturers, with the active cooperation and assistance of respondent association, have communicated between and among themselves and with respondent association, through correspondence, so-called "broadcasts," telephone, telegraph and otherwise, confidential and other information concerning past, current and future prices and price quotations, terms and conditions of sale, delivery and production which have been and now are or are to be quoted and charged by said respondents to purchasers or prospective purchasers of woven papermakers felts. Through and by means of such acts, practices and methods, all respondent manufacturers are enabled to keep informed and have knowledge and understanding of the prices and pricing factors and policies expected to be, and which have been, and are being used by each of the respondent manufacturers in the sale, or offering for sale, of woven papermakers felts.

(2) Respondent manufacturers, with the active co-operation and assistance, through meetings and otherwise, of respondent association, have planned, adopted and carried out certain programs and policies for the purpose and with the effect of fixing, establishing and maintaining identical or substantially identical prices and price quotations, terms and conditions of sale, delivery and production and other factors affecting prices at which woven papermakers felts are sold or offered for sale by such respondent manufacturers.

(3) Respondent manufacturers have held and continue to hold meetings from time to time under the auspices and supervision of respondent association, during the course of which, and at other times, said trade association has cooperated with and assisted, and continues

to cooperate with and assist said respondent manufacturers in furthering and carrying out the unlawful acts, practices, and methods set forth herein.

PAR. 7. The agreements, understandings, conspiracy, combination or planned common course of action and the acts, practices, methods and policies, 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 hinder competition and to restrain and monopolize trade and commerce and thereby constitute unfair methods of competition and unfair acts or 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 Papermakers Felt Association is an unincorporated trade association with its principal office and place of business located at 1215 Unity Street, Philadelphia, Pennsylvania.

Respondent Albany Felt Company is a corporation organized and existing under the laws of the State of New York with its principal office and place of business located at 1373 Broadway, Albany, New York.

Respondent Appleton Mills is a corporation organized and existing under the laws of the State of Wisconsin with its principal office and place of business located at 614 South Oneida Street, Appleton, Wisconsin.

Respondent Draper Brothers Company is a corporation organized and existing under the laws of the State of Massachusetts with its principal office and place of business located at 23 Draper Lane, Canton, Massachusetts.

Respondent Huyck Corporation is a corporation organized and existing under the laws of the State of New York with its principal office and place of business located at Rensselaer, New York.

Respondent The Knox Woolen Company is a corporation organized and existing under the laws of the State of Maine with its principal office and place of business located at 33 Mechanic Street, Camden, Maine.

Respondent Lockport Felt Company, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at Newfane, New York.

Respondent The Orr Felt & Blanket Company is a corporation organized and existing under the laws of the State of Ohio, with its principal office and place of business located at Piqua, Ohio.

Respondent The Philadelphia Felt Company is a corporation organized and existing under the laws of the State of Pennsylvania, with its principal office and place of business located at 1215 Unity Street, Philadelphia, Pennsylvania.

Respondent Porritts & Spencer (U.S.A.) Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at Skaneateles Falls, New York.

Respondent H. Waterbury & Sons Company is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at Oriskany, New York.

Respondents Paul Benninghofen and Charles C. Shuler are the active general partners of Shuler & Benninghofen, a partnership, with their office and principal place of business located at 2346 Pleasant Avenue, Hamilton, Ohio.

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 respondents Papermakers Felt Association, an unincorporated trade association; Albany Felt Company, a corporation; Appleton Mills, a corporation; Draper Brothers Company, a corporation; Huyck Corporation, a corporation; The Knox Woolen



Company, a corporation; Lockport Felt Company, Inc., a corporation; The Orr Felt & Blanket Company, a corporation; The Philadelphia Felt Company, a corporation; Porritts & Spencer (U.S.A.), Inc., a corporation; H. Waterbury & Sons Company, a corporation; and Paul Benninghofen and Charles C. Shuler, individually, and as partners trading and doing business as Shuler & Benninghofen, and their respective officers, agents, representatives, employees, successors or assigns, directly or through any corporate or other device in connection with the manufacture, offering for sale, sale or distribution of papermakers felts in commerce, as "commerce" is defined in the Federal Trade Commission Act do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any combination, conspiracy, agreement, understanding, or planned common course of action between or 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 following acts or practices:

1. Fixing or maintaining prices of papermakers felts;
2. Fixing or maintaining uniform terms or conditions of sale of papermakers felts;
3. Adopting or maintaining a uniform single zone delivered pricing system or any system through which prices of papermakers felts are equalized at destination without regard to actual shipping cost;
4. Adopting, fixing or maintaining standard classifications or weight limits for types or grades of papermakers felts for the purpose or with the effect of fixing, establishing or maintaining prices or price quotations, terms or conditions of sale and delivery;
5. Fixing or maintaining prices for treatments used in connection with the manufacture of papermakers felts;
6. Limiting, restricting, controlling or preventing the development, manufacture, production, distribution, offering for sale or sale of papermakers felts;
7. Establishing or maintaining any policy to require any customer to accept shipment of papermakers felts within any specified period of time;
8. Exchanging, distributing or circulating any information between or among respondents concerning prices, discounts, terms or conditions of sale, or any other pricing policies of papermakers felts, other than credit information not constituting a term or condition of sale.

## II

*It is further ordered,* That each respondent manufacturer shall, within ninety (90) days after the date of service of this Order, individually and independently, revise its prices and pricing systems and policies on woven papermakers felts in the following manner:

1. Review its prices, price lists, discounts, terms and conditions of sale, and pricing systems and policies, on the basis of its own costs, the margin of profit individually desired, and other lawful considerations;

2. Withdraw its presently effective prices, price lists, discounts, terms and conditions of sale and pricing systems;

3. Establish new prices, price lists, discounts and terms and conditions of sale determined under (1) immediately above, which prices shall become effective not later than ninety (90) days after the date of service of this Order. Nothing contained herein shall prevent any respondent acting independently, from thereafter deviating from, modifying or otherwise changing the established new prices, price lists, discounts, terms or conditions of sale for any lawful purpose;

4. In the event any prices, price lists, discounts, or terms or conditions of sale established pursuant to this Order are changed within the period of two (2) years following their adoption, the respondent making such change shall have the burden of establishing, for a period of three (3) years, that such change was made in good faith to meet a competitive pricing situation or for any lawful purpose.

## III

*It is further ordered,* That each of the respondent manufacturers, its officers, representatives, agents, employees, successors or assigns, directly or through any corporate or other device, in connection with the offering for sale, distribution or sale of papermakers felts in interstate commerce, do forthwith cease and desist from:

1. Attending any meeting with any respondent or manufacturer of papermakers felts not a party hereto at which the establishment or maintenance of prices, discounts, terms or conditions of sale are discussed or considered;

2. Circulating, disseminating, or communicating to any other manufacturer of papermakers felts or to any trade association of, or central agency or committee of such manufacturers for consideration, comment, discussion, or adoption, any prices, discounts,

terms or conditions of sale or system or method of pricing suggested or under consideration for future adoption;

3. Exchanging with, disseminating, or communicating to any other manufacturer of papermakers felts any price lists, prices, discounts, terms or conditions of sale relating to papermakers felts.

## IV

*It is further ordered*, That respondent Papermakers Felt Association, its officers, representatives, agents, employees, successors or assigns, directly or through any divisions, committees or other operating units or devices, formally or informally, in connection with the manufacture, offering for sale, sale or distribution of papermakers felts, do forthwith cease and desist from planning or performing any of the following things:

1. Obtaining or disseminating any information as to quotations of prices, discounts, terms or conditions of sale, or delivery;

2. Conducting or holding any meeting at which discussion is had or consideration is given concerning information as to quotations of prices, discounts, terms or conditions of sale, or delivery;

3. Cooperating in the formulation of any program or policy with the purpose or effect of controlling, restricting, or limiting the production or distribution of papermakers felts, or fixing, maintaining or tampering with any prices, discounts, terms or conditions of sale;

4. Acting, directly or indirectly, as an instrumentality or medium for promoting, aiding or rendering more effective any cooperative or concerted effort with any of the other respondents herein or any others not parties hereto in carrying out any of the acts prohibited by this Order.

## V

*It is further ordered*, That:

A. Nothing contained in this Order shall prevent or be construed to prevent any respondent manufacturer, acting independently, from negotiating or carrying out in good faith a contract to manufacture, to grant or receive licenses, otherwise lawful, for the use of patents or knowhow, or to sell to or buy from any bonafide customer or supplier, whether the licensee, licensor, customer or supplier is or is not a respondent herein.

B. Nothing in this Order shall prevent respondent manufacturers from disseminating any information to respondent Papermakers Felt Association or any other person, firm or corporation for the purpose

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of joint or several presentations to any legislative, judicial or executive body, provided that any information collected disclosing any prices, terms or conditions of sale of papermakers felts in individual transactions shall not be disclosed to or made available to any other competing manufacturer.

## VI

*It is further ordered,* That each of the respondents shall, within sixty (60) days after the service upon them 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 Parts I, III, and IV of this Order, and shall, within ninety (90) days after the service 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 Part II of this Order.

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 IN THE MATTER OF

## RAINBOW CRAFTS, INC., ET AL.

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

*Docket 8607. Complaint, Nov. 26, 1963—Decision, Sept. 11, 1964*

Order dismissing complaint charging Cincinnati toy distributors with making misrepresentations on television commercials concerning the number of parts contained in units of their "Forge Press" and "Magnajector" toys.

## 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 Rainbow Crafts, Inc., a corporation, and Joseph S. McVicker and Arthur L. Stoecklin, 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 Rainbow Crafts, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business

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\*Reported as amended by order of the Commission dated April 2, 1964, by striking Paragraph 7(2)(b) and the third sentence of Paragraph 8(2).

located at 2815 Highland Avenue in the city of Cincinnati, State of Ohio.

Respondents Joseph S. McVicker and Arthur L. Stoecklin 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 toys and related products, including toys designated "Forge Press", and "Magnajector", to distributors and to retailers for resale to the public.

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

PAR. 4. In the conduct of their business, at all times mentioned herein, respondents have 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 their business and for the purpose of inducing the purchase in commerce of the said "Forge Press" and "Magnajector", respondents have 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.

PAR. 6. Among and typical of the statements and representations made and appearing in said advertisements disseminated as hereinabove set forth are the following:

*FORGE PRESS*

\* \* \* with the Forge Press you can make your very own farm family and animals \* \* \* just shape Play Doh into a small ball \* \* \* there are 6 molds to make 10 different figures \* \* \*

(The above statement is a part of the audio portion of a sound-on-film television commercial, the video portion of which shows molds that are used for making human figures and four cans of "Play Doh" modeling compound.)

*MAGNAJECTOR*

Magnajector comes complete with two series of Rand McNally Flash Cards and picture "Lock" positioner.

Magnajector \* \* \* complete with flash cards and screen \* \* \*.

PAR. 7. Through the use of the aforesaid advertisements, and others containing statements and representations of the same import not specifically set forth herein, respondents have represented, directly and by implication:

1. That all "Forge Press" sets include six molds, including molds for making human figures, and four cans of "Play Doh" modeling compound.

2. (a) That all "Magnajector" units include educational flash cards, a card positioner and a projection screen.

PAR. 8. In truth and in fact:

1. Not all "Forge Press" sets include six molds, or molds for making human figures or four cans of "Play Doh" modeling compound.

One such set contains only four molds, none of which makes human figures, and only one can of "Play Doh".

