FEDERAL TRADE COMMISSION DECISIONS

FINDINGS, OPINIONS, AND ORDERS, JULY 1, 1965, TO DECEMBER 31, 1965

IN THE MATTER OF

WESTERN RADIO CORPORATION ET AL.

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

Docket 7468. Complaint, April 2, 1959—Decision, July 7, 1965

Order modifying cease and desist order of Sept. 25, 1963, 63 F.T.C. 882, requiring manufacturers of portable radio transmitters in Kearney, Nebr., to cease falsely advertising the operational range of their products; the conditions of licensing and the terms of guarantee remain unchanged, in accordance with an opinion of the Court of Appeals, Seventh Circuit, of Nov. 23, 1964, 339 F. 2d 937, *cert. denied,* 381 U.S. 938 (1965), 7 S.&D. 1030.

MODIFIED ORDER TO CEASE AND DESIST

Respondents having filed in the United States Court of Appeals for the Seventh Circuit a petition to review and set aside the order to cease and desist issued herein on September 25, 1963 [63 F.T.C. 882]; and the court on November 23, 1964 [339 F. 2d 937], having filed its decision, and on January 27, 1965, having entered its final decree modifying and as modified, affirming and enforcing said order to cease and desist; and the United States Supreme Court on June 1, 1965 [381 U.S. 938], having denied a petition for certiorari filed by respondents;

Now, therefore, it is hereby ordered, That the aforesaid order to cease and desist be, and it hereby is, modified in accordance with the said final decree of the Court of Appeals, as follows:

It is ordered, That respondents Western Radio Corporation, a corporation, and its officers, and Paul S. Beshore and W. P. Beshore, 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 their products, including radio transmitters, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication:

(a) That their transmitters with or without the use of additional equipment have a satisfactory operational range of any specified distance unless respondents are able to establish that their devices in fact have the operational ranges specified.

(b) That no license or permit is required for any operational use of their radio transmitters unless the specific conditions under which such license or permit would be required are conspicuously set forth in conjunction therewith.

(c) That any product is guaranteed unless the terms and conditions of such guarantee are clearly and conspicuously set forth, including the amount of any service or other charge which is imposed.

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

IN THE MATTER OF

PAILLARD, INCORPORATED

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

Docket C-914. Complaint, July 7, 1965—Decision, July 7, 1965

Consent order requiring a Linden, N. J., corporation—a subsidiary of Paillard, S.A. of Yverdon, Switzerland—engaged in selling and distributing cameras, photographic equipment and supplies through franchised dealers, to cease entering into and carrying out any planned common course of action through its franchised retail dealers to fix and maintain retail prices of its "Bolex" and "Hasselblad" cameras, photograph equipment, and supplies.

COMPLAINT

The Federal Trade Commission, having reason to believe that Paillard, Incorporated, a corporation, hereinafter referred to as respondent, has violated and is now violating the provisions of

Section 5 of the Federal Trade Commission Act (15 U.S.C. Sec. 45), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges with respect thereof as follows:

PARAGRAPH 1. Respondent, Paillard, Incorporated, 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 1900 Lower Road, Linden, New Jersey. Respondent is now and for several years last past, has been, among other things, engaged in the offering for sale, sale and distribution of cameras, photographic equipment and supplies in the various states of the United States. Respondent is a subsidiary of Paillard, S.A. of Yverdon, Switzerland. Said cameras are extensively advertised and sold under the brand names of "Bolex" and "Hasselblad." Respondent sells lenses and accessories for these cameras that are sold under various brand names. The dollar volume of sales of cameras, photographic equipment and supplies by respondent per year exceeds $7,000,000. The respondent sells its products to dealers throughout the United States and as of June 30, 1960, it had 1,494 franchised Bolex dealers, and 591 franchised Hasselblad dealers.

PAR. 2. In the course and conduct of its business, respondent is now and has been at all times referred to herein engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act, in that it ships its cameras, photographic equipment, and supplies, or causes such products to be shipped, from states wherein it does business to purchasers located in other states, and there is and has been at all times mentioned herein a continuous and substantial current of trade in commerce in such products between and among the various states of the United States and the District of Columbia.

PAR. 3. Except to the extent that competition has been hindered, frustrated, lessened and eliminated as set forth in this complaint, respondent has been and is now in substantial competition with other corporations, individuals and partnerships engaged in the sale and distribution of cameras, photographic equipment and supplies in commerce as that term is defined in the Federal Trade Commission Act.

PAR. 4. It is now, and has been for some time past, the practice and policy of Paillard, Incorporated, to enter into certain agreements, understandings, and arrangements with various of its retail dealers located in areas within which it does business, including the various States of the United States and the District of Columbia

whereby respondent forces and requires, or attempts to force and require its retail dealers to agree to maintain resale consumer prices fixed and promulgated by Paillard, Incorporated, for its products which are distributed, offered for sale, and sold through said retail dealers.

By various means and methods, respondent has entered into and effectuated the aforesaid practice and policy by which it can and does control, establish, manipulate, fix, and maintain the resale prices at which its products are sold by its dealers.

For example, in the selection and appointment of its retail dealers, respondent utilizes and consummates contracts designated and known as Franchise and Retail Fair Trade Agreements with its retail dealers, under the terms of which retail dealers agree, among other things, not to, directly or indirectly, display, advertise, offer to sell or sell the products purchased from respondent at prices less than the minimum retail or consumer selling prices set forth in a schedule established and provided by respondent. Although said franchise agreements contain a disclaimer as to the applicability of the resale price provisions in states where such agreements are not lawful by statute, law or public policy, respondent nevertheless has been and is now enforcing or attempting to enforce adherence to its schedule of prices uniformly in all states. In addition, respondent regularly publishes and distributes from time to time, to its franchised retail dealers price lists or catalog sheets which contain the retail or consumer prices to be observed by said dealers. Also, respondent publishes or causes to be published advertisements, such as those utilized in its cooperative advertising program, promoting and offering its products for sale by its franchised dealers to consumers at prices, which are determined and established by respondent, and to be observed by said dealers.

Through its officials and representatives respondent maintains and exerts pressure upon its retail dealers to insure that they do not depart from or sell below the minimum resale prices fixed by said respondent. Retail dealers who advertise or sell at prices below the agreed minimum prices are contacted by a representative of respondent, who secures, or attempts to secure, the retail dealers' adherence to the minimum prices fixed by respondent through persuasion, or informs and threatens the retail dealers that respondent will discontinue doing business with said dealers.

As a result of the aforesaid practice and policy, and various means and methods including, among others those described herein,

respondent has caused and is causing its franchised retail dealers to enter into or acquiesce in a course of dealing, combination, conspiracy, agreement, understanding, or planned common course of action with respondent whereby the retail or consumer price at which cameras, photographic equipment, and supplies were and are sold or offered for sale to the purchasing public by said retail dealers, was and is fixed and maintained.

Pursuant to and in furtherance of the aforesaid combination, planned common course of action, understanding and agreement, respondent, acting together in combination as aforesaid with such dealers, agreed to fix and maintain, and did fix and maintain, the retail price at which cameras, photographic equipment and supplies, purchased by the dealers from respondent, were to be sold or were sold at retail by the dealers to the purchasing public in the various States of the United States and the District of Columbia; and policed the retail prices at which respondent's products were sold; and prevented retail dealers from selling or shipping respondent's products to other retail dealers for resale; and withdrew the franchise from dealers who cut prices and who shipped or sold respondent's products to other retail dealers for resale.

PAR. 5. The agreements, understandings, conspiracy, combination, planned common course of action or course of dealings, together with the acts, practices, methods, and policies, as hereinabove alleged, are unlawful and against public policy because of their tendency to unduly restrain, hinder, suppress and eliminate competition and to restrain and monopolize trade and commerce and thereby constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

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

1. Respondent Paillard, Incorporated, 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 1900 Lower Road, Linden, New Jersey. Respondent is a subsidiary of Paillard, S.A. of Yverdon, Switzerland.

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 the respondent, Paillard, Incorporated, a corporation, its officers, directors, agents, representatives or employees, successors or assigns, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of its cameras, photographic equipment and supplies in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Entering into, continuing, cooperating in, or carrying out any planned common course of action, understanding, arrangement, agreement, contract or conspiracy with any person or persons not parties hereto to establish, fix, adopt, maintain, adhere to, or stabilize by any means or method, prices, terms or conditions of sale at which its cameras, photographic equipment and supplies are to be resold or otherwise distributed.

2. Establishing, maintaining, continuing, cooperating in, or carrying out, or attempting so to do, any plan, policy or program in combination with any other person or persons not parties hereto, for the purpose or with the effect of enabling respondent to establish or fix the prices, terms or conditions of sale at which its cameras, photographic equipment and supplies are to be resold or otherwise distributed.

3. Refusing to enter into or canceling any contract with a dealer, or distributor, for the distribution of respondent's products because of the dealer's or distributor's refusal to agree or adhere to any contract, agreement or understanding to

establish or fix the prices, terms or conditions of sale at which respondent's products are to be resold or otherwise distributed.

4. Putting into effect, maintaining, or enforcing any merchandising or distribution plan or policy under which contracts, agreements, or understandings are entered into with dealers in or distributors of respondent's products which have the purpose or effect of:

(a) Fixing, establishing, or maintaining the prices at which such products may be resold or distributed by dealers or distributors; or

(b) Requiring or inducing any dealer or distributor to refrain from reselling such products to any specified persons or classes of persons.

5. Directly or indirectly establishing, maintaining, continuing, or effectuating any of the acts or practices prohibited by paragraphs 1 through 4 above, by any one or more of the following:

(a) Compiling, circulating, publishing or causing to be published lists of dealers or distributors who have had their franchises or licenses revoked.

(b) Utilizing the services of salesmen or any other persons for the purpose of shopping, investigating, or exercising any other methods of surveillance over the business operations of dealers or distributors to determine the prices at which such products are resold by the dealers or distributors.

(c) Refusing to continue to sell to dealers or distributors for the reason that such dealers or distributors are known to be, or are suspected of being, dealers or distributors who resell such products for less than recommended or prevailing resale prices.

(d) Preventing in any manner dealers or distributors from reselling, lending, exchanging or giving such products to other dealers or distributors for the reason that such dealers or distributors are known to be, or are suspected of being, dealers or distributors who resell such products or any other products for less than recommended or prevailing resale prices; or for the reason that such dealers or distributors are known to have, or are suspected of having, resold, loaned, exchanged, or given such products to other dealers or distributors known to have, or suspected of having, resold such products, or any other

products, for less than recommended or prevailing resale prices.

(e) Disseminating to its dealers or distributors any lists of prices at which its products may be resold by said dealers or distributors.

It is further ordered, That respondent shall within sixty days following the effective date of this Order:

1. Terminate and cancel each existing contract, agreement or understanding which prescribes or maintains, or purports to prescribe or maintain, the price at which any person shall resell any camera, photographic equipment or supplies obtained directly or indirectly from respondent by purchase or otherwise;

2. Serve by mail a copy of this Order on all dealers or distributors of its products except for those dealers or distributors with whom respondent herein has resale price agreements excepted from the provisions of the Federal Trade Commission Act by virtue of the McGuire Act amendments to said Act.

Provided, however, That nothing contained in this Order shall be interpreted as prohibiting respondent herein from establishing, continuing in effect, maintaining, or enforcing in any lawful manner any price agreement excepted from the provisions of the Federal Trade Commission Act by virtue of the McGuire Act amendments to said Act or any other applicable statute, whether now in effect or hereafter enacted, or from complying with the requirements of any law or ordinances.

It is further ordered, That nothing contained in this Order shall be construed as prohibiting the establishment or maintenance of any lawful bona fide agreement, discussions, or other action solely between respondent and its parent.

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

AMERICAN BAKERIES COMPANY

ORDER OF DISMISSAL, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SECS. 2(a), (d), AND (e) OF THE CLAYTON ACT

Docket 8120. Complaint, Sept. 23, 1960—Decision, July 8, 1965

Order dismissing a complaint against a Chicago, Ill., distributor of bread and

other bakery products, which charged the firm with discriminating among its customers in prices, advertising allowances and services or facilities—five years having lapsed since issuance of complaint in this matter without proceeding to trial, the Commission concluded that public interest does not warrant further proceedings on the complaint.

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 subsections (a), (d), and (e), of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936, (U.S.C., Title 15, Section 13), hereby issues its complaint, stating its charges with respect thereto as follows:

COUNT I

PARAGRAPH 1. Respondent American Bakeries Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 919 North Michigan Avenue, Chicago 11, Illinois.

PAR. 2. Respondent is now, and for many years last past has been, engaged in the production, sale and distribution of bread and other bakery products for use, consumption or resale within the United States. Its total net sales for the year 1959 were approximately $160 million.

PAR. 3. Respondent markets its products under widely advertised brands, including Taystee, Merita and Grennan. Respondent sells its products to thousands of retailer customers and to many restaurants, lunch counters and other servers of food located generally throughout the eastern half of the United States. These customers are regular accounts with whom respondent has entered into contracts or arrangements to supply them with their requirements of the bakery products produced by it. Respondent operates approximately 49 bakeries and many more sales depots or loading stations located in 19 states. For the purpose of supplying said customers and of making deliveries pursuant to such contracts or arrangements, respondent ships its products both from its bakeries directly to its customers, some of which are located in States other than that from which such shipments originate, and from said bakeries to said sales depots or loading stations and to other bakeries, some of which depots and other bakeries are located in States other than that from which such shipments originate, for regular reshipment

to its customers, some of which are located in States other than that from which such reshipments are made. Respondent carries on negotiations across State lines with some of its customers for the sale of its products, and adjustments of accounts between respondent and some of its customers take place across such lines. Advertising, both national and local, is prepared and placed in media by respondent's headquarters or divisional offices.

Respondent, from its headquarters, centrally purchases raw materials for the manufacture of its products, as well as supplies, equipment, and other needs, and ships or causes to be shipped such items from various points to its bakeries located in States other than those from which such shipments originate. Respondent at all times maintains control, directly from its headquarters or through various divisional and regional offices, over the activities of its bakeries, such control being exercised over, among other matters, the area in which and the price at which each bakery is permitted to sell, standards of production to be maintained by said bakeries, all but minor repairs to plants and equipment, personnel policies, and funds collected and disbursed by said bakeries. In the exercise of such controls, respondent's headquarters, divisional and regional offices and its bakeries and sales depots carry on a steady flow of correspondence and other contacts with one another across state lines.

Thus there is and has been at all times herein mentioned a continuous current of trade and commerce, as "commerce" is defined in the Clayton Act, in said products between respondent and its customers.

PAR. 4. In the course and conduct of its business, respondent is now and during the times mentioned herein has been in substantial competition with other corporations, partnerships, individuals, and firms engaged in the production, sale and distribution of bakery products. Respondent's customers are competitively engaged with each other within the various trading areas in which they are engaged in business.

PAR. 5. Respondent, in the course and conduct of its business, as above described, has been for several years last past, and is now, discriminating in price, directly or indirectly, between different purchasers of bakery products, who are in competition with each other, by selling said products of like grade and quality to some of such purchasers at substantially higher prices than to other of such purchasers.

PAR. 6. Among the methods by which respondent discriminates between said purchasers is the granting of discounts (a) ranging

up to 7% off its list or regular price on all purchases of said products by certain of its restaurant, lunch-counter, or other food-serving customers, including large interstate chains operating lunch counters, and (b) ranging up to 5% off its list or regular prices on all purchases of said products by certain food-retailer customers, including large interstate food-retailer chains, and denying such discounts, or granting lesser discounts, to other customers who compete with said favored customers.

For example, during 1959, on purchases approximately $70,000 for the lunch counters of certain units of the F. W. Woolworth variety-store chain, respondent granted a discount of approximately $3,500. Further as an example, during 1959 on purchases of approximately $360,000 for certain units of The Kroger Company, a concern operating a large interstate chain of retail food stores, respondent began granting a discount, and at the end of that year was paying it at the annual rate of approximately $18,000. At the same time, respondent granted no discount, or a lesser rate of discount, to customers purchasing said products of like grade and quality and who competed with said two favored customers.

