discriminating, directly or indirectly, in the price of fluid milk and milk products of like grade and quality:

1. By selling any of these products to any purchaser in any city or definable market area in which respondents are in competition with another seller at a price which is lower than the price for such products charged any other purchaser at the same level of distribution in that or any other city or definable market area served by the same processing plant, where such lower price undercuts the lowest price offered to that purchaser by any other seller having a substantially smaller annual volume of sales of milk and milk products than respondents' annual volume of sales of those products.

2. By selling any of these products to any purchaser at a price which is lower than the price for products of like grade and quality charged any other purchaser who competes in the resale of such products with the purchaser paying the lower price.

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

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

Commissioners Elman and Jones dissenting. Commissioner MacIntyre has filed a separate statement.

IN THE MATTER OF

SWISS LABORATORY INC., DOING BUSINESS AS FEDERAL LEAD COMPANY ET AL.

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

Docket C-1006. Complaint, Oct. 25, 1965—Decision, Oct. 25, 1965

Consent order requiring Cleveland, Ohio, distributors of commercial wire solders to jobbers, to cease misrepresenting the nature, quality or composition of any of their solders, by such practice as using the designation "50/50" on labels and price sheets to describe a commercial wire solder which was not a 50/50 solder as known in the trade, as said solder contained less than 50% tin and more than 50% lead by weight.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Swiss Laboratory Inc., a corporation, doing business as Federal Lead Company and Leon W. Diamond and Myron Levy, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Swiss Laboratory Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 1515-1531 Hamilton Avenue in the city of Cleveland, State of Ohio. Federal Lead Company is a trade name of Swiss Laboratory Inc.

Respondents Leon W. Diamond and Myron Levy are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the offering for sale, sale and distribution of commercial solders including wire solders designated "50/50" and "40/60." Said solders are sold to jobbers who sell to retailers for ultimate resale to the public.

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

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the purchase of their commercial wire solders, respondents have engaged in the practice of labeling and describing in price sheets certain of said solders as "50/50" and "40/60."

PAR. 5. By and through the use of the aforesaid manner of labeling and describing said wire solders, the respondents represented:

(1) That their wire solder designated "50/50" is a 50/50 solder which is known in the trade as a solder containing 50% tin and 50% lead by weight.

(2) That their wire solder designed "40/60" is a 40/60 solder which is known in the trade as a solder containing 40% tin and 60% lead by weight.

PAR. 6. In truth and in fact:

(1) Their wire solder designated "50/50" is not a 50/50 solder as known in the trade as it contains less than 50% tin and more than 50% lead by weight.

(2) That their wire solder designed "40/60" is a 40/60 solder as known in the trade as it contains less than 40% tin and more than 60% lead by weight.

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 conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of products of the same general kind and nature as that sold by responedents.

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

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth by 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 Swiss Laboratory Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio with its principal office and place of business located at 1515-1531 Hamilton Avenue, in the city of Cleveland, State of Ohio.

Respondents Leon W. Diamond and Myron Levy are officers of the corporate respondent and their address is the same as that of said corporate respondent.

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

ORDER

It is ordered, That respondents Swiss Laboratory Inc., a corporation, doing business as Federal Lead Company or under any other name or names, and its officers, and Leon W. Diamond and Myron Levy, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of solders, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Using the designation 50/50 to designate, describe or refer to a commercial solder, which does not contain 50% tin by weight: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the tin content of a solder is within the permissible variations in composition allowed in the sampling procedures set forth in the then existing Specifications for Solder Metal as published by the American Society for Testing and Materials.

(2) Using the designation 40/60 to designate, describe or refer to a commercial solder which does not contain 40% tin by weight: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the tin content of a solder is within the permissible variations in composition allowed in the sampling procedures set forth in the then existing Specifications for Solder Metal as published by the American Society for Testing and Materials.

(3) Misrepresenting by any numerical designation or in any other manner the nature, quality or composition of any of their solders.

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

FREEMAN-TOOR CORPORATION

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

Docket C-1007. Complaint, Oct. 25, 1965—Decision, Oct. 25, 1965

Consent order requiring a New York City shoe manufacturer and its subsidiaries, to cease entering into agreements with independent retail stores to fix prices, terms and conditions of sale and delivery of its merchandise and attempting to enforce such resale price agreements, and from coercing and intimidating retail dealers for failure to observe and maintain prescribed resale prices.

COMPLAINT

The Federal Trade Commission having reason to believe that Freeman-Toor Corporation, a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Freeman-Toor Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with executive offices located

at 350 5th Avenue, New York, New York. Respondent Freeman-Toor Corporation is successor to Freeman Shoe Corporation, a Wisconsin corporation, now dissolved, the assets of which having been transferred on June 30, 1965, to respondent Freeman-Toor Corporation. The former business of Freeman Shoe Corporation is now operated by respondent Freeman-Toor Corporation through its division now known as Freeman Shoe division of such respondent corporation. For purposes of this complaint, the hereinafter recited acts and practices of respondent were engaged in by Freeman Shoe Corporation prior to the above-described corporate reorganization. The net annual sales of respondent Freeman-Toor Corporation are approximately $30,000,000.

PAR. 2. Respondent is now, and for some years last past has been, engaged in the manufacture, sale and distribution of shoes and other related incidental merchandise such as shoe laces, shoe polish, rubbers, house slippers and shoe trees. Said products of respondent are sold by respondent to independent retail shoe stores and other type apparel stores selling shoes to the consuming public. Respondent also sells its products direct to the consuming public through the respondent's own retail subsidiaries. Respondent has approximately 110 such subsidiaries operating approximately 230 retail shoe outlets located in department stores and men's clothing stores throughout the United States.

PAR. 3. The products of respondent are sold by said respondent for use, consumption and resale within the United States and the District of Columbia and respondent causes said products so sold to be shipped and transported from the State or States wherein they are manufactured to the purchasers thereof located in other States. Respondent maintains, and at all times mentioned herein has maintained a course of trade in commerce of said products among and between the various States of the United States and in the District of Columbia.

PAR. 4. Except to the extent that competition has been hindered, frustrated, lessened and eliminated as set forth in this complaint, respondent is now, and has been, in substantial competition with other corporations, individuals and partnerships engaged in the manufacture, distribution and sale of men's shoes in commerce as that term is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of its business, respondent has, together with its retail subsidiary corporations, entered into agreements, understandings and arrangements with many independent retail stores competing with said subsidiaries in the sale

of men's shoes whereby the prices at which the men's shoes are to be sold have been fixed, established and coordinated.

PAR. 6. In addition to the practices described in Paragraph Five above, it has been the policy and practice of respondent, in the course and conduct of its business, to enter or attempt to enter, into agreements, understandings and arrangements with various independent retail dealers located in areas within which it does business, to fix and maintain resale consumer prices of respondent's products distributed, offered for sale and sold by said independent retail dealers. Respondent employed persuasion, threats and compulsion in prevailing upon independent retail dealers selling its products to maintain resale prices fixed and promulgated by respondent for its products.

PAR. 7. 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 restrain and monopolize trade and commerce and they therefore 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 a complaint charging the former Freeman Shoe Corporation with violation of the Federal Trade Commission Act, and respondent herein, Freeman-Toor Corporation, successor to Freeman Shoe Corporation, having been furnished 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

Respondent herein, Freeman-Toor Corporation, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by said respondent of all the jurisdictional facts set forth in the complaint now to issue herein against said respondent, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by said 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, now issues its complaint in the form contemplated by

said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Freeman-Toor Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with executive offices located at 350 5th Avenue, New York, New York. Respondent Freeman-Toor Corporation is successor to Freeman Shoe Corporation, a Wisconsin corporation, now dissolved, the assets of which having been transferred on June 30, 1965, to respondent Freeman-Toor Corporation. The former business of Freeman Shoe Corporation is now operated by respondent Freeman-Toor Corporation through its division now known as Freeman Shoe division of such respondent corporation.

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 Freeman-Toor Corporation, a corporation, and its officers, and subsidiaries and said respondent's representatives, agents, employees, successors and assigns, directly or through any corporate or other device, in or in connection with the offering for sale, sale or distribution of shoes and related products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Entering into, continuing, cooperating in, carrying out any planned common course of action, understanding, agreement, combination or conspiracy between or among respondent or subsidiaries of respondent and any other person or persons not parties hereto, to fix, maintain, adhere to, stabilize by any means or methods, any prices, terms or conditions of sale or delivery of respondent's merchandise.

2. Entering into, continuing, establishing, or enforcing, or attempting to enforce, any agreement or understanding with any customer or customers or prospective customer or customers concerning the price at which any of respondent's products are to be resold.

3. Harassing, intimidating or coercing or threatening to refuse or refusing to sell men's shoes to independent retail dealers for failure to observe and maintain the resale prices prescribe by respondent.

It is further ordered, That respondent shall within sixty (60) days after service upon it of this Order, inform and advise each of

its customers of this Order, by serving by mail a copy of said Order upon all of said customers.

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

BARNEY'S SUPER CENTER, INC., ET AL.

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

Docket C-1008. Complaint, Oct. 27, 1965—Decision, Oct. 27, 1965

Consent order requiring a chain distributor of paints and floor covering products with 6 retail outlets in Pennsylvania, Ohio, and West Virginia, to cease making false and deceptive pricing, value, and savings claims in advertising its products by setting forth the term "Reg." in comparative-price advertisements to refer to prices which were higher than their regular retail prices, and the term "Val." to refer to prices which were higher than the retail prices of the trade area, and misrepresenting the quantity of merchandise for sale.

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 Barney's Super Center, Inc., Barney's Tile and Paint of Baden, Inc., Barney's Tile and Paint of Butler, Inc., Barney's Tile and Paint of New Castle, Inc., Barney's Tile and Paint Stores of Wheeling, West Virginia, Inc., and Barney's Tile and Paint Stores in Youngstown, Inc., corporations, and Lawrence R. Weisberg and Harry Weltman, individually and as officers 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 Barney's Super Center, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 1600 Fifth Avenue in the city of Pittsburgh, State of Pennsylvania.

Respondent Barney's Tile and Paint of Baden, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at Northern Lights Shopping Center in the city of Baden, State of Pennsylvania.

Respondent Barney's Tile and Paint of Butler, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at Greater Butler Shopping Center in the city of Butler, State of Pennsylvania.

Respondent Barney's Tile and Paint of New Castle, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at Lawrence Village Shopping Center in the city of New Castle, State of Pennsylvania.

Respondent Barney's Tile and Paint Stores of Wheeling, West Virginia, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of West Virginia, with its principal office and place of business located at Fourteenth and Market Streets in the city of Wheeling, State of West Virginia.

Respondent Barney's Tile and Paint Stores of Youngstown, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 234 Boardman-Canfield Road in the city of Youngstown, State of Ohio.

Respondents Lawrence R. Weisberg and Harry Weltman are officers of all of the corporate respondents. They formulate, direct and control the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. Their address is 1600 Fifth Avenue in the city of Pittsburgh, State of Pennsylvania.

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

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said merchandise to be transported from their main store in the city of Pittsburgh, State of Pennsylvania, to their other stores located in the States of Pennsylvania, Ohio, and West Virginia for sale to the purchasing public. Respondents 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 aforesaid business, and for the purpose of inducing the purchase of their paints and floor covering products, respondents have made numerous statements in advertisements inserted in newspapers published in the States of Pennsylvania, Ohio, and West Virginia. Said newspaper advertisements describe certain of the articles of merchandise offered for sale by respondents and in connection therewith set forth various comparative prices.

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

LUCITE WALL PAINT—$4.99 Gal.
FORMERLY $6.79 Gal.

LUCITE WALL PAINT $4.99 Gal. $6.79 VAL.

LUCITE HOUSE PAINT $5.94 Gal.
Reg. $8.55 Gallon.

LUCITE HOUSE PAINT $6.42 Gal. $8.55 VAL.

Duco Enamel SATIN SHEEN or Gloss
ENAMEL—$1.99 QT. Reg. $2.98

DUPONT PORCH-FLOOR $4.95 Gal. $7.60 VAL.
Trim "N" Shutter DuPont DULUX ENAMEL
$2.09 Qt. Reg. $3.08 Save 99¢ Qt.

DUPONT HOUSE PAINT REG. $6.98
SAVE $2.10 gal. $4.88 Gal.

PAR. 5. By and through the use of the above-quoted statements, and others of similar import not specifically set out herein, respondents have represented, directly or by implication, that the higher stated prices set out in said advertisements in connection with the terms "formerly" and "Reg." were the prices at which the advertised merchandise was sold or offered for sale by respondents in good faith for a reasonably substantial period of time in the recent regular course of their business, and that purchasers save the difference between respondents' advertised selling prices and the corresponding higher prices.

PAR. 6. In truth and in fact, the higher prices set out in said advertisements in connection with the terms "formerly" and "Reg." were not the prices at which the advertised merchandise was sold or offered for sale by respondents in good faith for a reasonably substantial period of time in the recent regular course of their business, and purchasers do not save the difference between respondents' advertised selling prices and the corresponding higher prices.

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

PAR. 7. By and through the use of the higher stated prices set out in connection with the term "Val.," respondents have represented, directly or by implication, that said higher prices were not 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 the trade area where such representations appeared, and that purchasers save the difference between respondents' advertised selling prices and the correspondents higher prices.

PAR. 8. In truth and in fact, the higher prices set out in said advertisements in connection with the term "Val." were 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 the trade area where such representations appeared, and purchasers do not save the difference between respondents' advertised selling prices and the corresponding higher prices.

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

PAR. 9. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their said merchandise, respondents have made statements in advertisements inserted in newspapers indicating that such merchandise has been purchased and is available in specified quantities.

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

10 carload purchase! 10,000 cases
of tile just arrived—$5.95 case
of 80 tiles reg. $9.60 value—save $3.65 per case.

10,000 gal. factory purchase A-1
Supertone Interior Latex Vinyl Paint
Save a Big 44%.

PAR. 10. By and through the use of the above-quoted statements, and others of similar import not specifically set out herein, respondents have represented, directly or by implication, that said quantities of merchandise have been purchased and are available for sale.

PAR. 11. In truth and in fact, respondents have not purchased or have available for sale such quantities of said merchandise.

Therefore, the statements and representations as set forth in

Paragraphs Nine and Ten hereof were and are false, misleading and deceptive.

PAR. 12. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their merchandise, respondents have made statements in advertisements inserted in newspapers describing certain prices at which specified articles of merchandise can be purchased at respondents' stores.

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

Duco Enamel Satin Sheen or
Gloss—$1.99 Qt.

Trim "N" Shutter DuPont DuLux
Enamel $2.09 qt.

Armstrong Excelon Tile
9 x 9" size 7¢

Armstrong Excelon Tile 7½¢ each

Armstrong Excelon Tile 7⅜¢

Translucent Vinyl Tile with solid
VINYL CHIPS Armstrong Congoleum-Nairn
Goodyear Your Choice 12¢ 9 x 9"

Translucent solid Vinyl Tile with solid
vinyl chips Armstrong-Goodyear your choice 11⅞¢

PAR. 13. By and through the use of the above-quoted statements, and others of similar import not specifically set out herein, respondents have represented, directly or by implication, that said merchandise in all instances was available for purchase at the advertised prices and would be sold at such prices.

PAR. 14. In truth and in fact, said merchandise in all instances was not available for purchase at the advertised prices and was often sold at higher prices.

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

PAR. 15. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of paints and floor covering products of the same general kind and nature as those sold by respondents.

PAR. 16. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of

the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 17. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

The Commission, having reason to believe that the respondents have violated the Federal Trade Commission Act, and having determined that complaint should issue stating its charges in that respect, hereby issues its complaint, accepts said agreement, makes the following jurisdictional findings and enters the following order:

1. Respondent Barney's Super Center, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 1600 Fifth Avenue, Pittsburgh, Pennsylvania.

Respondent Barney's Tile and Paint of Baden, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at Northern Lights Shopping Center, Baden, Pennsylvania.

Respondent Barney's Tile and Paint of Butler, Inc., is a corporation organized, existing and doing business under and by

virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at Greater Butler Shopping Center, Butler, Pennsylvania.

Respondent Barney's Tile and Paint of New Castle, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at Lawrence Village Shopping Center, New Castle, Pennsylvania.

Respondent Barney's Tile and Paint Stores of Wheeling, West Virginia, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of West Virginia, wth its office and principal place of business located at Fourteenth and Market Streets, Wheeling, West Virginia.

Respondent Barney's Tile and Paint Stores of Youngstown, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 234 Boardman-Canfield Road, Youngstown, Ohio.