2. Not all "Magnajector" units include educational flash cards, a card positioner or a projection screen. One such unit does not contain any of these.

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

PAR. 9. Respondents' toys and related products, including the "Forge Press" and the "Magnajector", are designed primarily for children, and are bought either by or for the benefit of children. Respondents' 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, respondents unfairly play 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 appearance or performance, which claims appeal both to adults and to children who bring the toys to the attention of adults. As a consequence of respondents' exaggerated and untrue representations, toys are purchased in the expectation that they will have characteristics or perform in a manner 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.

PAR. 10. The use by respondents of the aforesaid false, misleading and deceptive representations has had, and now has, the capacity and

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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 respondents by reason of said erroneous and mistaken belief.

PAR. 11. 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.

#### ORDER GRANTING MOTION TO DISMISS COMPLAINT

On August 28, 1964, the hearing examiner certified to the Commission a motion by complaint counsel to dismiss the complaint. Upon consideration of the examiner's certification and the motion by complaint counsel,

*It is ordered,* That the complaint issued herein be, and it hereby is, dismissed.

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#### IN THE MATTER OF

#### AMERICAN DOLL & TOY CORP. ET AL.

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

*Docket 8608. Complaint, Nov. 26, 1963—Decision, Sept. 11, 1964*

Order dismissing complaint charging New York City toy distributors with misrepresenting the capabilities, operational effectiveness and number of units in a set of their "Dick Tracy 2-Way Wrist Radio" on television commercials.

#### 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 Doll & Toy Corp., a corporation, and Jacob Brock, Herbert Brock, Eva Brock and Max Brock, 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 Doll & Toy Corp. 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 5112 Second Avenue in the city of Brooklyn, State of New York.

Respondents Jacob Brock, Herbert Brock, Eva Brock and Max Brock are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. The address of respondents Jacob Brock and Eva Brock is 12 Beverly Road in the city of Great Neck, Long Island, State of New York; the address of respondent Herbert Brock is 30 Shorecliff Terrace in the city of Great Neck, Long Island, State of New York; and the address of respondent Max Brock is 565 West End Avenue in the city of New York, State of New York.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of toys and related products, including a toy designated "Dick Tracy 2-Way Wrist Radio," to distributors and to retailers for resale to the public.

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

PAR. 4. 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 toys and related products.

PAR. 5. In the course and conduct of their business and for the purpose of inducing the purchase in commerce of the said "Dick Tracy 2-Way Wrist Radio," respondents have 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, and by means of advertisements appearing in newspapers and periodicals of general circulation and by means of other printed matter.

PAR. 6. Enlargements of individual frames extracted from said television commercials, illustrating typical representations with re-



spect to the manner in which the said "Dick Tracy 2-Way Wrist Radio" is purported to perform, as alleged in Paragraph Seven below, are attached hereto, marked Exhibits "A" through "C", inclusive and incorporated herein by reference.\*

PAR. 7. Among and typical of the statements and representations made and appearing in said advertisements as hereinabove set forth are the following:

There's excitement and adventure when you have the "Dick Tracy 2-Way Wrist Radio". Listen to ham radio stations, emergency distress calls \* \* \*.

(The above is part of the audio portion of a sound-on-film television commercial. The video portion thereof shows three boys talking to one another with "Dick Tracy 2-Way Wrist Radios").

\* \* \* listen to emergency distress calls, ham radio stations, ship-to-shore communications!

9 volt battery gives 30 hours transmission.

PAR. 8. Through the use of the aforesaid advertisements, and others containing statements and representations of the same import not specifically set forth herein, respondents have represented, directly and by implication:

1. That the "Dick Tracy 2-Way Wrist Radio" can receive amateur ("ham") radio signals, emergency distress calls and ship-to-shore communications.

2. That the "Dick Tracy 2-Way Wrist Radio," as packaged and sold to the purchasing public, is complete and ready for operation without additional components or accessories.

PAR. 9. In truth and in fact:

1. The "Dick Tracy 2-Way Wrist Radio" is designed and constructed to receive only "citizens band" broadcasts whereas amateur ("ham") radio transmissions, emergency distress calls and ship-to-shore communications are not normally transmitted over wave lengths within the "citizens band" and therefore will not be received by such a unit.

2. The "Dick Tracy 2-Way Wrist Radio" will not operate without a nine volt transistor-type energizer-battery which is not contained or included in the unit as packaged and sold to the purchasing public.

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

PAR. 10. In the further course and conduct of their business, respondents' advertising, including their television commercials, depicts the use of the "Dick Tracy 2-Way Wrist Radio" in pairs, thereby representing that the "Dick Tracy 2-Way Wrist Radio" is offered for sale and sold to the public as two radio units; whereas, in truth and in fact,

\*Pictorial exhibits are omitted in printing.

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the "Dick Tracy 2-Way Wrist Radio" is offered for sale and sold only as one such radio unit.

PAR. 11. Respondents' toys and related products are designed primarily for children, and are bought either by or for the benefit of children. Respondents' 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, respondents unfairly play 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 and appearance, which claims appeal both to adults and to children who bring the toys to the attention of adults. As a consequence of respondents' exaggerated and untrue representations, toys are purchased in the expectation that they will have characteristics or perform in a manner 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.

PAR. 12. The use by respondents 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 said representations were, and are, true and into the purchase of substantial quantities of the products of respondents by reason of said erroneous and mistaken belief.

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

#### ORDER GRANTING MOTION TO DISMISS COMPLAINT

On August 28, 1964, the hearing examiner certified to the Commission a motion by complaint counsel to dismiss the complaint. Upon consideration of the examiner's certification and the motion by complaint counsel,

*It is ordered*, That the complaint issued herein be, and it hereby is, dismissed.

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IN THE MATTER OF

## EMENEE INDUSTRIES, INC.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE  
COMMISSION ACT*Docket 8609. Complaint, Nov. 27, 1963—Decision, Sept. 11, 1964*Order dismissing complaint charging Flushing, N.Y., toy distributors with mis-  
representing their "Electronic Rifle Range" toy on television commercials.

## 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 Emenee Industries, 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, Emenee Industries, 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 41-06 DeLong Avenue, in the city of Flushing, State of New York.

PAR. 2. Respondent, Emenee Industries, Inc., 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 "Electronic Rifle Range", to distributors and to 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 "Electronic Rifle Range", 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

\*Reported as amended by order of the Commission dated April 22, 1964, to eliminate allegations that respondent engaged in deceptive practices (1) by failing to disclose that certain of its toys are operated by dry cell batteries which are not included with the toys when purchased and (2) by fictitious pricing.

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 "Electronic Rifle Range", respondent has made certain statements, representations and pictorial presentations with respect thereto in advertisements disseminated by means of commercials transmitted by television stations located in various States of the United States and in the District of Columbia.

PAR. 6. Among and typical of the statements and representations made and appearing in said advertisements concerning the said toy Electronic Rifle Range is the following:

\* \* \* just sight through the adjustable hairline sharp telescope-like sight \* \* \*.

(The above statement is part of the audio portion of a sound-on-film television commercial, the video portion of which shows a cross-hair sight on the toy rifle.)

PAR. 7. Through the use of the aforesaid advertisements, and others containing statements and representations of the same import not specifically set forth herein, respondent has represented, directly and by implication, that the toy rifle has an adjustable telescope-like sight with cross-hairs.

PAR. 8. In truth and in fact, the toy rifle has a hollow, cylindrical viewing piece without lens, glass or cross-hair sight; the so-called "telescope-like" sight consists of a piece of plastic with a hole that moves within a slot close to the eye.

PAR. 9. Respondent's toys and related products, including the "Electronic Rifle Range", 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 its toys and related products through false, misleading and deceptive claims of their appearance or 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 in a manner 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.

PAR. 10. The use by respondent of the aforesaid false, misleading and

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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.

#### ORDER GRANTING MOTION TO DISMISS COMPLAINT

On August 28, 1964, the hearing examiner certified to the Commission a motion by complaint counsel to dismiss the complaint. Upon consideration of the examiner's certification and the motion by complaint counsel,

*It is ordered*, That the complaint issued herein be, and it hereby is, dismissed.

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#### IN THE MATTER OF

#### EMESS SALES COMPANY, INC., ET AL.

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

*Docket C-829. Complaint, Sept. 11, 1964—Decision, Sept. 11, 1964*

Consent order requiring St. Louis, Mo., distributors of perfumes to cease misrepresenting the quality, identity and origin of their perfumes by representing certain of them falsely in advertising matter, labels, invoices and imprinted cartons as "No. 5 CHANEL," and representing by use of the initials "C," "A," "MS" and "W," that perfumes so labeled were the same as those sold under the trade and brand names "Chanel," "Arpege," "My Sin" and "White Shoulders," respectively.

#### 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 Emess Sales Company, Inc., a corporation, and Chester Sax, 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. Emess Sales Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business located at 1825 Chouteau Avenue, in the city of St. Louis, State of Missouri.

Respondent Chester Sax is an officer of said corporate respondent. He formulates, directs and controls the policies, acts and practices 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 perfumes and other products to distributors and jobbers and to retailers for resale to the public.

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

PAR. 4. In the 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 perfumes and other products of the same general kind and nature as those sold by respondents.

PAR. 5. Chanel Inc., is a corporation engaged in the manufacture of the perfume designated "Chanel No. 5." Lanvin Parfums, Inc., is a corporation engaged in the manufacture of the perfumes designated "Arpege" and "My Sin." Parfums Evyon, Inc., is a corporation engaged in the manufacture of the perfume designated "White Shoulders." Said perfumes are nationally advertised and are, along with said corporations, widely and favorably known to the trade and public, as a result of which, there is a preference by a substantial portion of the purchasing public for said perfumes and for perfumes manufactured by said corporations.

PAR. 6. In the course and conduct of their business, as aforesaid, respondents have made and are making statements concerning perfumes which they offer for sale. Said statements appear in advertising matter, labels, invoices and imprinted cartons prepared by or

for respondents, and which are disseminated by them to purchasers for use in the retail sale of said products. Through said statements the respondents represent and have represented, directly or indirectly:

1. That the perfume sold by respondents under the brand name "No. 5 CHANEL" is the nationally advertised, accepted and preferred product manufactured by Chanel Inc., of New York, New York.

2. That the perfumes sold by respondents labeled with the initial "C," "A," "MS" and "W" are the same as the perfumes sold under the trade name of "Chanel" by Chanel, Inc., and the brand name of "Arpege" by Lanvin Parfums, Inc., "My Sin" by Lanvin Parfums, Inc., and "White Shoulders" by Parfums Evyan, Inc.

PAR. 7. In truth and in fact:

1. The perfume sold by respondents under the name "No. 5 CHANEL" is not the nationally advertised, accepted and preferred product manufactured by Chanel, Inc., of New York, New York.

2. The perfumes sold by respondents labeled with the initial "C," "A," "MS" and "W" are not the same as the perfumes sold under the trade and brand names hereinabove stated in subparagraph 2 of Paragraph Six.

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

PAR. 8. By furnishing retailers and distributors of their products with advertising matter, labels, invoices and imprinted cartons containing false, misleading and deceptive statements and representations hereinabove described, respondents placed and now place in the hands of such retailers or distributors means and instrumentalities through and by which they may mislead and deceive the purchasing public, as to the quality, identity and origin of said perfumes.