Since September 23, 1960, the date of the Complaint in this matter, respondent has granted discounts of 5% and in excess thereof to the following Atlanta, Georgia purchasers, American Service Co. (trading as Green Circle Stores and Handy Pantry Stores); Atlantic Ice Company (trading as E-Z Curb Stores and E-Z Food Stores); The Kroger Company; Colonial Stores, Inc.; Alterman Foods, Inc. (trading as Big Apple Stores); Winn Dixie Stores, Inc.; Echols Ma-Jik Markets, Inc.; F. W. Woolworth Co.; Lane-Liggett Drug Co.; Waffle House Restaurants; and to the following Tampa, Florida purchasers, Tampa Wholesale Grocery Co. (trading as Kash and Karry Wholesale Supermarkets) and the Southland Corp. (trading as 7-Eleven Stores). The practices engaged in by respondent since September 23, 1960 were similar to those engaged in prior to September 23, 1960, were and are now similar.*

PAR. 7. The effect of such discriminations in price as alleged herein may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondent and its customers are respectively engaged; or to injure, destroy or prevent competition with respondent or with purchasers therefrom who receive the benefit of such discriminations.

*This paragraph was added by Hearing Examiner's Order of Nov. 18, 1964.

PAR. 8. The aforesaid acts and practices of respondent constitute violations of the provisions of subsection (a) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act.

COUNT II

PAR. 9. The allegations of Paragraphs One through Four, inclusive, of Count One of this complaint are hereby adopted and are incorporated herein by reference and made a part of this Count Two as if they were repeated herein verbatim.

PAR. 10. In the course and conduct of its business in commerce, as alleged, respondent has paid, or contracted for the payment of, something of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished by or through such customers in connection with their offering for sale or sale of products sold to them by respondent, and such payments were not made available on proportionally equal terms to all other customers competing in the distribution of respondent's products.

For example, during 1959, and during other years, respondent paid money in substantial sums to Food Fair Stores, Inc., a large interstate retail food chain, and to other large customers, as compensation or as an allowance for advertising or other service or facility furnished by or through such customers in connection with their offering for sale or sale of products sold to them by respondent. Such compensation or allowance was not offered or otherwise made available by respondent on proportionally equal terms to all other customers competing with said customers in the sale and distribution of respondent's products.

PAR. 11. The aforesaid acts and practices of respondent constitute violations of the provisions of subsection (d) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act.

COUNT III

PAR. 12. The allegations of Paragraph One through Four, inclusive, of Count One of this complaint are hereby adopted and are incorporated herein by reference and made a part of this Count Three as if they were repeated herein verbatim.

PAR. 13. In the course and conduct of its business, as alleged, respondent has discriminated in favor of some of the purchasers of its products bought for resale against other of such purchasers by contracting to furnish or furnishing, or by contributing to the furnishing of, services or facilities connected with the handling,

sale, or offering for sale of such products so purchased upon terms not accorded to all purchasers on proportionally equal terms.

For example, during 1959, and for sometime prior thereto, respondent regularly followed the practice of furnishing Milgram Food Stores, Inc., a food retailer operating a chain of approximately 22 units in the Kansas City, Missouri, metropolitan area, personnel, products and equipment for the purpose of demonstrating its products in the stores of said concern, which services or facilities were furnished upon terms not accorded to all purchasers on proportionally equal terms.

PAR. 14. The aforesaid acts and practices of respondent constitute violations of the provisions of subsection (e) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act.

ORDER DISMISSING COMPLAINT

This matter having come before the Commission upon respondent's motion, filed March 9, 1965, requesting that the complaint herein be dismissed; and

The Commission having considered said motion and having noted that the complaint in this matter originally issued about five years ago and has not yet proceeded to trial; and

The Commission being of the opinion that under the particular circumstances of this case, the public interest does not warrant further proceedings on the complaint herein:

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

IN THE MATTER OF

AMERICAN MUSIC GUILD, INC., ET AL.

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

Docket 8550. Complaint, Jan. 2, 1963—Decision, July 8, 1965

Order requiring two defunct Washington, D.C., retailers of stereophonic records and record players through a "package deal," to cease making false savings, pricing, value, and free claims, and misrepresenting the manner in which the records could be selected and would be delivered, and that offers were for a limited time and available only to specially selected persons.

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 Music Guild, Inc., a corporation, Space-Tone Electronics Corp., a corporation, and Philip R. Connor, Jr., individually and as an officer of both said corporations and Neil J. Cantor and Ernest R. Brewington, individually and as officers of American Music Guild, Inc., 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. Respondents American Music Guild, Inc., and Space-Tone Electronics Corp., are corporations organized, existing and doing business under and by virtue of the laws of the State of Maryland with their office and principal place of business located at 1145 - 19th Street, N.W., Washington, D.C.

Respondent Philip R. Connor, Jr., is an officer of both said corporate respondents and participates in formulating, directing and controlling the acts and practices of both said corporate respondents, including the acts and practices hereinafter set forth. Respondents Neil J. Cantor and Ernest R. Brewington are officers of the corporate respondent, American Music Guild, Inc., and, individually and jointly, and in conjunction with respondent Philip R. Connor, Jr. participate in formulating, directing and controlling the acts and practices of said corporate respondent, including the acts and practices hereinafter set forth. The business address of the individual respondents is the same as that of the corporate respondents.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the assembling, advertising, offering for sale and sale of phonographs, phonograph records and record cabinets 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 products, when sold, to be shipped and transported from their place of business in the District of Columbia to purchasers thereof located in various other States of the United States, as well as 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. Respondents, in the course and conduct of their business, and for the purpose of inducing the sale of their products, are engaged in a selling plan involving various combination offers for

one price, which offers included a console phonograph, a certain number of records to be delivered periodically, as specified, and a record cabinet, and, at the present time, includes a console phonograph and a certain number of records to be delivered as specified in the contract. These combination offers were, and are, generally the same, although varying in details of operation.

PAR. 5. In connection with said combination offers, respondents, in their advertising, which includes radio commercials, and through their sales representatives and employees, have made, and make, certain statements and representations, directly or by implication, to obtain purchasers for respondents' products.

Typical, but not all inclusive of such statements and representations, are the following:

1. That respondents are working with, are affiliated with, or are sponsored by RCA Victor, CBS Electronics, Columbia Records or Columbia Broadcasting System.

2. That respondents' combination offers, and the respondents themselves, have been approved by the Federal Trade Commission and the Better Business Bureau.

3. That the finance charge in the conditional sales contract is one per cent per month on the unpaid balance of the contract.

4. That the then current offer will be open for a limited time only and will be made to a limited number of persons who have been specially selected.

5. That by becoming a member of the American Music Guild, a substantial discount will be afforded to the customer from the regular retail price of said combination offer.

PAR. 6. In truth and in fact:

1. Respondents are not now, and never have been, working with, affiliated with, or sponsored by RCA Victor, CBS Electronics, Columbia Records or Columbia Broadcasting System or any other company.

2. Neither the combination offers of the respondents, nor the respondents themselves, are, or ever have been, approved by the Federal Trade Commission or the Better Business Bureau.

3. The finance charge in the conditional sales contract is greatly in excess of one percent a month on the unpaid balance.

4. The then current offer is not open for a limited time, is not made to a limited number of persons and the persons contacted as prospective customers have not been specially selected for that purpose. On the contrary, the offer is open for an indefinite period of time and the combination offer is made to the public in general

and can be purchased by anyone able to pay the purchase price in cash or who has a sufficiently good credit rating to warrant the extension of credit.

5. By becoming a member of the American Music Guild, the purchaser obtains no discount on the purchase price of said combination offer but, on the contrary, the net price after deduction of the said alleged discount is the price at which said combination offer is usually and customarily sold by the respondents at retail in the recent regular course of business in the trade area or areas where the representations are made.

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

PAR. 7. In the course and conduct of their business as aforesaid, and for the purpose of inducing the public to purchase their products, respondents, by means of newspaper advertisements, radio commercials and direct mail advertising, make certain other statements and representations concerning their products.

Typical, but not all inclusive, of such statements and representations are the following:

1. Free 120 12" (record) albums.

And the most exciting feature is that you'll then receive abosolutely free a magnificent Columbia Stereophonic Console Record Player* * * plus a handsome record cabinet***.

As a new subscriber to the American Music Guild you immediately receive without extra cost a brand new magnificent General Electric Stereo Console.

In addition you also receive at no cost a $40 matching record cabinet to store your albums.

Remember this valuable General Electric Stereophonic Console is yours at absolutely no additional cost.

No added cost for the GE Stereo Console.

Remember, a Columbia Stereophonic player free when you buy one stereo record a month.

Everything is yours free, the stereo console and matching cabinet when you buy one stereo LP a month from the American Music Guild.

As a new member-subscriber to the American Music Guild, you immediately receive without extra cost, the "Senator" (console).

Do you know that you can own a General Electric Hi-Fidelity Stereo Console worth over $300 as a dividend for subscribing to just two stereo albums a month at the American Music Guild?

Please accept this beautiful $695.00 stereo console at no extra cost by subscribing for only 2 stereo albums a month.

Please remember, you are obligated to accept only two stereo albums a month, priced at $4.98 each.

Your complete record collection will provide for you 140 stereo abums, that alone at the minimum nationally advertised price of $4.98 each is worth $695.

2. There are no hidden charges, no gimmicks.

All you buy is one LP a month at $4.98-$5.98.

The price you pay for each album is only $4.98.

Transportation and postage are prepaid.

3. Folks, just a minute. I have been handed a very important announcement from the American Music Guild, a division of Space-Tone Electronics. The membership committee has informed me there are more openings in the American Music Guild.

By becoming a member of American Music Guild * * *.

If you meet the qualifications you can join the American Music Guild.

The American Music Guild has asked for new memberships.

Membership in the American Music Guild now makes it possible * * *.

As a new member-subscriber to the American Music Guild * * *.

Designating the purchase contract as "Membership application."

4. All of the famous label American Music Guild stereo albums are nationally advertised at $4.98 or more.

The American Music Guild price for each album is only $4.98 payable in advance. Many of the famous American Music Guild albums you select could be priced much higher.

The price you pay for each album is only $4.98, payable in advance. Many of the famous label American Music Guild albums you select are priced much higher.

All nationally advertised at $4.98 or more.

5. Manufactured to sell for $695.

Please accept this beautiful $695 stereo console at no extra cost.

You will receive at no extra cost the "Senator" competitively priced at $695.

6. You select from albums like these. You have a wide variety of Stereo albums from which to choose * * * classical * * * semi-classical * * * popular * * * folk music * * * jazz * * * show tunes * * * whatever your particular taste in listening is * * * you assemble exactly what you wish * * * The selection is yours.

PAR. 8. By means of said statements and representations, and others of similar import not specifically set forth herein, respondents represented, and now represent, directly or by implication:

1. That one or more of the items constituting the particular combination offer then being sold are free or without additional cost or charge to the purchaser.

2. That the only cost of the combination offer was, and now is, the cost of one or two records purchased each month for a specified period of time, under the terms of the particular contract.

3. That the respondent, American Music Guild, Inc., is a non-profit association of persons, called members, with kindred pursuits or common interest or aims for mutual aid and protection.

4. That the records to be delivered as part of the combination offer are all famous label records, selling at or of a value of $4.98 or more each and that said records will be delivered each month.

5. That the "Senator" console is priced at, or is of a value of, $695.

6. That the purchaser will be privileged to choose the class or

kind of records he or she may desire and that only records of that class or kind will be delivered.

PAR. 9. In truth and in fact:

1. Nothing is given free or without additional cost or charge, but on the contrary, the price of each item constituting the particular combination offer is included in the total purchase price of such combination offer.

2. To the total purchase price of the combination offer there is added a 29¢ mailing and handling charge for each record, whether delivered one at a time or more than one at a time. In addition thereto, unless the purchaser pays the total amount of the purchase price for the entire combination offer in full within ninety days of the signing of the contract, the purchaser is required to sign a conditional sales contract which includes not only interest on the amount owed, but a substantial finance charge. The monthly payments on such conditional sales contract greatly exceed the cost of two records a month and the total amount is required to be paid in a much shorter time than it would be if the only payment was for two records a month.

3. The American Music Guild, Inc. is not a non-profit association of persons called members, with kindred pursuits or common interests or aims for mutual aid and protection but, on the contrary, it is a business corporation organized for the sole purpose of selling respondents' products to the general public for profit.

4. The records delivered as part of the combination offer are not all famous label records selling at, or of a value of, $4.98, they are not delivered monthly and the records delivered are not all of the class or kind chosen by the customer, but, on the contrary, many of the records are other than famous label records, and the records delivered are valued at, and selling at, substantially less than $4.98 in the trade area where the combination offer is presented, and at the time it is presented, and said records are delivered at intervals of six months or more.

5. The "Senator" console which is part of the combination offer is not manufactured to sell at $695, is of a value less than $695 and has never been sold separately at that, or any other, price.

6. No matter what class or kind of records are chosen by the customer, the records delivered as part of the combination offer are not all of that class or kind.

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

PAR. 10. In the conduct of their business, and at all times men-

tioned herein, respondents have been in substantial competition, in commerce, with other corporations, firms and individuals in the sale of products of the same general kind and nature as those sold by respondents.

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

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

Mr. Roy B. Pope, Mr. J. Leon Williams supporting the complaint.
Mr. Philip R. Connor pro se.

INITIAL DECISION BY RAYMOND J. LYNCH, HEARING EXAMINER

OCTOBER 5, 1964

The complaint in this proceeding alleges that the respondents engaged in a promotional program advertising for sale, and selling, a "package program" consisting of a series of records and a record player, and during the course of said advertising engaged in false, deceptive, and misleading representations in violation of Section 5 of the Federal Trade Commission Act.

Copies of the complaint were served upon all of the respondents. Answers were filed by all respondents, both admitting and denying certain of the allegations of the complaint. However, after several pretrial conferences, counsel representing the individual respondents as well as the corporate respondents withdrew from the proceeding. The answers were not withdrawn. However, respondents Neil J. Cantor and Ernest R. Brewington subsequently withdrew their original answers and filed admission answers. Respondent Philip R. Connor requested that a hearing be held.

Hearings were held in Washington, D.C., July 6 through 10, 1964, inclusive. Respondent Connor appeared in his own behalf,

cross-examined witnesses, and gave testimony. No one appeared in behalf of the corporate respondents. At the conclusion of the hearings, respondent Connor and counsel supporting the complaint filed suggested findings of fact, conclusions of law and replies thereto.

This proceeding is now before the hearing examiner for final consideration based upon the complaint, answers thereto, testimony and documentary evidence, and proposed findings of fact and conclusions filed by respondent Connor and counsel supporting the complaint.

The hearing examiner has given consideration to the proposed findings of fact and conclusions, and all findings of fact and conclusions not herewith found or concluded are herewith rejected. Having considered the entire record, the hearing examiner makes the following findings of fact, conclusions drawn therefrom, and Order.

FINDINGS OF FACT

1. Respondents American Music Guild, Inc., and Space-Tone Electronics Corp., are corporations organized and doing business under and by virtue of the laws of the State of Maryland and, until June 25, 1963, each of said corporate respondents maintained its office and principal place of business in the same suite of rooms located at 1145 19th Street, N.W., Washington, D.C.

2. On June 25, 1963, each of the corporate respondents filed voluntary petitions in bankruptcy in the United States District Court for the District of Columbia. Each was duly adjudged bankrupt, and the proceedings are still pending (CXs 1 and 2).

3. Respondent Space-Tone Electronics Corp., at the time of the filing of the complaint, was the owner of 100 per cent of the stock of respondent American Music Guild, Inc., and controlled the acts and practices of American Music Guild, Inc., completely (CXs 3 and 4; testimony of Raymond T. Hunt, Tr. 130).

4. Respondent Philip R. Connor, Jr., is and was the president of both said corporate respondents and participated directly in controlling the acts and practices of both corporate respondents (CX 3).

5. Respondents Neil J. Cantor and Ernest R. Brewington were executive vice president and vice president, respectively, of respondent corporation American Music Guild, Inc., and acted individually and in conjunction with its President, Philip R. Connor, Jr. (admitted by answer, CX, p. 29).

6. In the course and conduct of their business respondents caused their products to be shipped and transported from their

place of business in the District of Columbia to purchasers thereof located in various other States of the United States, as well as in the District of Columbia, and at all times mentioned herein maintained a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

7. Respondents in the course and conduct of their business, and for the purpose of inducing the sale of their products, were engaged in a selling plan or program involving the offering for sale and the sale of a combination package deal that included a console phonograph, a certain number of records, and a record cabinet to be delivered to the purchaser, as specified in the contract of sale (admitted in answer).