Respondents Lawrence R. Weisberg and Harry Weltman are officers of said corporations and their address is 1600 Fifth Avenue, Pittsburgh, Pennsylvania.

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 Barney's Super Center, Inc., Barney's Tile and Paint of Baden, Inc., Barney's Tile and Paint of Butler, Inc., Barney's Tile and Paint of New Castle, Inc., Barney's Tile and Paint Stores of Wheeling, West Virginia, Inc. and Barney's Tile and Paint Stores of Youngstown, Inc., corporations, and their officers, and Lawrence R. Weisberg and Harry Weltman, individually and as officers of said corporations, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of paints and floor covering products, or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the terms "Reg.," "formerly," or any other terms or words of similar import or meaning, to refer to any amount which is in excess of the price at which such merchandise has been sold or offered for sale in good faith by respondents

for a reasonably substantial period of time in the recent regular course of their business; or otherwise misrepresenting the price at which such merchandise has been sold or offered for sale by respondents.

2. Using the term "Val." or the word "value," or any other term or word of similar import or meaning, 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 the trade area where such representations are made; or otherwise misrepresenting the price at which such merchandise has been sold in the trade area where such representations are made.

3. Representing, in any manner, that by purchasing any of said merchandise, customers are afforded savings amounting to the difference between respondents' stated price and any other price used for comparison with that price:

(a) Unless respondents have offered such merchandise for sale at the compared price in good faith for a reasonably substantial period of time in the recent regular course of their business; or

(b) Unless substantial sales of said merchandise are being made in the trade area at the compared price, or a higher price; or

(c) Unless a substantial number of the principal retail outlets in the trade area regularly offer the merchandise for sale at the compared price or some higher price; or

(d) When a value comparison representation with comparable merchandise is used, unless substantial sales of merchandise of like grade and quality are being made in the trade area at the compared price or a higher price and it is clearly and conspicuously disclosed that the comparison is with merchandise of like grade and quality.

4. Misrepresenting, in any manner, the savings available to purchasers or prospective purchasers of respondents' merchandise.

5. Representing, directly or by implication, that stated quantities of certain merchandise have been purchased or that stated quantities of certain merchandise are available for sale: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that such quantities have been purchased or that such quantities are available for sale as represented.

6. Representing, directly or by implication, that merchandise is available for purchase at stated prices or is being or will be sold at such prices: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that a sufficient quantity of the advertised merchandise was available to meet all reasonably anticipated demands for the merchandise at the advertised price and that such merchandise was sold at or below the advertised price.

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

ENDICOTT-JOHNSON CORP.

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

Docket C-1009. Complaint, Oct. 29, 1965—Decision, Oct. 29, 1965

Consent order requiring one of the Nation's largest shoe manufacturers with its principal place of business located in Endicott, N. Y., to cease and desist from acquiring any interest in any domestic concern engaged in manufacturing shoes and footwear for the next 20 years, without the prior approval of the Commission.

COMPLAINT

1. The Federal Trade Commission, having reason to believe that the party respondent named above, and hereinafter more particularly designated and described, has violated and is now violating provisions of Section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. § 45 (a) (1)), and of section 7 of the Clayton Act, as amended, (15 U.S.C. §18), and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint charging as follows:

Endicott-Johnson Corporation

2. Respondent, Endicott-Johnson Corporation (hereinafter sometimes referred to as Endicott-Johnson) is a corporation organized and existing under the laws of the State of New York, with its office and principal place of business located at 1100 East Main Street, Endicott, New York.

3. Endicott-Johnson is engaged in commerce as "commerce" is defined in the Clayton Act, as amended, and in the Federal Trade Commission Act.

4. Endicott-Johnson is engaged principally in the manufacture, sale and distribution of men's, women's and children's shoes and footwear. Endicott-Johnson produces most of its own leather and other shoe raw materials and components. It presently produces shoes in over two dozen shoe manufacturing plants. Of the shoes produced by Endicott-Johnson, approximately one-third are sold to mail order houses and large chain stores, approximately one-third are sold to small independent shoe retailers, and approximately one-third are retailed through the approximately 550 retail shoe outlets owned and operated by Endicott-Johnson itself.

5. In 1963, Endicott-Johnson had total dollar sales in excess of $118,000,000, and assets of over $85,000,000. In that year, Endicott-Johnson was the fourth largest manufacturer of shoes in the United States when measured by the number of pairs of shoes manufactured, and the fifth largest company when measured in terms of dollar sales.

6. Endicott-Johnson sells men's, women's and children's shoes under various trade names, including the following: "Johnsonian," "Guide Step," "Dobie's," "E-Jay," "Cool Notes," "Ranger," "Fashion 10," and "High Society."

Nobil Shoe Company

7. The Nobil Shoe Company (hereinafter sometimes referred to as Nobil) was a corporation organized and existing under the laws of the State of Ohio, and its office and principal place of business was located at 750 East Talmadge Avenue, Akron, Ohio.

8. Nobil operated 121 retail shoe outlets consisting of retail, family type shoe stores, or of leased shoe departments. Nobil's stores were located in Ohio, Michigan, Indiana, Pennsylvania, Wisconsin and Illinois. Nobil did not own or operate any shoe manufacturing facilities. In 1964 Nobil had sales of approximately $17,000,000, and assets of $6,564,000.

Trade and Commerce

9. Although domestic shoe manufacturing is spread among many companies, a small number of companies occupy a commanding position in the shoe industry. There are between 700 and 1,000 manufacturers of shoes in the United States, but just a few large companies control a sizeable segment of total industry production, while the balance is divided among hundreds of smaller companies

having only very tiny shares. In 1962 the four largest companies accounted for 23.6% of total industry production, the fifty largest companies accounted for 52.5% of total industry production.

10. Endicott-Johnson is one of the few large companies controlling a comparatively large segment of the total market. In 1962 Endicott-Johnson produced over 28,000,000 pairs of shoes, which made it the fourth largest manufacturer of shoes in the United States, with a total market share exceeded only by International Shoe Company, Brown Shoe Company and Genesco.

11. In 1963 "shoe stores," or stores and retail outlets which deal primarily in the sale of shoes, accounted for more than 50% of the total market for shoes sold and distributed in the United States. A very large proportion of shoe stores in this country are "factory owned" or owned and operated by companies manufacturing shoes.

12. Furthermore, there has been a definite trend since 1945 for shoe manufacturers, particularly the largest shoe manufacturers, to acquire retail outlets. International Shoe Company, the leading producer in the industry had no retail outlets in 1945, but by 1956 had acquired 130 retail outlets, and today is estimated to have over 700 retail units. Genesco had only 80 retail outlets in 1945, while today it is estimated to have more than 1,000 retail outlets. Shoe Corporation of America during this same period increased its retail outlets from 301 to approximately 350. Melville Shoe Company has increased its retail outlets from 526 to about 1,275. And Brown Shoe Company with no retail outlets of its own prior to 1951, is estimated to have in excess of 715 outlets today. In addition, between 1950 and 1956 nine independent shoe store chains operating 1,114 retail shoe stores were found to have become subsidaries of these large firms, and to have ceased their independent operations.

13. There also exists a definite trend for the parent manufacturers of such acquired shoe outlets to supply a large and increasing proportion of the retail outlets' needs, thereby foreclosing other shoe manufacturers, particularly independent producers, from competing for the business of these retail stores.

14. Since 1953 Endicott-Johnson has made four acquisitions of companies operating retail shoe stores. In 1953 Endicott-Johnson acquired Liberty Shoe Stores, Inc., for a consideration of $300,000. Liberty Shoe Stores, Inc. operated nine shoe stores in the Buffalo, New York area. In 1955 Endicott-Johnson acquired Slaters Boot Shops for approximately $800,000. Slaters Boot Shops operated 11 stores in Louisiana and Florida. In 1958 Endicott-Johnson acquired

Rival Shoe Co., Inc. for approximately $356,000. Rival Shoe Co., Inc. operated 11 retail shoe stores in New York City and Philadelphia. In 1962 Endicott-Johnson acquired Brasley-Cole Shoe Co. Ltd., for a consideration of $2,700,000. Brasley-Cole Shoe Co., Ltd. operated 83 retail shoe stores in Clafiornia, New Mexico and Texas.

15. It is estimated that there are twenty-three companies in the United States that own 100 or more retail shoe outlets. Endicott-Johnson ranked seventh among these companies in number of retail outlets, while Nobil ranked twentieth. Endicott-Johnson and Nobil combined rank sixth.

16. These twenty-three companies, each of which operated over 100 retail shoe outlets, had in the aggregate, about 9,000 retail shoe outlets. Of these twenty-three companies, fourteen were shoe manufacturers as well as retailers, while nine were retailers only. Of the approximately 9,000 shoe stores owned by this group of companies, the fourteen manufacturer-retailers owned 75% of all the stores, while the retailer group accounted for only 25% of such stores. Nobil was the ninth ranking non-manufacturing shoe retailer. The addition of the Nobil stores to the manufacturer-retailer group lowers the number of units operated by the non-manufacturing retailers with over one hundred stores by nearly 6%. Nobil was a substantial independent shoe retailer, and accounter for an appreciable part of the independent shoe retailer business.

17. Endicott-Johnson operated retail shoe stores in all of the states in which Nobil operated retail stores. The stores operated by Endicott-Johnson which were located in the same States as were Nobil stores, had total sales, in 1963, of $12,389,000.

18. There were twenty-six cities, in five States, in which both Endicott-Johnson and Nobil operated retail outlets. Those cities were Altoona, Erie, New Kensington, Pittsburgh, and Scranton, Pennsylvania; Alliance, Cleveland, Lorain, Mansfield, Massillon, Mount Vernon, Sandusky, Stow, and Youngstown, Ohio; Anderson, Indianapolis, and Marion, Indiana; Aurora, Illinois; Ann Arbor, Battle Creek, Bay City, Benton Harbor, Detroit, Lincoln Park, Muskegon, Port Huron and Saginaw, Michigan. Endicott-Johnson operated 52 retail shoe store outlets with aggregate sales of $2,400,000, and Nobil operated 39 retail shoe outlets with aggregate sales of $5,400,000 in the 26 cities named above.

Violations Charged

In September 1965, Endicott-Johnson Corporation acquired all

of the stock of Nobil Shoe Company for a consideration of $9,400,000.

A. *Violation of Section 7 of the Clayton Act.*

19. The effect of the aforesaid acquisition of Nobil Shoe Company by Endicott-Johnson Corporation may be substantially to lessen competition and to create a monopoly in the manufacture and sale of shoes and footwear in the United States as a whole in the following ways among others:

(1) Competition between Endicott-Johnson and other manufacturers of shoes and footwear has been eliminated or restricted;

(2) An independent purchaser of shoes and footwear has been eliminated;

(3) A portion of the market for shoes and footwear has been acquired by Endicott-Johnson thereby foreclosing other manufacturers of shoes and footwear from effectively competing for the business of the acquired company;

(4) In an industry already characterized by the existence of a trend toward vertical integration between manufacturers and retailers, the acquisition has further reduced the number of available independent purchasers of shoes;

(5) The trend towards vertical integration between manufacturers and retailers has been, or may be, encouraged or stimulated;

(6) The level of integration between the shoe and footwear manufacturing industry and shoe and footwear retailing has been increased;

(7) The entry of new competitive entities into the manufacture and sale of shoes and footwear has been made more difficult.

20. A further effect of the aforesaid acquisition of Nobil Shoe Company by Endicott-Johnson Corporation may be substantially to lessen competition or to tend to create a monopoly in the sale of shoes at retail in the United States as a whole, and in that area of the country which consists of all or any part of the States of Pennsylvania, Ohio, Indiana, Illinois, and Michigan, in the following ways among others:

(1) Actual or potential competition between Endicott-Johnson and Nobil has been eliminated;

(2) Nobil has been eliminated as an independent competitive factor;

(3) Concentration has been increased;

(4) The members of the consuming public will be denied the benefit of free and unrestricted competition.

21. The acquisition of Nobil Shoe Company constitutes a violation of Section 7 of the Clayton Act (15 U.S.C. § 18), as amended.

B. *Violation of Section 5 of the Federal Trade Commission Act.*

22. The combination by which Endicott-Johnson and Nobil undertook to merge Nobil into Endicott-Johnson is an unreasonable restraint of trade and commerce in the retail sale of shoes and footwear, throughout the United States or certain sections thereof, in violation of Section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. § 45(a)(1)).

23. The acquisition of Nobil, and the previous acquisitions by Endicott-Johnson, taken as a whole, have hindered, and have a dangerous tendency to hinder, competition unduly, and constitute unfair acts and practices, in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of Section 7 of the Clayton Act, as amended, and 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 Endicott-Johnson Corporation is a corporation organized, existing and doing business under the laws of the State of New York with its office and principal place of business located at 1100 East Main Street, Endicott, New York.

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

ORDER

It is ordered, That for a period of twenty years after the service upon it of this Order, Endicott-Johnson Corporation 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 course of business), of, or any other interest in, any domestic concern, corporate or non-corporate, engaged principally or as one of its major commodity lines at the time of such acquisition, in any State of the United States or the District of Columbia, in the business of manufacturing or selling shoes or footwear, without the prior approval of the Federal Trade Commission.

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

ARMSTRONG CORK COMPANY

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 2(a) OF THE CLAYTON ACT

Docket C-1010. Complaint, Nov. 3, 1965—Decision, Nov. 3, 1965

Consent order requiring a Lancaster, Pa., manufacturer and distributor of floor covering products such as linoleum, linoleum tile, asphalt tile, rubber tile and related products—having total net sales of approximately $341,899,000 in 1963—to cease conspiring unlawfully with its wholesalers to fix and maintain the prices, terms and conditions of resale of such products by wholesalers or other purchasers; to cease discriminating in price between competing purchasers of its products by charging some purchasers higher net sale prices than charged other competing purchasers, in violation of Sec. 2(a) of the Clayton Act; and requiring an independent review of its present pricing policies and pricing materials and thereafter issue new pricing materials to be effective, July 1, 1966.

COMPLAINT

The Federal Trade Commission, having reason to believe that the corporation named as respondent in the caption hereof, and more particularly designated and described hereinafter, has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act (15 U.S.C. Sec. 41, et seq.) and subsection

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

Count I

PARAGRAPH 1. Respondent, Armstrong Cork Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania with its principal office and place of business located at West Liberty and Charlotte Streets, Lancaster, Pennsylvania.

PAR. 2 Respondent has been and is now engaged in the manufacture, sale and distribution of various products, including floor covering products such as, but not limited to, linoleum, linoleum tile, vinyl corlon, rubber tile, linotile, cork tile, excelon tile, asphalt tile, quaker rugs, vinyl accolon and their accompanying adhesives and primers with total net sales in all products of approximately $341,899,000 in 1963. The respondent is a major factor in the highly concentrated floor covering industry. By way of example, in the year 1962 respondent's sales of asphalt floor tile represented approximately 23% of total industry sales; while sales of respondent and two other companies represented approximately 65% of the total market of asphalt floor tile.

PAR. 3. Respondent is now, and for the last several years has been, engaged in the sale and distribution of floor covering products to different purchasers located in the various States of the United States and in the District of Columbia. Said products are sold by respondent for resale and use within the United States and the District of Columbia, and respondent causes said products so sold to be shipped and transported from the State or States of manufacture to purchasers located in States other than the State or States wherein said shipments originated. In the course and conduct of its business, respondent has engaged and is now engaging in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business in commerce, the respondent has been and is now in substantial competition in the sale of floor covering products with other manufacturers and sellers of such products. Respondent's purchasers are now, and during the times mentioned herein, have been in substantial competition with other purchasers in the sale and distribution of floor covering products. Respondent's wholesale distributors are now, and during the times mentioned herein have been in substantial

competition with each other in the resale of respondent's products to retailers and flooring contractors. Many of respondent's retail purchasers are likewise directly or indirectly in competition with each other in the resale of respondent's products within the same trading area.

PAR. 5. Respondent is now, and for the last several years has been, distributing its floor covering products to approximately 40,000 retailers through some 84 wholesalers having a total of some 170 outlets in the United States. In addition, the respondent sells directly to selected mail order houses.

PAR. 6. Respondent and its wholesalers are now and, for the last several years, have been continuously maintaining a close and cooperative relationship through communications and publications such as, but not limited to, correspondence, seasonal letters to wholesale distributors, price and policy bulletins, price lists and supplements thereto, reports, invoices showing prices and other writings, and by means of annual wholesalers' conventions and other meetings and conferences.

PAR. 7. Respondent for the last several years and continuing to the present time has, in combination, agreement and conspiracy with its wholesalers, or some of them with the cooperation or acquiescence of others, established, maintained and pursued a planned course of action to hinder, lessen and eliminate competition in the sale and distribution of respondent's floor covering products in interstate commerce.