PAR. 9. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

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

## DECISION AND ORDER

The 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 charge in that respect, hereby issues its complaint, accepts said agreement, makes the following jurisdictional findings and enters the following order:

1. Respondent Emess Sales Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 1825 Chouteau Avenue, in the city of St. Louis, State of Missouri.

Respondent Chester Sax 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 respondents Emess Sales Company, Inc., a corporation, and its officers and Chester Sax, 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 perfumes, toilet waters or other related products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Simulating the brand or trade name, labeling, packaging,



shape of container, or other distinctive characteristics of any nationally advertised, preferred or accepted perfume, toilet water or allied product, or in any other manner misrepresenting the company of origin of any of respondents' products.

2. Using the brand name "No. 5 Chanel" in connection with any merchandise not manufactured by Chanel Inc., of New York, N.Y.

3. Using the letter "C" in any advertising or labeling of perfumes, toilet waters or related products unless said products are manufactured by Chanel Inc., of New York, N.Y., and sold and distributed by said corporation under the trade name "Chanel."

4. Using the letter "A" in any advertising or labeling of perfumes, toilet waters or related products unless said products are manufactured by Lanvin Parfums, Inc., of New York, N.Y., and sold and distributed by said corporation under the brand name "Arpege."

5. Using the letters "MS" in any advertising or labeling of perfumes, toilet waters or related products unless said products are manufactured by Lanvin Parfums, Inc., of New York, N.Y., and sold and distributed by said corporation under the brand name "My Sin."

6. Using the letter "W" in any advertising or labeling of perfumes, toilet waters or related products unless said products are manufactured by Parfums Evyan, Inc., of New York, N.Y., and sold and distributed under the brand name "White Shoulders."

7. Using any letters, numerals or symbols not specifically listed in Paragraphs 2 through 6 above, either singly or in combination, in the advertising or labeling of said perfumes, toilet waters or cosmetics to designate or describe the kind or quality thereof without clearly and conspicuously revealing in immediate connection therewith the actual trade name of the manufacturer of said products.

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

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

## Complaint

## IN THE MATTER OF

MAR-CAL SPORTSWEAR OF CALIFORNIA, INC., TRADING  
AS MELVYN MODES OF CALIFORNIA ET AL.

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

*Docket C-830. Complaint, Sept. 11, 1964—Decision, Sept. 11, 1964*

Consent order requiring Los Angeles manufacturers of fur and textile fiber products to cease violating the Fur Products Labeling Act by failing on invoices to show the true animal name of fur used in fur products, omitting required item numbers, and abbreviating required information; and to cease violating the Textile Fiber Products Identification Act by furnishing false guarantees that certain of their textile fiber products were not misbranded or falsely invoiced.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Fur Products Labeling 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 Mar-Cal Sportswear of California, Inc., a corporation trading as Melvyn Modes of California, and Gene Wishan and Joseph A. Capitano, 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 said Acts, 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 Mar-Cal Sportswear of California, Inc., trading as Melvyn Modes of California is a corporation organized, existing and doing business under and by virtue of the laws of the State of California.

Respondents Gene Wishan and Joseph A. Capitano are officers of the corporate respondent and formulate, direct and control the acts, practices and policies of the said corporate respondent including those hereinafter set forth.

Respondents are manufacturers of fur products and textile fiber products with their office and principal place of business located at 818 South Broadway, Los Angeles, California.

PAR. 2. Subsequent to the effective date of the Fur Products Label-

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

PAR. 3. Certain of said fur products were falsely and deceptively invoiced by the respondents in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated under such Act.

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

PAR. 4. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth on invoices in abbreviated form, in violation of Rule 4 of said Rules and Regulations.

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

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 introduction, manufacture 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. 6. Respondents furnished false guaranties that certain of their textile fiber products were not misbranded or falsely and deceptively invoiced by falsely or deceptively representing in writing on

invoices that respondents had filed a continuing guaranty under the Textile Fiber Products Identification Act with the Federal Trade Commission, in violation of Section 10(b) of said Act and Rule 38(d) of the Rules and Regulations promulgated under the said Act.

PAR. 7. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act, the Textile Fiber Products Identification Act and the Rules and Regulations promulgated under said acts and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce under the Federal Trade Commission Act.

#### DECISION AND ORDER

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

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

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

1. Respondent Mar-Cal Sportswear of California, Inc., trading as Melvyn Modes of California is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its office and principal place of business located at 818 South Broadway, Los Angeles, California.

Respondents Gene Wishan and Joseph A. Capitano are officers of the corporate respondent and their address is the same as that of the corporate respondent.

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 Mar-Cal Sportswear of California, Inc., a corporation, trading as Melvyn Modes of California and its officers and Gene Wishan and Joseph A. Capitano, 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 or manufacture for introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act do forthwith cease and desist from:

A. Falsely or deceptively invoicing fur products by:

1. Failing to furnish invoices, as the term "invoice" is defined in the Fur Products Labeling Act, 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.
2. Setting forth information required under Section 5(b)(1) of the Fur Products Labeling Act and of Rules and Regulations promulgated thereunder in abbreviated form.
3. Failing to set forth on invoices the item number or mark assigned to fur products.

*It is further ordered,* That respondents Mar-Cal Sportswear of California, Inc., a corporation trading as Melvyn Modes of California and its officers, and Gene Wishan and Joseph A. Capitano, individually and as officers of said corporation and respondents' representatives, agents and employees, directly or through any corporate or other device in connection with the introduction, delivery for introduction, manufacture for introduction, sale, advertising or offering for sale in commerce, or the transportation or causing to be transported into commerce, or the importation into the United States of textile fiber products, 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

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## Complaint

"textile fiber product" are defined in the Textile Fiber Products Identification Act do forthwith cease and desist from furnishing a false guaranty that any textile fiber product is not misbranded or falsely and deceptively invoiced.

*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

JACOB WEINSTEIN ET AL. TRADING AS A. WEINSTEIN  
& SON CO.

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

*Docket C—831. Complaint, Sept. 11, 1964—Decision, Sept. 11, 1964*

Consent order requiring Worcester, Mass., manufacturers of garnetted fiber products to cease misrepresenting the fiber content of certain of their products by making such statements on invoices and shipping memoranda as "100% Wool" when the product so described contained substantially different fibers and amounts of fibers than represented.

## 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 Jacob Weinstein and Rose Weinstein, individually and as copartners trading as A. Weinstein & Son Co., hereinafter referred to as respondents, have violated the provisions of the said Act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Jacob Weinstein and Rose Weinstein are individuals and copartners trading as A. Weinstein & Son Co. They formulate, direct and control the acts, policies and practices of the partnership including the acts and practices hereinafter referred to.

Respondents are manufacturers of garnetted fiber products with their office and principal place of business located at 80 Austin Street, Worcester, Massachusetts.

PAR. 2. Respondents in the course and conduct of their business, as

aforesaid, have made statements on invoices and shipping memoranda to their customers misrepresenting the fiber content of certain of their said products.

Among such misrepresentations, but not limited thereto, were statements representing the fiber content thereof as "100% Wool" whereas in truth and fact the product contained substantially different fibers and amounts of fibers than represented.

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

PAR. 4. The acts and practices set out in Paragraph Two have had and now have the tendency and capacity to mislead and deceive the purchasers of said products as to the true content thereof and were and are all to the prejudice and injury of the public and constituted, and now constitute 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 respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order: and

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

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

1. Respondents Jacob Weinstein and Rose Weinstein are individuals

and copartners trading as A. Weinstein & Son Co., with their office and principal place of business located at 80 Austin Street, in the city of Worcester, State of Massachusetts.

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 Jacob Weinstein and Rose Weinstein, individually and as copartners trading as A. Weinstein & Son Co., or under any other trade name, and respondents' representatives, agents and employees directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of garnetted fibers or any other textile products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the character or amount of constituent fibers contained in garnetted fiber products or any other textile products on invoices or shipping memoranda applicable thereto or in any other manner.

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

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IN THE MATTER OF  
VISLO CORPORATION ET AL.

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

*Docket 8570. Complaint, May 15, 1963—Decision, Sept. 15, 1964*

Order requiring a Great Neck, N.Y., distributor of tinted glasses under the name of "Rayex Night Glasses" to dealers and distributors for resale to retailers, to cease representing falsely in newspaper, magazine and other advertising that wearing said glasses would eliminate glare from the eyes of the wearer, enable him to see in the dark and through fog glare, improve his night driving vision and allow all the light to reach his eye.

## 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

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\*Reported as amended by Hearing Examiner's order dated Oct. 15, 1963.



Trade Commission, having reason to believe that Vislo Corporation, a corporation, and Eugene A. Griffin, 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 Vislo Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located in the Vislo Building, in the city of Great Neck, State of New York.

Respondent Eugene A. Griffin is the sole officer of the corporate respondent. He formulates, directs and controls the acts and practices 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 have been for more than one year last past, engaged in the offering for sale, sale and distribution of tinted glasses to dealers and distributors who resell to retailers who sell to the purchasing public. Said tinted glasses are sold under the trade name of "Rayex Night Glasses," and are devices as the term "device" is defined in the Federal Trade Commission Act.

PAR. 3. Respondents cause the said device, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said device in commerce, as "commerce" is defined in the Federal Trade Commission Act. The volume of business in such commerce has been and is substantial.

PAR. 4. In the course and conduct of their said business, respondents have disseminated, and caused the dissemination of, certain advertisements concerning the said device by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in newspapers, magazines and other advertising media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said device; and have disseminated, and caused the dissemination of, advertisements concerning said device by various means, including but not limited to the aforesaid media, for

the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said device in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of their business and for the purpose of inducing the sale of the said tinted glasses, respondents have made certain statements with respect thereto in advertisements disseminated as hereinabove set forth. Among the typical, but not all inclusive, of such statements are the following:

Stop Headlight Glare  
Eliminate Blinding Headlight Glare  
Actually See in the Dark  
See to Drive Through Fog Glare with Almost Perfect Daytime Vision  
Rayex glasses do not eliminate light.

PAR. 6. Through the use of said advertisements respondents have represented, and are now representing, directly or by implication, that the wearing of respondents' tinted glasses will:

1. Eliminate glare from the eyes of the wearer.
2. Enable the wearer to see in the dark.
3. Enable the wearer to see through fog glare.
4. Improve night driving vision.
5. Allow all the light to reach the eye of the wearer.

PAR. 7. In truth and in fact the wearing of respondents' tinted glasses:

1. Will not eliminate or substantially reduce glare from the eyes of the wearer.
2. Will not enable the wearer to see in the dark.
3. Will not enable the wearer to see through fog glare.
4. Will not in any manner improve night driving vision.
5. Will not allow all the light to reach the eye of the wearer.

Therefore, the advertisements referred to in Paragraph Five were and are misleading in material respects and constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act.

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

*Mr. Francis J. Charlton* and *Mr. William E. McMahon, II*, supporting the complaint.

*Mr. Roy C. Frank* of Washington, D.C., for the respondents.

Initial Decision

66 F.T.C.

INITIAL DECISION BY DONALD R. MOORE, HEARING EXAMINER

FEBRUARY 14, 1964

## STATEMENT OF PROCEEDINGS

The complaint in this matter was issued by the Federal Trade Commission on May 15, 1963, and was duly served on both respondents. It charges misrepresentation in the sale of tinted night driving glasses, in violation of Sections 5 and 12 of the Federal Trade Commission Act.

After being served with the complaint, respondents appeared by counsel and filed answer making certain admissions but denying generally any violation of law.