8. Respondents, in connection with their said combination offer, used salesmen making personal contact with selected customers and radio advertisements making certain statements and representations, directly or by implication, to obtain purchasers for respondents' products. Typical, but not all inclusive, of such statements and representations are the following:[1]

a. Free 120 12" (record) albums.

b. And the most exciting feature is that you'll then receive absolutely free a magnificent Columbia Stereophonic Console Record Player * * * plus a handsome record cabinet * * *.

c. As a new subscriber to the American Music Guild you immediately receive without extra cost a brand new magnificent General Electric Stereo Console.

d. In addition you also receive at no cost a $40 matching record cabinet to store your albums.

e. Remember, a Columbia Stereophonic player free when you buy one stereo record a month.

f. Everything is yours free, the stereo console and matching cabinet when you buy one stereo LP a month from the American Music Guild.

g. As a new member-subscriber to the American Music Guild, you immediately receive without extra cost, the "Senator" [console].

h. Please accept this beautiful $695.00 stereo console at no extra cost by subscribing for only 2 stereo albums a month.

i. Please remember, you are obligated to accept only two stereo albums a month, priced at $4.98 each.

j. Your complete record collection will provide for you 140 stereo albums, that alone at the minimum advertised price of $4.98 each is worth $695.

k. Transportation and postage are prepaid.

l. Folks, just a minute. I have been handed a very important announcement from the American Music Guild, a division of Space-Tone Electronics. The membership committee has informed me there are more openings in the American Music Guild.

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[1] CXs 36-40, 43, 46-47, 50, 64, 72, 75, 78, 105, 108, 117.

m. All of the famous label American Music Guild Stereo albums are nationally advertised at $4.98 or more.

n. The American Music Guild price for each album is only $4.98 payable in advance. Many of the famous American Music Guild albums you select could be priced much higher.

o. The price you pay for each album is only $4.98 payable in advance. Many of the famous label American Music Guild albums you select are priced much higher.

p. All nationally advertised at $4.98 or more.

q. Manufactured to sell for $695.

r. Please accept this beautiful $695 stereo console at no extra cost.

s. You will receive at no extra cost the "Senator" competitively priced at $695.

t. You select from albums like these. You have a wide variety of Stereo albums from which to choose * * * classical * * * semi-classical * * * popular * * * folk music * * * jazz * * * show tunes * * * whatever your particular taste in listening is * * * you assemble exactly what you wish * * *. The selection is yours.

u. Representations were also made that the finance charge in the conditional sales contract would be one per cent per month on the unpaid balance of the contract.

9. The record discloses and the examiner finds that the finance charge in the conditional sales contract was considerably in excess of the one per cent per month on the unpaid balance. The interest charge varied from ¾ of one per cent to one per cent of the balance due after the down payment had been deducted, multiplied by the number of months the contract specified. As an example, CX 103 discloses that:

Selling Price	$695.00
Other charges	16.90
Total	711.90
Down Payment (Cash)	31.90
Unpaid balance	680.00
Principal balance	680.00
Time differential	244.84
Total time balance	$924.84

The purchaser agrees to repay the Total Time Balance hereunder in 36 monthly payments at $25.69 (CXs 102, 103, 105, 108, 109; Tr. 156, 244).

10. Representations made by respondents that the current offer of the "package deal" would only be open for a limited time and made to a limited number of persons specifically selected is completely false. The fact of the matter is, and the record discloses, that respondents offered to and did sell to any one willing to purchase. It is clear that the offer was not made to a limited number

of persons or to a select list. Commission Exhibit 7, a letter used for advertising purposes, was mailed to 10,000 persons whose names were obtained from the telephone book (Tr. 54).

Furthermore, the representation that by becoming a member of the American Music Guild, a discount would be offered from the regular retail price of said combination offer was not true (Tr. 254, 302, 353). Respondent Connor contends that discounts were actually offered to members of the American Music Guild as set forth on the back of CX 5. However, the discount referred to on this exhibit refers to additional purchases that may be made later and has nothing to do with the pricing or selling of the actual package deal sold by the respondents. The best example of the discount deal is CX 118. In this contract, the price of the phonograph was listed at $695 plus the cost of the records, $797, making a total purchase price of $1492. Respondents then granted what the contract calls "Credit to American Music Guild members $695.00." This left a balance due of $797, the price of the records purchased. A delivery charge and clearing fee of $13 was added, making the "Cash delivered price $810.00." The purchaser paid $50 cash and on the balance of $760 a "Finance charge" of $273.56 was added, making the "Time balance $1033.56" payable in 36 monthly installments of $28.71. This is but one example of respondents' "Hi Fi," "High Finance" deals (Tr. 484-87).

11. In the course and conduct of their business, the respondents, for the purpose of inducing the public to purchase their products, made other representations by means of newspaper advertisements, radio commercials, and direct mail advertising that were misleading, false and deceptive. Typical, but not all inclusive of such statements and representations, are those set forth in Finding No. 8.

Contrary to the above statements, the testimony of the witnesses and the documentary evidence present in this record discloses that respondents gave nothing away free or at no cost to the customers. The respondents were in business to make a profit which is perfectly legitimate, but the methods that were used are proscribed by the Federal Trade Commission Act. No matter how you analyze their program, whether it be on the sale of records and a phonograph free or at no cost, or whether you consider the deal as the sale of a phonograph and the records free or at no cost, respondents are in violation of the Act. The respondent Connor as early as 1960 stated that he was selling a combination package or program (Tr. 50, 483). In the first place, the records offered in CX 30 were not what respondents represented them to be. An expert in the

methods of competition in commerce, in violation of Section 5 of the Federal Trade Commission Act.

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

ORDER

It is ordered, That respondents American Music Guild, Inc., a corporation, and Space-Tone Electronics Corp., a corporation, and their officers, and respondent Philip R. Connor, Jr., individually and as an officer of both of said corporations, and respondents Neil J. Cantor and Ernest R. Brewington, individually and as officers of American Music Guild, Inc., 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 phonographs, phonograph records, record cabinets, or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication:

   a. That all phonograph records to be included in any combination offer or otherwise, will be famous label records.

   b. That the price or value of any records included in any combination offer, or otherwise, is more than the price at which such records are being sold or offered for sale in the usual and regular course of business in the trade area in which the combination offer is made.

   c. That the "Senator" console phonograph is manufactured to sell at, or is of a value of, any amount which is in excess of the price at which it has been sold to the public separate and apart from any combination offer, or is in excess of the price at which comparable phonographs are being offered for sale in the trade area in which the combination offer is being made.

   d. That the customer may select the records or type of records to be delivered as part of the combination offer or that a specified number of records will be delivered each month, if in fact such selections are made by respondents or deliveries are made on other than a monthly basis; or otherwise misrepresenting the manner of selection or of delivery of such records.

e. That the rate of interest specified in their conditional sales contract is the total finance charge, or misrepresenting in any manner the rate of interest or amount of their finance charge.

f. That any offer to purchase is open for a limited time only, or is being offered to a limited number of people, or that those to whom the offer is made have been specially selected.

g. That any of respondents' products included in the combination offer are free or without additional cost or charge; that the only charge will be the monthly cost of record or records, or otherwise misrepresenting that the offer is other than a combination offer to sell all of the items included in the offer, or misrepresenting the period within which payment is to be made for said combination offer.

h. That by reason of membership in the American Music Guild, or for any other reason, savings or a discount are afforded a purchaser of respondents' merchandise or combination offer from the usual and customary retail price, unless the price at which said merchandise or combination offer is offered constitutes a reduction from the price at which said merchandise or combination offer is usually and customarily sold at retail in the recent regular course of business in the trade area where the representation is made.

2. Misrepresenting the value of any item or items of any combination offer or any of respondents' products.

3. Using the word "Guild" in or as part of their trade or corporate name or otherwise representing that their business is anything other than a commercial enterprise operated for profit.

OPINION OF THE COMMISSION

JULY 8, 1965

BY REILLY, *Commissioner:*

This matter is before the Commission on respondent Connor's appeal in his individual capacity from the examiner's initial decision. The other two individual respondents have filed admission answers, and no appeal has been taken, by the corporate respondents or by

respondent Connor as an officer of the corporations, from the initial decision of the hearing examiner.

The complaint herein issued January 2, 1963, and alleged violation of the Federal Trade Commission Act through misrepresentation in the advertising and sale of stereophonic records and record players.

Respondents, prior to the corporate respondents being adjudged bankrupt, were engaged in the sale of stereophonic records and record players through a package deal which in broad outline consisted of the purchase of records at full price and the inclusion of a record player "at no extra cost." As the plan was originally conceived, the cost to respondents of supplying customers with the record players would be defrayed from the substantial savings realized in the bulk purchase of records at extremely low prices and the resale of the records at the highest prevailing price. The plan went awry when the respondents began to broadly suggest, and explicitly state on occasion, that the records or the record player were free upon the purchase of the other or that the customer was getting the one at current market value with the other included when in fact, as will appear below, the records were "cutouts," "budget lines," "discontinued or slow-moving items" worth far less than the value represented. Thus, instead of purchasing currently popular records at the prevailing market price and receiving a stereophonic record player "at no extra cost" the purchaser was paying a high, nationally advertised, price for records worth a fraction of that value, the substantial markup thereby defraying the cost of the record player.

The hearing examiner's findings and order concern themselves with this central representation and six others incident thereto.

In brief summary, the hearing examiner found that respondents:

Had misrepresented that records received by or available to members of American Music Guild are all *famous label* records,

Had misrepresented that the *finance charge* in their conditional sales contract would be one percent per month on the unpaid balance (that is, the declining outstanding balance) of the contract when in fact the monthly charge was assessed against the total balance due after the down payment had been applied,

Had "the intention * * * to create the impression that the American Music Guild was something other than a profit-making organization,"

Had, on some occasions, represented that the records were *free* with the purchase of a stereo record player and, on others, that the stereo was free with the purchase of the records,

Had misrepresented the *value* of the records and/or stereo in the combination deal,

Had misrepresented that the customer could select the class of records he desired and that the transportation and postage would be prepaid,

Had misrepresented that the package deal would only be open for a limited time and was available only to a limited number of persons specifically selected.

The hearing examiner's findings and order are generally correct only as to the last four above. The findings and conclusions as to the first three are based on a misapprehension as to the facts or a misinterpretation of the applicable law or both.

Famous Label

Respondents made an explicit representation that all of the records available for selection were "famous label records."[1] The hearing examiner in his proposed order prohibited any representation that all phonograph records included in the offer would be famous label records. However, nowhere in the initial decision did the examiner make a finding that the representation was false. In fact he made no explicit finding that the representation had in fact been made. The failure to make a finding that the representation had been made is of little consequence since the record contains ample evidence in that regard. The failure of the examiner to find that the representation was false is possibly explained by the fact that there is nothing in the record to support such a finding.

The only evidence in the record bearing upon the question of the truth or falsity of the representation is the testimony of five witnesses to the effect that some of the records bore labels they had never heard of.[2] In no case does the record show that the "unknown" labels fell within the type or classification of music the witness was familiar with. In no instance was it established on the record why lack of familiarity on the part of the witnesses should be taken as an indication of the "fame" of the records. Nowhere in the record is there any attempt to establish what constitutes a famous label.

The inclusion in the order of a proscription against representation that records are famous label records was error.

Interest Rate

The complaint alleged misrepresentation by respondents "that the finance charge in the conditional sales contract is one percent per month on the unpaid balance of the contract." The examiner

[1] CX 37, 85, 61.
[2] Tr. 206, 263, 305, 347, 377.

found that the finance charge in the conditional sales contract was "considerably in excess of one percent per month on the unpaid balance."

The allegation in the complaint is ambiguous but the examiner is wrong in any event. The ambiguity arises out of the meaning of "unpaid balance." If it means the amount due and owing after down payment has been deducted, it would appear there is no misrepresentation since the amount due each month is a stated percentage of that figure. If, on the other hand, "unpaid balance" means the constantly diminishing balance due each successive month by virtue of the outstanding balance having been reduced by the preceding monthly payment, there would be a misrepresentation if the expression had been used.

In point of fact, the expression used by respondents was "one percent per month on the balance" and there has been no showing that it is generally understood that that phrase means on the declining balance after application of payments. Indeed, there is no showing in the record that the witnesses so understood it.

The contracts used by respondents and the testimony of witnesses are clear that the interest was described as a given percentage usually one percent or three-quarters of one percent per month applied to the balance due after the application of the down payment. The nearest the record comes to supporting the allegation was in the following colloquy between complaint counsel and a customer witness:

Q. With regards to the interest on the unpaid balance, Mrs. Terrell, was it explained to you what that rate of interest would be?

A. It was supposed to be very little, if nothing, he said. It was to be very little. It seems, after we paid the down payment, it was a pretty good amount. We got the book on it. It seems like it was a pretty good amount of interest.

Q. Did you check your contract which indicates that it was three-quarters of one percent per month?

A. Yes. But the way he sounded that night, we thought he meant it was that for the time while we were getting it. It wasn't going to be like that.

Q. On the unpaid balance, was that your understanding?

A. Yes. That is what we thought that night.

Q. Later, did there come a time when you ascertained it was three-quarters of one percent on the entire balance per month?

A. Yes.[3]

[3] Tr. 258, 259.

This witness was one of several examined by complaint counsel and the testimony cited is the only testimony in point. Considering the way this witness was led, and the failure to pin her "misapprehension" on anything respondents had said, and in view of the clear provisions of the contract which her husband signed,[4] there is simply not enough here either to cure the ambiguity or support the allegation.

The examiner's finding and his inclusion in the proposed order of a proscription against misrepresenting the rate of interest were error.

Guild

The complaint alleged that reference to membership and the use of the word "Guild" by respondents constituted a misrepresentation "that respondent American Music Guild, Inc., is a non-profit association of persons called members with kindred pursuits or common interests or aims for mutual aid and protection."

The examiner found that ". . . it was the intention of the respondents . . . to create the impression that American Music Guild was something other than a profit-making organization."

The bankruptcy of American Music Guild, Inc., might suggest that it was indeed something other than a profit-making organization. In any event, considering the name as a whole and the circumstances in which it was used, we have no basis for finding that "Guild" had the capacity or tendency to deceive consumers.

Complaint counsel cites definitions of the word "guild" in *Webster's Third New International Dictionary* and *Black's Law Dictionary, 4th Edition,* and asserts that under those definitions American Music Guild is not entitled to use the word. Neither of the definitions cited says anything about "guild" being equivalent to "non-profit."

In their brief, complaint counsel rely on *Goodman* v. *F.T.C.*, 244 F.2d 584 (CA-9, 1957) for the proposition that use of the word Guild is misleading as suggesting something other than an organization for profit. *Goodman* v. *F.T.C.* is readily distinguishable from the present case. There the organization was engaged in selling instruction in reweaving and it represented itself to be the "Weavers Guild of America." The court upheld the Commission's power to prohibit the use of the word Guild in that context since the word connoted a voluntary association of persons to promote common interests and was likely to mislead consumers into believing that

[4] CX 108.

the respondent was other than a firm engaged in business. The "Guild" in *Goodman* purported to instruct those interested in reweaving, and as such the parallel to a guild as defined in *Webster* and *Black* is obvious. Here reference to membership in a guild carries no greater overtones of a non-profit association than does membership in book clubs or, indeed, record clubs imply that the proprietors of the enterprise are not devoted to making money.

"Free"

At one point respondents represented that the records were free with the purchase of a stereo console.[5] At another it was represented that the stereo was free with the purchase of records.[6] Respondent Connor admitted on the record that the whole merchandising plan of American Music Guild was to *sell* stereo *and* records as a package and that the "free" representation was false since neither records nor stereo were intended to be given away free.[7]

Value of Records and Stereo

Respondents' sales and advertising program included explicit representations as to the value of its records and stereo.[8]

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[5] CX 108, 123.

[6] CX 117.

[7] Tr. 482-484.

[8] "You can now own one of the finest stereo consoles, manufactured to sell for $695, at no extra cost when you become a member of American Music Guild by subscribing for two stereo albums a month." CX 36.

"To own the 'Senator' [stereophonic console] you have only to become a member-subscriber to the American Music Guild and agree to accept each month 2 stereo albums priced at $4.98 each." CX 37.

"By becoming a member of American Music Guild and agreeing to subscribe to just *two* Stereo L.P. Albums a month, valued at $4.98 and $5.98 each, you immediately become eligible, and at no extra cost, to receive a magnificent General Electric Stereophonic Console Hi-Fi Set * * *." CX 70.