PAR. 8. Pursuant to and in furtherance of the said combination, agreement and conspiracy, respondent and its wholesalers, have established, maintained, and fixed the prices, terms and conditions of sale of respondent's floor covering products by wholesalers to retail dealers and flooring contractors.

PAR. 9. The acts and practices of respondent as herein alleged, and practices pursuant thereto being implemented by the respondent's substantial market position are to the prejudice of the public, and have a dangerous tendency to, and have, hindered, suppressed, lessened, and eliminated competition in the sale and distribution of respondent's floor covering products in commerce and constitute unfair methods of competition in commerce, all in derogation of the public interest and in violation of Section 5 of the Federal Trade Commission Act.

Count II

PAR. 10. The allegations of Paragraphs One, Two, Four, Five and Six of Count I are hereby incorporated by reference and made

a part of this Count as fully and with the same effect as if quoted verbatim herein.

PAR. 11. Respondent, in the course and conduct of its business, is now, and for the last several years has been, engaged in the manufacture, sale and distribution in commerce as "commerce" is defined in the amended Clayton Act, of floor covering products, for resale and use within the United States.

PAR. 12. Respondent, in the course and conduct of its business, as above described, for the last several years has been and is now discriminating in price, directly or indirectly, between different purchasers of its floor covering 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. The following examples are illustrative of respondent's discriminatory pricing practices:

(a) Respondent is now distributing, and for the last several years has distributed, its floor covering products to its wholesalers under a volume rebate plan based upon purchases made during a six month season, with earned rebates payable at the end of the season. The percent of volume rebate is and has been determined on the basis of three-tenths of one percent per $100,000 of aggregate purchases, with a maximum of 4%, after cash discount and before freight equalization. In computing this percentage, respondent multiplies aggregate purchases by a factor of .000003, the product thereof representing the percentage figure which, when applied to aggregate purchases, determines the amount of rebate earned.

Some of respondent's wholesalers, purchasing under respondent's volume rebate plan have been discriminated against by having to pay higher net sale prices than other competing wholesalers purchasing floor covering products of like grade and quality under the same plan.

(b) Respondent is now and, for the last several years has been selling to direct purchasers in the wholesale trade and by and through such means to indirect purchasers in the retail trade. Respondent, in making such indirect sales, sends directly to each retail dealer a seasonal letter accompanied by the new price lists for that particular six month season. The lists contain the prices and conditions of sale on the basis of which Armstrong wholesalers will sell to the retailers in the coming season. Armstrong also employs salesmen who work out of twenty-one district offices. These salesmen have direct contact with the retailer accounts and perform functions such as, but not limited to, signing seasonal contracts, taking orders and other "missionary" and promotional duties.

Some of respondent's indirect purchasers purchasing under the said price lists containing rebate and discount schedules, have been discriminated against by having to pay higher net sale prices than other competing indirect purchasers purchasing floor covering products of like grade and quality under the same price lists.

PAR. 13. The effect of respondent's aforesaid discriminations in price, as alleged in Paragraphs Eleven and Twelve herein, may be to injure, destroy, or prevent competition between and among purchasers of respondent's products, or to substantially lessen competition or tend to create a monopoly in the line of commerce in which the aforesaid purchasers receiving the discriminatory prices are engaged.

PAR. 14. The aforesaid acts and practices of respondent constitute violations of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C. Title 15, Sec. 13).

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of Section 2(a) of the Clayton Act, as amended, and 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 Armstrong Cork Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at West Liberty and Charlotte Streets, in the city of Lancaster, State of Pennsylvania.

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

I

It is ordered, That respondent, Armstrong Cork Company, a corporation, its officers, employees, agents and representatives, successor or assigns, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of floor covering products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Engaging in, participating in, continuing, carrying out or enforcing any contract, agreement, arrangement or understanding, with any wholesalers, distributors, or other purchasers of Armstrong floor covering products, which directly or indirectly establishes, maintains or fixes prices, terms or conditions of resale of such products by such wholesalers, distributors, or other purchasers.

2. Enforcing, or attempting to enforce, the price or prices or suggested prices, discounts, rebates or terms or conditions for the resale of Armstrong floor covering products.

3. Securing or attempting to secure the cooperation of its distributors in any system of resale prices by agreement or understanding.

4. Circulating to or exchanging with any wholesaler or distributor or other purchaser, any circulars, price lists, suggested price lists, policy letters or other information, the effect of which is to create a contract, agreement, arrangement, or understanding which fixes or establishes a price or prices, terms or conditions at or upon which any Armstrong floor covering products shall be resold.

5. Requiring or requesting any wholesaler or distributor or other purchaser of Armstrong floor covering products to furnish respondent any invoice or any report which reflects the price at which any such product has been resold.

II

It is further ordered, That respondent Armstrong Cork Company shall complete an independent review of its present prices, price lists, suggested prices, discounts, rebates, pricing policies, and other pricing materials, and based upon such review respondent shall

thereafter issue new pricing materials to be effective not later than the beginning of the floor covering sales season July 1, 1966.

III

It is further ordered, That respondent, Armstrong Cork Company, send a copy of this Order to all parties to whom it sends any of the new price lists, suggested price lists, or other pricing materials issued pursuant to Part II of this Order.

IV

It is further ordered, That respondent, Armstrong Cork Company, a corporation, its officers, employees, agents and representatives, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of floor covering products in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from discriminating, directly or indirectly, in the price of such products of like grade and quality by selling to any purchaser at net prices higher than those charged any other purchaser who in fact competes in the resale and distribution of such products with the purchaser paying the higher price.

V

It is further ordered, 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.

VI

It is further ordered, That nothing in this Order shall prohibit respondent from sending to its wholesalers, distributors and potential customers or users of respondent's floor covering products its suggested resale price lists.

VII

It is further ordered, That respondent, Armstrong Cork Company, shall, within sixty (60) days after service of this Order upon it, 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

STANLEY MYERS ET AL.

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

Docket C-1011. Complaint, Nov. 4, 1965—Decision, Nov. 4, 1965

Consent order requiring three defunct firms in Melrose Park, Pa., engaged in purchasing used X-ray film from hospitals, doctors and others, for resale to processers for the recovery of silver therefrom, to cease misrepresenting the condition of materials received and the cost or amount of labor expended upon any shipment of goods, and to cease from failing to pay suppliers agreed-upon amounts for material unless failure to pay is based upon a bona fide claim.

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 Stanley Myers, Edward S. Myers and Louis Myers, individuals, formerly doing business at Edward S. Myers Company, Jostan-Montgomery Plastics Company and Philadelphia Processing Company, 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 Stanley Myers, Edward S. Myers and Louis Myers are individuals who have in the past done business as Edward S. Myers Company, Jostan-Montgomery Plastics Company and Philadelphia Processing Company, with their principal office and place of business located at 7607 Spring Avenue, Melrose Park, Pennsylvania.

PAR. 2. Respondents have in the past engaged in the solicitation for and purchase of used X-ray film from hospitals, doctors and others, for resale to processers of such film for the recovery of silver therefrom. Respondents used the name Edward S. Myers Company from the inception of their business in about 1955 until about May, 1961 when they adopted the name Jostan-Montgomery Plastics Company. Respondents used the latter name until about January, 1964 at which time they chose the name Philadelphia Processing Company, which they used until September, 1964 when they ceased doing business.

PAR. 3. In the course and conduct of their business, respondents for some time in the past caused the aforesaid product, when pur-

chased, to be shipped to their place of business in the State of Pennsylvania from sellers thereof located in various other States of the United States. In addition, respondents for some time in the past caused the aforesaid product, when sold, to be shipped from their place of business in the State of Pennsylvania to a purchaser thereof located in the State of New Jersey. At all times mentioned herein respondents maintained a substantial course of trade in said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, respondents engaged in the practice of mailing circulars to prospective sellers of used X-ray film throughout the country, offering to purchase such film at a specified price and offering to pay the motor freight charges for the shipment of such film. When contacted by the recipients of these circulars, respondents forwarded to them a purchase order contract along with instructions for shipping the used X-ray film.

Upon receipt of a shipment of used X-ray film accompanied by a signed purchase order contract, respondents engaged in the practice of notifying the seller that the packaging of the film did not comply with the conditions prescribed in the purchase order contract, that most of the film was substandard or was received in a damaged condition and, by reason thereof, respondents were required to perform extensive labor upon the substandard or damaged film. Consequently, respondents deducted a substantial portion of the agreed upon amount as compensation for the alleged labor performed and for the lower value of the alleged substandard or damaged film, and remitted a check which was a small fraction of the amount originally offered as full payment for the film received.

PAR. 5. In truth and in fact, the used X-ray film received by respondents was packaged in the same manner usually and customarily employed by sellers of such used film and such packing was in substantial compliance with the terms of the purchase order contract. The film was not substandard, received in a damaged condition, or otherwise of lower value than any other used X-ray film of the same type. No labor was performed by respondents upon the film other than that required in any case to prepare such film for resale to processors thereof.

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

PAR. 6. In the conduct of their business, at all times mentioned herein, respondents were in substantial competition, in commerce,

with corporations, firms and individuals likewise engaged in the purchase and resale of used X-ray film.

PAR. 7. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said statements and representations were true and into the sale of substantial quantities of used X-ray film by reason of said erroneous and mistaken belief.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, were all to the prejudice and injury of the public and of respondents' competitors and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondents Stanley Myers, Edward S. Myers and Louis Myers are individuals who have in the past done business as Edward S. Myers Company, Jostan-Montgomery Plastics Company and Philadelphia Processing Company, with their office and principal place of business located at 7607 Spring Avenue, in the city of Melrose Park, State of Pennsylvania.

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 Stanley Myers, Edward S. Myers and Louis Myers, individuals, doing business as Edward S. Myers Company, Jostan-Montgomery Plastics Company, Philadelphia Processing Company or under any other trade name or names, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the soliciting or offering to purchase or the purchase of used X-ray film, or any other product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Falsely representing, directly or by implication, that any goods or materials shipped to or purchased by respondents were substandard, or otherwise inferior, or were received in a damaged or otherwise injured condition.

2. Falsely representing, directly or by implication, the cost or amount of labor that has been or will be performed upon any shipment of goods or materials purchased or received by respondents.

3. Failing to pay, or deducting any amount of money from, a sum agreed upon between respondents and the seller of any goods or materials, unless such failure to pay or deduction is based upon a bona fide claim.

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

NATIONAL MODERNIZERS, INC., ET AL.

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

Docket C-1012. Complaint, Nov. 5, 1965—Decision, Nov. 5, 1965

Consent order requiring three affiliated sellers of storm-screen windows with places of business in Cranston, R. I., Needham, Mass., and Hartford, Conn., to cease using "bait" advertising to sell their storm-screen windows, in pursuance of which they placed advertisements in newspapers of "UNCLAIMED * * * STORM-SCREEN WINDOWS * * * $8.50 * * *" which were not bona fide offers to sell at the advertised price

but were for the purpose of obtaining leads to prospective purchasers who were then called upon by salesmen and pressured into buying other merchandise at higher prices.

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 National Modernizers, Inc., National Modernizers of Massachusetts, Inc., National Modernizers of Connecticut, Inc., corporations, and Eugene Albanese and Donald S. Letts, individually and as officers 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 National Modernizers, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Rhode Island, with its principal office and place of business located at 1732 Cranston Street in the city of Cranston, State of Rhode Island.

Respondent National Modernizers of Massachusetts, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts. It has had its principal place of business in various locations at the times set forth herein, principally at 32-32A Dedham Avenue in the city of Needham, State of Massachusetts and 1732 Cranston Street in the city of Cranston, State of Rhode Island.

Respondent National Modernizers of Connecticut, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its principal office and place of business located at 453 Wethersfield Avenue in the city of Hartford, State of Connecticut.

Respondents Eugene Albanese and Donald S. Letts are officers of the corporate respondents. They formulate, direct and control the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. Their address is the same as that of respondent National Modernizers, Inc., at 1732 Cranston Street in the city of Cranston, State of Rhode Island.

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

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from the various places of business of the said corporate respondents, in their respective States of incorporation, to purchasers thereof located in various other States of the United States, and have caused to be mailed, shipped, or delivered by other means, from one corporate respondent to another corporate respondent, various books, documents, checks, letters, advertisements and other writings and papers for use in the matters and things hereinafter alleged and set forth, and maintain and at all times herein mentioned 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 aforesaid business, and for the purpose of inducing the purchase of their products, respondents have made statements in advertisements in newspapers of general circulation. Typical and illustrative, but not all inclusive, of such statements are the following:

UNCLAIMED ALCOA ALUMINUM
TRIPLE ACTION STORM-SCREEN WINDOWS
WHILE THEY LAST!
$8.50
per window installed any size.
NOT SECONDS—NOT REJECTS BUT BRAND NEW WINDOWS
UNCLAIMED BY OUR CUSTOMERS. MINIMUM 6 WINDOWS

* * * * * * *

FREE HOME DEMONSTRATION ANYWHERE IN NEW ENGLAND
NATIONAL MODERNIZERS, INC.
32 Dedham Ave., Needham, Mass.

PAR. 5. By and through the use of said above-mentioned statements, and others of similar import not specifically set out herein, the respondents represented, directly or by implication, that they were making a bona fide offer to sell storm-screen windows at the prices specified in the advertising.

PAR. 6. In truth and in fact, respondents' offers were not bona fide offers to sell the said storm-screen windows at the advertised prices but were made for the purpose of obtaining leads and information as to persons interested in the purchase of storm-screen windows. After obtaining leads through response to said advertisements, respondents' salesmen called upon such persons but made no effort to sell said storm-screen windows at the advertised prices. Instead they exhibited samples of the advertised storm-screen windows, or one similar to them, in demonstrating that they were

manifestly unsuitable for the purpose intended, in addition disparaging the advertised products and using other tactics in such a manner as to discourage their purchase, and attempted to and frequently did, sell much higher priced products.

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 conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of storm-screen windows of the same general kind and nature as those sold by respondents.

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

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent National Modernizers, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Rhode Island, with its principal office and place of business located at 1732 Cranston Street, in the city of Cranston, State of Rhode Island.

Respondent National Modernizers of Massachusetts, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts. It has had its principal place of business in various locations at the times relevant to this proceeding, principally at 32-32A Dedham Avenue, in the city of Needham, State of Massachusetts and 1732 Cranston Street, in the city of Cranston, State of Rhode Island.

Respondent National Modernizers of Connecticut, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its principal office and place of business located at 453 Wethersfield Avenue, in the city of Hartford, State of Connecticut.

Respondents Eugene Albanese and Donald S. Letts are officers of the said corporations, and their address is the same as that of respondent National Modernizers, Inc. at 1732 Cranston Street, in the city of Cranston, State of Rhode Island.

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

ORDER

It is ordered, That respondents National Modernizers, Inc., National Modernizers of Massachusetts, Inc., National Modernizers of Connecticut, Inc., corporations, and their officers, and respondents Eugene Albanese and Donald S. Letts, individually and as officers of said corporations, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of storm-screen windows or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using, in any manner, a sales plan, scheme or device wherein false, misleading or deceptive statements or represen-

tations are made in order to obtain leads or prospects for the sale of merchandise or services.

2. Offering for sale, in advertisements or otherwise, merchandise described as "unclaimed" or by any other terms which are designed not to sell that particular merchandise but to sell other merchandise at higher prices.

3. Making representations purporting to offer merchandise for sale when the purpose of the representation is not to sell the offered merchandise but to obtain leads or prospects for the sale of other merchandise at higher prices.

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

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

6. Offering for sale in advertisements or through out-of-store solicitations any merchandise which is thereafter stated to be not in stock or not readily available for delivery at the advertised or offering price, unless the advertisement states the period of time during which the merchandise will be available at the advertised price and sufficient merchandise is in fact in stock available for sale at that price for that period of time.

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

FAIRCHILD CAMERA AND INSTRUMENT CORPORATION ET AL.

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

Docket C-1013. Complaint, Nov. 10, 1965—Decision, Nov. 10, 1965

Consent order requiring a manufacturer of photoengraving equipment and related products with headquarters in Syosset, N.Y., to cease attempting to lessen competition through threatening to breach the guarantees on its equipment, making adjustments on such equipment so that plastic plates of a competitor would cause malfunctions, falsely disparaging competitors' products, and refusing to sell or make timely shipments to customers also buying from competing firms.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (15 U.S.C. Sec. 41, et seq.) and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the parties named in the caption hereof, and hereinafter more particularly described, have violated Section 5 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 as follows:

PARAGRAPH 1. (1) Respondent Fairchild Camera and Instrument Corporation is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 300 Robbins Lane, Syosset, Long Island, New York.