A prehearing conference was held in Washington, D.C., August 1, 1963. Hearings for the presentation of testimony and other evidence in support of, and in opposition to, the allegations of the complaint were then held in New York, New York, and Boston, Massachusetts, between October 1 and 9, 1963. At the initial hearing, the complaint was amended to correct an error in terminology, the word "eye" being substituted for "field of vision" in subparagraph 5 of Paragraphs Six and Seven (Tr. 56-66).

Throughout the proceeding, both sides were represented by counsel and were afforded full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing on the issues. The evidence so presented was duly recorded and filed in the office of the Commission.

Proposed findings of fact and conclusions of law, accompanied by a proposed form of order, have been filed by counsel supporting the complaint and by counsel for respondents. Proposed findings not adopted, either in the form proposed or in substance, are rejected as not supported by the evidence or as involving immaterial matters.

After carefully reviewing the entire record in this proceeding, together with the proposals filed by both parties, the hearing examiner finds that this proceeding is in the interest of the public and, on the basis of such review and his observation of the witnesses, makes the following findings of fact and conclusions drawn therefrom, and issues the following order.

## FINDINGS OF FACT

There is little or no dispute as to the basic facts concerning the respondents, their business operations and the nature of their product. By admissions in respondents' answer, by undisputed testimony of

the respondent Griffin and the witness Chick (Tr. 69<sup>1</sup> *et seq.*, 330 *et seq.* and 350 *et seq.*), and through CX 5,<sup>1</sup> the following facts have been established:

I. *The Business of Respondents.*

1. Respondent Vislo Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located in the Vislo Building in the city of Great Neck, State of New York.<sup>2</sup>

Respondent Eugene A. Griffin is the sole officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent. His address is the same as that of the corporate respondent.<sup>3</sup>

2. Respondents are now, and for several years have been, engaged in the offering for sale, sale and distribution of tinted night driving glasses. They have sold such glasses to distributors and dealers for resale, and also have made direct mail order sales to the purchasing public.

Since about October 1961, or perhaps October 1960 (Tr. 75, 76), the glasses have been advertised and sold under the trade name of Vislo Night Driving Glasses; previously they were advertised and sold under the name Rayex Night (or Nite) Glasses, or Rayex Night (or Nite) Driving Glasses. The glasses are devices as the term "device" is defined in the Federal Trade Commission Act.<sup>4</sup>

The glasses are contract manufactured to Vislo's order by Rayex Corporation, Flushing, Long Island. (Tr. 71, 356)

3. Respondents have caused their glasses, whether sold under the trade name "Rayex" or "Vislo," to be transported from their place of business in the State of New York to purchasers located in various other States of the United States and in the District of Columbia. Respondents maintain, and have maintained, a course of trade in such glasses in commerce, as "commerce" is defined in the Federal Trade Commission Act. The volume of business in such commerce has been and is substantial, approximately \$300,000 annually. (Tr. 70)

II. *The Product and Its Properties.*

4. The glasses consist of plastic lenses, the upper half having a

<sup>1</sup> The transcript of hearing is abbreviated herein as "Tr." Commission Exhibits are abbreviated "CX"; Respondents' Exhibits, "RX."

<sup>2</sup> Respondents admitted the complaint's allegations regarding the Great Neck location, but respondent Griffin testified that his and Vislo's office address is 75 East 55th Street, New York 22, New York (Tr. 69, 50-51) In the absence of any record explanation of this apparent discrepancy, it is presumed and found that the New York City office is additional to the principal office in Great Neck.

<sup>3</sup> See footnote 2.

<sup>4</sup> Sec. 15(d), of the Federal Trade Commission Act [15 U.S.C. § 55(d)] provides in pertinent part that the term "device" means instruments, apparatus, and contrivances intended "to affect the structure or any function of the body of man \* \* \*"

yellow tint; the lower portion being clear. The tint is graduated, or gradient, ranging from light yellow about the middle of the lens to a darker shade at the top of the lens. This is accomplished by dip-coating a narrow sheet of plastic. The plastic is suspended over a tank in such a way that it can be dipped a number of times but to a lesser depth each time so that the result is a progressively heavy deposit of tint. (Tr. 353)

The composition of the coating is "a secret process," but two of its elements are chromium salt and silicon. (Tr. 354)

5. There is no dispute between the parties regarding the "spectral transmittance" of the glasses. Both sides rely on a report (CX 5) that shows "Spectral Transmittance in the Visible Region."

The report was made for respondent Vislo by Electrical Testing Laboratories, Inc., of New York. Offered as Commission Exhibit 5, it was received in evidence without objection. (Tr. 81) In the course of their defense, respondents called the Manager of the Photometric Laboratory, who supervised the tests, to explain the results. (Tr. 330 *et seq.*)

The tests made are described as follows:

Spectral transmittance measurements in the visible region were made using a recording spectrophotometer.

Transmittance measurements were made on the graduated density night driving eyeglasses through three different areas: (1) clear, (2) medium tint and (3) dark tint.

The total transmittance values for CIE Illuminant "A"<sup>5</sup> were calculated from the spectrophotometric data.

6. For total light transmitted by each area of the Vislo glasses, the report showed 91.3 percent transmittance through the clear portion; 89.4 per cent through the medium tint; and 83.8 per cent through the dark tint. Conversely, the total light "absorbed" by each area is as follows:

	<i>Percent</i>
Clear .....	8.7
Medium tint.....	10.6
Dark tint .....	16.2

7. According to a graph included in CX 5 showing the spectral transmittance curves in the visible region, as interpreted by the witness Chick, the dark-tinted top section of the Vislo lens absorbs or eliminates a maximum of 82.5 per cent of the violet region of the spectrum.

Similarly, a maximum of 82.5 per cent of the blue region of the spectrum is eliminated, or an average of 77 per cent.

<sup>5</sup> This is not fully explained in the record, but it appears that "CIE Illuminant 'A'" is an incandescent (tungsten) lamp used as a standard of measurement of luminous transmittance. (Tr. 103-104)

Elimination by the dark tint of other regions of the spectrum is tabulated as follows:

	<i>Percent</i>
Green -----	43
Yellow -----	13
Orange-red -----	8

8. The elimination accomplished by the medium tint was listed as follows:

	<i>Percent</i>
Violet -----	<sup>1</sup> 15.5
Blue -----	<sup>2</sup> 23.0
Green -----	<sup>2</sup> 16.5
Yellow -----	<sup>2</sup> 10.0
Orange-red -----	<sup>2</sup> 7.5

<sup>1</sup> Maximum.

<sup>2</sup> Average.

9. Thus, with reference to both the dark tint and the medium tint, the highest transmittance of light is in the yellow-orange, the yellow, the yellow-green and the red regions of the spectrum. (Tr. 341)

10. Various of the Government's witnesses concurred in the findings reported in CX 5. (Tr. 103-104, 235, 306)

### III. *The Advertising Representations.*

11. In the course and conduct of their business, respondents have disseminated, and have caused the dissemination of, certain advertisements concerning their glasses. Such advertisements have been disseminated by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act. They have included, but are not limited to, advertisements inserted in newspapers, magazines and other advertising media, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of such glasses. Respondents also have disseminated, and caused the dissemination of, advertisements, concerning such glasses by various means, including, but not limited to, the media referred to. Such advertisements were for the purpose of inducing, and were likely to induce, directly or indirectly, the purchase of such glasses in commerce, as "commerce" is defined in the Federal Trade Commission Act.

12. In the course and conduct of their business, and for the purpose of inducing the sale of the Rayex or Vislo glasses, respondents have made certain statements in advertisements disseminated as set forth in Paragraph 11, above. Among and typical, but not all inclusive, of such statements are the following:

Stop Headlight Glare.

Eliminate Blinding Headlight Glare.

Actually See in the Dark.

See to Drive Through Fog Glare with Almost Perfect Daytime Vision.  
Rayex glasses do not eliminate light.

Respondents admitted making the quoted statements, and respondent Griffin identified the advertising brochures (CX 3 and 4) from which the statements were taken.

13. On the basis of the advertisements in evidence (CX 3 and 4), and in the absence of any showing that those advertisements are not fairly representative of respondents' advertisement, it is found that the quoted statements are typical of the advertising statements made by respondents.

14. Through the use of the advertisements referred to in Paragraph 12 (above), respondents have represented, and are now representing, directly or by implication, that the wearing of their tinted glasses will:

1. Eliminate glare from the eyes of the wearer.
2. Enable the wearer to see in the dark.
3. Enable the wearer to see through fog glare.
4. Improve night driving vision.
5. Allow all the light to reach the eye of the wearer.

15. Concerning the meaning of the advertising statements challenged by the complaint, the pleadings create issues as to only two representations. In their answer, respondents admitted making the representations numbered 2, 3 and 4, and denied making only the representations numbered 1 and 5.

16. In their proposed findings, however, respondents argue that, when read in context, the words "actually see in the dark" refer to "seeing after dark when normal objects of light are present." This position is based essentially on the testimony of respondent Griffin to the effect that "while driving in the dark one has light," and that the glasses "deal with the matter of light." The Claim was not made "in connection with driving in the Sahara Desert without lights on your car." (Tr. 87)

Respondents argue that "No purchaser with an ordinary mind would be led to believe that the glasses would enable him to see in the absence of all light," or "in complete darkness."

The hearing examiner does not disagree with the principle that statements must be considered in the context in which they are made. Here, the representation *is* made in a setting in which the presence of some light may be implied.

Nevertheless, in view of respondents' admission, as well as the unambiguous nature of the claim, it must be found that respondents have represented that the glasses enable the wearer to see in the dark.

17. Regarding the first representation cited in Paragraph 14 above--

that the glasses eliminate glare—respondents' position is that, read in context, the claim has been made only with respect to *blinding* glare.

Since, according to Webster's New International Dictionary (2d ed.), the word "glare" carries with it a meaning of intense, dazzling, overpowering brightness, and since, in respondents' advertising, the word is frequently modified by the word "blinding," the examiner is inclined to agree that respondents' representations have dealt with blinding glare, whether or not so denominated. It may be assumed that the public would so interpret the advertising, but without drawing any nice distinctions between degrees of glare.

However, it is difficult to understand just why respondents insist on that distinction. By claiming elimination of blinding glare through the use of their glasses, they necessarily imply elimination of any glare lesser in degree than blinding glare.

In view of the finding, *infra*, concerning the efficacy of the glasses with respect to glare—blinding or otherwise—the distinction sought to be made by respondents is of no great significance.

Regardless how the term "glare" may be technically defined, and whether or not the public distinguishes between "glare" and "blinding glare," the fact is that respondents have represented that their glasses eliminate glare.

18. The other representation that respondents deny making is that numbered 5 in Paragraph 14 above, to the effect that the glasses allow all the light to reach the eye of the wearer. This representation is the interpretation placed by the complaint, as amended, on advertising statements that the lenses "do not eliminate light."

The examiner rejects the attempt of respondents, in their proposed findings, to qualify the claim to mean only that the glasses "do not eliminate light necessary to enable the wearer of the glasses to see effectively while driving at night." Respondents argue that, when read in context, the claim that the glasses "do not eliminate light" means that they do not eliminate light "to the extent that the wearer of the glasses is prevented from seeing effectively while driving at night." Such a representation obviously is included in the advertising statement, but the claim is not so delimited.