"Please accept this beautiful $695.00 stereo console at no extra cost by subscribing for only 2 stereo albums a month." CX 38.

"Build your record collection and own one of the finest stereophonic consoles available at no extra cost. * * * Your complete record collection will provide for you 140 stereo albums that alone, at the minimum nationally advertised price of $4.98 each is worth $695.00." CX 50.

"Your complete record collection will provide for you 150 stereo albums, that alone at the minimum nationally advertised price of $4.98 each is worth $747.00." CX 47.

"Your complete record collection will provide for you 160 stereo albums, that alone at the minimum nationally advertised price of $4.98 each is worth $797.00." CX 49.

"You can select from your favorite record labels * * * all worth $4.98 each." CX 85.

"The price you pay for each album is only $4.98. Many of the famous label American Music Guild albums you select are priced much higher." CX 61.

"The Senator [stereophonic console] * * * made to sell for $695." CX 52.

"You will receive at no extra cost the 'Senator' competitively priced at $695 when you become a member-subscriber." CX 50.

Through these and similar statements respondents represented that by paying a price representing the value or prevailing price for the records the buyer would receive without extra cost the stereo valued at the amount stated. In practice, respondents purported to deduct the price of the stereo from the total cost of the records as set forth in the conditional sales contract as a "discount" available by virtue of membership in American Music Guild.[9]

It goes without saying that respondents would be hard put to operate profitably if they were supplying records at competitive prices representing a normal retail markup and in addition supplying a stereo of substantial value without extra charge.

The truth of the matter is that the represented values of both the records and the stereo were substantially inflated. The record shows that, far from being worth $4.98 to $5.98 each, the records which respondents made available were, according to expert testimony, labels of firms no longer in the record business or records no longer listed in catalogs because they don't sell, which could be purchased from the manufacturer from 75¢ to a dollar apiece, whereas records usually retailing for $4.98 are purchased at a cost of $3.09.[10]

The stereo which was represented to be made to sell for $695 and competitively priced at $695 was worth, according to expert testimony, $300 to $350 at retail.[11]

In the face of this expert testimony respondents introduced no countervailing evidence that $695 or any figure approximating it is the usual and customary retail price at which his or comparable phonographs were being offered in his trade area.

Customer Selection of Records

Respondents represented that the purchaser or member may exercise unrestricted selection of the albums he prefers. The advertising includes such statements as "Select the type music you prefer," "The selection is yours," "You can select from your favorite labels."[12]

The testimony of the customer witnesses clearly shows the respondents consistently pre-selected some records without reference to the known desires of the customers; that the customers could not select their favorite labels because the American Music Guild catalog from which they made their selection bore "American

[9] CX 118, 121.
[10] Tr. 225-230.
[11] Tr. 428, 429.
[12] CX 36, 49, 54, 61, 85.

Music Guild" designations without cross reference to commercial labels; that customers not only did not receive their first or second choice but at times received substantial numbers of records they did not want. One witness had expressed a preference to American Music Guild for classical and semi-classical records, nevertheless, out of 12 records received, only 3 fell within this category.[13] Moreover, in repeated instances customers did not receive the records in the amounts and within the periods specified.[14]

In regard to the alleged misrepresentation by respondents that there would be no extra charges when in fact there was a charge for mailing and handling, we find the record insufficient to support this allegation.

Selected Membership

Oral representations made by respondents' salesmen as well as representations made in advertising were to the effect that membership in American Music Guild was open only to a select few; that the person or neighborhood was selected especially for the "benefits" of membership; that the persons contacted were the lucky few and that a select list was the basis for approaching prospective members.[15]

In point of fact respondents' offer was available to all comers, and respondents were engaged through their printed advertising in making a general offer of their products. This point is not seriously contested by respondents.

There is one other matter deserving of consideration relating to certain rulings of the examiner which respondent Connor on appeal claims were prejudicial:

The testimony of the expert appearing in support of the complaint that respondents' records were "low cost," "cut-outs," "budget lines," etc., was based upon his examination of catalog descriptions of the records, the wholesale prices of the records and upon his conviction that the firms supplying respondents with the records are customarily engaged in the sale of low cost, budget lines, etc., records.

Respondent Connor attempted to counter this last basis by showing on cross examination and in his own direct testimony that certain New York department stores in fact purchased from the suppliers in question. The examiner prevented his eliciting

[13] Tr. 316, 325, 326, 346, 376, 377, 384, 385, 391.
[14] Tr. 260, 264, 310, 316.
[15] CX 7, 78; Tr. 170, 254, 302, 353, 355.

this testimony on cross examination on the ground that it was beyond the scope of the direct examination. The examiner further prevented respondent Connor's direct testimony on the ground that the dealings between the suppliers and New York department stores were hearsay.

We think the examiner was in error on his cross examination ruling, and on his direct testimony ruling we think the testimony should have been admitted whether or not it was hearsay. However, in neither event was respondent prejudiced. The most persuasive basis for the expert's testimony was his reliance on the descriptions of the records themselves and upon the wholesale price, and neither of these bases was effectively countered by respondent Connor.

An appropriate order will issue.

FINDINGS OF FACT, CONCLUSIONS, FINAL ORDER

FINDINGS OF FACT

The Commission adopts the findings of fact contained at pages 20 to 25 of the hearing examiner's initial decision as its own findings of fact except that finding No. 2, page 20, should be changed so that the second sentence should read "Each was duly adjudged bankrupt and the proceedings were still pending as of the date the record in this matter was closed"; the second sentence of finding No. 8, page 21, and all subparagraphs are specifically rejected. Findings 9, 11 and 12 are rejected. The Commission's other findings of fact are set forth in the accompanying opinion.

CONCLUSIONS

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

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

FINAL ORDER

It is ordered, That respondents American Music Guild, Inc., a corporation, and Space-Tone Electronics Corp., a corporation, and their officers, and respondent Philip R. Connor, Jr., individually and as an officer of both of said corporations, and respondents Neil J. Cantor and Ernest R. Brewington, individually and as

officers of American Music Guild, Inc., 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 phonographs, phonograph records, or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication:

a. That any of respondents' products are free or without additional cost or charge; or otherwise misrepresenting that the offer is other than a combination offer to sell all of the items included in the offer.

b. That records, offered by respondents, are nationally advertised at a price higher than respondents' offering price, or are comparable in value to records currently selling or offered at a nationally advertised price.

c. That the "Senator" console phonograph or any other phonograph offered by respondents is manufactured to sell at, or is of a value of, any amount which is in excess of the price at which it or phonographs of comparable quality and components are being sold or offered for sale in the usual and regular course of business in the trade area in which respondents' offer is made.

d. That the customer may select the records to be delivered as part of a combination offer or that a specified number of records will be delivered within a specified period if in fact selection of the records is in any way made by respondents or if in practice the number of records delivered or the period within which delivery is to be made do not conform to prior representation.

e. That any offer to purchase is open for a limited time only, or is being offered to a limited number of people, or that those to whom the offer is made have been specially selected.

f. That by reason of membership in the American Music Guild, or for any other reason, savings or a discount are afforded a purchaser of respondents' merchandise off the usual and customary retail price, unless the price at which said merchandise is offered constitutes a reduction from the price at which substantial sales of said merchandise have been made at retail in the recent regular course of business in the trade area where the representation is made.

2. Misrepresenting the value of any item or items of any combination offer or of any of respondents' products.

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

IN THE MATTER OF

BEAR SALES CO. ET AL.

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

Docket 8627. Complaint, May 18, 1964—Decision, July 8, 1965

Order requiring a Chicago mail-merchandising firm to desist from furnishing its customers pushcards and other devices to be used in selling its merchandise to the public by means of a game of chance, gift enterprise, lottery scheme, chance, or gaming device, or selling or otherwise disposing of any merchandise by such means.

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 Bear Sales Co., a corporation, and E. Robert Baer, 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 Bear Sales Co., 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 203 North Wabash Avenue, in the city of Chicago, State of Illinois.

Respondent E. Robert Baer is an officer of corporate respondent. He formulates, directs and controls the acts and practices of 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 sale and distribution, through others, of numerous articles of merchandise to the public.

PAR. 3. In the course and conduct of their business, respondents 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 Illinois to purchasers located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business as aforesaid, respondents sell and distribute said articles of merchandise, through others, by means of a lottery scheme, game of chance or gift enterprise. Their operational plan is as follows:

Respondents cause to be distributed, through the mails, to operators and to members of the public, certain literature and instructions including, among other things, pushcards, order blanks, circulars including thereon illustrations and descriptions of their merchandise, and circulars explaining respondents' plan of selling and distributing their merchandise and of alloting it as premiums or prizes to the operators of said pushcards; and as prizes to members of the purchasing and consuming public who purchase chances or pushes on said cards. One of respondents' said pushcards bears 45 masculine and feminine names with columns on the back of said card for writing in the name of the purchaser of the push corresponding to the masculine or feminine name selected. Said pushcard has 45 partially perforated discs. Each of said discs bears one of the masculine or feminine names corresponding to those on the list. Concealed within each disc is a number which is disclosed only when the customer pushes or separates the disc from the card. The pushcard also has a larger master seal and within the master seal is one of the masculine names or one of the feminine names appearing on a disc. The person selecting the name corresponding with the name under the master seal receives a set of three French Poodle dog dolls called "Lillie and her Children." The pushcard bears the following legend or instructions:

Lucky Name Under Seal Gets
Lilli and her Children

Brand new French Poodle Family
Just Begging to be Adopted By your Family.

Lilli is 20 inches tall—Life Size! Sports a handsome
Gold Colored Collar and Chain, Pom Pom bow!

Beau is Black as ink. This Imp has felt ears, a real Puppy Trim!

Babs is Silvery White and On Her Way to Being a "SHOW" dog!

It's America's most popular dog family for you, for your favorite youngster, teenager or co-ed.

* * * * * * *

Lucky Numbers 3, 16 and 22 Pay Nothing

No. 1 pays 1¢.	No. 6 pays 6¢
No. 12 pays 12¢.	No. 14 pays 14¢
No. 19 pays 19¢.	All others pay only 39¢. None Higher.

On the right of said pushcard is the said master seal. Printed thereon is the following:

Do Not Remove Seal Until Entire Card is Sold.

Directly underneath the said Master Seal is the following:

Push Out with Pencil.

The pushcard also contains an illustration of the French Poodle dog dolls.

Another of respondents pushcards reads:

Lucky Name Under Seal Gets This
CONTINENTAL BROILER-TOASTER
- Delightfully portable—weighs only 4 pounds
- Triple Plate Chrome—beautiful Lifetime finish
- Multi-position tray—a full 9 in. by 10½ in.!
- Tray and Rack completely washable—rack removable from tray!
- Sta-cool side, front handles—extra stable non-skid feet!
- One-Year GUARANTEE against defects in material and workmanship.

Lucky Nos. 3, 13, 17 pay nothing.
No. 1 pays 1¢. No. 6 pays 6¢. No. 12 pays 12¢.
No. 14 pays 14¢. No. 19 pays 19¢. All others pay only 39¢ none higher.

(MASTER SEAL)
Push out with Pencil.

The pushcard also contains an illustration of the broiler-toaster.

Sales of respondents' merchandise by means of said pushcards are made in accordance with the above-described legend or instructions, and said prizes or premiums are alloted to the customers or purchasers from said cards in accordance with the above legend or instructions. Whether a purchaser receives an article of merchandise or nothing for the amount of money paid, and the amount to be paid for the merchandise, or the chance to receive said merchandise, are thus determined wholly by lot or chance. The article of merchandise has a value substantially greater than the price paid for each chance or push.

PAR. 5. The persons to whom respondents furnish and have furnished said pushcards use the same in selling and distributing

respondents' merchandise in accordance with the aforesaid sales plans. Respondents thus supply to and place in the hands of others the means of conducting games of chance, gift enterprises or lottery schemes in the sale of their merchandise in accordance with the aforesaid sales plans.

The sale of merchandise in accordance with the aforesaid sales plans described in Paragraph Four hereof also constitutes the sale of merchandise by means of a chance or gaming device inasmuch as the amount of money to be expended is unknown to the purchaser until the disc is removed from the pushcard.

The use by respondents of aforesaid sales plans in the sale of their merchandise by and through the use thereof and by the aid of aforesaid sales plans is a practice which is contrary to established public policy of the Government of the United States and constitutes an unfair practice within the intent and meaning of the Federal Trade Commission Act.

PAR. 6. The aforesaid acts and practices of respondents and herein alleged are all to the prejudice and injury of the public and constituted, and now constitute unfair acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

Mr. Thomas J. Whitehead for the Commission.

Mr. Charles H. Rowan and *Mr. Willis Hagen*, Milwaukee, Wis., for the respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

JANUARY 25, 1965

Respondents are charged in the Commission's complaint with the use of lottery methods in the sale and distribution of their merchandise, in violation of the Federal Trade Commission Act. After the filing of respondents' answer to the complaint, a hearing was held at which evidence both in support of and in opposition to the complaint was introduced. Proposed findings and conclusions have been submitted by counsel for the parties, oral argument before the hearing examiner having been waived. The case is now before the examiner for final consideration. Any proposed findings or conclusions not included herein have been rejected as not material or as not warranted by the evidence or the applicable law.

Respondent Bear Sales Co. is an Illinois corporation with its principal office and place of business at 203 North Wabash Avenue, Chicago, Illinois.

Respondent E. Robert Baer is an officer of the corporate respondent, and formulates, directs and controls its acts and practices. His address is the same as that of the corporation.

Respondents are engaged in the sale and distribution, through others, of numerous articles of merchandise to the public.

In the course and conduct of their business respondents are engaged in interstate commerce within the meaning of the Federal Trade Commission Act. Not only is their merchandise sold and shipped to purchasers residing in States of the United States other than Illinois, but respondents' advertising and sales literature, order forms, and the alleged lottery devices are also mailed from respondents' place of business to numerous members of the public located in States other than Illinois (CX 1A-B; Tr. 27-31; 35-40).

Respondents' method of selling and distributing their merchandise is to send to members of the public advertising and sales literature, order blanks, and a device commonly called a pushcard. One of these cards, which is typical of those used by respondents, involves the sale of an electric broiler-toaster. The card has forty-five partially perforated discs, each of which bears a masculine or feminine name. Under each disc is a number which determines the amount to be paid by persons punching the discs. For example, the person punching the disc which has under it the number twelve pays twelve cents. The numbers are effectively concealed until the disc has been punched or separated from the card.

The card also contains a master seal under which is concealed a name corresponding to one of the names on the discs. When all of the discs have been punched, the master seal is removed and the person who has punched the disc bearing the name corresponding to that under the master seal wins the broiler-toaster (CX 3E).

Thus the amount to be paid and whether persons "playing" the card receive the broiler-toaster or nothing for the amounts paid are determined wholly by lot or chance. The broiler-toaster has a value greatly in excess of the amount paid by any of the persons playing the card.

The operator of the card (member of the public to whom respondents have sent the card) sells the chances on the card among his friends and acquaintances. After all of the chances have been sold and the money collected, the operator remits the total amount to respondents and respondents ship to the operator two of the broiler-toasters, one to be delivered by the operator to the person punching the lucky disc and the other to be retained by the operator as compensation for his services.

In the circular letter which respondents send to members of the public along with the pushcard, the sales method is set forth as follows:

> Show the enclosed card to all your acquaintances. Explain to them that they can win a genuine CONTINENTAL BROILER-TOASTER, guaranteed for 1 year, for as little as 1¢ just by taking a punch on the card. You see, under each of the names is a number. No. 1 pays 1¢, No. 6 pays 6¢, No. 12 pays 12¢, No. 14 pays 14¢, and No. 19 pays 19¢. But regardless of how the number goes *nobody pays a single penny more than 39¢.*
>
> Then, when all the names are punched out you lift the big seal and the person with the name under the big seal—even if they paid only 1¢—wins a deluxe Broiler-Toaster. And you've got yours almost as a gift!
>
> What's more. The persons who get the numbers 3, 13 and 17 pay nothing and even they can win the Broiler-Toaster, too. (CX 3A)

The sales method clearly involves and contemplates a lottery. Respondents thus supply to and place in the hands of members of the public lottery devices to be used in the sale and distribution of respondents' merchandise.