(2) Respondent Fairchild Credit Corporation, a wholly owned subsidiary of Fairchild Camera and Instrument Corporation, is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business at 221 Fairchild Drive, Plainview, Long Island, New York.

PAR. 2. (1) Respondents are and for the five (5) years last past or more have been engaged in the manufacture, sale and lease of graphic equipment, including printing presses, teletype setter machines, and electronic engraving machines. Respondents also sell materials for use in conjunction with the above equipment, including plastic engraving plates, and metal engraving styli. This equipment is marketed and serviced throughout the United States through a network of local salesmen, and customer engineers and in conducting this portion of their business respondents operate under the name of Fairchild Graphic Equipment, an unincorporated division of Fairchild Camera and Instrument Corporation.

(2) Fairchild Credit Corporation is and has been engaged in the maintenance of electronic engraving machines leased by Fairchild Camera and Instrument Corporation to users of printing and engraving equipment.

(3) Respondents have the major share of the Electronic engraving machines market. In 1963, Fairchild engravers were installed in more than 40% of the newspapers in the United States. As of January 1963 this market was shared by only three competitors, with a total of 540 machines in use. Prior to about 1960, respondents were virtually the sole suppliers of engraving materials, including engraving plastics, required for use with Fairchild engraving machines. In 1962 Fairchild Camera and Instrument Corporation had gross receipts of $101,550,000.00.

(4) In or about 1960, two other corporate suppliers of engraving plastics entered the field of manufacturing and selling engraving materials for use with Fairchild engraving machines.

PAR. 3. The respondents in the course and conduct of the aforesaid business sell and transport or cause to be transported the aforementioned engraving materials, including plastic plates and metal engraving styli, required for use with respondents' photoengraving equipment, to their customers in States other than the States in which said engraving materials are manufactured. There has been and is now a continuous and substantial trade in commerce in said engraving materials and products between and among the several States of the United States and the District of Columbia within the intent and meaning of the Federal Trade Commission Act.

PAR. 4. Respondents, in the course and conduct of their businesses, in commerce, as aforesaid, are now and have been at all times mentioned herein, in competition with other corporations, individuals, partnerships and firms likewise engaged in the sale and distribution of similar products as described herein except to the extent that such competition has been hindered, lessened, restricted, restrained and forestalled by the unfair acts and practices and unfair methods of competition herein set forth.

PAR. 5. During the years since 1959, the respondents have been and are now engaged in, and have used and are now using, unfair methods of competition, and unfair acts and practices in commerce, as "commerce" is defined in the Federal Trade Commission Act. Included among and illustrative of such unfair acts and practices are:

(1) Threatening to refuse, and refusing to honor the guarantee and service provisions of their contracts with lessees and owners of respondents' photoengraving machines who had purchased engraving materials from competitors of respondents.

(2) Instructing or causing their salesmen and customer engineers or other employees or agents to remove, or employ coercive or collusive means to effect the removal of, used and new styli from the premises of the users of respondents' photoengraving machines or to destroy such styli for the purpose of, or with the effect of making these products unavailable for use on said engraving machines in connection with plastic plates supplied by or purchased from competitors of respondents.

(3) Falsely disparaging or making false or misleading representations concerning the effectiveness or quality of a competitor's engraving materials by the use of statements disseminated in any

manner to purchasers or prospective purchasers of engraving materials.

(4) Causing the heat on respondents' photoengraving machines to be raised to an unnecessarily high level so that plastic produced and supplied by competitors of respondents, being less resistant to extreme heat, burned, scorched and blistered when used on such machines.

(5) Causing unnecessary adjustments to be made to the "bounce" on the cutter-head of the engraving machine and on the styli on respondents' photoengraving machines, so that styli purchased from or supplied by competitors of respondents tended to engrave distorted and uncertain images.

(6) Threatening to refuse to sell, or refusing to sell, or to make timely shipment of, styli to engraving machine users who had purchased engraving materials and supplies from competitors of respondents.

(7) Furnishing, and instructing, their salesmen and customer engineers to furnish free styli to users of Fairchild plastic while at the same time charging the standard price for the styli to users of plastic purchased from respondents' competitors.

(8) Selling and making contracts or agreements for the sale or lease of respondents' products on the condition, agreement, or understanding that the purchaser thereof shall not purchase or use similar products supplied by any competitor or competitors of respondents.

(9) Enforcing and continuing in effect, requirements, conditions, agreements, or understandings with customers of respondents to the effect that such customers or purchasers shall not purchase or use similar products supplied by any competitors of respondents.

PAR. 6. The acts, practices and methods of competition engaged in, followed, pursued or adopted by respondents, and the acts and practices engaged in and followed pursuant thereof and in furtherance and implementation thereof by respondents as hereinbefore alleged, constitute unfair acts, practices and methods of competition, the effect of which has been, is now, or may be to injure, impair, frustrate, eliminate, or prevent competition between respondents and others engaged in the manufacture, distribution and selling of engraving materials, or to tend to create a monopoly in respondents in the manufacture, distribution and selling of such products or to unduly obstruct, hamper or impede the current of commerce in such products between and among the several states or to deprive members of the public who have purchased, do purchase or may purchase such engraving materials of the advantage

and opportunity to so purchase from manufacturers, distributors or vendors in active and bona fide competition, unimpeded by artificially imposed restraints, or to curtail the breadth of choice of vendors from which such members of the purchasing public may buy, all in derogation of the public interest and in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Restraint of Trade 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 Fairchild Camera and Instrument Corporation is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 300 Robbins Lane, Syosset, Long Island, New York.

Respondent Fairchild Credit Corporation is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 221 Fairchild Drive, Plainview, Long Island, New York.

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

ORDER

It is ordered, That respondents Fairchild Camera and Instrument Corporation, a corporation, and Fairchild Credit Corporation, a

corporation, and respondents' officers, employees, agents, or representatives, successors and assigns, directly or through any corporate or other device, in or in connection with the sale, offering for sale or lease or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of photoengraving equipment and of products (hereinafter referred to as "respondents' products") used in connection with photoengraving equipment, including, but not limited to, plates, plastics and styli, do forthwith cease and desist from:

1. Threatening to breach, or actually breaching provisions of contracts guaranteeing maintenance or otherwise relating to the servicing of photoengraving equipment leased or sold to customers, for the reason that such customers are known to respondents to be, or are believed to be, purchasing or using a competitor's engraving materials.

2. Removing, destroying or employing coercive or collusive means to effect the removal of styli from the premises of the users of respondents' photoengraving machines for the purpose of or with the effect of making these products unavailable for use on said engraving machines in connection with plastic plates supplied by or purchased from competitors of respondents.

3. Falsely disparaging or making false or misleading representations concerning the effectiveness or quality of a competitor's engraving materials sold or distributed in competition with respondents' products by the use of statements disseminated in any manner to purchasers or prospective purchasers of such engraving materials.

4. Interfering with the normal or usual processes or operations of customer photoengraving equipment in order to render competitive products which are otherwise capable of use with such equipment inoperative, defective or inferior in comparison with respondents' products.

5. Threatening to refuse to sell, or refusing to sell, or failing to make timely shipment of, merchandise to customers for the reason that such customers are known to respondents to be, or are believed to be, using engraving materials sold or distributed in competition with respondents' products.

6. Levying charges for merchandise ordered by users of products sold or distributed in competition with respondents' products while supplying the same kind of merchandise without charge to customers using respondents' products exclusively.

7. Selling or making any contract or agreement for the lease or sale of respondents' products or of respondents' photoengraving equipment on the agreement or understanding that the lessee or purchaser thereof shall not purchase or use products sold or distributed in competition with respondents' products, or enforcing or continuing in operation or effect, any such agreement or understanding.

It is further ordered, That respondent shall, within sixty (60) days after service upon them of this Order, serve by mail a copy of said Order upon all its customers, who have, since January 1, 1960, purchased or leased photoengraving equipment or have purchased respondents' products.

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

T. E. BROOKS & CO. ET AL.

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

Docket C-1014. Complaint, Nov. 15, 1965—Decision, Nov. 15, 1965

Consent order requiring manufacturers located in Red Lion, Pa., to cease representing falsely that their cigars were made entirely from tobacco grown in Cuba through the use of the word "Havana" on their packages, labels and other identifying product materials.

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 T. E. Brooks & Co., a partnership, and Arthur H. Thompson, Fred A. Thompson, Brooks K. Thompson, Edward B. Thompson, Harry K. Thompson, and Robert H. Thompson, individually and as copartners trading and doing business as T. E. Brooks & Co., 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 T. E. Brooks & Co. is a partnership comprised of the subsequently named individuals who formulate, direct and control the acts and practices of said partnership, including the acts and practices hereinafter set forth. The principal office and place of business of said partnership is located at Red Lion, State of Pennsylvania.

Respondents Arthur H. Thompson, Fred A. Thompson, Brooks K. Thompson, Edward B. Thompson, Harry K. Thompson, and Robert H. Thompson are individuals and copartners, trading and doing business as T. E. Brooks & Co. with their principal office and place of business located at the above-stated address.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacturing, advertising, offering for sale, sale and distribution of cigars to distributors, wholesalers, dealers and retailers for resale to the public.

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

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their cigars, the respondents have made numerous statements and representations in connection with the advertising of their cigars by and through the use of language appearing on their packaging, labels and other identifying product material which purport to disclose the composition, formulation, origin and place of manufacture of their cigars.

Typical and illustrative of the aforesaid statements and representations are the following:

BROOKS HAVANA PALMAS HAVANA PALMAS
BROOKS HAVANA TIP CIGARILLOS
* * * HAVANA * * * BLEND MILD HAVANA

PAR. 5. By and through the use of the above-quoted statements and representations, and others similar thereto not specifically set out herein, the respondents represented that said cigars were made entirely from tobacco grown on the island of Cuba.

PAR. 6. In truth and in fact, respondents' cigars bearing the descriptions and designations which include the word "HAVANA"

as aforesaid and other similar terms were not made entirely from tobacco grown on the island of Cuba.

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

PAR. 7. By the aforesaid practices, respondents place in the hands of distributors, wholesalers, dealers and retailers, means and instrumentalities by and through which they may mislead the public as to the composition, formulation, origin and place of manufacture of their cigars.

PAR. 8. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of merchandise of the same general kind and nature as that sold by respondents.

PAR. 9. 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' products by reason of said erroneous and mistaken belief.

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

DECISION AND ORDER

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

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

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

The Commission, having reason to believe that the respondents have violated the Federal Trade Commission Act, and having determined that complaint should issue stating its charges in that respect, hereby issues its complaint, accepts said agreement, makes the following jurisdictional findings and enters the following order:

1. Respondent T. E. Brooks & Co. is a partnership, with principal office and place of business located at Red Lion, State of Pennsylvania.

Respondents Arthur H. Thompson, Fred A. Thompson, Brooks K. Thompson, Edward B. Thompson, Harry K. Thompson and Robert H. Thompson are individuals and copartners comprising said partnership, and trading and doing business as T. E. Brooks & Co., with their principal office and place of business located at Red Lion, State of Pennsylvania.

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 T. E. Brooks & Co., a partnership, and Arthur H. Thompson, Fred A. Thompson, Brooks K. Thompson, Edward B. Thompson, Harry K. Thompson, and Robert H. Thompson, individually and as copartners, trading and doing business as T. E. Brooks & Co., or under any other name or names and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of cigars or other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the term "Havana" or any other term or terms indicative of tobacco grown on the island of Cuba, either alone or in conjunction with any other terms, to describe, designate or in any way refer to cigars not made entirely from tobacco grown on the island of Cuba; except that cigars containing a substantial amount of tobacco grown on the island of Cuba may be described, designated, or referred to as "blended with Havana," or by any term of similar import or meaning: *Provided*, That the words "blended with," or other qualifying word or words, are set out in immediate connection or conjunction with the word "Havana," or other term indicative of tobacco

grown on the island of Cuba, in letters of equal size and conspicuousness.

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

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

IN THE MATTER OF

DAVID YOUNGMAN DOING BUSINESS AS RAY HAT COMPANY

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

Docket C-1015. Complaint, Nov. 18, 1965—Decision, Nov. 18, 1965

Consent order requiring an individual in New York City engaged in the manufacture of men's hats from previously used or worn hat bodies and then sold to wholesalers, jobbers and retailers for resale to the public, to cease selling or distributing such hats unless they were conspicuously stamped "secondhand," "worn," "used," or "made-over," and to cease misrepresenting that said hats were originally manufactured by a well-known manufacturer.

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 David Youngman, an individual trading as Ray Hat Company, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent David Youngman is an individual trading as Ray Hat Company. The office and principal place of business of respondent is located at 21 West Fourth Street, New York City, New York.

PAR. 2. Respondent David Youngman, trading and doing business as Ray Hat Company, is engaged in the manufacture of men's hats

from hat bodies which have been previously used or worn. Said hats when manufactured are sold to wholesalers, jobbers and retailers for resale to the public.

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

PAR. 4. In the course and conduct of his business, respondent reconditions or makes over men's hats, using in the process, hat bodies which have been previously used or worn. Respondent places various labels on the exposed surface of the sweat bands of his finished hats.

Typical and illustrative, but not all inclusive, of such is the following:

THIS IS A
JOHN B. STETSON
RENOVATED HAT

PAR. 5. By and through the use of labels such as those illustrated in Paragraph Four hereof, respondent represents, directly or by implication, that:

(1) Each of the hats so labeled was originally manufactured by the John B. Stetson Co., a long-established and well-known manufacturer of men's hats, whose products are widely accepted by the purchasing public; and

(2) Each of the hats so labeled was made entirely from new and unused materials which have not previously been sold to and worn by consumers.

PAR. 6. In truth and in fact:

(1) Each of the hats so labeled was not originally manufactured by the John B. Stetson Co. Among the hats so labeled may be some that were originally manufactured by the John B. Stetson Co. However, respondent also makes over previously used or worn hats originally produced by other manufacturers and respondent does not in his manufacturing process preserve the identity of the original manufacturer of his made over hats.

(2) Each of the hats so labeled was not made entirely from new and unused materials which had not been previously sold to and worn by consumers. All of the hats so labeled are made over from hats which have been previously used or worn by consumers.

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

PAR. 7. By the use of the word "renovated" in the labels as illustrated in Paragraph Four hereof and through the absence of words or wording clearly disclosing that his hats are made over from previously used and worn hat bodies, respondent fails to disclose adequately that his hats are made from previously used and worn hat bodies as distinguished from hats made entirely from new and unused materials which have not previously been sold to consumers.

When made over, the hats sold by respondent have the appearance of hats made entirely of new and unused materials which have not previously been sold to consumers and, in the absence of an adequate disclosure that such hats are made from previously used and worn hat bodies, such hats are understood to be and are readily accepted by the purchasing public as being made entirely from new and unused materials which have not previously been sold to and worn by consumers, facts of which the Commission takes official notice. This understanding and acceptance by the public is further enhanced by respondent's use of the John B. Stetson name in his labeling coupled with the absence of any disclosure that such hats are respondent's products.

PAR. 8. There is a preference on the part of the purchasing public for products, including men's hats, produced or manufactured by long-established and well-known business firms, a fact of which the Commission takes official notice.

PAR. 9. By and through the acts and practices herein alleged, respondent places in the hands of others the means and instrumentalities whereby they may mislead and deceive the public in the manner and as to the things herein alleged.

PAR. 10. In the conduct of his business and at all times mentioned herein, respondent has been in substantial competition, in commerce, with corporations, firms and individuals in the sale of men's hats.

PAR. 11. The use by respondent of the aforesaid false, misleading and deceptive statements, representations and practices and his failure to disclose adequately that his hats are made over from previously used and worn hat bodies have had and now have the tendency and capacity to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true; into the erroneous and mistaken belief that respondent's hats are made entirely from new and unused

materials which have not previously been sold to and worn by consumers and into the purchase of substantial quantities of respondent's products by reason of said erroneous and mistaken beliefs.

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

DECISION AND ORDER

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

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

The Commission, having reason to believe that the respondent has violated the Federal Trade Commission Act, and having determined that complaint should issue stating its charges in that respect, hereby issues its complaint, accepts said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent David Youngman is an individual trading and doing business as Ray Hat Company with his office and principal place of business located at 21 West Fourth Street, New York City, New York.