19. Here again, as in the case of "see in the dark," the respondents are undertaking to change the plain meaning of words that they themselves have chosen to use. The record affords no basis for a finding that respondents' advertising claims regarding elimination of light embrace the qualifications or limitations that they say were intended.

One does not have to be unduly sensitive to the protection of the



gullible and credulous to hold these respondents responsible for the literal meaning of the words that they have chosen to use in advertising.<sup>6</sup> The word "eliminate" is "a word of common understanding," and does not carry the connotation contended for. In the absence of any showing to the contrary, it must be found that respondents used the word in its "ordinary and commonly accepted understanding." *International Parts Corp. v. FTC*, 133 F. 2d 883 (7th Cir. 1943).

IV. *The Proof of Misrepresentation.*

20. In truth and in fact, the wearing of respondents' tinted glasses:

1. Will not eliminate or substantially reduce glare from the eyes of the wearer.

2. Will not enable the wearer to see in the dark.

3. Will not enable the wearer to see through fog glare.

4. Will not in any manner improve night driving vision.

5. Will not allow all the light to reach the eye of the wearer.

21. The findings in Paragraph 20 were reached after careful consideration and weighing of all the evidence presented by both sides. The determinations set forth find support for the most part in the testimony of four expert witnesses presented in support of the complaint, and also in certain of the testimony presented by respondents.

As will be demonstrated, the conflict between the testimony of the Government's witnesses and that presented by respondents is more apparent than real.

To the extent, however, that there is a conflict, the examiner finds that the weight of the evidence supports the allegations of the complaint.

22. The four expert witnesses presented in support of the complaint, together with a brief summary of their qualifications, are as follows:

*Professor Charles R. Marsh*—Associate Professor of Electrical Engineering, Pennsylvania State University, University Park, Pennsylvania, since 1948. He holds a Master of Science degree from the University of Illinois and has been engaged in teaching and research since 1935. His activities in the field of night driving problems include the following:

1951-54.....	Consultant on Highway Visibility, Westinghouse Corp.
1955-57.....	Illuminating Engineering Society Research Grant: Visibility in Fog.
1960-date.....	Consultant on Visibility Problems, New Jersey Turnpike Authority.
1962.....	Chairman, Papers Committee of the Night Visibility Committee, Highway Research Board, National Academy of Sciences.

<sup>6</sup> Cf. *Universe Company*, D. 8538 (Nov. 7, 1963) [63 F.T.C. 1282].

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## Initial Decision

- 1959-date..... Night Visibility Committee, Highway Research Board,  
National Academy of Sciences.
- 1956-date..... Motor Vehicle Lighting Committee, Illuminating Engi-  
neering Society. Vice-Chairman and Chairman-elect,  
1963-64.

Publications and studies in which Professor Marsh has been involved have covered such subjects as "Highway Visibility in Fog"; "Headlight Dimming" and "Optical Problems." (CX 6)

*Dr. Gerald E. Fonda*—Practicing ophthalmologist in Short Hills, New Jersey, and Associate Clinical Professor of Ophthalmology, New York University Post-Graduate Medical School. He is also attending ophthalmologist at St. Barnabas Medical Center, Newark, New Jersey, and at Overlook Hospital, Summit, New Jersey, and is Assistant Ophthalmic Surgeon at the New York Eye & Ear Infirmary.

Dr. Fonda is a diplomate of the American Board of Ophthalmology (1947) and a Fellow in the American College of Surgeons (1958). He is a member of the Illuminating Engineering Society, the Vision Committee of the National Research Council, and numerous other professional organizations. (CX 7, Tr. 174-179)

Dr. Fonda is the author of numerous technical reports published in professional journals and has made a number of presentations at professional meetings. (CX 7)

*Dr. Oscar W. Richards*—Chief Biologist, American Optical Company, Southbridge, Massachusetts, in charge of the Biological Optics Section in the Research Laboratory. Dr. Richards received his Bachelor of Arts and Master of Arts degrees from the University of Oregon, and his Ph. D. from Yale University. He has been on the faculty of both these institutions and at Clark University. He also has been a lecturer at Woman's College, New Haven, Connecticut; University of Buffalo, and Brown University.

Dr. Richards has been Chairman of the Research Subcommittee of the Highway Research Board since 1957, and a member of its Night Visibility Committee since 1951. The national committees and professional societies with which he has been affiliated are set out at length in CX 8B.

Dr. Richards has been a prolific writer, and the bibliography of his work covers some 16 pages. (CX 8C-R) Many of them have dealt with subjects closely related to the problems involved in this proceeding. For several years, Dr. Richards has reviewed annually the literature relating to night driving.

*Dr. Ernst Wolf*—Research Associate of the Retina Foundation, Boston, Massachusetts; Research Fellow in Ophthalmology, Massachusetts Eye & Ear Infirmary, Boston; Instructor in Ophthalmology,

Harvard Medical School; and Research Associate in Psychology, Wellesley College.

Dr. Wolf has a Ph. D. degree in biology from the University of Heidelberg. He has been engaged in research and teaching for many years, and is a member of the Night Visibility Committee of the Highway Research Board. The list of publications of which he has been author or coauthor is impressive. (CX 9A-G)

23. In the field of highway visibility and night driving glasses, it appears that Dr. Richards is pre-eminent.

Respondents themselves recognize Dr. Richards' special qualifications.

At the outset of his examination, respondents made the simple concession that Dr. Richards' qualifications as an expert were acceptable. (Tr. 230)

In the course of cross-examination, however, it was developed that Dr. Richards has tested tinted glasses for many years and has "read practically everything in the field of literature, articles and publications, with respect to lenses for night driving." He is "familiar with the viewpoints of various researchers." (Tr. 265)

Later, respondents' counsel said of Dr. Richards:

He is a very excellent man in his field. He has read and written scores of articles. He has researched for many years. He works for an optical company that I am certain keeps up to every new development in the optical field by its competitors and by others.

I am very certain that there isn't anything going on in the optical field that Dr. Richards doesn't know about. \* \* \* (Tr. 283)

24. On the other hand, respondents request that the hearing examiner disregard in its entirety the testimony of Professor March and Dr. Fonda.

This the examiner declines to do.

25. Cross-examination of Professor Marsh disclosed certain limitations on his knowledge of ophthalmology and related matters. Actually, respondents posit their criticism of Professor Marsh on his lack of familiarity or disagreement with certain books and other publications referred to in cross-examination by respondents' counsel but never established to be authoritative and never received in evidence.

Irrespective of Professor Marsh's limited knowledge concerning the structure and mechanics of the eye, it is apparent that his education, training and experience qualify him as an expert in the field of highway illumination and night driving. His lack of familiarity with "dazzling glare" as a technical British term is surprising but not discrediting. (Tr. 128-29, 289-90)

Although he did tend to quibble and become evasive when he was led into subject matter outside his specialty, the examiner does not consider that this requires that all his testimony be disregarded. His testimony has been weighed in the light of the admitted limitations on his qualifications.

Mr. Marsh freely conceded that he had never made any investigation or study of tinted lenses for night driving, and has not written anything on the subject. He has read some of the literature. (Tr. 120-121)

Defining an expert as "someone who had made more than an ordinary study, or had more than ordinary experience in a field," Professor Marsh considered himself an expert in the field of tinted lenses. "Indirectly" he has made more than an ordinary study in the field of night driving tinted lenses. (Tr. 123) By this he meant he had expertise in the general field, derived from tests involving

the use of colored light achieved by means other than having a filter before the eye, which is quite valid in optical models, to color the light source as well as to color the viewing filter. \* \* \* (Tr. 124)

26. Similarly, respondents have shown no basis for disqualifying Dr. Fonda as an expert, either for want of knowledge or for bias. His qualifications (CX 7) speak for themselves, and respondents' main objection seems to be that his testimony is not in accord with their theories.

Dr. Fonda refused to subscribe to respondents' theory concerning the significance of the short wave blue and violet in the field of headlight glare. His testimony on this subject also may vary to some extent from that presented by the other Government experts.

This is a factor that the examiner has taken into account in reaching his decision, but contrary to respondents' contentions, does not disqualify the witness or demonstrate bias.

In considering the disparagement of Dr. Fonda's testimony by respondents, it is interesting to note that whereas respondents' counsel indicated surprise, if not incredulity, when Dr. Fonda declined to agree that there was a difference of 100 per cent in a visual acuity of 20/20 and one of 20/40 (Tr. 222-224), respondents' own witness, Dr. Cohen, stated that "Given a percentage of visual efficiency of 20/20 at 100 percent, the American Medical Association has determined that 20/40 represents 83.6 per cent of visual efficiency." (Tr. 367)

27. Defense witnesses, besides the individual respondent Griffin, were:

*Dr. Irwin Cohen*—Practicing ophthalmologist in New York City. He is Assistant Clinical Professor of Ophthalmology at the New York

University Post-Graduate College of Medicine and is affiliated with a number of hospitals. He is a diplomate (1952) and Fellow (1953) of the American Board of Ophthalmology and a Fellow of the American College of Surgeons (1959).

Dr. Cohen has been the author or co-author of articles in professional publications, but none have been directly related to the field of night driving. (RX 2)

As a matter of fact, Dr. Cohen stated that he did not hold himself out to be an expert on night driving. He did, however, consider himself an expert in the field of night vision "to the extent that night vision forms a portion of my practice of ophthalmology of which I am a specialist." (Tr. 419)

A. R. Chick—Manager, Photometric Laboratory, Electrical Testing Laboratory, Inc. Mr. Chick's qualifications are listed on RX 1. They are not detailed here because there is no issue as to his qualifications. As noted, both sides rely on the test he made of the Vislo glasses.

28. The evidentiary basis for each of the findings in Paragraph 20, *supra*, is set forth *seriatim*.

29. The finding that the Vislo glasses: "Will not eliminate or substantially reduce glare from the eyes of the wearer" is supported by the unanimous opinion of the four experts who testified on behalf of the Government. Their testimony is to the effect that while the Vislo glasses may reduce glare, the reduction is negligible because the glasses—even the darkest tint—fail to cut out an appreciable amount of light. On the other hand, their testimony is to the effect that although the amount of light eliminated is insufficient to reduce glare appreciably, it *is* sufficient to reduce visual acuity to a significant degree.

30. What is glare? There is no single clear-cut definition in this record; the word is variously defined by the experts, but the import of all the definitions is similar.

31. Dr. Richards defined glare as "Any amount of light which spoils or decreases vision, any extraneous light [which] would spoil or decrease vision." <sup>7</sup> Glare is produced by "Any light source that lies within the line of vision which does not contribute to the image \* \* \*." (Tr. 252)

Headlight glare "would tend to cover the image of the road you are looking at and wash out the contrast," Dr. Richards said; "the effect would be a general veiling and reduced contrast." (Tr. 254)

32. Dr. Wolf defined glare as "adverse light which makes visibility of

<sup>7</sup> This definition is "acceptable" to respondents. ("Proposed Findings," etc., page 8).

objects exceedingly hard," and as "light in the wrong place." (Tr. 305)

33. Dr. Fonda described glare as "an uncomfortable sensation caused by too much light, constricted light or poor distribution of light which, in extreme cases, may interfere with vision." Constricted light means focused light. Dr. Fonda explained: "If you shined a flashlight into my eyes, that would be glare." A searchlight would be constricted light. (Tr. 181-82; see also Tr. 200-05)

34. Professor Marsh defined glare (including veiling glare) as "the reduction in visibility of a target due to light from some other area of the field of view." He doesn't "quarrel" with a definition of glare as "The sensation produced by light so invading the eye as to inhibit distinct vision."