Respondents do not deny that their sales method involves the use of a lottery. Their defense is that their "practices are not inconsistent with the standards of fair dealing of contemporary business practices and public behavioral norms and are therefore not in violation of Section 5 of the Federal Trade Commission Act." (Respondents' Answer to Complaint)

In support of this defense respondents point out that during comparatively recent years a number of the States in the United States have enacted laws permitting Bingo games, raffles, pari-mutuel betting on horse races, etc.; that there is now a state-operated lottery in New Hampshire. Respondents also showed, through the testimony of an expert witness, a professor of marketing at the University of Wisconsin at Milwaukee, and through documentary exhibits introduced through the witness' testimony, that a number of the country's major and reputable business concerns employ games, contests, and various methods in which there is an element of chance, in advertising and marketing their products. Such methods, according to the witness, appeal to the public's curiosity, to its needs and desires for amusement, novelty, etc. (Tr. 54-110; RXs 1-15)

In summary, respondents' position appears to be that whatever may have been the situation in the past, the use of lotteries and games of chance in the sale of merchandise is not now in contravention of public policy and therefore is not in violation of the Federal Trade Commission Act.

The contention must be rejected. Insofar as the state statutes are concerned, they merely provide exceptions to the general rule against gambling. As for the games, contests and other methods used by major business concerns, it is obvious that most of them do not constitute lotteries. If any of them are in fact lotteries, their use is insufficient to show a change in public policy.

Since the decision in *Federal Trade Commission* v. *Keppel*, 291 U.S. 304 (1934) innumerable decisions have held that the sale of merchandise by lottery means is in contravention of public policy and an unfair practice within the meaning of the Federal Trade Commission Act. A very recent case, which would appear to be decisive of the issue here, is *Dandy Products, Inc.* v. *Federal Trade Commission*, 332 F. 2d 985 (1964). Referring to a contention made there which is very similar to, if not identical with, the contention made here, the United States Court of Appeals for the Seventh Circuit said:

> Without agreeing that morals are relative, as petitioners argue, we have considered petitioners' arguments that there are many contests, involving prizes, used by major companies; that in some states gambling is permitted and in others punchboards are held not to be gambling equipment; that gambling is not immoral per se, and is involved in stock brokerage and other businesses; and that a gambling "instinct" seems to be a weakness in human nature. All these arguments were addressed to the Commission below, and in one degree or another have been addressed to this court, without success, in *Wren Sales, Peerless* and *Modernistic Candies*. We are not persuaded that this merchandising practice is less an "unfair method of competition" today than it was in the time of *Keppel*.

It is concluded that respondents' practice constitutes an unfair practice in commerce in violation of the Federal Trade Commission Act and is to the prejudice of the public. The present proceeding is in the public interest.

ORDER

It is ordered, That respondent Bear Sales Co., a corporation, and its officers, and respondent E. Robert Baer, 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 any merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others, pushcards or any other device designed or intended to be used in the

sale or distribution of merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

2. Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise, or lottery scheme.

OPINION OF THE COMMISSION
JULY 8, 1965

Respondents have been charged with selling merchandise, through others, by means of a lottery scheme, game of chance or gift enterprise. The hearing examiner found that the allegations of the complaint had been sustained by the evidence and entered an order to cease and desist. The matter is before the Commission on cross appeals.

Respondents contend that complaint counsel failed to prove that the practice of selling merchandise by chance is an unfair act or practice under Section 5 of the Federal Trade Commission Act and further contend that this practice is not contrary to the established public policy of the United States. Both of these arguments are rejected. Respondents failed to demonstrate that the public's concern with lotteries as evidenced by the various State and federal laws dealing with lottery and related practices had changed significantly to enable the Commission to conclude that lotteries were no longer against public policy. Similar attempts to show a change in public policy have been rejected by the Commission and the Courts. *Dandy Products, Inc.* v. *Federal Trade Commission*, 332 F. 2d 985 (7th Cir. 1964), *Wren Sales Co.* v. *Federal Trade Commission*, 296 F. 2d 456 (7th Cir. 1961), *Goldberg* v. *Federal Trade Commission*, 283 F. 2d 299 (7th Cir. 1960) and *Surf Sales Co.* v. *Federal Trade Commission*, 259 F. 2d (7th Cir. 1958).

Counsel supporting the complaint appeals from the scope of the examiner's order, arguing that the order may not apply to the practice of selling merchandise by means of devices designed to appeal to the public gambling instinct but which are not technically lotteries, *i.e.*, do not include all three elements of consideration, chance and prize. We agree that this possibility exists. See *J. C. Martin Corporation* v. *Federal Trade Commission*, 242 F. 2d 530 (7th Cir. 1957) and *J. C. Martin Corporation, et al.*, Docket No. 8520 (1964) [66 F.T.C. 1], *aff'd* 346 F. 2d 147 (3d Cir. 1965). The complaint specifically alleges that the sale of merchandise in accordance with respondents' sales plans "also constitutes the sale of merchandise by means of a chance or gaming device" and the findings, of course, support this allegation. Consequently, the order will be modified to

prohibit respondents from selling merchandise by means of a chance or gaming device or placing in the hands of others devices for this purpose.

Respondents' appeal is denied. The appeal of counsel supporting the complaint is granted. An appropriate order will be entered.

Commissioner Elman dissents on the ground that there is no "established public policy of the United States" that requires the Commission to expend its limited resources on this kind of case.

FINAL ORDER

Respondents and counsel in support of the complaint having filed cross appeals from the initial decision of the hearing examiner, and the matter having been heard on briefs and oral argument; and the Commission having rendered its decision denying respondents' appeal and granting the appeal of counsel supporting the complaint and directing modification of the initial decision:

It is ordered, That the following order be, and it hereby is, substituted for the order contained in the initial decision:

It is ordered, That respondent Bear Sales Co., a corporation, and its officers, and respondent E. Robert Baer, 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 any merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others, push-cards or any other device designed or intended to be used in the sale or distribution of merchandise to the public by means of a game of chance, gift enterprise, lottery scheme, chance, or gaming device.

2. Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise, lottery scheme, chance, or gaming device.

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

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

Commissioner Elman dissents on the ground that there is no "established public policy of the United States" that requires the Commission to expend its limited resources on this kind of case.

IN THE MATTER OF

ADVANCE JUNIOR, INC., ET AL.

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

Docket C-133. Complaint, May 8, 1962—Decision, July 9, 1965

Order vacating consent order and dismissing complaint of May 8, 1962, 60 F.T.C. 1127, which required New York City importers to cease violating the Flammable Fabrics Act by importing, manufacturing, and selling dresses so highly flammable as to be dangerous to wearer, and by furnishing guaranties that such dresses were not dangerously flammable.

ORDER REOPENING AND VACATING ORDER TO CEASE AND DESIST

The Commission on May 6, 1965, having issued its order to show cause why its order to cease and desist dated May 8, 1962 [60 F.T.C. 1127], should not be vacated, and

Respondents having failed to file an answer to said order to show cause within the period specified by the Commission's Rules, and

The Commission, for the reasons set forth in its order to show cause, being of the opinion that its order to cease and desist of May 8, 1962, should in the public interest be vacated.

It is ordered, That the Commission's order to cease and desist dated May 8, 1962 [60 F.T.C. 1127], be, and it hereby is, vacated and the complaint dismissed.

IN THE MATTER OF

ABBY-KENT CO., INC., ET AL.

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

Docket C-273. Complaint, Nov. 29, 1962—Decision, July 9, 1965

Order modifying cease and desist order of November 29, 1962, 61 F.T.C. 1297, requiring New York City dress manufacturers to cease furnishing false guaranties that articles of wearing apparel including ladies' dresses

and fabrics were not so highly flammable under the provisions of the Flammable Fabrics Act as to be dangerous when worn by individuals; the Commission modified by striking paragraphs numbered 1 and 2 of the original order.

ORDER REOPENING PROCEEDINGS AND MODIFYING ORDER TO CEASE AND DESIST

The Commission on May 6, 1965, having issued its order to show cause why its order to cease and desist dated November 29, 1962, [61 F.T.C. 1297], should not be reopened and modified, and

Respondents having failed to file an answer to said order to show cause within the period specified by the Commission's Rules, and

The Commission, for the reasons set forth in its order to show cause dated May 6, 1965, being of the opinion that the public interest requires reopening of the proceedings, which culminated in its order of November 29, 1962, and modification of the order,

It is ordered, That said proceedings be, and they hereby are, reopened and the Commission's order of November 29, 1962 [61 F.T.C. 1297], be, and it hereby is, modified by striking therefrom paragraphs 1 and 2 so that the order will consist entirely of the paragraph numbered 3 in the Commission's original order.

IN THE MATTER OF

NEW CROSSTOWN RAILROAD SALVAGE COMPANY, INC., ET AL.

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

Docket C-915. Complaint, July 13, 1965—Decision, July 13, 1965

Consent order prohibiting three affiliated Memphis, Tenn., concerns engaged in selling and distributing furniture, appliances and other merchandise to cease using the words "Railroad Salvage," or words of similar import in their corporate or trade names; and from using such words to describe their merchandise unless it was actually so; and from using the word "Value" to misrepresent a previous price of said merchandise; and from using comparative prices to imply that the purchaser would make a savings.

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 New Crosstown Railroad Salvage Company, Inc., a corporation, New Lamar Avenue Railroad Salvage Company, Inc., a corporation, and New Railroad Salvage Company, Inc., a corporation, and I. Leon Underberg, Mrs. Ray Kaplan Underberg, and Ronald P. Underberg, individually and as officers of each of said corporations, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent New Crosstown Railroad Salvage Company, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its principal place of business located at 427 North Watkins Street, in the city of Memphis, State of Tennessee.

Respondent New Lamar Avenue Railroad Salvage Company, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its principal place of business located at 2331 Lamar Avenue, in the city of Memphis, State of Tennessee.

Respondent New Railroad Salvage Company, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its principal place of business located at 3104 Summer Avenue, in the city of Memphis, State of Tennessee.

The principal office of each of said corporations is located at 1025 Firestone Boulevard, in the city of Memphis, State of Tennessee.

Respondents I. Leon Underberg, Mrs. Ray Kaplan Underberg, and Ronald P. Underberg are officers of each of said corporate respondents. They formulate, direct and control the acts and practices of all of the corporate respondents, including the acts and practices hereinafter set forth. The principal office and place of business of respondents Mrs. Ray Kaplan Underberg and Ronald P. Underberg is located at 1025 Firestone Boulevard, in the city of Memphis, State of Tennessee. The principal office and place of business of respondent I. Leon Underberg is located at 1445 South Bellevue, in the city of Memphis, State of Tennessee.

PAR. 2. Respondents operate a warehouse and a chain of retail stores and have been and are now engaged in the advertising, offering for sale, sale and distribution of furniture, appliances, and other articles of merchandise to the general public.

Respondents New Crosstown Railroad Salvage Company, Inc., New Lamar Avenue Railroad Salvage Company, Inc., and New Railroad Salvage Company, Inc., are three of the aforesaid retail stores and will be sometimes hereinafter referred to collectively as the Railroad Salvage stores.

PAR. 3. In the course and conduct of their business, respondents have been and are now engaged in disseminating and causing to be disseminated in The Commercial Appeal and the Memphis-Press Scimitar, newspapers of interstate circulation, advertisements designed and intended to induce sales of said merchandise.

In the further course and conduct of their business, respondents now cause, and for some time last past have caused, their said merchandise, when sold, to be shipped from their aforesaid places of business in the State of Tennessee to purchasers thereof located in the States of Arkansas and Mississippi, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the purchase of said merchandise, respondents have made and are now making numerous statements and representations with respect to the origin and character of said merchandise and the savings afforded to purchasers of said merchandise. Among and typical of the aforesaid statements and representations, but not all inclusive thereof, are the following:

(a) * * * RAILROAD SALVAGE DISTRESS SALE * * * EVER SO SLIGHT DAMAGE ALLOWS FOR FANTASTIC PRICE REDUCTIONS * * * 3 DAYS ONLY!!

* * * * * * *

IN CARTONS! 25 AIR-CONDITIONERS * * * TAKE 'EM WITH YOU! * * * $199.00 VALUE $100.00

(b) * * * FREE WITH THIS COUPON AND PURCHASE OF EVERY "HOUSE FULL" [sketch of furniture] * * * $70.00 Value * * * New! GE Swivel-Top Cleaner with Big Easy Roll Wheels Model C-65

* * * [sketch of a railroad boxcar with the words "RAILROAD SALVAGE" printed on the side, and immediately thereunder the words] CO'S INC. * * *

PAR. 5. Through the use of the aforesaid corporate names, and through the use of the aforesaid statements and representations and others similar thereto, but not specifically set forth, respondents have represented, directly or indirectly:

1. That the Railroad Salvage stores are companies which offer to sell and sell merchandise all of which has been purchased from railroad companies after such merchandise has been damaged while in transit or for some other reason classified as "salvage" by such railroad companies.

2. That said Air Conditioners and GE Swivel-Top Cleaners have been purchased from railroad companies after such merchandise has been damaged while in transit or for some other reason classified as "salvage" by such railroad companies; and that said Air Conditioners were, accordingly, slightly damaged and distress merchandise.

3. That the higher price amounts accompanied by the word "VALUE" are not appreciably in excess of the highest price at which substantial sales of said merchandise have been made in the recent regular course of business in respondents' trade area; and that purchasers of said merchandise save $99 and $70 respectively when such merchandise is purchased from the respondents.

PAR. 6. In truth and in fact:

1. The Railroad Salvage stores are not companies which offer to sell and sell merchandise all of which has been purchased from railroad companies after such merchandise has been damaged while in transit or for some other reason classified as "salvage" by such railroad companies. Respondents' sales of actual railroad salvage merchandise, if any, have been insignificant and have not and do not now constitute a significant portion of respondents' business.

2. Said Air Conditioners and GE Swivel-Top Cleaners have not been purchased from railroad companies after such merchandise has been damaged while in transit or for some other reason classified as "salvage" by such railroad companies. Said Air Conditioners and Vacuum Cleaners were not damaged or distress merchandise but were actually new merchandise purchased by respondents from usual and customary sources of supply.

3. The higher price amounts accompanied by the word "VALUE" are appreciably in excess of the highest price at which substantial sales of said merchandise have been made in the recent regular course of business in respondents' trade area; and purchasers of said merchandise do not save $99 and $70 respectively when such merchandise is purchased from the respondents.

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 engaged in the sale of articles of merchandise of the same general kind and nature as those sold by respondents.

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

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 methods of competition in commerce, and unfair and deceptive acts and practices in commerce, in violation of Section 5(a)(1) of the Federal Trade Commission Act.

DECISION AND ORDER

The 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 New Crosstown Railroad Salvage Company, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its principal place of business located at 427 North Watkins Street, in the city of Memphis, State of Tennessee.

Respondent New Lamar Avenue Railroad Salvage Company, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its principal place of business located at 2331 Lamar Avenue, in the city of Memphis, State of Tennessee.

Respondent New Railroad Salvage Company, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its principal place of business located at 3104 Summer Avenue, in the city of Memphis, State of Tennessee.

The principal office of each of said corporations is located at 1025 Firestone Boulevard, in the city of Memphis, State of Tennessee.

Respondents I. Leon Underberg, Mrs. Ray Kaplan Underberg, and Ronald P. Underberg are officers of each of said corporations. The principal office and place of business of Mrs. Ray Kaplan Underberg and Ronald P. Underberg is located at 1025 Firestone Boulevard, in the city of Memphis, State of Tennessee. The principal office and place of business of I. Leon Underberg is located at 1445 South Bellevue, in the city of Memphis, State of Tennessee.

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 New Crosstown Railroad Salvage Company, Inc., a corporation, and its officers, New Lamar Avenue Railroad Salvage Company, Inc., a corporation, and its officers, New Railroad Salvage Company, Inc., a corporation, and its officers, I. Leon Underberg, Ronald P. Underberg, and Mrs. Ray Kaplan Underberg, individually, and as officers of each of said corporations, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of furniture, appliances or any other articles of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith desist from:

1. Using the words "Railroad Salvage" or either of them,

or any other word or words of similar import or meaning, as part of *any* of their corporate names or trade names: *Provided, however,* That should respondents so desire for reasons of continuity, respondents may use the identifying phrases "formerly Railroad Salvage Company" or "formerly Railroad Salvage Furniture Company" or words of similar import in advertising for a period not to exceed two years from the effective date of this order.