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

ORDER

It is ordered, That respondent David Youngman, an individual trading and doing business as Ray Hat Company or under any other name or names, and respondent's representatives, agents and

employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of hats in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Offering for sale, selling or distributing discarded, secondhand or previously used hats that have been rebuilt, reconstructed, reconditioned or otherwise made over, or hats that are composed in whole or in part of materials which have previously been worn or used, unless a statement that said hats are composed of secondhand, or used materials (*e.g.* "secondhand," "worn," "used," or "madeover") is stamped in some conspicuous place on the exposed surface of the inside of the hat in clearly legible terms which cannot be obliterated without mutilating the hat itself: *Provided*, That, if sweat bands or bands similar thereto are attached to said hats, such statement may be stamped upon the exposed surface of such bands: *Providing*, That said stampings be of such a nature that it cannot be removed or obliterated without mutilating the band and the band itself cannot be removed without rendering the hat unserviceable.

(2) Representing, directly or by implication, in labeling or in any other manner, that the hats sold by respondent were or are made from hats originally manufactured by any particular hat manufacturer.

(3) Placing in the hands of others the means and instrumentalities by and through which they may mislead and deceive the public as to the matters and things set forth in Paragraphs (1) and (2) of this order.

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

IN THE MATTER OF

KING'S DEPARTMENT STORES, INC., ET AL.

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

Docket C-1016. Complaint, Nov. 18, 1965—Decision, Nov. 18, 1965

Consent order requiring four affiliated Massachusetts retailers of fur products and textile fiber products, to cease violating the Fur Products

Labeling Act by falsely invoicing and deceptively advertising their fur products; and to cease violating the Textile Fiber Products Identification Act by misbranding and falsely advertising their textile fiber products, and misrepresenting the character and fiber content of wearing apparel.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Fur Products Labeling Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that King's Department Stores, Inc., King's Department Store of Springfield, Inc., King's Dept. Store of Worcester, Inc. and King's Boott Mills Store, Inc., corporations, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act and 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 interst, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent King's Department Stores, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware. Its office and principal place of business is located at 150 California Street, Newton, Massachusetts. Said corporate respondent operates retail outlets located in various States of the United States.

Respondent King's Department Store of Springfield, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Comonwealth of Massachusetts. Its office and principal place of business is located at 828 State Street, Springfield, Massachusetts.

Respondent King's Dept. Store of Worcester, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts. Its office and principal place of business is located at 380 Maple Street, Shrewsbury, Massachusetts.

Respondent King's Boott Mills Store, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts. Its office and principal place of business is located at 171 Watertown Street, Newton, Massachusetts. Respondents are retailers of fur products and textile fiber products.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents have been and are

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

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

Among such falsely and deceptively invoiced fur products, but not limited thereto, were fur products covered by invoices which failed to show any required information.

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

(a) The term "natural" was not used on invoices to describe fur products which were not pointed, bleached, dyed, tip-dyed or otherwise artificially colored, in violation of Rule 19(g) of said Rules and Regulations.

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

PAR. 5. By means of advertisements which appeared in issues of the Brockton Daily Enterprise and Boston Record American, newspapers of interstate circulation, and others of similar import and meaning not specifically referred to herein, respondents falsely and deceptively advertised fur products in violation of the Fur Products Labeling Act in that the said fur products were not advertised in accordance with the Rules and Regulations promulgated thereunder in that the term "natural" was not used to describe fur products which were not pointed, bleached, dyed, tip-dyed or otherwise artificially colored in violation of Rule 19(g) of the said Rules and Regulations.

PAR. 6. In advertising fur products for sale, as aforesaid, respondents made pricing claims and representations of the types covered by subsections (a), (b), (c) and (d) of Rule 44 of the Regulations under the Fur Products Labeling Act. Respondents in making such claims and representations failed to maintain full and adequate records disclosing the facts upon which such pricing claims and

representations were based, in violation of Rule 44(e) of the said Rules and Regulations.

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

PAR. 8. Subsequent to the effective date of the Textile Fiber Identification Act on March 3, 1960, respondents have been and are now engaged in the introduction, delivery for introduction, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, and in the importation into the United States, of textile fiber products; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, textile fiber products, which have been advertised or offered for sale in commerce; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products; as the terms "commerce" and "textile fiber product" are defined in the Textile Products Identification Act.

PAR. 9. Certain of said textile fiber products were misbranded in violation of the Textile Fiber Products Identification Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in that samples, swatches and specimens of textile fiber products subject to the aforesaid Act, which were used to promote or effect sales of such textile fiber products, were not labeled to show their respective fiber content and other information required by Section 4(b) of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, in violation of Rule 21(a) of the aforesaid Rules and Regulations.

PAR. 10. Certain of said textile fiber products were falsely and deceptively advertised in that respondents in making disclosures or implications as to the fiber content of such textile fiber products in written advertisements used to aid, promote, and assist directly or indirectly in the sale or offering for sale of said products, failed to set forth the required information as to fiber content as specified by Section 4(c) of the Textile Fiber Products Identification Act and in the manner and form prescribed by the Rules and Regulations promulgated under said Act.

Among such textile fiber products, but not limited thereto, were articles of wearing apparel which were falsely and deceptively advertised in newspapers of interstate circulation distributed by re-

spondents throughout the United States in that the true generic names of the fibers in such articles were not set forth.

PAR. 11. 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 newspapers of interstate circulation, distributed by respondents throughout the United States in the following respects:

(a) Terms were used in written advertisements which are descriptive of a method of manufacture, construction or weave, which are indicative of a textile fiber or fibers and imply fiber content under Section 4(c) of the Act without setting forth the true generic name of the fiber or fibers present in violation of Rule 40 of the aforesaid Rules and Regulations.

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

(c) A fiber trademark was used in advertising textile fiber products, namely wearing apparel 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.

(d) A fiber trademark was used in advertising textile fiber products, namely wearing apparel 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.

PAR. 12. The acts and practices of respondents, as set forth above were, and are, in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, and constituted, and now constitute unfair methods of competition and unfair and deceptive acts or practices, in commerce, under the Federal Trade Commission Act.

PAR. 13. Respondents in the course and conduct of their business, are now, and for some time last past have been, engaged in the

advertising, offering for sale, sale and distribution of merchandise, namely wearing apparel, to the public.

PAR. 14. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products to be imported into the United States from foreign countries 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. 15. Respondents in the course and conduct of their business, as aforesaid, have made statements in advertisements to their customers misrepresenting the fiber content of certain of their products.

Among such misrepresentations, but not limited thereto, were statements representing the fiber content thereof as "wool" whereas in truth and in fact said textile products contained substantially different fibers and amounts of fibers than represented.

PAR. 16. The acts and practices set out in Paragraph Fifteen have had and now have the tendency and capacity to mislead and deceive the purchasers of said products as to the true content thereof.

PAR. 17. The aforesaid acts and practices of respondents as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

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

1. Respondent King's Department Stores, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 150 California Street, Newton, Massachusetts.

Respondent King's Department Store of Springfield, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business located at 828 State Street, Springfield, Massachusetts.

Respondent King's Dept. Store of Worcester, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business located at 380 Maple Street, Shrewsbury, Massachusetts.

Respondent King's Boott Mills Store, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business located at 171 Watertown Street, Newton, Massachusetts.

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

ORDER

It is ordered, That respondents King's Department Stores, Inc., King's Department Store of Springfield, Inc., King's Dept. Store of Worcester, Inc., and King's Boott Mills Store, Inc., corporations, and their officers, and respondents' representatives, agents, employees, and corporate subsidiaries and affiliates, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Falsely or deceptively invoicing fur products by:

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

2. Failing to set forth the term "natural" as part of the information required to be disclosed on invoices under the Fur Products Labeling Act and Rules and Regulations promulgated thereunder to describe fur products which are not pointed, bleached, dyed, tip-dyed or otherwise artificially colored.

3. Failing to set forth on invoices the item number or mark assigned to a fur product.

B. Falsely or deceptively advertising fur products through the use of any advertisement, representation, public announcement or notice which is intended to aid, promote, or assist, directly or indirectly, in the sale, or offering for sale of any fur products, and which fails to set forth the term "natural" as part of the information required to be disclosed in advertisements under the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder to describe fur products which are not pointed, bleached, dyed, tip-dyed or otherwise artificially colored.

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

It is further ordered, That respondents King's Department Stores, Inc., King's Department Store of Springfield, Inc., King's Dept. Store of Worcester, Inc. and King's Boott Mills Store, Inc., corporations, and their officers, and respondents' representatives, agents, employees, and corporate subsidiaries and affiliates, directly or through any corporate or other device, do forthwith cease and desist from introducing, delivering for introduction, selling, advertising, or offering for sale, in commerce, or in transporting or causing to be transported in commerce, or importing into the United States, any textile fiber product; or selling, offering for sale, advertising, delivering, transporting, or causing to be transported, any textile fiber product which has been advertised or offered for sale, in commerce, or selling, offering for sale, advertising, delivering, transporting, or causing to be transported after shipment in commerce, 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 unless each sample, swatch and specimen of textile fiber product subject to the aforesaid Act which is used to promote or effect sales of such textile fiber products has

securely affixed thereto or place thereon a label showing the respective fiber content and other required information.

It is further ordered, That respondents King's Department Stores, Inc., King's Department Store of Springfield, Inc., King's Dept. Store of Worcester, Inc. and King's Boott Mills Store, Inc., corporations, and their officers, and respondents' representatives, agents, employees, and corporate subsidiaries and affiliates, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

Falsely or deceptively advertising textile fiber products by:

1. 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 product need not be stated.

2. Using terms in written advertisements which are descriptive of a method of manufacture, construction or weave and which are indicative of a textile fiber or fibers and imply fiber content under Section 4(c) of the Act without disclosure of the proper generic name or names.

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

4. Using a fiber trademark in advertising textile fiber products containing more than one fiber without such fiber

trademark appearing in the required fiber content information in immediate proximity and conjunction with the generic name of the fiber in plainly legible type or lettering of equal size and conspicuousness.

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

It is further ordered, That respondents King's Department Stores, Inc., King's Department Store of Springfield, Inc., King's Dept. Store of Worcester, Inc. and King's Boott Mills Store, Inc., corporations, and their officers, and respondents' representatives, agents, employees, and corporate subsidiaries and affiliates, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of wearing apparel or any other textile products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the character or amount of constituent fibers contained in wearing apparel or any other textile products in advertisements applicable thereto or in any other manner.

It is further ordered, That respondent King's Department Stores, Inc., shall within thirty (30) days after service hereof furnish to each of its corporate subsidiaries and affiliates (except those expressly named as co-respondents in the order to cease and desist) a copy of this order.

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

IN THE MATTER OF

PRECISION EQUIPMENT CO. ET AL.

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

Docket C-1017. Complaint, Nov. 19, 1965—Decision, Nov. 19, 1965

Consent order requiring Chicago, Ill., sellers of filing cabinets, binoculars and other merchandise to the public, to cease making false and deceptive pricing and savings claims in advertising by such means as using the word "regular" in comparative-price advertisements to refer to prices

which were higher than the prices respondent had sold such merchandise in the recent regular course of business, and misrepresenting that the special offers were for a limited time.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Precision Equipment Co., a corporation, and Walter A. Heiby, 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 Precision Equipment 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 4401 North Ravenswood Avenue, Chicago, Illinois 60640.

Respondent Walter A. Heiby is an officer of the corporate respondent. He formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of their "Diplomat" filing cabinets, binoculars and other merchandise to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said merchandise, when sold, to be shipped from their place of business in the State of Illinois to purchasers thereof located in the various other States of the United States, 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, for the purpose of inducing the sale of their "Diplomat" filing cabinets and binoculars, respondents have made statements and representations with respect to the prices of said merchandise. Said statements have been made in circulars, direct mail pieces, catalogs and other types of advertising and promotional material distributed by means

of the United States mails to prospective purchasers located in States other than the State of Illinois.

Typical and illustrative of said statements and representations are the following:

Re: "Diplomat" filing cabinets:

Special introductory offer

Regular

Save

Saving of $40.00

An outstanding value at its regular $79.95 price

$39.96 * * * if ordered during this sale!
(Thereafter, $79.95 price applies.)

$79.95 catalog price * * *
* * * *$40.00 less than catalog price.*
$39.95 * * * if ordered while this offer
is in effect. (Thereafter $79.95 catalog
price applies.)

Re: Binoculars:

A $75.00 Binocular * * * plus $12.00 Filtrol
both for only $29.95.

A $75.00 Binocular * * * plus Sport Opera
Glasses. Both for only $29.95.

PAR. 5. By and through the use of the aforesaid statements and representations, and others of similar import and meaning not specifically set forth herein, respondents represent, directly or by implication:

a. That the amounts of $79.95 for the letter size and $89.95 for the legal size "Diplomat" filing cabinets and the amount of $75 for the binoculars with the $12 filtrol and $75 for the binoculars with the sport opera glasses are the prices at which such articles of merchandise were sold or offered for sale in good faith for a reasonably substantial period of time in the recent regular course of respondents' business;

b. That purchasers of said merchandise save an amount equal to the difference between said higher prices and the corresponding lower prices;

c. By and through the use of the words "special introductory offer" and words or terms of similar import or meaning that the offer of sale of respondents' merchandise at the lower prices is limited in point of time.

PAR. 6. In truth and in fact:

a. The aforestated higher price amounts are not the prices at which the designated articles of merchandise were sold or offered for sale in good faith for a reasonably substantial period of time in the recent regular course of respondents' business;

b. Purchasers of respondents' said merchandise do not save an amount equal to the difference between said higher prices and the corresponding lower prices;

c. Respondents' offer to sell said merchandise at the lower prices is not limited in time, as the respondents have sold and are offering to sell said merchandise at the reduced price without imposing any limitation as to the period of time in which it may be purchased.

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 conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of filing cabinets and binoculars of the same general kind and nature as those sold by respondents.

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

PAR. 9. The aforesaid acts and practices of respondents as herein alleged, were, and are, all to the prejudice and injury of the public and 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 Precision Equipment Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 4401 North Ravenswood Avenue, Chicago, Illinois 60640.

Respondent Walter A. Heiby is an officer of said corporation and his address is the same as that of the said corporation.

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

ORDER

It is ordered, That respondents, Precision Equipment Co., a corporation, and its officers, and Walter A. Heiby, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale, or distribution of filing cabinets, binoculars, or other merchandise, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "regular," or any other word or term of similar import or meaning, to refer to any amount which is in excess of the price at which such merchandise has been sold or offered for sale in good faith by the respondents in the recent regular course of their business; or otherwise misrepresenting the price at which such merchandise has been sold or offered for sale by respondents.

2. Representing in any manner that by purchasing any of said merchandise, customers are afforded savings amounting to the difference between respondents' stated price and any other price used for comparison with that price,

(a) Unless respondents have offered such merchandise for sale at the compared price in good faith for a reasonably substantial period of time in the recent regular course of their business; or

(b) Unless substantial sales of said merchandise are being made in the trade area at the compared price, or a higher price; or

(c) Unless a substantial number of the principal retail outlets in the trade area regularly offer the merchandise for sale at the compared price, or some higher price; or

(d) When a comparable value representation is used, unless substantial sales of merchandise of like grade and quality are being made in the trade area at the compared price, or a higher price.

3. Misrepresenting, in any manner, the savings available to purchasers of respondents' merchandise.

4. Using the words "special introductory offer," or representing, directly or by implication, that any offer is limited in point of time or in any manner: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that any represented limitation or restriction was actually imposed and in good faith adhered to.

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

SIBCO PRODUCTS COMPANY, INC., ET AL.

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

Docket 8628. Complaint, June 8, 1964—Decision, Nov. 22, 1965

Order requiring a New Jersey manufacturer of water filtrators to cease misrepresenting the effectiveness and capability of its water filtration units and deceptively guaranteeing the performance of such units.

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 Sibco Products

Company, Inc., a corporation, and Frank Sibert, 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 Sibco Products Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 8 Livington Street in the city of Newark, State of New Jersey.

Respondent Frank Sibert is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of water filtration units directly to the public and to dealers for resale to the public.

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

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the purchase of their water filtration units, respondents have made statements and representations in brochures, leaflets and form letters and in advertisements inserted in newspapers and magazines, respecting the nature and extent of their guarantee for said products and the nature and duration of the performance of said filtration units.

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

PURE WATER
Amazing New Purifier guaranteed for
10 years! Removes RUST, IRON, SULPHUR,
CHLORINE, ODORS, etc. Purifies and
filters city or well water. * * *

* * * * * * *

* * * it needs NO REGENERATION and NO REFILLING. * * * We use specially processed MINERALS which DO NOT WEAR OUT but are kept clean by back flushing once every 2 or 3 months, depending upon the condition of your water.