That definition seemed "all right" to the witness, although he "wouldn't state it that way." (Tr. 125-27; see also Tr. 127-30)

35. Respondents' expert, Dr. Cohen, defined three "types of glares which are more in the nature of quantum of glare." His classifications are as follows:

Veiling glare—"an amount of glare sufficient to cast a veil or haze over the vision. This is adventitious light which has value to the seeing image."

Dazzling glare—"where you have glare, or adventitious light, surround[ing] the image itself."

Blinding glare—"glare of such intensity to blanch out the useful image entirely." (Tr. 409)

36. There was some recognition by all the Government's witnesses of various degrees of glare, but no general acceptance of Dr. Cohen's classifications or definitions of "veiling glare," "blinding glare" and "dazzling glare."

37. For purposes of this proceeding, "glare" may be taken to mean light of such a nature or degree invading the eye as to cause discomfort in the eye and a temporary loss or impairment of central vision.

38. Regarding the effectiveness of the Vislo glasses in eliminating or reducing glare, the position of the Government's witnesses may be summarized as follows:

39. Professor March expressed the opinion that the Vislo glasses would not stop headlight glare. (Tr. 106) He explained:

It could stop glare only by reducing the amount of light reaching the eye from the glare source and ordinarily if headlights are glaring, the amount available is so far in excess of what would produce glare that attenuating it by 16 or 17 per cent would be insignificant. (Tr. 107)

Thus, according to Marsh, the reduction of headlight glare by the Vislo glasses would be so small that it would not substantially affect the glare problem.

40. The opinion of Dr. Fonda—based on his examination of the glasses, his background, his education and his experience—was that the wearing of these glasses will not “stop” headlight glare or “eliminate” glare from the eyes of the wearer. (Tr. 185, 189)

According to Dr. Fonda, the glasses will “reduce” glare “to some extent” (Tr. 185, 189-90), but the reduction is not of any practical value. It is so slight in proportion to the brightness of the light that he does not think it is “appreciable.” (Tr. 185-86)

41. In Dr. Richards’ opinion, the Vislo glasses would not have “any effect on any serious glare.” They would reduce glare only to “a negligible degree.” (Tr. 253) His opinion is the same with regard to any type of glare. (Tr. 254)

Dr. Richards’ opinion is based on his examination of the Vislo glasses, his education, his experience and his research in the field of optics and vision. (Tr. 252-53)

According to this witness, use of a yellow lens like that in the Vislo glasses “would reduce the effect of glare by around 15. 20 percent,” depending on the adaptation level of the wearer, and “would reduce his seeing of the road the same amount.” (Tr. 291)

Dr. Richards knows of “no good scientific information” reaching the conclusion that “yellow tinted glasses are effectual or have merit for night driving.” He knows of no researchers who have reached that conclusion. (Tr. 266)

In the course of further cross-examination, respondents’ counsel inquired whether the merits of yellow night driving glasses are still “uncertain.” To this question, Dr. Richards responded “Not at all.” (Tr. 270) He was then asked whether he meant that it is certain that night driving glasses have no value. (Tr. 270-71) His answer was: “I believe that all of the experts on vision hold that opinion.” And Dr. Richards is certain of it in his own mind: “[W]e found out that they were useless back in 1953.” (Tr. 271)

42. Dr. Wolf has examined and tested the Vislo glasses. (Tr. 306) On the basis of that examination, together with his education, experience and research in the field of optics and vision, his opinion is that the Vislo glasses “will not eliminate” glare (Tr. 307) or blinding headlight glare. (Tr. 311)

“They will reduce glare” but are not of “any practical value for night driving.” Although the dark-tinted portion of the glasses reduces the amount of light coming to the eye by 16 per cent, Dr. Wolf said, “at the same time you have to see objects on the road which are also reduced by the same amount of 16 per cent: so you end up with the same reduction of brightness on both things, on the glare and on what you are supposed to see.” (Tr. 307-08)

Dr. Wolf does not think that the wearing of tinted lenses is the solution to the problem of glare in night driving. (Tr. 309)

43. To overcome this consensus of expert opinion, respondents rely on the opinion testimony of Dr. Cohen, an ophthalmologist, and the evidence of certain tests performed by him (Tr. 368, 375 *et seq.*) and by others (CX 5; Tr. 330 *et seq.*).

44. It is significant, however, that Dr. Cohen was extremely guarded in his defense of respondents' advertising claims in the field of glare.

Although he indicated that the glasses would stop veiling glare and reduce the "recovery time" after light shock caused by glare, he never did specifically and unequivocally state that the Vislo glasses would eliminate or stop headlight glare, dazzling glare or blinding glare. At most, this was suggested by his statement that the yellow lens would filter out "the major component" of the glare source. This is considered in more detail *infra*.

45. There is a curious inconsistency in respondents' position that the Vislo glasses "will eliminate blinding headlight glare, and will substantially reduce other forms of glare." (Proposed finding No. 10; see also pages 8 and 9)

The record indicates, and Dr. Cohen agrees, that blinding glare is the most extreme form of glare. Yet respondents claim to "eliminate" it while only "reducing" other unidentified forms of glare. If the glasses can eliminate *blinding* headlight glare, it follows that they also can eliminate any lesser form of glare.

On this record, the finding is that the Vislo glasses can do neither.

46. Dr. Cohen described as "a fair statement" the respondents' advertising claim (CX 4) that the Vislo glasses "stop headlight glare." It is a fair statement, he said, to the extent that the yellow color of the lens gives "sharper definition" and to "the extent that the recovery time \* \* \* with the use of the glasses is shortened \* \* \*." (Tr. 408)

The record does not indicate how "sharper definition" stops glare, but "recovery time" refers to a test by Dr. Cohen purporting to show that the glasses reduce the time required for the eye to recover from an exposure to extremes of light so that it may again see clearly. (Tr. 375)

Dr. Cohen first avoided the direct question, "Will these glasses stop headlight glare?" He paraphrased it to call for "a subjective interpretation" of whether he believed the glasses "will tolerate glare better than without them." To that question, he "would have to say yes." (Tr. 408)

47. When the direct question was repeated, Dr. Cohen again parried, saying "We will have to get what glare in the field would mean." (Tr. 408) After defining his three classes of glare (see Paragraph 35,



*supra*), he said he believes the glasses would stop veiling glare by "looking through the yellow portion of the lens." (Tr. 409)

48. Next, without directly answering as to "blinding glare" and "dazzling glare," Dr. Cohen set forth the thesis that constitutes one of the key elements in respondents' claim that the Vislo glasses stop glare. He said "dazzling glare" is

an irritating portion of the spectrum which is in the blue-violet field, and the yellow filter, being the complementary color to the blue, will filter out blue, and also by filtering out the blue, this will also filter out the major component of what we believe to be the glare source. (Tr. 409)

It is possible to get glare from other portions of the spectrum, but "the blue field is considered to be the area of the greatest quantum, if you will, of glare ensuing from any one particular portion of the spectrum." (Tr. 410)

Dr. Cohen was unable to state the percentage of blue in automobile headlights. He said the headlight, as an incandescent, "would have a blue component," but he could not state the exact percentage of blue in it. (Tr. 410)

Dr. Cohen insisted, however, that a reduction of the blue component of headlight glare reduces the amount of glare reaching the eye. He stated:

I cannot give you an exact percentage, but I can give it to you as a principle that when you eliminate blue from a light source, you will eliminate what is considered to be one of the most important sources of glare. (Tr. 410)

49. This statement of Dr. Cohen is coupled with the undisputed facts shown by CX 5 to provide the foundation for respondents' defense to the glare elimination charge.

As set forth in Paragraphs 7-9 *supra*, CX 5 shows that the Vislo glasses reduce the short wave violet and blue regions of the spectrum substantially, particularly in the dark-tinted upper portion of the glasses. The glasses eliminate an average of 77 per cent of the short wave blue in the dark tint, and 23 per cent in the medium tint. (Tr. 337-38) The dark tint eliminates a maximum of 82½ per cent of the short wave violet; and the medium tint, 15½ per cent. (Tr. 338) From this, respondents argue:

Since the greatest amount of the short wave violet and blue regions of the spectrum are eliminated by the dark tinted portion of the Vislo Night Driving Glasses, and since these two regions, particularly the blue, are the major cause of glare, it must necessarily follow that the major portion of glare is eliminated by wearing the glasses. It must further necessarily follow that by eliminating the major portion of the glare, the blinding effect of glare is eliminated, and that other forms of glare are substantially reduced, if not entirely eliminated \* \* \*. (Proposed Findings, page 9)

50. But respondents claim too much when they say in effect that all the witnesses except Dr. Fonda agree essentially with some or all those conclusions.<sup>8</sup>

51. Professor Marsh conceded that the upper portion of the Vislo lens "would reduce blue to 33 percent transmittance," as an average. (Tr. 160)

In choosing to cite Professor Marsh here, despite their earlier effort to discredit his expertise, respondents fail to refer to his previous testimony that all regions of the spectrum could cause dazzling glare. He stated that any color could cause dazzling; yellow could if the luminance were high enough. (Tr. 157-58)

52. Respondents' shorthand summary of the testimony on this subject (Proposed Findings, pages 8-9) does particular violence to the position enunciated by Dr. Wolf.

After agreeing that the dark-tinted portion of the Vislo glasses eliminates about 84 per cent of the short wave blue, and the lighter tint eliminates about 25 per cent of the blue, Dr. Wolf conceded that it is the blue, the violet and the ultraviolet that produce "scatter"; so to eliminate glare, it is desirable to eliminate as much of the violet, ultraviolet and short wave blue as possible. (Tr. 318-19)

On redirect examination, however, when Dr. Wolf was asked about the amount of blue transmitted from automobile headlights at night, he indicated there is "relatively little" blue in automobile headlights. He was then asked:

Would the wearing of the Vislo night driving glasses have any effect, any practical effect, on the blue that is transmitted from an oncoming automobile headlights with regard to the elimination of the short wave blue?

To this, Dr. Wolf replied:

I don't think it makes any difference at that level. (Tr. 321-22)

Under further cross-examination, Dr. Wolf agreed that glare is accentuated by the short wave blue. Then this colloquy followed:

Q. So when the car comes toward you and glare gets in your eyes, that glare to a large extent is caused by the short wave blue, that section of the spectrum of your eye?

A. Yes.

Q. And if you eliminate that, you get less glare?

A. Yes. (Tr. 323)

Regarding the fact that the dark tint in the Vislo glasses eliminates

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<sup>8</sup> Many of respondents' record citations (Proposed Findings, page 9) have to do with "chromatic aberration of the eye," but its relationship to glare is not shown. Whatever the effect of the glasses on that phenomenon, it does not resolve the glare question.

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84 per cent of the short wave blue, the question was asked whether that 84 per cent represents a substantial elimination. Dr. Wolf replied:

In connection with the tungsten filament lamp of the headlight, I think it's insignificant. (Tr. 323-24)

Dr. Wolf would not agree that the glare is reduced by 84 per cent. He explained:

Your glare is not only produced by the blue light; there is the total spectrum. The blue alone doesn't have a lot of light in your spectrum. You have a good deal of radiant energy around which if you don't have the blue or the green or the red it still causes glare.

\* \* \* You do not take one part of the spectrum, but you take the total. (Tr. 324)

The total amount of energy which reaches the eye is scattered around. You can cut scatter with the green light and red light if you make it strong enough.