2. Using the words "RAILROAD SALVAGE" to designate or describe such merchandise or representing in any manner that said merchandise has been purchased from railroad companies after said merchandise has been damaged while in transit or for some other reason classified as "salvage" by said railroad companies.

3. Misrepresenting in any manner, directly or by implication, the source or character of any of said merchandise.

4. Representing, directly or by implication, that any merchandise is damaged or distress goods unless respondents are able to establish that such is the fact.

5. Using the word "VALUE" or any word or words of similar import to refer to any amount which is appreciably in excess of the highest price at which substantial sales of such merchandise have been made in the recent regular course of business in respondents' trade area; or otherwise misrepresenting the price at which such merchandise has been sold in respondents' trade area.

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

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

MARZOTTO CORPORATION OF AMERICA ET AL.

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

Docket C-916. Complaint, July 16, 1965—Decision, July 16, 1965

Consent order requiring a New York City importer and wholesaler of wool

products to cease misbranding fabrics as "100% Wool"or "All Wool" whereas in fact, such fabrics contained substantially different fibers and amounts of fibers than represented, and to cease misrepresenting the fiber content of fabrics on invoices.

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 Marzotto Corporation of America, a corporation, and George Monfrino, Isabella Di Martino, and Sol Horowitz, 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 Marzotto Corporation of America, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Individual respondents George Monfrino, Isabella Di Martino and Sol Horowitz are officers of said corporation and cooperate in formulating, directing and controlling the acts, policies and practices of corporate respondent including the acts and practices hereinafter referred to.

Respondents are importers and wholesalers of wool products with their office and principal place of business located at 1290 Avenue of the Americas, New York, New York.

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

PAR. 3. Certain of said wool products were misbranded 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 constitutent fibers contained therein.

Among such misbranded wool products, but not limited thereto, were fabrics stamped, tagged, or labeled as containing "100%

Wool" or "All Wool" whereas in truth and in fact, said fabric contained substantially different fibers and amounts of fibers than represented.

PAR. 4. Certain of said wool products were further misbranded 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 not exceeding 5 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 5 per centum or more; and (3) the aggregate of all other fibers.

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, in the course and conduct of their business, 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 located in various other States of the United States, and 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 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" or "All Wool," whereas in truth and in fact, said fabric contained substantially different fibers and amounts of fibers than represented.

PAR. 8. The acts and practices set out in Paragraphs Six and Seven have had and now have the tendency and capacity to mislead and deceive the purchasers of said products as to the true

sales of $594,000,000 in 1963—to divest itself absolutely within 5 years of seven plants which are engaged in the manufacture of corrugated and solid fibre products, located at Salinas, Fullerton, and Emeryville, Calif., Birmingham, Ala., Jersey City, N. J., Jacksonville, Fla., and Tacoma, Wash., acquired as a result of respondent's acquisitions; and requiring company to refrain from making further acquisitions in specified segments of the fibreboard industry for the next ten years without prior approval of the Commission.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named above, as hereinafter more particularly designated and described, has violated and is now violating the provisions of Section 7 of the Clayton Act, as amended, (U.S.C., Title 15, Sec. 18) through the acquisition of the stock and assets of 15 corporations, hereinafter more particularly designated and described, hereby issues its complaint pursuant to Section 11 of the aforesaid Act (U.S.C., Title 15, Sec. 21) charging as follows:

I

Definitions

1. For the purposes of this complaint, the following definitions shall apply:

(a) *Paperboard*—a general term descriptive of a sheet made of fibrous material on a paper machine. Paperboard is commonly made from wood pulp, straw, or waste papers, or any combination thereof.

(b) *Containerboard*—a type of paperboard used for the manufacture of corrugated board and solid fibre board.

(c) *Corrugated board*—relatively lightweight, rigid sheets commonly made by combining two sheets of containerboard, which serve as the outer plies, together with a third sheet of containerboard which is fluted or corrugated and pasted between the outer plies.

(d) *Solid fibre board*—rigid sheets made by combining sheets of containerboard. Two sheets of containerboard which serve as the outer plies commonly are combined with one or more flat sheets of containerboard between them, to produce a solid sheet whose thickness and weight depend on the number of inner plies.

(e) *Linerboard*—a type or kind of containerboard usually employed as the smooth outer plies in the manufacture of corrugated board or solid fibre board.

(f) *Corrugating medium*—a type or kind of containerboard employed as the fluted or corrugated component of corrugated board

(g) *Container chip and fillerboard*—a type of containerboard used where strength and quality are not needed. Its two principal uses are (1) as a substitute for linerboard and (2) as the filler plies between two liners of solid fibreboard.

(h) *Corrugated products*—articles, primarily comprising corrugated shipping containers and other types of corrugated boxes, manufactured from corrugated board.

(i) *Solid fibre products*—articles, including shipping containers and boxes, made from solid fibreboard.

(j) *Corrugator plant*—a manufacturing facility where containerboard is combined into sheets of corrugated board, and such corrugated board is usually converted into corrugated products.

(k) *Sheet plant*—a manufacturing facility which converts sheets of corrugated board into corrugated products. Sheet plants do not manufacture corrugated board and are indirect, not direct, consumers of containerboard.

II

The Respondent

2. Respondent, St. Regis Paper Company (hereinafter referred to as St. Regis), is, and has been at all times relevant herein, a corporation organized and existing under the laws of the State of New York with its present office and principal place of business located at 150 E. 42nd St., New York, New York.

3. St. Regis is engaged in commerce as "commerce" is defined in the Clayton Act, as amended, and has been continuously so engaged at least since 1953.

4. St. Regis is engaged in the manufacture, sale and distribution of a wide variety of paper and paper products including, but not restricted to, paperboard, linerboard, corrugating medium, container chip and filler board, and converted paperboard products.

5. In 1963 St. Regis had net sales of approximately $594,000,000, and its total assets amounted to approximately $603,600,000.

6. St. Regis' development has been characterized through the years by continuous growth. By 1949, at the end of 50 years of operation, St. Regis had grown from one mill producing newsprint to one of the leading companies in the pulp and paper industries and operated mills and plants at approximately 23 locations in the United States, as well as a number of other plants in foreign countries.

7. By 1954 St. Regis had become a highly integrated corporation within the paper industry, having its own source of raw materials,

its own manufacturing mills, its own converting operations, and its own sales force.

8. By 1954 St. Regis had become the third largest manufacturer of paper and paper products in the United States.

9. By 1962 St. Regis had become the second largest manufacturer of such products.

10. Much of St. Regis' growth prior to 1954 was the result of its acquisition of stock or assets of other companies.

11. Much of St. Regis' growth subsequent to 1954 also was achieved by acquiring the stock or assets of other companies. In addition to the acquisitions specifically referred to hereinafter, which are alleged as violations of law, St. Regis acquired the stock or assets of 15 other corporations.

12. During the year 1953 St. Regis produced approximately 120,341 tons of linerboard and 27,283 tons of corrugating medium, for a total of 147,624 tons of containerboard. No container chip and filler board was produced by St. Regis in this year. In 1962 St. Regis produced approximately 427,147 tons of linerboard, 67,833 tons of corrugating medium and 19,553 tons of container chip and filler board, for a total of 514,533 tons of containerboard.

III

The Nature of Trade and Commerce

13. The manufacturer of containerboard is a very substantial industry in the United States. In 1962 approximately nine million tons of containerboard were produced, with a dollar valuation of nearly one billion dollars, based on price levels current during that year.

14. The manufacture of corrugated products and solid fibre products constitutes the largest market for the sale or use of containerboard, accounting in 1962 for approximately 95% of all domestic containerboard consumption. By far the greater part of this containerboard was used in the making of corrugated products rather than solid fibre products. In 1962 corrugated products accounted for about 98% of the combined shipments of corrugated products and solid fibre products.

15. The production of corrugated products is also a very substantial industry in the United States. In 1962 about 120.9 billion square feet of corrugated products were shipped, with a total sales valuation of approximately $1.9 billion. In 1962 approximately 1.2

billion square feet of solid fibre products were shipped with a total sales valuation of approximately $44 million.

16. Most of the containerboard manufactured in the United States east of the Rocky Mountains area, that is, east of the eastern boundaries of Montana, Wyoming, Colorado, and New Mexico is shipped to users also located east of the Rocky Mountain area. Most of the containerboard manufactured in the Rocky Mountain area, that is, west of the aforesaid boundary line, is shipped to users also located in the Rocky Mountain area.

17. Subsequent to 1953 there has occurred a significant increase in the level of integration of the containerboard producers and corrugated products and solid fibre products manufacturers, that is, users of containerboard. This has resulted, in large measure, from acquisitions by containerboard producers of corrugated products and solid fibre products manufacturers.

18. The manufacturer of containerboard is a relatively concentrated industry. In 1962 the twenty largest manufacturers of containerboard produced approximately 80.5% of all containerboard.

19. The increase in integration between the containerboard and corrugated products industries has produced, in recent years, a concomitant rise in horizontal concentration in the corrugated products industry. As the largest containerboard producing companies have made multiple acquisitions of corrugated products companies, including most of the larger companies in this industry, a greater and greater share of the corrugated products business has been concentrated in the hands of these relatively few containerboard producing companies. In 1962 the twenty largest manufacturers of corrugated products accounted for approximately 67% of total industry shipments.

20. In 1962 St. Regis ranked sixth in the production of containerboard, and its production accounted for approximately 5.5% of total national industry production.

21. In 1962 St. Regis ranked fourth in shipments of corrugated and solid fibre products and these shipments accounted for approximately 4.7% of total national industry shipments. In 1953 St. Regis owned no facilities which were used for the conversion of containerboard into corrugated and solid fibre products. Subsequent to 1953 St. Regis established itself in the corrugated products and solid fibre products industry by acquiring corporations engaged in the manufacture of corrugated and solid fibre products, which are more specifically hereinafter described.

IV

The Acquisitions Alleged to Violate Section 7 of the Clayton Act

Superior Paper Products Company

22. Prior to and until March 21, 1954, Superior Paper Products Company, hereinafter referred to as "Superior," was a corporation organized and existing under the laws of the State of Delaware with its office and principal place of business located in Robinson Township, near Pittsburgh, Pennsylvania.

23. Superior owned and operated two plants, one near Pittsburgh, Pennsylvania, and the other near York, Pennsylvania. Superior was engaged in the manufacture, distribution and sale of corrugated containers, corrugated sheets, and corrugated inserts and interiors. These products were sold to customers located in Pennsylvania, Ohio and other States.

24. The business operations of Superior included the purchase of linerboard, corrugating medium and container chip and filler board. In 1953 Superior used approximately 44,000 tons of these products.

25. Prior to and until March 21, 1954, Superior was engaged in commerce as "commerce" is defined in the Clayton Act, as amended.

26. On or about March 21, 1954, St. Regis acquired all of the stock of Superior, and Superior became a wholly owned subsidiary of St. Regis. On or about December 31, 1956, Superior was merged into St. Regis Container Corporation, another subsidiary of St. Regis.

27. For the fiscal year ending November 30, 1953, Superior had net sales of approximately $8,765,407 and total assets of approximately $3,321,569, with net earnings of approximately $234,642.

Pollock Paper Corporation

28. Prior to and until June 1, 1955, Pollock Paper Corporation, hereinafter referred to as "Pollock," was a corporation organized and existing under the laws of the State of Texas with its office and principal place of business located in Dallas, Texas.

29. Pollock owned and operated plants in Texas, Georgia, Alabama, and Ohio. Pollock was engaged in the manufacture, distribution and sale of waxed paper, labels, folding cartons, set-up boxes, corrugated shipping containers, and other products. Sub-

stantial quantities of products manufactured by it were sold to customers located throughout the United States.

30. The business operations of Pollock included the purchase of corrugated sheets. In 1954 Pollock purchased corrugated sheets valued at approximately $306,495.

31. Prior to and until June 1, 1955, Pollock was engaged in commerce as "commerce" is defined in the Clayton Act, as amended.

32. On or about June 1, 1955, St. Regis acquired all of the outstanding stock of Pollock. On or about March 28, 1959, Pollock was merged into St. Regis.

33. For the year ending December 31, 1954, Pollock had net sales of approximately $32,770,307 and total assets of approximately $1,205,091.

General Container Corporation

34. Prior to and until September 1, 1955, General Container Corporation, hereinafter referred to as "General," was a corporation organized and existing under the laws of the State of Ohio with its office and principal place of business located in Cleveland, Ohio.

35. In addition to the operations conducted by General in its own corporate name, General had five operating subsidiary corporations located at Cohoes, New York, (Albany Corrugated Container Corp.), Buffalo, New York, (Niagara Corrugated Container Co., Inc.) Dubuque, Iowa, (Dubuque Container Co.), Cleveland, Ohio, (Great Lakes Box Co.), and Marshall, Michigan, (Crowell Carton Co.).

36. General was engaged in the manufacture, distribution and sale of corrugated shipping containers, corrugated sheets, and corrugated inserts and interiors, folding cartons and set-up boxes. General also manufactured corrugating medium and container chipboard at its mill at Coshocton, Ohio. In 1954 General produced approximately 17,800 tons of containerboard. General's products were sold to customers located in a number of States including, but not restricted to, the States of New York, Massachusetts, Ohio, Michigan, Iowa, and Illinois.

37. The business operations of General and its subsidiaries included the purchase of linerboard, corrugating medium and container chip and filler board. In 1954 General used over 61,000 tons of containerboard, some of which was manufactured at General's own mill and some of which was purchased from outside sources.

38. Prior to and until September 1, 1955, General was engaged in commerce as "commerce" is defined in the Clayton Act, as amended.

39. On or about September 1, 1955, St. Regis acquired all of the outstanding stock of General. On or about July 2, 1956, the name of General was changed to St. Regis Container Corporation, a subsidiary of St. Regis, and on or about December 31, 1956, the subsidiaries of General were merged into St. Regis Container Corporation. On or about July 1, 1957, St. Regis Container Corporation was merged into St. Regis Paper Company, the respondent herein.

40. For the year ending December 31, 1954, General and its consolidated subsidiaries had net sales of approximately $23,030,199 and total assets of approximately $10,129,758, with net income of approximately $1,276,230.

The Ajax Box Company

41. Prior to and until January 1, 1956, The Ajax Box Company, hereinafter referred to as "Ajax," was a corporation organized and existing under the laws of the State of Illinois with its office and principal place of business located in Chicago, Illinois.

42. Ajax owned a plant in Chicago, Illinois and was engaged in the manufacture and sale of corrugated shipping containers, corrugated sheets, corrugated inserts and interiors, corrugated wrapping and other products. The products of Ajax were sold throughout the United States.

43. The business operations of Ajax included the purchase of linerboard, corrugating medium, and container chip and filler board. In 1955 Ajax used approximately 15,000 tons of these products.

44. Prior to and until January 1, 1956, Ajax was engaged in commerce as "commerce" is defined in the Clayton Act, as amended.

45. On or about January 1, 1956, St. Regis acquired all of the stock of Ajax. On or about December 31, 1956, Ajax was merged into St. Regis Container Corporation.

46. As of November 5, 1955, Ajax's gross sales for 1955 were approximately $1,957,198. Its total assets were approximately $969,584, and its estimated net income was $122,673.

Cambridge Corrugated Box Company

47. Prior to and until August 17, 1956, Cambridge Corrugated Box Company, hereinafter referred to as "Cambridge," was a corporation organized and existing under the laws of the State of Ohio with its office and principal place of business located in Cambridge, Ohio.

48. Cambridge was engaged in the manufacture and sale of corrugated shipping containers, and corrugated inserts and interiors. These products were manufactured at its plant in Cambridge, Ohio and were sold to customers located in Ohio and West Virginia.

49. The business operations of Cambridge included the purchase of corrugated sheets. In 1955 Cambridge purchased corrugated sheets valued at approximately $142,873.

50. Prior to and until August 17, 1956, Cambridge was engaged in commerce as "commerce" is defined in the Clayton Act, as amended.

51. On or about August 17, 1956, St. Regis, through its wholly-owned subsidiary, St. Regis Container Corporation acquired all of the stock of Cambridge. On or about September 27, 1958, Cambridge was merged into St. Regis.

52. In 1955 Cambridge had total sales of approximately $290,000, and as of March 31, 1956, had total assets of approximately $226,857.

Growers Container Corporation

53. Prior to and until October 1, 1958, Growers Container Corporation, hereinafter referred to as "Growers," was a corporation organized and existing under the laws of the State of California with its office and principal place of business located in Salinas, California.