PAR. 5. By and through the use of the aforesaid statements, and others of similar import and meaning not specifically set out herein, respondents represent, directly or by implication, that:

1. Respondents' water filtration units are fully and unconditionally guaranteed by them in every respect for a period of ten years.

2. Respondents' water filtration units effectively remove water-borne microorganisms and viruses capable of causing diseases.

3. Respondents' water filtration units need no regeneration and no refilling; the filtering material in respondents' water filtration units will not wear out or become exhausted; and the filtering material in such units will remain effective if backflushed with water periodically.

PAR. 6. In truth and in fact:

1. Respondents' water filtration units are not fully and unconditionally guaranteed by them in every respect for a period of ten years. The guarantee is limited and the terms, conditions and extent to which such guarantee applies and the manner in which the guarantor will perform thereunder are not clearly and conspicuously disclosed. Moreover, a charge is made for service of respondents' products, which fact is not disclosed in respondents' advertisements.

2. Respondents' water filtration units do not effectively remove water-borne microorganisms or viruses capable of causing diseases.

3. Respondents' water filtration units need regeneration or refilling; the filtering material in respondents' water filtration units will wear out and become exhausted; and the filtering material in such units will not remain effective if backflushed with water periodically. In areas where the water to be filtered contains rust, ionic iron, odors and flavors, or is slightly acid, the capacity of the filtering material to perform effectively will diminish in time, and it will eventually become ineffective. When this occurs, backflushing the filtering material with water will not restore its effectiveness, and it must be replaced or reactivated.

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

PAR. 7. By and through the use of the aforesaid acts and practices respondents place in the hands of dealers and others the means

and instrumentalities by and through which they may mislead the public in the manner hereinabove alleged.

PAR. 8. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of water filtration units of the same kind and nature as those sold by respondents.

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

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

Mr. Sheldon Feldman for the Commission.

Mr. Frank Sibert, pro se, and for the corporate respondent, Sibco Products Company, Inc.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

DECEMBER 18, 1964

The complaint in this proceeding, asserting a violation of Section 5 of the Federal Trade Commission Act,[1] alleges that respondents, in advertising for sale and selling water filtration units in interstate commerce, represent, contrary to the fact, that their water filtration units are (1) guaranteed unconditionally in every respect for a period of ten years; (2) will effectively remove water-borne microorganisms or viruses capable of causing disease, and (3) that the water filtration units, and particularly the minerals which are enclosed in the casings, will not wear out or be used up, but that such filtering material will remain effective indefinitely if backflushed periodically with water.

Respondents' answer was filed on July 9, 1964, by George R. Handler, Esquire, as attorney for the respondents. The answer, in

[1] "Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful." (15 U.S.C.A., Section 45).

substance, denies that the statements which respondents have made in advertising and selling their water filtration units are false, misleading and deceptive as asserted in the complaint.

A prehearing conference was held on August 12, 1964. Respondents at the conference were represented by George R. Handler, Esquire, of the Newark, New Jersey, Bar. Also present at the prehearing conference was Frank Sibert, the individual respondent and the *de facto* owner of Sibco Products Company, Inc. At the August 12, 1964, prehearing conference, after an extended discussion between parties and colloquy with the hearing examiner in an effort to reduce the issues of the controversy to their simplest terms, it appeared that respondents might wish to request leave to withdraw their answer and petition the Commission for leave to reopen negotiations under Sections 2.1-2.4, inclusive, of the Commission's Rules of Practice.

Under date of September 8, 1964, George R. Handler wrote to counsel supporting the complaint as follows:

> This is to advise you that I no longer represent the respondents in the above matter. I have been relieved of further connection with this case by Mr. Sibert who felt that he could not proceed in the manner that I recommended.
>
> I want to thank you for your kindness extended to me during our negotiations.
>
> Very truly yours,
>
> /s/ George R. Handler
> George R. Handler.

When the case was called for hearing on September 21, 1964, (a date which had previously been agreed upon by all of the parties), only Frank Sibert appeared on behalf of respondents. Mr. Sibert represented to the hearing examiner that the respondents were not represented by counsel because they did not have funds to pay counsel fees.[2] The hearing examiner offered to postpone the September 21, 1964, hearing in order to afford Frank Sibert an opportunity to arrange for new counsel, but Mr. Sibert declined the offer of postponement and elected to act as both counsel and witness for himself and for the corporate respondent which is, in fact, his alter ego.

Hearings went forward on September 21 and September 22, 1964, in Washington, D.C. Witnesses were called and examined by counsel

[2] It is to be noted that this representation is at variance with that in the letter of September 8, 1964, from the attorney to the effect that he was relieved of further representative connection by Mr. Sibert who *"felt that he could not proceed in the manner that I recommended."* (Emphasis supplied.)

supporting the complaint and cross-examined by Frank Sibert. Mr. Sibert actively participated in all of the proceedings as though he were a lawyer and was accorded every administrative safeguard which it was possible to accord him under the circumstances. At the close of the proceeding, Mr. Sibert stated:

> Water problems are getting worse every day, and need to be encouraged to develop new simple ways to meet this great need of good water. Do not tear me down with technicalities, my business being as small as it is, and I am struggling to help people to get good water and I ask that you dismiss the complaint against me and my firm and you may be assured that I will do everything possible to abide by the rules of the Federal Trade Commission, that I have learned and I sincerely want to thank you, Mr. Gross and Mr. Feldman, for treating me so nicely and being so helpful in guiding me. (Tr. 249)

The record was closed for the receipt of evidence effective September 24, 1964. Findings, conclusions and briefs have been filed by Frank S. Sibert and by complaint counsel. Proposed findings which are not incorporated in and made a part of this initial decision in the form or substantially the form in which they were proposed, are hereby rejected as being either unsupported by the evidence or irrelevant and immaterial to a decision of the issues. All motions, if any, which have heretofore been made, which have not previously been ruled upon hereby are overruled and denied. The hearing examiner heard and observed the witnesses in the hearing room and on the witness stand. He observed their demeanor and their manner of answering questions. He was able to, and did, form an opinion as to their reliability and creditability. He was also able to, and did, form a judgment as to the weight and probative value of the testimony of the witnesses. The hearing examiner has considered the reliability, creditability and probative value of the witnesses' testimony in making his findings of fact as well as the witnesses' respective interest in the outcome of this proceeding. Based upon the entire record, including testimony of the witnesses and the exhibits, the hearing examiner makes the following:

FINDINGS OF FACT

1. Sibco Products Company, Inc., a New Jersey corporation, whose principal place of business is 8 Livingston Street, Newark, New Jersey, manufacturers and sells in interstate commerce, among other things, a Sibco water purifier. The individual respondent Frank Sibert is president and principal stockholder of the corporation. He formulates, directs and controls the acts and practices

hereinafter described. Frank Sibert's address is the same as that of Sibco Products Company, Inc., to wit: 8 Livingston Street, Newark, New Jersey.

2. In the course of manufacturing and selling their water filtration units to the public, and to dealers for resale to the public, respondents have caused their said products, when sold, to be shipped from their place of business in New Jersey to purchasers thereof located in various other States of the United States. (Tr. 9) Respondents maintain, and, at all times pertinent to this proceeding, have maintained a substantial course of trade in their products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

3. Respondent Frank Sibert, and his wife, own all of the issued and outstanding stock of the corporate respondent and are the sole officers of the corporation. (Tr. 32 and 33)

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

5. In the course and conduct of manufacturing and selling their water filtration units in interstate commerce, respondents have been and now are in substantial competition with other corporations, firms and individuals in the sale of water filtration units of substantially the same kind and nature as those sold by respondents.

6. Respondent Frank Sibert has had no educational background or training which qualify him as an expert in the field of water filtration. (Tr. 45) He did not complete high school. (Tr. 60, 62) Mr. Sibert's sole technical qualifications for designing, manufacturing, and selling water filtration units is based upon information which he asserts was imparted to him by a foreign-born M.D., a Dr. Emil Hoffman, whom he knew. (Tr. 60 *et seq.*, 64) Dr. Hoffman died before 1955. (Tr. 63) Dr. Hoffman was not an expert in the manufacture of water filtration units. Mr. Sibert first began to manufacture water filtration units "about five years ago." (Tr. 68)

7. Sibert testified that he had been in the water purification business for the last seven years; that the first two years he did not manufacture and sell his water filtration units but was only "field testing" such units. Sibert stated, therefore, that he had only been manufacturing and selling his water filtration units for the last five years. When pressed to give the name of any purchaser who had used one of his water filtration units satisfactorily for seven years without replacing the minerals, Sibert was unable to give the name of any such purchaser or the location of any unit,

other than a unit which, he claims, has been on his premises at 8 Livingston Street, Newark, New Jersey.

8. Dr. Emil Hoffman died before Sibert went into the water purification business. Dr. Hoffman was not alive when Sibert entered the water filtration business and did not provide any scientific assistance, guidance, or knowledge for Sibert in constructing and selling his water filtration units. Sibert did not, and does not, have the assistance, guidance, and supervision of any scientifically qualified person in designing, constructing, and selling his water filtration units.

9. Specimens of respondents' water filtration units are in evidence as CX 25, CX 26 and CX 27 which constitute the metal containers; and CX 28, CX 29, CX 30, CX 31 and CX 32 which are the minerals or chemicals placed inside the metal containers. These minerals or chemicals are:

CX 28—"Birm material" (Tr. 28, *et seq.)*
CX 29—Zeolite resin—"a water softener" (Tr. 39)
CX 30—Calcite—to reduce the acidity in the water (Tr. 40)
CX 31 and 32—bone black or bone char—"to remove rust, iron, sulphur, chlorine, odors, et cetera." (Tr. 47)

10. In addition to conducting business under the name of Sibco Products Company, Inc., respondent Sibert also conducts business under the name of Sibert and Company. Sibco Products Company, Inc. and Sibert and Company are New Jersey corporations. Sometimes one corporation and sometimes the other corporation is used by Frank Sibert to contract for and fill orders for the water treatment units which respondents manufacture and sell.

11. Mr. Sibert asserts that he holds patents on and/or has manufactured or sold, in addition to the current water filtration units, an infrared massager (Tr. 65), an electric fly killer (Tr. 66), a cigarette roller for rolling cigarettes, a substance for removing tarnish for silver (Tr. 66, 67), a nail clipper (Tr. 66), a switch blade knife (Tr. 67), a cushion vibrator to condition the body (Tr. 67), a vibrating pillow and a slenderizing and exercising machine. (Tr. 68).

12. Mr. Sibert estimated the gross annual sales of his water filtration units to be between $20,000 and $30,000. When pressed to give more specific figures, Sibert refused to do so on the grounds that he did not have the precise information, even though he is the only person involved in his business enterprises which are, in fact, a one-man operation. Sibert testified further that, by comparison with other successful water purification manufacturers, he

does "[p]robably a million dollars they do to my one dollar or one hundreds dollars. My volume is very, very small." (Tr. 72)

13. In addition to Frank Sibert, witnesses in support of the complaint included:

ROBERT L. TILLSON (Tr. 86 *et seq)*, a general physical scientist for the Federal Trade Commission. Mr. Tillson is a graduate of Iowa State University with a bachelor's degree in chemical engineering. He was a research chemist with the Bureau of Chemistry and Soils, U.S. Department of Agriculture, and has been employed by the Food and Drug Administration of the U.S. Department of Agriculture in its enforcement of the food, drug and cosmetic laws.

DR. VICTOR R. DEITZ (Tr. 101 *et seq.*), of the Naval Research Laboratory, Washington, D.C., a Ph.D. degree in chemistry from the Johns Hopkins University, who had done postdoctoral study at the University of Illinois. Dr. Deitz had been research chemist with the General Electric Company, Schenectady, New York, for one year. Thereafter, he was with the National Bureau of Standards from 1939 to 1963. At the time of his testimony, Dr. Deitz was with Naval Research Laboratory doing research in chemistry. He is a member of the American Chemical Society, the Washington Academy of Science, the Farraday Society of London and the Sugar Industry Technicians. Dr. Deitz edited and published a two-volume bibliography of solid adsorbents—the commercial solvent adsorbents used in industrial chemistry. He is the author of between fifty and sixty papers on the various aspects of the adsorption of these materials and of laboratory prepared materials. He has been editor of the proceedings of the technical sessions on bone char published jointly by the National Bureau of Standards and the Sugar Refining Industry of the world. Dr. Deitz has been a Guggenheim Research Fellow, and the recipient of the annual award of the Sugar Industry Technicians. While a Guggenheim Fellow he studied at the Imperial College of Science and Technology in London, England.

DR. ROBERT B. DEAN (Tr. 140 *et seq.*) is presently director of Laboratory Research for the Advanced Waste Treatment Program of the U.S. Public Health Service. He was previously a chemist with the Borden Chemical Company in Bainbridge, New York, manufacturer of adhesives and chemicals. Dr. Dean has his bachelor's degree in chemistry from the University of California at Berkeley, California, and his Ph.D. degree in experimental zoology

from Cambridge University, Cambridge, England. He engaged in two years of teaching in medical schools in Rochester, New York and Minneapolis, Minnesota; was a research associate at Stanford University in California, doing research on water for the War Production Board; assistant professor of chemistry, University of Hawaii, a professor at the University of Oregon. Dr. Dean is a member of the American Chemical Society, the British Society for Chemical Industry, the New York Academy of Sciences, Phi Beta Kappa honorary scholastic fraternity and Sigma Xi, the honorary scientific fraternity. He is the author of the book, "Modern Colloids" published by D. van Nostriand, Princeton, New Jersey, and the author of between fifty and sixty scientific papers which have been published in various scientific journals.

JAMES JOLLY (Tr. 195 *et seq.)*, a geologist with the U.S. Bureau of Mines, holds a bachelor's and master's degree in geology from the University of Oregon at Eugene, Oregon. Mr. Jolly was a mine geologist with the Hecia Mining Company of Wallace, Idaho, and is presently a mineralogist and petrologist doing x-ray spectographic work with the U.S. Bureau of Mines.

GRANT KUBBARD (Tr. 206 *et seq.)* is a chemist with the U.S. Bureau of Mines. Mr. Hubbard was formerly employed by the Los Alamos Scientific Laboratory of the University of California. He holds a bachelor's degree in chemistry from Arizona State College; has been employed by Crown Zellerbach Corporation as a research chemist; and has engaged in graduate studies in analytical chemistry. Mr. Hubbard is a member of Phi Sigma. He had his undergraduate college training in all fields of general chemistry and in mathematics. Mr. Hubbard has done graduate college work in analytical chemistry and instrumental methods. Mr. Hubbard was an analytical chemist when he was at the Los Alamos Scientific Laboratory.

14. In the course and conduct of their business, and for the purpose of inducing the purchase of their water filtration units, respondents have made statements and representations in brochures, leaflets, and form letters, and in advertisements inserted in newspapers and magazines, respecting the nature and extent of their guarantee for said products and the nature and duration of the performance of said water filtration units.

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

PURE WATER
Amazing New Purifier
guaranteed for
10 years! Removes
RUST, IRON, SULPHUR,
CHLORINE, ODORS, etc. Purifies and
filters city or well water. * * * (CX 11)
* * * it needs NO REGENERATION and NO
REFILLING. * * * We use specially
processed MINERALS which DO NOT WEAR
OUT but are kept clean by back flushing
once every 2 or 3 months, depending upon
the condition of your water. (CX 1)

15. By and through the use of their advertising statements, respondents represent, directly or by implication, contrary to the fact, that their water filtration units are "UNCONDITIONALLY GUARANTEED for a period of 10 years from date of proper installation, if found defective for any reason, subject to the following conditions: * * *" (CX 3)

Respondents' newspaper advertisements, CX 7-13, describe the guarantee for their water filtration units as: "Amazing New Purifier guaranteed for 10 years!"

16. Respondents' water filtration units are not fully and unconditionally guaranteed by them in every respect for a period of ten years. The guarantee is limited and the terms, conditions, and extent to which such guarantee applies and the manner in which the guarantor will perform thereunder are not clearly and conspicuously disclosed. A charge is made for servicing respondents' products.

17. Compliance with the terms of respondents' guarantee by a dissatisfied purchaser would be a difficult task. In order to avail oneself of this guarantee the unit must be dismantled and returned to respondents. The unit weighs approximately 100 lbs. (Tr. 51) The minimum shipment fee, as far as respondent Sibert is aware, is $3. (Tr. 52) From southern Florida, the truck rate for return of the unit to Newark, New Jersey, according to Mr. Sibert, would be $5.85. (Tr. 52) This amount, coupled with the required $30 service charge, involves a substantial outlay of money. In addition, a considerable amount of effort would be required to ship these units, which are heavy, large, and very difficult to handle. (See CX 25, 26, 27) Respondents' "service charge" is in reality a reimbursement fee which is sufficient to completely compensate respondents for the cost of a new unit. The filtration casing and accompanying valve assembly cost respondents between $10 to $15.