\* \* \* you cannot bind me down and say if you take the blue out you reduce glare by 84 per cent, forgetting the green and yellow and everything else or the white light which causes a great deal of it. I am not going along with that; I can't. (Tr. 324-25)

53. Dr. Fonda testified on cross-examination that the Vislo glasses cut out "the shorter end of the spectrum," with the greatest cut-out in the shortwave blue (Tr. 198), but he did not consider this "significant" with respect to either dazzling glare or veiling glare. (Tr. 204-05)

Later, respondents' counsel asked a question regarding "dazzling light." (Tr. 219-20) The question is confusing in its terminology, but Dr. Fonda made clear that the dazzle depended more upon the quantity of the light than upon its color. Whether the light is blue or red is "not a significant factor for a light-adapted eye." (Tr. 220)

54. Dr. Richards also touched briefly on this subject (Tr. 275-76), but unfortunately, the colloquy is not illuminating.

55. Thus, the evidence leads to the conclusion that although the Vislo glasses admittedly screen out much of the shortwave blue and violet light, this is not a significant factor in the elimination of automobile headlight glare, blinding or otherwise.

56. As previously noted, respondents rely also on a test made by Dr. Cohen respecting "recovery time." (Tr. 375 *et seq.*) He defined this term as meaning that time, usually expressed in seconds, "required for the eye to recover from an exposure to extremes of light so that it may again see clearly." Dr. Cohen had made the test at the request of respondent Griffin.

Using a device called a portaglare instrument, Dr. Cohen sought to ascertain the recovery time of a wearer of the Vislo glasses as compared to the recovery time of the same person when not wearing the glasses. The tests were made on himself, his wife, his daughter, respondent Griffin and Mrs. Griffin.

57. Dr. Cohen described the test in substance as follows: The test subject is exposed to bright headlights for five seconds. At the instant the headlights are turned off, a test letter is illuminated within the field of vision of the subject, and a timing device measures the number of seconds required to recognize the test letter.

All the subjects were first tested without glasses. Then each was tested wearing the Vislo glasses.

Dr. Cohen made two tests on himself. He first tested himself without glasses, then tested the other four subjects without glasses. This took about 20 minutes after Dr. Cohen's first exposure to the headlights.

Then he tested himself wearing the Vislo glasses. This was followed by a similar test, using the Vislo glasses on the other four subjects. The same complete procedure was then re-done on Dr. Cohen approximately 30 minutes later.

58. Dr. Cohen first testified that his recovery time on the first test without glasses was three seconds. He later stated the correct time was 2.9 seconds. The time of three seconds was registered on the second test without the glasses.

For Dr. Cohen, use of the Vislo glasses shortened the recovery time to 2.2 seconds in the first examination, and 2.3 seconds in the second examination. Thus, in each case, the recovery time was shortened by .7 of a second.

According to Dr. Cohen, the recovery time for each of the other subjects was shortened as follows:

	<i>Seconds</i>
Mrs. Cohen -----	.5
Susan Cohen -----	.8
Mrs. Griffin -----	1.4
Mr. Griffin -----	1.5

<sup>1</sup> Approximately.

Dr. Cohen said the recovery time for Mrs. Cohen was 3.4 seconds without glasses, and 2.9 seconds using the Vislo glasses. He could not recall what the respective readings were for his daughter, Susan, nor did he state respective readings for Mr. and Mrs. Griffin.

59. Dr. Cohen gave his statement of the test results from memory. He stated that the results were not reduced to writing "[a]t the time." (Tr. 377) In answering the question as to the test results on Mrs. Griffin, Dr. Cohen said:

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To the best of my recollection, it was approximately .4 of a second in Mrs. Griffin and .5 of a second in Mr. Griffin. (Tr. 383)

Regarding his inability to recall respective readings for his daughter Susan, Dr. Cohen stated he "made no notes of her test at the time." The record indicates that the test results were never reduced to writing. (Tr. 377-78)

60. Dr. Cohen twice referred to the test as "a casual test." (Tr. 382, 404) He has not published any report of the test.

61. Dr. Cohen was careful to state that he was simply reporting on the number that he tested and the results that he found. (Tr. 397) He declined to draw any general conclusions or to extrapolate the test results.

Although "five is too few to be able to draw a percentage conclusion," Dr. Cohen did say that the results of his test were such that he thought he could reasonably expect that there would be benefit in a great number of other individuals. (Tr. 398)

62. Dr. Cohen was asked about his willingness to publish in professional circles the results of the portaglare test. He said he would have no hesitancy to publish it "as a preliminary report—as a report which indicated my findings so far as I had gone with this examination." He would not be prepared to make a report with extrapolations from those five people to a thousand or to twenty. He "would be most happy to make a report as a preliminary report indicating a trend" that he had discovered.

"It does not purport to be, nor would it be, a definitive report." (Tr. 400-01)

63. In the opinion of the examiner, the test results are not such as to overcome the expert opinion testimony of the Government witnesses.

64. The test procedures—conceded by Dr. Cohen himself to have been "casual"—leave much to be desired. Despite the explanation by Dr. Cohen (Tr. 398, 415) it does not inspire confidence to find a party in interest involved in the test. To say this is not necessarily to impugn the good faith of Dr. Cohen or anyone else.

Although Dr. Cohen was competent, from a legal standpoint, to testify to the test results from memory, this again does not inspire confidence in the exactitude of the results reported. It is not particularly helpful to have approximations when dealing with time measurements in tenths of a second, or to have such figures given to the best of a witness' recollection.

Another point worthy of mention is that there was no showing in this record that the test conditions were comparable to night driving conditions on the road.

65. These considerations aside, however, the most that can be said for the test results is that they indicate that for the five persons tested, the use of the Vislo glasses tended to reduce the recovery time from the blinding effect of glaring headlights. This is hardly contradictory of reasoned opinions by experts that the glasses do not *eliminate* glare.

Two or more seconds were required for "recovery" even with the glasses on, so that the wearing of the glasses did not *eliminate* the headlight glare that presumably produced the light shock.

66. Concerning the finding that the glasses: "Will not enable the wearer to see in the dark," there is actually no dispute between the parties concerning the truth of this representation literally construed.

67. As noted previously, respondents have consistently taken the position that the words "actually see in the dark," when read in context, were intended to refer, and are understood to refer, to seeing after dark when normal objects of light are present.

That contention having already been disposed of adversely to respondents, there is no necessity to quote all the references in the record proving that the glasses do not permit one to see in the dark.

68. All the witnesses who were asked about this particular representation agreed that it is impossible to see in the dark with or without the Vislo glasses.

Defining dark as the total absence of light, respondents' witness, Dr. Cohen, testified that no one can see in the dark. (Tr. 410)

Other record references to the evidence regarding this representation include respondent Griffin (Tr. 87); Professor Marsh (Tr. 107); Dr. Richards (Tr. 240-41); Dr. Fonda (Tr. 181, 187); and Dr. Wolf (Tr. 305, 308-09).

It may be noted in passing that some of this testimony developed the fact that the Vislo glasses would not improve vision even in the presence of normal objects of light. This is more fully covered in Paragraphs 78-83 *infra*.

69. As in the case of glare elimination generally, the evidence clearly shows that the Vislo glasses: "Will not enable the wearer to see through fog glare."

70. Professor Marsh stated unequivocally that the wearing of the Vislo glasses would not enable the wearer to see through fog or improve visibility in fog. (Tr. 107-08)

Professor Marsh referred to "a feeling that visibility in fog is better in yellow light," but he said that this is true only for haze of a different order of magnitude. Fog particles are so large compared to the wave length of visible light that there is no selective scattering, so

that fog is transmitted light without discrimination as to color. (Tr. 108)

This witness pointed out also that the yellow lenses in the Vislo glasses would reduce the color contrast with yellow or amber warning signal lights on the highway. (Tr. 108-09)

Concerning the specific claim that the Vislo glasses permit the driver to "see through fog glare with almost perfect daylight vision," Professor Marsh said this is not true; that "there is no known way to see through fog with anything approaching perfect daytime vision." (Tr. 119)

71. A similar position was taken by Dr. Fonda. He stated that the Vislo glasses "don't enable you to see through fog glare." (Tr. 187) He specifically branded as "false" the advertising claim that the glasses permit one to "see through fog glare with almost perfect daylight vision." He explained that "you are in the dark, so you can't see with daylight vision. The daylight vision is not there." (Tr. 188)

72. Similarly, Dr. Richards was of the opinion that the Vislo glasses would not be of any help in seeing through fog or haze. (Tr. 241) He characterized as "untrue," the specific advertising claim regarding seeing through fog glare with almost perfect daylight vision. (Tr. 246)

According to Dr. Richards, "you can't see as well in fog as you can in good daylight vision. There isn't as much light to the eye, and the light is badly diffused." (Tr. 247)

73. Dr. Wolf stated that it is "not true" that Vislo glasses provide almost perfect daylight vision in seeing through fog glare. (Tr. 310) The advantages of using the glasses in fog glare are "negligible" because "the reduction of the brightness of the glare also applies to the reduction of the light you need for seeing objects which are not illuminated and, therefore, you don't gain anything." (Tr. 308)

74. Respondents' witness, Dr. Cohen, referred to respondents' advertising claims concerning fog glare as "contradictory." He stated that "on the one hand you talk of fog-glare which would be present with headlights at night, and on the other hand you talk about daytime vision, and I do not think the two can be compared." (Tr. 411)

Although he has not tested the glasses personally in a fog situation, Dr. Cohen believed they would be of assistance when driving in fog. The basis of his opinion was the fact that fog lamps on automobiles are in a monochromatic yellow color; that turn signals on automobiles in 1963 are yellow in color; and that headlights are required to be yellow in France and in other European countries. (Tr. 373-74)

In using the fog lamp on his automobile, Dr. Cohen found that he was able to see a greater distance; he did not have as much as a sense

of haze and fog using the yellow lamp as with his headlamps. There appeared to be "more of a scatter or dispersion of light when the white light was used rather than the yellow." (Tr. 373)

According to Dr. Cohen, it makes no difference whether the yellow filter is in front of the eye or over the headlights.<sup>9</sup> "The net radiant energy received would be the same assuming the filter was the same." (Tr. 372, 416-17)

75. The explanation of respondent Griffin was that he "started with the fact that yellow filters are used on cameras in order to sharpen the outline of cloud formations, and in order to sharpen the outlines of anything you want to take pictures of on a hazy day that has to be done." Proceeding from there, he used his glasses "on foggy days and found them very helpful." (Tr. 89)

76. The weight of the evidence requires a finding that the Vislo glasses are not efficacious in allowing one to see through fog glare.

In addition to the testimony directly on this point, the examiner has also taken into account the testimony regarding the efficacy of the Vislo glasses in eliminating or reducing headlight glare generally. See Paragraphs 28-42, *supra*.

77. The testimony of the Government's experts also supports the finding that the Vislo glasses: "Will not in any manner improve night driving vision." Respondents' evidence to the contrary is not persuasive.