54. Growers owned plants located at Salinas and Fullerton, California and Jacksonville, Florida. Growers was engaged in the manufacture and sale of corrugated shipping containers, corrugated inserts and interiors. These products were sold to customers located in California, Oregon, Washington, Idaho, Nevada, Arizona, as well as generally throughout the Gulf Coast and Southeastern States.

55. The business operations of Growers included the purchase of linerboard, corrugating medium, and container chip and filler board. In 1957 Growers used approximately 55,000 tons of these products.

56. Prior to and until October 1, 1958, Growers was engaged in commerce as "commerce" is defined in the Clayton Act, as amended.

57. On or about January 16, 1956, St. Regis acquired 34.48% of the stock of Growers. Subsequently, on or about October 1, 1958, St. Regis acquired the remainder of the stock of Growers. On or about June 27, 1959, Growers was merged into St. Regis.

58. For the fiscal year ending September 30, 1957, Growers had net sales of approximately $12,926,553 and total assets of approximately $12,034,697.

F. J. Kress Box Company

59. Prior to and until January 1, 1959, F. J. Kress Box Company, hereinafter referred to as "Kress," was a corporation organized and existing under the laws of the State of Pennsylvania with its office and principal place of business located in Pittsburgh, Pennsylvania.

60. Kress owned plants located in Pittsburgh, Pennsylvania, Newark, Ohio and Hagerstown, Maryland. It also leased a plant in Washington, Pennsylvania. Kress was engaged in the manufacture and sale of corrugated shipping containers, corrugated sheets, and corrugated inserts and interiors which were sold to customers located in Ohio, Indiana, West Virginia, Maryland, Virginia, Pennsylvania and New York.

61. The business operations of Kress included the purchase of linerboard, corrugating medium and container chip and filler board. In 1958 Kress used approximately 59,000 tons of these products.

62. Prior to and until January 1, 1959, Kress was engaged in commerce as "commerce" is defined in the Clayton Act, as amended.

63. On or about January 1, 1959, St. Regis acquired all of the stock of Kress, and on February 2, 1959, Kress was merged into St. Regis.

64. For the nine months ending September 30, 1959, Kress had net sales of approximately $11,638,050 and total assets of approximately $9,295,114, with net income of approximately $461,317.

Continental Can Company

65. Prior to and until January 31, 1959, Continental Can Company, hereinafter referred to as "Continental," was a corporation organized and existing under the laws of the State of New York with its office and principal place of business located in New York, New York.

66. Continental owned a number of plants located in various States of the United States, including one at Grafton, West Virginia. At the Grafton, West Virginia plant Continental was engaged in the manufacture and sale of corrugated shipping containers which were sold to customers located in various other States of the United States.

67. The business operations of Continental included the purchase of linerboard and corrugating medium.

68. Prior to and until January 31, 1959, Continental was engaged in commerce as "commerce" is defined in the Clayton Act, as amended.

69. On or about January 31, 1959, St. Regis acquired certain assets of Continental consisting of the corrugated shipping container plant, property and equipment located at Grafton, West Virginia.

Atlanta Container Corporation

70. Prior to and until August 29, 1959, Atlanta Container Corporation, hereinafter referred to as "Atlanta," was a corporation organized and existing under the laws of the State of Delaware with its office and principal place of business located in Atlanta, Georgia.

71. Atlanta operated a plant at Atlanta, Georgia. Atlanta was engaged in the manufacture and sale of corrugated shipping containers and corrugated inserts and interiors. Substantial quantities of products manufactured by it were sold to customers located in various States of the United States.

72. The business operations of Atlanta included the purchase of corrugated sheets. In the first eight months of 1959 Atlanta purchased corrugated sheets valued at approximately $299,244.

73. Prior to and until August 29, 1959, Atlanta was engaged in commerce as "commerce" is defined in the Clayton Act, as amended.

74. On or about August 29, 1959, St. Regis acquired all of the stock of Atlanta. On or about December 30, 1960, Atlanta was merged into St. Regis.

75. For the fiscal year ending June 30, 1959, Atlanta had net sales of approximately $1,014,308, total assets of approximately $272,000, and net income of approximately $21,766.

Cornell Paperboard Products Co.

76. Prior to and until December 31, 1959, Cornell Paperboard Products Co., hereinafter referred to as "Cornell," was a corporation organized and existing under the laws of the State of Wisconsin with its office and principal place of business located in Milwaukee, Wisconsin.

77. In addition to the operations conducted by Cornell in its own corporate name, Cornell had five wholly-owned subsidiaries; Carton Craftsmen, Inc., an Illinois corporation having its principal office in Cicero, Illinois; Superior Paper Products Company, Inc., an Indiana corporation having its principal office in Marion, Indiana; Rathborne, Hair & Ridgway Box Co., an Illinois corporation having its principal office in Chicago, Illinois; C. L. Cecil Timber Company, a Minnesota corporation having its principal office in Duluth, Minnesota, and Northern Pulpwood and Timber Company,

a Wisconsin corporation having its principal office in Superior, Wisconsin.

78. Additionally, beginning on April 1, 1953, Cornell and three other corporations entered into a series of agreements for the organization and acquisition of shares of the capital stock of Tennessee River Pulp & Paper Company, a Delaware corporation, and the Corinth & Counce Railroad Company, a Mississippi corporation. These agreements also provided for the financing of the acquisition by Tennessee of timberlands and the construction and operation of a kraft containerboard mill at Counce, Tennessee, and the construction by the railroad company of a railroad to serve the mill. Cornell had a 22% interest in each of the above named corporations and the right to purchase 22% of the monthly production of the mill.

79. Cornell's mill located in Milwaukee, Wisconsin manufactured linerboard and container chip and filler board. Cornell's container division located in Milwaukee, Wisconsin manufactured corrugated shipping containers and solid fibre boxes. Cornell's subsidiary, Rathborne, Hair & Ridgway Box Co., had a plant in Chicago, Illinois which manufactured corrugated shipping containers, corrugated sheets and corrugated inserts and interiors. The products of Cornell and its subsidiary corporations were sold to customers located in various States of the United States. In 1959 Cornell produced approximately 33,500 tons of containerboard.

80. The business operations of Cornell included the purchase of linerboard and corrugating medium. In 1959 Cornell and its subsidiary Rathborne, Hair & Ridgway Box Co., purchased approximately 22,000 tons of these products.

81. Prior to and until December 31, 1959, Cornell was engaged in commerce as "commerce" is defined in the Clayton Act, as amended.

82. On or about December 31, 1959, St. Regis acquired all of the stock of Cornell. On or about February 5, 1960, Cornell was merged into St. Regis. On or about July 19, 1960, Rathborne, Hair & Ridgway Box Co. was merged into St. Regis. On or about December 30, 1960, Carton Craftsmen, Inc. was merged into St. Regis.

83. For the fiscal year ending December 31, 1959, Cornell had unconsolidated net sales of approximately $25,192,530, total assets of approximately $22,332,135, and net profit before taxes of approximately $2,190,011. Cornell's wholly-owned subsidiary, Rathborne, Hair & Ridgway Box Co., for the same period had net sales of

approximately $6,831,932, total assets of approximately $2,630,171, and net earnings of approximately $75,685.

Birmingham Paper Company

84. Prior to and until January 1, 1960, Birmingham Paper Company, hereinafter referred to as "Birmingham," was a corporation organized and existing under the laws of the State of Alabama with its office and principal place of business located in Birmingham, Alabama.

85. In addition to the operations conducted by Birmingham in its own corporate name, Birmingham had two wholly-owned subsidiaries, The Nifty Tablet Mfg. Co., a Texas corporation, and Nifty Manufacturing Company, a California corporation.

86. Birmingham owned and operated a plant in Birmingham, Alabama. Birmingham was engaged in the manufacture and sale of corrugated shipping containers, corrugated sheets and corrugated inserts and interiors. Substantial quantities of these products were sold to customers located in Alabama and adjacent States in the United States.

87. The business operations of Birmingham included the purchase of linerboard and corrugating medium. In 1959 Birmingham purchased approximately 12,000 tons of these products.

88. Prior to and until Januray 1, 1960, Birmingham was engaged in commerce as "commerce" is defined in the Clayton Act, as amended.

89. On or about January 1, 1960, St. Regis acquired all of the stock of Birmingham. On or about March 16, 1960, Birmingham was merged into St. Regis. On or about April 28, 1960, Birmingham's two wholly-owned subsidiaries were also merged into St. Regis.

90. For the fiscal year ending December 31, 1959, Birmingham had net sales of approximately $8,011,913, total assets of approximately $3,347,330, and net income of approximately $351,022.

Sherman Paper Products Corporation

91. Prior to and until January 31, 1960, Sherman Paper Products Corporation, hereinafter referred to as "Sherman," was a corporation organized and existing under the laws of the State of Massachusetts with its office and principal place of business located in Newton, Massachusetts.

92. In addition to the operations conducted by Sherman in its own corporate name, Sherman had three wholly-owned operating subsidiaries: Sherman Paper Products Corporation of Cal-

ifornia, a California corporation; N - L Realty Corporation, a Massachusetts corporation, and Upper Falls Realty Corporation, a Massachusetts corporation.

93. Sherman owned and operated plants located at Newton, Massachusetts, Chicago, Illinois and Los Angeles, California.

94. Sherman was engaged in the manufacture, distribution and sale of corrugated sheets. These products were sold to customers located throughout the United States.

95. The business operations of Sherman included the purchase of linerboard, corrugating medium, and container chip and filler board. In 1959 Sherman purchased approximately 12,000 tons of these products.

96. Prior to and until January 31, 1960, Sherman was engaged in commerce as "commerce" is defined in the Clayton Act, as amended.

97. On or about January 31, 1960, St. Regis acquired all of the stock of Sherman. On or about March 18, 1960, St. Regis merged the two real estate subsidiaries of Sherman into Sherman. On or about April 17, 1961, Sherman Paper Products Corporation of California was merged into St. Regis. On or about December 30, 1960, Sherman was merged into American Sisalkraft Corporation, a subsidiary of St. Regis.

98. For the year ending December 31, 1958, Sherman had net sales of approximately $10,603,466 and total consolidated assets of approximately $7,511,221, with net earnings of approximately $347,933.

Schmidt & Ault Paper Company

99. Prior to and until March 29, 1960, Schmidt and Ault Paper Company, hereinafter referred to as "Schmidt & Ault," was a corporation organized and existing under the laws of the State of Pennsylvania with its office and principal place of business located in York, Pennsylvania.

100. Schmidt & Ault owned and operated one mill located in York, Pennsylvania. Schmidt & Ault was engaged in the manufacture, distribution and sale of corrugating medium and container chip and filler board. These products were sold to customers located in the Middle Atlantic and Northeastern States.

101. In 1959 Schmidt & Ault produced over 45,000 tons of corrugating medium and container chip and filler board.

102. Prior to and until May 29, 1960, Schmidt & Ault was

engaged in commerce as "commerce" is defined in the Clayton Act, as amended.

103. On or about May 29, 1960, St. Regis acquired all the stock of Schmidt & Ault. On or about August 25, 1960, Schmidt and Ault was merged into St. Regis.

104. For the year ending December 31, 1959, Schmidt & Ault had net sales of approximately $8,444,289 and total assets of approximately $10,729,591, with net income of approximately $748,699.

Federal Container Corporation

105. Prior to and until July 31, 1960, Federal Container Corporation, hereinafter referred to as "Federal," was a corporation organized and existing under the laws of the State of Minnesota with its office and principal place of business located in Minneapolis, Minnesota.

106. Federal owned and operated a plant in Minneapolis, Minnesota. Federal was engaged in the manufacture, distribution and sale of corrugated shipping containers, corrugated sheets, corrugated inserts and interiors, and solid fibre boxes. Substantial quantities of these products were sold to customers located in Minnesota and adjacent States in the United States.

107. The business operations of Federal included the purchase of linerboard, corrugating medium, and container chip and filler board. For the fiscal year ending July 31, 1960, Federal purchased approximately 11,000 tons of these products.

108. Prior to and until July 31, 1960, Federal was engaged in commerce as "commerce" is defined in the Clayton Act, as amended.

109. On or about July 31, 1960, St. Regis acquired all of the stock of Federal. On or about December 31, 1960, Federal was merged into St. Regis.

110. For the eight months ending April 2, 1960, Federal had net sales of approximately $1,650,958 and total assets of approximately $2,220,502.

National Kraft Container Corporation

111. Prior to and until August 16, 1960, National Kraft Container Corporation, hereinafter referred to as "National," was a corporation organized and existing under the laws of the State of Delaware with its office and principal place of business located in Jersey City, New Jersey.

112. In addition to operations conducted by National in its own corporate name, National had only one wholly-owned operating subsidiary, Metro Corrugated Containers, Inc., a New York corporation, which was engaged in the distribution and sale of paperboard containers and other products.

113. National owned and operated plants in Jersey City, New Jersey and Jacksonville, Florida. National was engaged in the manufacture, distribution and sale of corrugated shipping containers, corrugated sheets, and corrugated inserts and interiors. Substantial quantities of these products were sold to customers located in New Jersey and adjacent States and Florida and adjacent States.

114. The business operations of National included the purchase of linerboard and corrugating medium. For the first eight months of 1960 National purchased approximately 17,000 tons of these products.

115. Prior to and until August 16, 1960, National was engaged in commerce as "commerce" is defined in the Clayton Act, as amended.

116. On or about August 16, 1960, St. Regis acquired all of the stock of National.

117. For the three months ending March 31, 1960, National had net sales of approximately $930,754 and consolidated assets of approximately $4,419,320.

V

The Alleged Unlawful Adverse Competitive Effects

118. The effect of the aforesaid acquisitions by St. Regis of the stock or assets of Superior Paper Products Company, Pollock Paper Corporation, General Container Corporation, The Ajax Box Company, Cambridge Corrugated Box Company, Growers Container Corporation, F. J. Kress Box Company, Continental Can Company, Atlanta Container Corporation, Cornell Paperboard Products Co., Birmingham Paper Company, Sherman Paper Products Corporation, Schmidt & Ault Paper Company, Federal Container Corporation, and National Kraft Container Corporation may be substantially to lessen competition or to tend to create a monopoly in the manufacture and sale of (1) containerboard, (2) linerboard, (3) corrugating medium, or (4) container chip and filler board in the United States as a whole (excepting Alaska and Hawaii), or in that section of the United States which lies east of the eastern boundaries of Montana, Wyoming, Colorado, and New Mexico, in the following ways, among others:

(a) Competition between St. Regis and other sellers of containerboard, linerboard, corrugating medium, or container chip and filler board has been, or may be, eliminated or restricted;

(b) Independent purchasers and consumers of containerboard, linerboard, corrugating medium, or container chip and filler board have been eliminated;

(c) St. Regis has foreclosed, or may foreclose, actual or potential competitors from a substantial segment of the market for containerboard, linerboard, corrugating medium, or container chip and filler board;

(d) An industry trend toward vertical integration has been substantially accelerated by the reduction in the number of available independent purchasers and consumers of containerboard, linerboard, corrugating medium, or container chip and filler board;

(e) The industry trend toward vertical integration between manufacturers of containerboard, linerboard, corrugating medium, or container chip and filler board and manufacturers of corrugated products and solid fibre products has been, or may be, encouraged or stimulated;

(f) The industry level of integration between containerboard, linerboard, corrugating medium, or container chip and filler board manufacturers and manufacturers of corrugated products and solid fibre products has been substantially increased; and

(g) The entry of new competitive entities into the business of manufacturing and selling containerboard, linerboard, corrugating medium, or container chip and filler board has been made more difficult.