(Tr. 54, 55, and see CX14-19) Although Mr. Sibert has refused to disclose the source of the ingredients which he uses in his units, and it is not possible to determine their cost precisely, a fair estimate of the cost of the bone char would be approximately $15.

18. In their advertising statements, respondents represent, directly or by implication, contrary to the fact, that their water filtration units effectively remove water-borne microorganisms and viruses capable of causing diseases. Such misrepresentations include the statements that respondents' water filtration units give: "Delicious Clear, *Clean,* Odor-free water"; that "*Pure* drinking and cooking water are vital to the *health* of your family so don't delay correcting your bad water with a SIBCO Water Purifier" (Emphasis added.) (CX 1); "giving you crystal clear, clean odor Free water that tastes good," (CX 4b); "Gives you clear, clean, odor free water that tastes good for drinking, cooking, laundering, etc." (CX 5b); "The function of this unit is to FILTER the impurities at the source of supply in your home" (CX 6a); "PURE WATER," "Purifies and filters city or well water." (CX 7-13)

19. Respondents' representations are intended to and do convey the impression to a prospective purchaser by employing the words "clean," "pure water," and "health" that the Sibco water filtration unit will remove bacteria from the user's water.

20. Respondents' water filtration units do not effectively remove water-borne micro organisms or viruses capable of causing diseases Respondents' disclaimer in their advertisements (CX 1, CX 4a-b, CX 5, CX 6, CX 7-13) does not cure the deception implicit in the impression created in the initial representation to a prospective purchaser. (See *Giant Food, Inc.* v. *F.T.C.*, Docket 7773, Commission's decision and Court of Appeals decision, 322 F. 2d, 977 (1963).

21. Respondents' advertising represents, contrary to the fact, that their water filtration units need no regeneration and no refilling; that the filtering material in respondents' water filtration units will not wear out or become exhausted; and that the filtering material in such units will remain effective indefinitely if backflushed with water periodically. (See Answer, CX 1, CX 3, CX 4a-b, CX 5a-b, CX6, CX 7-13)

22. Respondents' water filtration units do require regeneration or refilling, the chemicals (finding 9, *supra,* CX 28, CX 29, CX 30, CX 31, CX 32) will wear out and become exhausted and will not remain effective indefinitely if backflushed with water periodically. In areas where the water to be filtered contains rust, ionic iron, odors and flavors, or is slightly acid, the capacity of the filtering

material to perform effectively will diminish in time, and will eventually become ineffective. When this occurs, backflushing the filtering material with the same water which deposited the undesirable elements upon the chemicals will not restore the filtration unit's effectiveness. The chemicals must be replaced or reactivated. The chemicals used by respondents are in general usage as water filtration agents and their properties are generally known. Sibert's bald statement that he subjects the chemical to a "secret" process which basically alters their known characteristics is not supported by probative evidence and is contrary to accepted scientific opinion.

23. Dr. Victor R. Deitz and Dr. Robert B. Dean testified that respondents were, and are, misrepresenting when they claim their units will not wear out or become exhausted, need no regeneration and no refilling, and will remain effective if merely backflushed with water periodically. Dr. Deitz, an expert on bone char (Tr. 101-04), has edited seven volumes of the proceedings of the technical sessions of the chemical industry on bone char, published jointly by the National Bureau of Standards and the Sugar Refining Industry of the World. (Tr. 103) (See *supra* finding 13) In substance, Dr. Deitz testified: that bone char, an industrial adsorbent manufactured from animal bones, is granular and usually contains 9 to 11 percent of carbon. The remaining part is calcium phosphate, a constituent of the bone itself. Bone char removes impurities by adsorption. Internal voids and pores of the bone char are filled up with the filtered out impurities. Once these voids and pores are clogged with impurities, the bone char ceases to filter out further impurities. (Tr. 127-28) An "adsorbent" is typified by a mechanical retention of the material which is adsorbed. (Tr. 105) Heating an organic material in the absence of air, will cause it to carbonize. This is known in the trade as the "charring process." Dr. Deitz has done research on the history and usage of the charring process. (Tr. 107) Bone char is an old and well-known adsorbent, first proposed in 1828. In early literature it was known as "bone black." (Tr. 108) Bone char and bone black are two names for the same material. (Tr. 103 and 109) The principal use for bone char as a filtering agent is in the sugar refining business where the average life of the bone char is three to four years under favorable conditions. During this time bone char, which started out as a porous material, becomes hard and dense. Starting with a weight of 40 pounds per cubic foot, when clogged with impurities it may weight as much as 80 pounds per cubic foot. At this stage it is virtually worthless as a filtration agent.

When bone char is used in the sugar refining industry for the

purpose of removing calcium and decolorization, its average cycle of operation is about one week. After that

> It requires—I said it did require regeneration for the reason that at a practical level its ability to remove color, and carbon falls off, so that it cannot produce the white sugar as it did before. Now, this regeneration is in two steps. First one washes away with water the sugar that is in the tank. This represents quite a bit of sugar solids, since I mentioned that the tank was ten feet in diameter and 20 feet high. Then a little bit—then as the water enters, having forced out the sugar, there is a sort of half a tankfull of sweet water. That is, a mixture of sugar and water which they recover. And finally they wash, sometimes for days, with water to remove some of the adsorbed impurities that will come out.
>
> Then the contents are completely removed and sent to high temperature kilns where the water then is driven out of the wet bone char and the bone char actually heated up to about 550 centigrade which is about, oh, anywhere around 1050 to 1100 degrees Fahrenheit, and at these temperatures the adsorbed impurities are recomposted and the volatile products come out and as a result of this heat treatment, the alkalinity of the bone char is restored for it, too, had suffered a drop during its use. (Tr. 111)

When used for water filtration bone char must be regenerated chemically in order to continue to filter effectively. (Tr. 114) Backflushing bone char with water may have limited effectiveness, but the water used for the backflushing must be purer than the water which flowed through the filter originally. (Tr. 116) Certain substances added to bone char may assist it in its filtration function. In the sugar industry burnt magnesia and marble chips are added, but these materials are used up or dissolved in the filtration process. Marble is a calcium carbonate with properties similar to calcite, which is occasionally used in respondents' units. The calcite in respondents' unit will be used up when the water to be filtered is acid. (Tr. 118)

In areas where the water contains rust, ionic iron, odors, and flavors, and is slightly acid, a water filtration unit composed of bone char and calcite would not remain effective indefinitely. (Tr. 119) Such a unit might last a few weeks, or longer, depending upon the condition of the water to be filtered. (Tr. 119) After a period of time the calcite will be used up if the water is slightly acid and the bone char will be ineffective because it will be clogged with impurities. Periodic backflushing with water will not restore the effectiveness of these filtering materials, but will loosen up the bed of char. When respondents' filtering materials become ineffective they must be reactivated or regenerated. No substances known to men of science have an "unlimited life" in effectively removing impurities from water if such substances are merely backflushed

with the same water which flowed through them originally. (Tr. 120)

24. The following colloquy occurred between Dr. Deitz and Mr. Sibert:

Q. * * * Now, if you found friends of yours who had a water purifier for two, three, four, five years that had iron in their water, say one or two or three parts per million of iron, had a little odor in the water and probably some rust that came from the well, and these people used only water from their well to backwash that particular unit without any other type of regeneration—these are friends of yours, people you know and you have seen this in operation for two, three, four, five years—would you believe that that could be done without regeneration?

A. No. It is against all my chemical training.

Q. In other words, it is against all the laws of physics and the training that you have had, right?

A. I would say yes. All adsorbents gradually die out in their activity.

Q. But if something was done to that bone char that would make it do that, would you then believe it?

A. I have studied it for 25, 30 years, and we made a lot of—we doped the bone char up with many things. This is an old chestnut. And we have never been able to modify the surface in such a way that its adsorbing cycle was any better than it was originally. I can—

Q. You said you could never modify the surface?

* * * * * * *

Mr. Sibert: The adsorbing surface. (Tr. 130-31)

25. Dr. Robert B. Dean, director of laboratory research for the Advanced Waste Treatment Program of the United States Public Health Service, an expert on the treatment and purification of water, has dealt with water filtration since 1938 (Tr. 142), has a Ph.D. degree, and is a specialist and university professor in colloid chemistry, including absorption and absorption. He has authored between fifty and sixty scientific papers, including a series of six papers on adsorption on liquid surfaces. (Tr. 144) Dr. Dean testified, as did Dr. Deitz, that bone char is made by heating bones in a furnace with a limited amount of air, leaving the mineral matter substantially intact. The organic matter of the bone is converted to carbon which is distributed over the surface of the mineral so that the end product is a black "friable" material which can be broken fairly easily, and is porous. Bone char is a natural product containing a number of substances which also occur as minerals. The carbon is in a form not too different from the carbon made by charring a stick in fire. (Tr. 146) Bone char is generally composed of approximately 10 percent carbon; "it might be 8 percent." (Tr. 147) There are a great many carbons. Specific carbons are usually tailor-made for a particular filtering job, *i.e.*, powdered carbon is used by waterworks to remove excessive odor and taste from water.

In such instances, alum is used as a coagulant. Granular carbon is used in the treatment of water also. It has a low ash content, looks very much like bone char, and has a much higher capacity for adsorbing certain odors, flavors, colors, and dissolved organic material. Granular carbon used for purifying water may be made by carbonizing coal, *i.e.*, coal treated with heat and steam, carbon dioxide, or other gases.

26. Regeneration, as applied to bone char, refers to the process by which there is restored to the filtering material its initial ability to adsorb impurities and other chemicals. (Tr. 151) The regeneration process is similar to the original process of making bone char, *i.e.*, the organic matter on the bone char is heated, and part of it is driven off and part is reconverted into carbon.

27. Bone char functions in a way analagous to a sponge. There are many tiny holes or pores leading in from the surface, with smaller holes branching off from these, and smaller holes branching off from each of those. Bone char has about 10 percent of the porosity area of a good activated carbon, which would have areas of as much as an acre of adsorbing surface per pound. (Tr. 152)

28. According to Dr. Dean's calculations, a tank containing 45 pounds of bone char could effectively filter out fluorides for from between 200 and 1,000 days. (Tr. 155) When the bone char becomes clogged with impurities its effectiveness cannot be restored by merely backflushing it with water. When it becomes ineffective the filtering material must be reactivated by regenerating it with heat in a kiln. Such regeneration could not be done in the home. (Tr. 158)

29. Odors and flavors will be adsorbed by bone char, but the deposits which they leave are not removed by backflushing with water. (Tr. 158) A common water treatment problem is the presence of the taste of chlorine. The longevity of a water filtration unit, installed to remove this type of odor, cannot be predicted exactly because water supplies differ too greatly. A water filtration unit will not last indefinitely. (Tr. 160)

30. Calcite is often used to remove excessive acidity from water and to contribute hardness to water. As it removes acidity in water, it dissolves into the water and disappears. (Tr. 160) Birm is used to remove iron from water, but it would have absolutely no effect on the removal of odors, taste, or detergents. It would not add any longevity to bone char. Zeolite minerals are used for the removal of hardness from water. They are not "zeolite resins," as Mr. Sibert named them. Many resins function in the same way as zeolite but are properly called "iron exchange resins." (Tr.

161-62) Neither zeolite, nor iron exchange resins would add any longevity to bone char, nor would they have any effect on bone char's ability to remove odors, taste, color, or detergent from water.

31. In the opinion of Dr. Dean and Dr. Deitz, the water filtering materials in respondents' units will not remain effective indefinitely. Dr. Dean, who has been intensely involved in the treatment of water for over 25 years, knows of no special treatment that will make bone char effective indefinitely for the removal of impurities. (Tr. 163) Based upon the information that respondents' water filtration units are composed of bone char and, on occasion, calcite and zeolite, Dr. Dean was of the opinion that respondents' description of their filtration unit: "it needs NO REGENERATION and NO REFILLING. No chemicals are used. We use specially processed MINERALS which DO NOT WEAR OUT but are kept clean by back flushing once every 2 or 3 months, depending upon the condition * * *" is false, misleading, and deceptive. (CX 1) Dr. Dean concluded "That water filter [respondents' unit] can certainly function as claimed to remove certain filterable impurities and it may remove other impurities for a limited time, but not indefinitely." In Dr. Dean's opinion, "clean water" would mean bacteria-free water. (Tr. 182-83)

32. The evidence in this record fails to show that any controlled tests of respondents' water filtration units were ever conducted by or on behalf of respondents. No substantial probative evidence has been offered by respondents to support their contentions that their units will not wear out and will remain effective if backflushed periodically. The thrust of the instant complaint does not concern itself with *which impurities* respondents' water filtration units are capable of removing.

33. JAMES JOLLY, a geologist employed by the United States Bureau of Mines, at the request of complaint counsel, analyzed the chemicals taken from one of respondents' water filtration units. His role in the presentation of the evidence was limited, and his cross-examination by Mr. Sibert did not elicit any evidence rebutting the charges of the complaint that respondents made false and misleading representations concerning (1) the guarantee attaching to their unit (2) the longevity of their units in use (3) the capability of their units to remove effectvely water-borne microorganisms or viruses capable of causing diseases.

34. GRANT HUBBARD, a chemist employed by the United States Bureau of Mines, also at the request of complaint counsel, analyzed or supervised the analysis of the filtration chemicals taken from one of respondents' water filtration units and incorporated the re-

sults of such analysis in the Spectrographic Report. (CX 36a-b) Based on this analysis, it would appear that 8 percent or approximately 8 percent of respondents' filtration material, so tested, was bone char. The other 92 percent is "largely made up of calcium phosphorus and oxygen or calcium phosphorus, primarily, with perhaps other compounds of calcium. * * * the presence of a trace of iron, but * * * substantially calcium phosphate and carbon." (Tr. 215)

In support of the allegations of the complaint, this record contains the positive, categorical testimony of highly qualified, scientifically trained and knowledgeable scientists against the bald unsupported assertions of respondent Frank Sibert, the real party interest. The hearing examiner received the impression at the first prehearing conference that a failure of communication between complaint counsel and Mr. Sibert was the only reason that this matter ever reached the stage of formal complaint and hearings. However, the hearing examiner is now convinced and finds as a matter of fact and law that the public interest requires that Mr. Sibert, individually and through any corporate or other device, be publicly enjoined from the false, misleading, and deceptive representations and practices he has utilized in selling his water filtration units in interstate commerce. Irrespective of the depth and sincerity of his convictions about his "secret" process (which he refused to disclose at the hearing), Mr. Sibert must be permanently ordered to limit his representations to such facts as he can prove. In this record, Mr. Sibert has not *proven* any of his challenged advertising claims to be true. Complaint counsel has proven them to be false.

The facts of record support the following:

CONCLUSIONS

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

2. Respondents manufacture and sell in interstate commerce a water purifier or water filtration unit which they marketed under the name, among others, of "Sibco Water Purifier" in competition with other manufacturers and sellers of similar water filtration units.

3. In selling their water filtration and water purifier units in interstate commerce, respondents make false, misleading, and deceptive representations which are more specifically found, *supra,* to be in violation of the Federal Trade Commission Act.

4. Respondents' false, misleading, and deceptive representations have been and will continue to be unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce in violation of the Federal Trade Commission Act.

ORDER

It is ordered, That respondents Sibco Products Company, Inc., a corporation, its officers, agents, representatives and employees, and Frank Sibert, individually and as an officer of said corporation, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of water filtration units, 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, that respondents' water filtration units or any other products are guaranteed, unless the precise nature, extent, and duration of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed;

2. Representing, directly or by implication, that respondents' water filtration units or any of respondents' other products, are unconditionally guaranteed when a service or other charge is imposed for repairing or replacing said products, unless the amounts of said repair or service charges are clearly and conspciuously disclosed in the text of the guarantee;

3. Representing, directly or by implication, that respondents' water filtration units effectively remove water-borne microorganisms or viruses capable of causing diseases;

4. Representing, directly or by implication, that:

(a) respondents' water filtration units need no regeneration or no refilling;

(b) the filtering material in respondents' water filtratration units will not wear out or become exhausted; or

(c) the filtering material in respondents' water filtration units will remain effective indefinitely if backflushed with water periodically.

5. Misrepresenting in any manner, or placing in the hands of others the means and instrumentalities whereby they may mislead or deceive the purchasing public as to the nature or extent of respondents' guarantee, the effectiveness or duration of the effectiveness of their water filtration units, the manner or means for restoring or prolonging the effectiveness of said

units; or the capability of respondents' water filtration units to remove water-borne microorganisms or viruses capable of causing diseases.