78. The testimony of Professor Marsh was definite that the wearing of the Vislo glasses would not improve night driving vision. He stated:

There would be some increase in comfort due to the reduction of the headlight glare. but in the regions of critical seeing. the same loss of light would produce a loss of vision even greater than the reduction in glare. (Tr. 119-20)

Use of the upper dark tinted portion of the Vislo glasses would reduce the vision of the observer, according to Professor Marsh. This is "Because his eye receives less light." (Tr. 105-06) The witness made clear that he was talking about the effect only in the light conditions ordinarily encountered in night driving. He said that this objection would not be true in the hearing room. (Tr. 106)

79. Wearing of the Vislo glasses "would make night driving worse" in the opinion of Dr. Fonda. He explained that "already there is not enough light to see driving at night and if a lens cuts down on the transmittance, why, that makes it more difficult to see." (Tr. 187)

80. Dr. Richards was of a similar view. The effect of wearing the Vislo glasses would be to "decrease night driving vision," Dr. Richards testified. There is not enough light for good visibility during night

<sup>9</sup> This aspect of the matter is considered *infra*, Par. 91.



driving on most roads, and the use of glasses that cut down on the light reaching the eye is not helpful. (Tr. 238, 249)

Dr. Richards' opinion is predicated on studies and tests in which he has been engaged for more than ten years. In a 1953 report on experimental work involving yellow glasses, the finding was that "vision was decreased by about the amount of light absorbed." (Tr. 234)

Although there have been subsequent studies, there has been no basic change in Dr. Richards' position with regard to yellow lenses since the publication of the 1953 study. (Tr. 235, 237) They are "useless" and "have no value" for night driving. (Tr. 271) (See Paragraph 41, *supra*.)

81. Regarding the specific claim in advertising that use of the glasses "cuts out grey shadows \* \* \* makes black objects stand out sharper, clearer," Dr. Richards testified:

The yellow glasses would make no difference in the seeing or contrast. It would just be harder to see.

This is because "since gray is not colored, there would be no advantage for any colored tint to improve seeing." (Tr. 246)

Respondents cite Dr. Wolf as supporting that advertising claim, but they misread the record. Dr. Wolf first characterized the statement as "true" but his explanation indicates a contrary answer. He stated:

If you have less light to see by and cut down on the brightness of the object, they must appear darker.

When he was asked whether this also would make the surroundings appear darker, he replied: "Everything, that applies to the whole field of vision." (Tr. 310)

82. Dr. Richards explained why many drivers might report favorably on the use of yellow lenses for driving. He stated:

There is a peculiar effect of yellow psychologically. Most people looking through yellow glasses seem to feel that the world is brighter. Many shadows in daylight are bluish; and, of course, they are intensified by yellow glass, so the average person has the feeling he is seeing better, but when you measure it you find the contrary. \* \* \* (Tr. 291)

83. Dr. Wolf's opinion is that the Vislo glasses cannot in any way improve night driving vision. This is "For the simple reason that in night driving situations at the critical level any amount of light is necessary and if you reduce it, there is less light to see by." (Tr. 309)

Dr. Wolf does not think that the wearing of tinted lenses is the solution to the problem of glare in night driving. Tinted lenses do

not improve the ability to see at night, and accordingly there would be no advantage in wearing Vislo glasses for night driving. (Tr. 309-10)

84. In arguing, contrary to the consensus of the Government's witnesses, that the Vislo glasses will improve night driving vision by permitting the wearer to see more effectively, respondents rely on Dr. Cohen's testimony to the effect that he found no correlation between light loss and loss of visual acuity.

However, Dr. Cohen's broad generalization was ultimately qualified to the point that it does not carry any weight sufficient to overcome the evidence offered by the Government's witnesses. His office test of the glasses was shown to have no relationship to the highway lighting conditions specified by the Government witnesses.

85. Regarding the facts shown in CX 5 that the dark tint of the Vislo glasses transmits 83.8% of the light, meaning a light transmittance loss of 16.2%, Dr. Cohen expressed the opinion that "there would be no corresponding loss in visual acuity from a 16% transmission loss." (Tr. 368)

Dr. Cohen based this opinion primarily on an eye chart examination he made of himself in his own office. He said he was not able to determine that the Vislo glasses made any difference in his ability to read the test letters.

He reported similar results when using his normal sunglasses, which transmitted only 15% of the light and blacked out 85% of the light. (Tr. 368)

86. Dr. Cohen was then asked if it was his opinion that there is no relationship between the loss of light transmittance and the loss of visual acuity. His reply is revealing:

In the levels that we have been discuss[ing], I was not able to determine a visual acuity loss. I am sure if you had not light present, or such a minimum amount of light present, you wouldn't be able to distinguish these characters. There would be visual acuity loss. This would be a function of the fact that you could not see what was going on. (Tr. 369; cf. Tr. 106)

87. Dr. Cohen conceded on cross-examination that he has not actually tested these glasses on the highway at night himself, but based on his office test, and despite the answer quoted in Paragraph 86, he expressed the opinion that looking through the darkest portion of the Vislo glasses while driving at night would result in "no visual acuity loss." (Tr. 391)

88. Dr. Cohen would not use his sunglasses for driving at night. He "would not use an overall 85 per cent loss glass to reduce headlight glare." The sunglasses might reduce visual acuity at night "in extreme

conditions of lowering of light." (Tr. 392) Dr. Cohen then conceded that he was saying that he would not use his sunglasses because they would reduce the amount of light transmitted to his eye, but he said that this was "with one qualification." The qualification was:

That the reduction of light in the peripheral area would be sufficiently great with sunglasses to cause me to have difficulty with the periphery of my vision. I am not so sure I would have too much sensitivity [difficulty?] with the central portion of my vision. I cannot categorically say one way or the other. I have never used sunglasses at night. (Tr. 393)

He was questioned further on this matter by the hearing examiner, and his statement was quite narrow:

Sir, I limited my answer to correlation between the use of the Vislo glasses and visual acuity *in my office*, and correlation between the use of an 85 per cent cutoff of light of 15 per cent transmission of light in my sunglasses and my visual acuity *in my office*. \* \* \*. (Tr. 417; emphasis added)

89. Thus, on analysis, the denial of visual acuity loss becomes meaningless for purposes of this proceeding.

90. It is significant that when, on cross-examination, he was asked about published research reports condemning the use of any type of night-driving lens because

Any such lens, whether colored, reflecting or polarizing, reduces the total light transmitted to the eye and renders the task of seeing at night more difficult,

Dr. Cohen said: "I agree with that statement completely as long as it refers to an overall uniformed tint lens." (Tr. 402-04)

However, the distinction drawn is not compelling. The principle appears applicable to the tinted portion of the Vislo lens.

91. Other than his own examination of the Vislo glasses, Dr. Cohen has no authority for his opinion that no loss of visual acuity results from up to 16 percent light transmittance loss involved in wearing the glasses. (Tr. 414) His opinion that Vislo glasses improve night driving vision is based essentially on the fact that "visual acuity and discriminatory details are enhanced by the use of a yellow filter." (Tr. 414; see also Tr. 370, 411-13, 416) He referred to the yellow light used in the ophthalmoscope, but the examiner finds the analogy unconvincing. Cf. Tr. 99-100, 291.

92. The hearing examiner rejects the proposed findings and the contentions of respondents relative to the significance of the fact that the Vislo glasses are coated by a secret process, two elements of which are chromium salt and silicon.

Although respondents, in their proposed findings, have linked a number of statements by the various witnesses that seem to lend

support to their contentions concerning the coating, the fact remains that whatever effect on light transmittance the coating on the Vislo lenses may have, that effect is reflected in the light transmittance report in the record as CX 5. Respondents' claims of additional virtues for the coating are unwarranted.

93. Respondents do not really oppose a finding that the Vislo glasses: "Will not allow all of the light to reach the eye of the wearer." They make no real contention that their glasses do allow all of the light to reach the eye of the wearer. As indicated previously, their position is that this statement represents an unreasonable reading of their claim that the Vislo lenses "do not eliminate light."

This defense having been rejected (Paragraph 18, *supra*), it remains only to indicate briefly the record basis for the finding that the glasses, in fact, will not allow all of the light to reach the eye of the wearer.

94. This finding is supported, first, by CX 5, the graph showing the light transmission curves for Vislo glasses. This test demonstrates as a physical fact that Vislo glasses will not allow all of the light to reach the eyes of the wearer. See Paragraphs 5-6, *supra*.

95. Other record references include Tr. 120 (Professor Marsh); Tr. 250 (Dr. Richards); Tr. 187-88, 197 (Dr. Fonda); and Tr. 307, 309, 312 (Dr. Wolf). Finally, respondents' own witness, Dr. Cohen, admitted that the glasses do eliminate light. (Tr. 411)

#### CONCLUSIONS

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

2. The complaint herein states a cause of action, and this proceeding is in the public interest.

3. The statements and representations of respondents, as found herein, were and are false, misleading and deceptive in material respects and constituted and now constitute "false advertisements" as that term is defined in the Federal Trade Commission Act.

4. The acts and practices of respondents, as found herein, have had and may have the capacity and tendency to mislead and deceive members of the purchasing public and into the purchase of substantial quantities of respondents' products as a result.

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

6. An order requiring respondents to cease and desist from the dissemination of such false advertisements is required in the public interest. With minor exceptions required by the record as made, the order

entered is in accordance with the form of order that the Commission said should issue if the facts were found to be as alleged in the complaint.

The preamble refers to Vislo glasses, rather than Rayex. In Paragraph 1(e) of the order, the word "eye" has been substituted for the term "field of vision" in accordance with the amendment of the complaint allowed at the initial hearing.

#### ORDER

*It is ordered*, That respondents Vislo Corporation, a corporation, and its officers, and Eugene A. Griffin, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of Vislo Night Glasses, or any other device of similar composition or possessing substantially similar properties, do forthwith cease and desist from directly or indirectly:

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

(a) The wearing of respondents' tinted glasses will eliminate or substantially reduce glare from the eyes of the wearer.

(b) The wearing of respondents' tinted glasses will enable the wearer to see in the dark.

(c) The wearing of respondents' tinted glasses will enable the wearer to see through fog glare.

(d) The wearing of respondents' tinted glasses will improve night driving vision.

(e) The wearing of respondents' tinted glasses will allow all the light to reach the eye of the wearer.

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

#### FINAL ORDER

Respondents have appealed from the initial decision of the hearing examiner. They have, however, waived oral argument. Upon examina-

tion of the record below and the appeal briefs and after full consideration of the issues of fact and law presented, the Commission has concluded that the initial decision is correct except that the initial decision shall be modified by striking the third paragraph of Finding 17 at pages 7 and 8 [p. 682, 683 herein] of the initial decision. Accordingly, and as so modified,

*It is ordered*, That the initial decision of the hearing examiner, including the findings, conclusions, and order, be, and hereby is, adopted as the decision of the Commission.

*It is further ordered*, That respondents shall, within sixty (60) days after service of the order herein upon them, file with the Commission a report in writing, signed by such respondents, setting forth in detail the manner and form of their compliance with the order to cease and desist.

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IN THE MATTER OF

CLAIROL INCORPORATED

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

*Docket C-832. Complaint, Sept. 15, 1964—Decision, Sept. 15, 1964*

Consent order requiring a major manufacturer of hair coloring and other beauty aids to cease discriminating in price between its customers competing in the same market area, and preticketing its products with deceptive prices.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated, and is now violating the provisions of subsection (a) of Section 2 of the Clayton Act, as amended (U.S.C., Title 15, Section 13), and Section 5 of the Federal Trade Commission Act (U.S.C., Title 15, Section 45), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Clairol Incorporated 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 1290 Avenue of the Americas, New York, New York. Respondent Clairol Incorporated is a wholly owned subsidiary corpora-