119. The effect of the aforesaid acquisitions by St. Regis of the stock or assets of Superior Paper Products Company, Pollock Paper Corporation, General Container Corporation, The Ajax Box Company, Cambridge Corrugated Box Company, Growers Container Corporation, F. J. Kress Box Company, Continental Can Company, Atlanta Container Corporation, Cornell Paperboard Products Co., Birmingham Paper Company, Sherman Paper Products Corporation, Federal Container Corporation, and National Kraft Container Corporation may be substantially to lessen competition or to tend to create a monopoly in the manufacture and sale of corrugated products and solid fibre products in the United States as a whole (excepting Alaska and Hawaii), or in that section of the United States which lies east of the eastern boundaries of Montana, Wyoming, Colorado, and New Mexico, in the following ways, among others:

(a) Actual or potential competition between St. Regis and the corporations acquired by it has been, or may be, eliminated;

(b) Actual or potential competition among and between the corporations acquired by St. Regis has been, or may be, eliminated;

(c) Each of the corporations acquired by St. Regis has been eliminated as an independent competitive factor;

(d) An industry trend toward horizontal concentration has been substantially accelerated;

(e) The level of horizontal concentration has been substantially increased;

(f) The industry trend toward horizontal concentration has been, or may be, encouraged or stimulated;

(g) The entry of new competitive entities into the business of manufacturing and selling corrugated products and solid fibre products has been made more difficult; and

(h) The actual and potential competitive power of St. Regis has been enhanced to the point where it threatens the existence of non-integrated manufacturers and sellers of corrugated products and solid fibre products.

120. The effect of the aforesaid acquisitions by St. Regis of the stock or assets of Growers Container Corporation and Sherman Paper Products Corporation may be substantially to lessen competition or to tend to create a monopoly in the manufacture and sale of (1) containerboard, (2) linerboard, (3) corrugating medium, or (4) container chip and filler board in that section of the United States which lies west of the eastern boundaries of Montana, Wyoming, Colorado, and New Mexico (excepting Alaska and Hawaii), in the following ways, among others:

(a) Competition beween St. Regis and other sellers of containerboard, linerboard, corrugating medium, or container chip and filler board has been, or may be, eliminated or restricted;

(b) Independent purchasers and consumers of containerboard, linerboard, corrugating medium, or container chip and filler board have been eliminated;

(c) St. Regis has foreclosed, or may foreclose, actual or potential competitors from a substantial segment of the market for containerboard, linerboard, corrugating medium, or container chip and filler board;

(d) An industry trend toward vertical integration has been substantially accelerated by the reduction in the number of available independent purchasers and consumers of containerboard, linerboard, corrugating medium, or container chip and filler board;

(e) The industry trend toward vertical integration between manufacturers of containerboard, linerboard, corrugating medium, or container chip and filler board and manufacturers of corrugated products and solid fibre products has been, or may be, encouraged or stimulated;

(f) The industry level of integration between containerboard, linerboard, corrugating medium, or container chip and filler board manufacturers and manufacturers of corrugated products and solid fibre products has been substantially increased; and

(g) The entry of new competitive entities into the business of manufacturing and selling containerboard, linerboard, corrugating medium, or container chip and filler board has been made more difficult.

121. The effect of the aforesaid acquisitions by St. Regis of the stock or assets of Growers Container Corporation and Sherman Paper Products Corporation may be substantially to lessen competition or to tend to create a monopoly in the manufacture and sale of corrugated products and solid fibre products in that section of the United States which lies west of the eastern boundaries of Montana, Wyoming, Colorado, and New Mexico (excepting Alaska and Hawaii), in the following ways, among others:

(a) Actual or potential competition between St. Regis and the corporations acquired by it has been, or may be, eliminated;

(b) Actual or potential competition among and between the corporations acquired by St. Regis has been, or may be, eliminated;

(c) Each of the corporations acquired by St. Regis has been eliminated as an independent competitive factor;

(d) An industry trend toward horizontal concentration has been substantially accelerated;

(e) The level of horizontal concentration has been substantially increased;

(f) The industry trend toward horizontal concentration has been, or may be, encouraged or stimulated;

(g) The entry of new competitive entities into the business of manufacturing and selling corrugated products and solid fibre products has been made more difficult; and

(h) The actual and potential competitive power of St. Regis has been enhanced to the point where it threatens the existence of non-integrated manufacturers and sellers of corrugated products and solid fibre products.

122. The effect of the aforesaid acquisitions by St. Regis of the stock or assets of General Container Corporation, Cornell Paperboard Products Co., and Schmidt & Ault Paper Company may be

substantially to lessen competition or to tend to create a monopoly in the manufacture and sale of (1) containerboard, (2) linerboard, (3) corrugating medium, or (4) container chip and filler board in the United States as a whole (excepting Alaska and Hawaii), or in that section of the United States which lies east of the eastern boundaries of Montana, Wyoming, Colorado and New Mexico, in the following ways, among others:

(a) Actual or potential competition between St. Regis and the companies acquired has been, or may be, eliminated;

(b) Actual or potential competition between and among the companies acquired by St. Regis has been, or may be, eliminated;

(c) Each of the companies acquired has been eliminated as an independent competitive factor;

(d) Concentration in the manufacture and sale of containerboard, linerboard, corrugating medium, or container chip and filler board has been increased.

VI

The Violations Charged

123. The acquisitions by St. Regis, individually or cumulatively, of the stock or assets of Superior Paper Products Company, Pollock Paper Corporation, General Container Corporation, The Ajax Box Company, Cambridge Corrugated Box Company, Growers Container Corporation, F. J. Kress Box Company, Continental Can Company, Atlanta Container Corporation, Cornell Paperboard Products Co., Birmingham Paper Company, Sherman Paper Products Corporation, Schmidt & Ault Paper Company, Federal Container Corporation, and National Kraft Container Corporation constitute violations of Section 7 of the Clayton Act (15 U.S.C. 18), as amended.

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 Restraint of Trade proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of Section 7 of the Clayton Act, as amended; 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 Section 7 of the Clayton Act, as amended, and having determined that complaint should issue stating its charges in that respect, hereby issues its complaint, accepts said agreement, makes the following jurisdictional findings and enters the following order:

1. Respondent St. Regis Paper Company 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 150 E. 42nd Street, New York, New York.

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

ORDER

I

It is ordered, That St. Regis Paper Company, hereinafter referred to as "St. Regis," shall divest itself, absolutely and in good faith, subject to the prior approval of the Commission, of all of the right, title and interest of St. Regis in and to its facilities, machinery, buildings, equipment or other property of whatever description (hereinafter referred to as the "plant" or "plants") for the manufacture or conversion of corrugated board or solid fibreboard which are situated at the locations hereinafter named and which were acquired by St. Regis as a result of its acquisition of the corporations specified in subparagraphs (a) through (e) herein, including all rights, titles, interests, assets and properties acquired by St. Regis, together with such machinery and equipment as has been added to or placed on the premises at the following specified locations, in a manner contemplating the operation of each such plant by the purchaser as a going concern in the business operations substantially as conducted by St. Regis therein: *Provided*, That each such plant shall be divested by St. Regis in good faith to a person or persons who, insofar as St. Regis can reasonably determine, will operate each such plant as a going concern engaged in such business: *And provided further*, That pending the aforesaid ordered divestitures, St. Regis shall not make any change in such plants which might substantially impair their present capacities for engaging in such business operations unless such capacities are fully restored prior to divestiture.

Location	*Corporate Acquisition*
(a) Salinas, California	Growers Container Corporation
(b) Fullerton, California	Growers Container Corporation
(c) Birmingham, Alabama	Birmingham Paper Company
(d) Jersey City, New Jersey	National Kraft Container Corporation
(e) Jacksonville, Florida	National Kraft Container Corporation

II

It is further ordered, That St. Regis shall divest itself, absolutely and in good faith, subject to the prior approval of the Commission, of all of the right, title and interest of St. Regis in and to its plants for the manufacture or conversion of corrugated board or solid fibreboard which are located in (a) Tacoma, Washington, and (b) Emeryville, California, in a manner contemplating the operation of each such plant by the purchaser as a going concern in the business operations substantially as conducted by St. Regis therein: *Provided*, That each such plant shall be divested by St. Regis in good faith to a person or persons who, insofar as St. Regis can reasonably determine, will operate each such plant as a going concern engaged in such business: *And provided further*, That pending the aforesaid ordered divestitures, St. Regis shall not make any change in such plants which might substantially impair their present capacities for engaging in such business operations unless such capacities are fully restored prior to divestiture.

III

The divestiture ordered herein of the St. Regis plants located at Salinas, California; Fullerton, California; Emeryville, California; and Tacoma, Washington, shall include as a part thereof and at the option of the purchaser (a) a non-exclusive license for the application of the St. Regis Wet-lok and Presseal processes in that area of the United States west of the eastern boundaries of Montana, Wyoming, Colorado and New Mexico at a fair and reasonable royalty; and (b) the sale of all equipment and machinery now located at such plants necessary to apply such processes to corrugated containers.

The divestiture of the St. Regis plants located at Birmingham, Alabama; Jersey City, New Jersey; and Jacksonville, Florida, shall not include, as a part thereof, either (a) the licensing of St. Regis'

Wet-lok or Presseal processes, or (b) the sale of the machinery and equipment required for the application of such processes to corrugated containers.

IV

It is further ordered, That the divestitures of stock, assets and properties required by paragraphs I and II of this Order shall not be divested, sold or transferred, directly or indirectly, to any person who is an officer, director, employee or agent of, or under the control or direction of St. Regis or any subsidiary of St. Regis, or to any person who owns or controls, directly or indirectly, more than one percent (1%) of the common capital stock of St. Regis, or to any purchaser who is not approved in advance by the Federal Trade Commission.

As used in this Order the terms "person" or "persons" is defined as including, but not being restricted to, corporations, partnerships, associations, and other legal entities.

As used in this paragraph IV only of this Order these terms are defined as including natural persons who are individuals in the classifications hereinbefore set forth and all members of the immediate family of each such individual.

V

With respect to the seven plants hereinbefore named in paragraphs I and II and ordered divested, St. Regis shall make every reasonable effort to accomplish divestiture of one of the seven plants within one year from the date of service upon St. Regis of this Order; a second plant within two years of such date; a third and fourth plant within three years of such date; a fifth and sixth plant within four years of such date; and a seventh plant within five years of such date.

If any of the aforesaid divestitures shall not have been accomplished within the periods specified herein, the Commission will give St. Regis written notice and an opportunity to be heard before the Commission issues any further order or orders which the Commission may deem appropriate.

VI

If any of the plants required to be divested by this Order are not sold or disposed of entirely for cash, nothing in this Order shall be deemed to prohibit St. Regis from retaining, accepting and enforcing a lien, mortgage, deed of trust or other security interest in or to any of the aforesaid assets or stock for the purpose of

securing to St. Regis full payment of prices, with interest, at which any of said plants are sold or disposed of; but if after bona fide disposal of any of the aforesaid plants in accordance with the provisions of this Order, St. Regis, by enforcement of such security interest, regains ownership or control of any such plant or plants, the same shall be redivested, subject to the provisions of this Order within six (6) months from the time of such reacquisition.

VII

It is further ordered, That for a period of ten years after the service upon it of this Order, St. Regis shall cease and desist from acquiring, directly or indirectly, through subsidiaries, or otherwise, the whole or any part of the share capital, or assets (other than products sold or purchased in the regular course of business), of any domestic concern, corporate or non-corporate, which is, or shall have been engaged at any time during the aforesaid ten year period, in any state of the United States or in the District of Columbia, in the business of manufacturing linerboard, corrugating medium, or container chip and fillerboard, or in the business of converting such products into corrugated board or into solid fibreboard, or in the business of converting corrugated board into corrugated products, or in the business of converting solid fibreboard into solid fibre products, without the prior approval of the Federal Trade Commission.

VIII

It is further ordered, That St. Regis shall, within sixty (60) days after the date of service of this Order, and every ninety (90) days thereafter until St. Regis has fully complied with the provisions of this Order, submit in writing to the Federal Trade Commission a report setting forth in detail the manner and form in which St. Regis intends to comply, is complying or has complied with this Order. All compliance reports shall include, among other things that are from time to time required, a summary of all contacts and negotiations with potential purchasers of the specified plants, the identity of all such potential purchasers, and copies of all written communications to and from such potential purchasers.

Complaint

IN THE MATTER OF

JACKSON'S/BYRONS ENTERPRISES, INC.

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

Docket C-918. Complaint, July 16, 1965—Decision, July 16, 1965

Consent order requiring a Miami, Fla., operator of a chain of retail department stores, to cease violating the Textile Fiber Products Identification Act by falsely labeling, invoicing, and advertising its textile fiber products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Jackson's/Byrons Enterprises, Inc., a corporation, hereinafter referred to as the respondent, has violated the provisions of said Acts and the Rules and Regulations promulgated under the Textile Fiber Products Identification Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Jackson's/Byrons Enterprises, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida.

The respondent corporation with its office and principal place of business located at 29 N. W. Tenth Street, Miami, Florida, is engaged in the operation of a chain of retail department stores, offering a wide variety of popular to medium-priced clothing and other department store merchandise. Operations under the control of the respondent corporation are conducted through wholly owned subsidiaries which are individually incorporated in Florida and comprise eleven retail stores in the Greater Miami area. The same officers of the respondent corporation are similarly officers in the same capacities in the eleven subsidiaries.

PAR. 2. 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 sale, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, and in the importation into the United States, of textile fiber products;

and 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 products" are defined in the Textile Fiber Products Identification Act.

PAR. 3. Certain of said textile fiber products were misbranded by respondent within the intent and meaning of Section 4(a) of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, invoiced, advertised, or otherwise identified as to the name or amount of constituent fibers contained therein.

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products which were advertised in the Miami Herald, a newspaper published in Miami, Florida and distributed in interstate commerce. The said advertisement contains terms which represented, either directly or by implication, that certain fibers are present in the said product, when such was not the case.

Among such terms, but not limited thereto, was the term "Silk Look" and the term "Look and Feel of Imported Silk"; the advertisement also described the product as 100% Estron. In truth, and in fact, Estron is the trade name of the Tennessee Eastman Company for the fiber known as Acetate and the said textile fiber product did not have any silk in it nor was it imported.

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

Among such textile fiber products, but not limited thereto, were articles of wearing apparel which were falsely and deceptively advertised in the Miami Herald, a newspaper published in Miami, Florida, and distributed in interstate commerce, in that the trade name of the fibers was used in lieu of the true generic name of the fibers in such articles.

PAR. 5. Certain of said textile fiber products were falsely and deceptively advertised in violation of the Textile Fiber Products Identification Act, in that they were not advertised in accordance with the Rules and Regulations promulgated thereunder.

Among such textile fiber products, but not limited thereto, were textile fiber products which were falsely and deceptively advertised in the Miami Herald, a newspaper published in Miami, Florida, and distributed in interstate commerce, in the following respects:

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

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

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

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

Among such products, but not limited thereto, were textile fiber products, namely ladies' dresses, advertised as "Silk Look" and "The Look and Feel of Imported Silk," thus implying that such products were composed wholly or in part of silk, when in fact the products contained no silk.

e. Fiber connoting terms were used in the said advertisement in such a manner as to require disclosure of the information required by the Act and Regulations, and all parts of the required information were not stated in immediate conjunction with

each other in legible and conspicuous type, or lettering, of equal size and prominence, in violation of Rule 42(a) of the aforesaid Rules and Regulations.

Among such products, but not limited thereto, were textile fiber products, namely, sheets advertised as being made of "Finest White Combed Percale in a Blend of Precious Pima Yarns." The terms Percale and Pima are fiber implying terms and the proposed respondent failed to set forth the true generic name of these fibers in conjunction therewith.

PAR. 6. 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 methods of competition and unfair and deceptive acts and practices in commerce, under the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of the Federal Trade Commission Act and the Textile Fiber Products Identification 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 Jackson's/Byrons Enterprises, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 29 N. W. Tenth Street, in the city of Miami, State of Florida.

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 Jackson's/Byrons Enterprises, 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 introduction, manufacture for 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, 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:

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

2. Falsely or deceptively stamping, tagging, labeling, invoicing, advertising or otherwise identifying such products by representing either directly or by implication, through the use of such terms as "Silk Look" and "Look and Feel of Imported Silk," or any other words or terms, that any fibers are present in a textile fiber product, when such is not the case, except that nothing herein shall be construed to prevent the use of a non-deceptive statement in advertising that a textile fiber product has one or more of the characteristics of a material or fiber not present in the said product, if the advertisement contains all of the required fiber content information as to such product.

3. Falsely and deceptively advertising textile fiber products by:

(a) Making any representations, by disclosure or by implication, as to the fiber contents of any textile fiber product in any written advertisement which is used to

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

(b) Using a fiber trademark in advertisement without a full disclosure of the required content information in at least one instance in the said advertisement.

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

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

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

(f) Failing to state all parts of the required information in immediate conjunction with each other in legible and conspicuous type, or lettering, of equal size and prominence, where textile fiber products are advertised in such a manner as to require disclosure of the information required by the Act and Regulations.

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.