OPINION OF COMMISSION

NOVEMBER 22, 1965

BY JONES, *Commissioner:*

The complaint in this matter charges that Sibco Products Company, Inc., a corporation, and its principal stockholder, Frank Sibert, violated Section 5 of the Federal Trade Commission Act by making certain misrepresentations in connection with the sale and distribution of their water filtration unit. The hearing examiner sustained the allegations in the complaint and entered an order requiring respondents to cease and desist from making the representations he found to be false. Respondents have appealed.

I. *Respondents and Their Product*

Sibco Products Company, Inc., is a New Jersey corporation which manufactures and sells in interstate commerce, among other things, a water filtration unit. The individual respondent, Frank Sibert, is the president of the corporate respondent, and he and his wife are sole officers and stockholders of the corporation. He formulates, directs and controls the acts and practices of the corporation.

Sibert entered the water filtration business in 1957, some seven years prior to the hearing below. Previously according to his testimony, he had developed a total of 15 new products, including an infrared massager, an electric fly-killer, a nail clipper, a cigarette roller, an automatic silver tarnish remover, a quick-opening pocket knife, a cushion vibrator, a vibrating pillow, a slenderizing machine and a water desalter.

Sibert had no background which qualified him as an expert in the field of water filtration. He testified that he had been inspired to enter the water filtration business by a Dr. Emil Hoffman, a medical doctor, and that the sole basis for his technical competence in the design and manufacture of water-filtration units was information purportedly given to him by Dr. Hoffman, who did not himself claim any specialized training in this field. Dr. Hoffman died in or about 1956, and Sibert did not have any scientific assistance, guidance or supervision from any technically qualified people in the design or construction of water filtration units at the

time he decided, shortly after Dr. Hoffman's death, to go into this business.

During his first two years in the business, Sibert stated that he did not sell his units but only "field-tested" them. Thus, the period he actually sold the units was limited to five years preceding the hearing. Sibert stated that he sold about 1,000 units during this period. Although it is not clear precisely what the price of the unit was, a letter sent to prospective purchasers sets forth a "retail price" of $345 each, or a "factory price" of $295. Sibert testified that the price of the least expensive unit was $125. He estimated that the amount of the gross annual sales of the units was between $20,000 and $30,000. When pressed to give more specific figures, Sibert refused to do so on the ground that he did not have the precise information, even though he was the only person involved in the business. He also refused to give the names of any customers who had in fact purchased the unit.

The water filtration unit sold by respondents consists of a metal tank, approximately four feet in height and eight inches in diameter. Although Sibert consistently refused to disclose the ingredients used in his unit despite a subpoena duces tecum ordering him to produce this data, experts at the hearing who tested respondents' unit testified that the minerals or chemicals inside respondents' filtration units include birm (for the removal of iron), zeolite resin (a water softener), calcite (to reduce acidity) and bone char (to remove rust, iron, sulphur, chlorine and odors).

II. *The Representations Challenged*

The challenged representations of respondents are contained in advertisements placed by respondents in the press and in literature and brochures sent by respondents to prospective customers. One of the newspaper advertisements of respondents' product, published in various New York City dailies and elsewhere, reads in part as follows:

> PURE WATER. Amazing New Purifier guaranteed for 10 years! Removes RUST, IRON, SULPHUR, CHLORINE, ODORS, etc. Purifies and filters city or well water. Eliminates stained sinks, dishes, clothes. Gives you crystal clear, odor-free, better tasting water. * * * No refills, no motor, no regeneration, no chemicals. Write for FREE details. * * *

Prospective purchasers were sent a form letter containing, *inter alia,* the following language:

> * * * [O]ur wonderful New Type Sibco Water Purifier * * * needs NO REGENERATION and NO REFILLING. No chemicals are used. We use

specially processed MINERALS which DO NOT WEAR OUT but are kept clean by back flushing once every 2 or 3 months, * * *.

Our Model S-1 will give you approximately [sic] 200 gal. per hour of Delicious Clear, Clean, Odor-free water to delight your family. * * *

This unit will be shipped with the specific understanding that if it fails to perform those functions which we guarantee, namely, the removal of RUST, IRON, SULPHUR, & CHLORINE ODORS, you may return it to us within 30 days after you receive it, for a full refund.

We know you and your entire family will be just delighted with the SIBCO Purified Water which is Sparkling Clear, Clean and Odor free. Pure drinking and cooking water are vital to the health of your family so don't delay correcting your bad water with a SIBCO Water Purifier.

A separate brochure sent to prospects stated, among other things, "no regeneration, no refills * * * Special Minerals last for years, need only a periodic back flushing to keep Minerals clean * * *."

The hearing examiner made the following findings with respect to respondents' challenged representations:

1. Respondents represented that their water filtration units are fully and unconditionally guaranteed by them in every respect for a period of ten years, whereas in fact the user in order to take advantage of the guaranty must dismantle the unit, ship it back to respondents at their own expense and in addition pay a $30 service charge which in effect covers the cost of a new unit;

2. Respondents represented that their water filtration units effectively remove water-borne microorganisms and viruses capable of causing diseases, whereas in fact these units do not perform as claimed;

3. Respondents represented that their water filtration units need no regeneration and no refilling; the filtering material in their water filtration units will not wear out or become exhausted; and the filtering material in such units will remain effective if back-flushed with water periodically, whereas in fact these units do require regeneration or refilling and the chemical filtering agents contained in the unit will wear out and become ineffective even if back-flushed.

III. *Discussion of the Issues*

Respondents were not represented by counsel either during the hearing before the examiner or on their appeal to the Commission from the hearing examiner's initial decision. For this reason, it is important to detail the facts respecting respondents' conduct of their defense and appeal in this case before considering the issues on appeal.

Respondents were represented by counsel throughout the period of the investigation, which commenced in 1961, in the precomplaint consent order negotiations, in the preparation of their answer to the complaint herein, and during the pretrial conference held before the examiner about six weeks before the hearing commenced. Approximately one month after this conference, respondents' counsel wrote to counsel supporting the complaint as follows:

> This is to advise you that I no longer represent the respondents in the above matter. I have been relieved of further connection with this case by Mr. Sibert, who felt that he could not proceed in the manner that I recommended.

On September 21, 1964, the first day of the hearing, respondent Sibert appeared and stated that respondents were not represented by counsel because they could not afford to pay counsel fees and that he intended to conduct respondents' defense. The hearing examiner then offered to adjourn the hearing, to give Sibert a chance to obtain counsel, but this offer was rejected by Sibert. At the conclusion of the two-day hearing, in which Sibert testified and cross-examined witnesses at length, he made a statement on the record thanking the examiner and complaint counsel "for treating me so nicely and being so helpful in guiding me."

On December 31, 1964, respondent Sibert wrote a letter to the Commission stating as follows:

> At the pre-Hearing. the Hearing Examiner, Mr. L. R. Gross told me that if I or the Company could not afford a lawyer to help me defend myself and the Company. that the Federal Trade Commission would provide legal counsel for us.
>
> This was not brought up at the Hearing, and I had to defend myself and the Company without the benefit of Counsel, because of lack of funds to bring in my own lawyer. (I was really nervous)
>
> Can you enlighten me on this matter, and what legal help we may expect or can obtain when financially unable to pay for a lawyer to defend us.

On the same date, he also wrote another letter to the Commission stating that he could not afford a copy of the transcript and requesting that the Commission send him a copy.

On January 19, 1965, the Commission advised Sibert that a copy of the transcript of the hearing would be made available to him in New York and that the Commission would give Sibert the right to file a statement in lieu of a brief and extended the time for filing that statement. The Commission also advised Sibert that he could obtain legal assistance from a number of sources, including the New Jersey State Bar Association, the Legal Aid Society of

New York City, and the Legal Referral Service located in New York. Sibert, however, continued to represent himself and the corporate respondent and appeared on his own behalf at the oral argument.

Sibert claimed in his Appeal Brief that he had been very nervous and confused during the hearing and that he could not afford to purchase a copy of the transcript. However, in his Appeal Brief he made references to specific pages of the transcript of the hearing before the examiner, so that it is apparent that he did in fact use a copy of the transcript in preparing his Appeal Brief to this Commission even though he had not purchased a copy (*e.g.* pp. 6, 8, Resp. Appeal Brief).

In our consideration of the issues in this case, we have been mindful of the fact that respondents were not represented by counsel during the hearing before the examiner and before the Commission. Accordingly, we have examined the entire record in this case with great care and we are satisfied that respondents were accorded a full and complete opportunity by the hearing examiner to present every facet of their defense. Moreover, we ourselves heard respondent Sibert on oral argument and are quite confident that he was completely aware of all of the issues involved in this complaint, clearly understood the evidence offered in support of the complaint, availed himself fully of the opportunity to offer all of his evidence during the hearing in support of his defense, and took advantage of his time for oral argument to explain his position on appeal in great detail to the Commission. He was an able counsellor in his own behalf, and we have no doubts as to his abilities to conduct his own defense.

With this background in mind, we turn to our discussion of the issues in this case.

1. *The Unconditional Ten-Year Guaranty*

Respondents admitted in their answer prepared by their counsel that their ten-year guaranty was not unconditional and that users of respondents' unit seeking to return the unit for repair or replacement during this ten-year period had to pay the costs of shipment as well as a $30 service charge. Their advertisements did not disclose any of those conditions.

Respondents' sole argument is that their customers received a copy of the formal guaranty setting forth the conditions under which it would be honored prior to purchasing the unit. The evidence for this claim was Mr. Sibert's testimony during the hearing before the examiner. While the documentary evidence in

support of this claim is somewhat inconclusive, it is not necessary to resolve this point, and we will assume that Mr. Sibert's testimony is in accord with the facts.

The Commission has long held that a representation that a product is guaranteed must disclose the manner, if any, in which such guaranty is limited. See *Pati-Port, Inc.*, 60 F.T.C. 35 (1962), *aff'd*, 313 F 2d 103 (4th Cir. 1963) and *Luxury Industries, Inc.*, 59 F.T.C. 442 (1961). An advertisement which states that a product is guaranteed and fails to disclose that a service charge will be required before said guaranty will be honored is an unfair and deceptive practice. *Parker Pen Co.* v. *F.T.C.*, 159 F 2d 509 (7th Cir. 1946).

The failure to set forth the terms of the guaranty was particularly deceptive in this case, since the so-called guaranty was so severely limited that it hardly constituted a guaranty at all. To have his unit repaired or replaced a customer was required not only to go to the considerable trouble and expense of dismantling and shipping the 100-pound, four-foot unit, but also to pay a $30 service charge—the approximate amount which respondents paid for the materials in their unit. So onerous were these conditions that they undoubtedly discouraged many customers from acting under the guaranty, and, if they had been disclosed in the advertisements, would probably have deterred many potential purchasers from buying the unit in the first place.

Nor is the deception in this case cured by the fact that respondent in other literature directed to prospective customers disclosed that the guaranty is in fact limited and conditional. As the Court stated in *Carter Products Co.* v. *F.T.C.*, 186 F. 2d 821, 824 (7th Cir. 1951)

> The law is violated if the first contract or interview is secured by deception *(Federal Trade Comm.* v. *Standard Education Society, et al.,* 302 U.S. 112, 115), even though the true facts are made known to the buyer before he enters into the contract of purchase *(Progress Tailoring Co., et al.* v. *Federal Trade Comm.,* 7 Cir., 153 F. 2d 103, 104, 105). See also *Aronberg, et al.* v. *Federal Trade Comm.,* 7 Cir., 132 F. 2d 165, 169.

Accordingly, we hold that respondents' advertisements were false and misleading in that they unqualifiedly represented that the product was guaranteed, whereas in fact, in order to take advantage of the guaranty, the customer had to return the unit to respondents at his own expense and had to pay an additional service charge of $30.

2. *Implied Representations Respecting Micro-organisms and Viruses*

Complaint counsel charges that by the use of such words as "pure," "purify" and "clean" and the phrase "pure drinking and cooking water are vital to the health of your family * * *" in connection with the unit, respondents are implicitly representing that disease-carrying water will be made safe for drinking through the use of the Sibco "Purifier."

Respondents admit that the unit will not kill micro-organisms but maintain that the words quoted above do not constitute an implicit representation to this effect. Moreover, respondents alleged in their answer that the literature accompanying the unit contains a specific disclaimer that it does not kill bacteria.

We conclude from the evidence that respondents' water purifier does not in fact remove water-borne micro-organisms or viruses capable of causing diseases. Moreover, we hold that the statements in respondents' advertisements and form letters—that their unit will "purify and filter" water, will ensure "clean" water, will correct "bad" water, will give "pure drinking and cooking water" which is "vital to the health of your family" and will filter "impurities" found in the consumer's water supply—constitute representations that respondents' unit will remove bacteria and other disease-causing germs. We find that a potential purchaser who has or believes he has or may have contaminated water could easily be led by statements of the type quoted above to believe that respondents' unit will make his water potable. *Giant Foods, Inc.* v. *F.T.C.* 332 F. 2d 977 (1963).

With respect to the disclaimer used by respondents in one brochure, we have no way of knowing from the evidence whether all of respondents' prospective customers actually received this pamphlet. Furthermore, this disclaimer was not inserted until respondents' precomplaint negotiations with complaint counsel. Finally, the presence of this disclaimer in one of respondents' brochures does not negate the contrary implication in the affirmative representations contained in their advertisements and sales literature as to the purifying qualities of their unit.

3. *Representations Respecting Longevity of Materials in Unit.*

Complaint counsel charges that since the materials in respondents' unit cannot last indefinitely without regeneration, respondents' contrary representations are false. Respondents claim that while ordinary bone char (one of the major filtering ingredients in their

unit) will remove water impurities for only a limited time, their bone char has been subjected to a "secret" process which enables respondents' filtering unit to function without regeneration and remain effective for an indefinite period. During the hearing before the examiner, however, respondents consistently refused to disclose their alleged "secret" process with which they treated their bone char.

The testimony at the hearing by complaint counsel's expert witnesses was unanimous that the period for which bone char will function without regeneration as an effective filtering agent, is rather limited, and that calcite, one of the other filtering substances in respondents' unit, will disappear altogether within a few years.

A laboratory analysis of respondents' materials conducted prior to the hearing revealed that the bone char in respondents' unit is chemically and physically indistinguishable from other bone chars and has no unique characteristics.

The record discloses that while Dr. Victor R. Deitz, complaint counsel's first expert witness, was on the stand, complaint counsel suggested that Sibert testify *in camera* "to give Dr. Deitz an opportunity to be aware of what this process [is]" (Tr. 131). The term "*in camera*" was explained to respondent both by complaint counsel and by the hearing examiner (Tr. 132). The hearing examiner specifically explained to Mr. Sibert that he, the examiner, could segregate that portion of the record referring to the secret process so that it would not be made public. The hearing examiner's statement on this point was as follows:

> * * * [I]f you wish to ask this witness whether treating the bone char in the way you treated it, divulge your secret, that the Hearing Examiner can by order direct that part of the examination to be made separate and apart from the rest of the record so it would not be available to the public (Tr. 132).

Despite this assurance, Mr. Sibert refused to take the stand and testify on the nature of the process used, claiming still that he was unwilling to disclose the secret nature of his process.

In the final minutes of the hearing, after all of the expert witnesses had departed, Sibert offered to divulge his secret process for treating bone char to the examiner and to complaint counsel. The examiner refused to permit this, setting forth his grounds as follows:

> I do not know what you do with the bone char. Mr. Feldman does not know what you do with the bone char. So far as I know this is your "secret." We have no desire in view of your previously expressed determination, not to

reveal it even to create a situation where, inadvertently, because once it was made known to us I might have to use that in writing an initial decision, and then that initial decision would be a matter of public record.

Am I making myself clear to you? For once I know it I have no right, in writing an initial decision, particularly if I should hold in your favor, I could not possibly say, "In view of the testimony that a secret which I have in my pocket means that all of their witnesses are wrong," because I would have to say why (Tr. 224-225).

During the oral argument, respondents did describe their process to the Commission. Mr. Sibert told the Commission the following:

Bone char has millions of tiny little crevices in it. This bone char when it is checked shows certain minerals. Now, bone char is made from bones. Bones have fat and oils in them. Those fats and oils that remain in there when bone is charred are the culprits that keep the regular stuff, unless it is removed, from working.

Now, that is my secret. All we do is remove that oil and fat from that bone char that holds all these millions of tiny impurities that go in there. And you can't backflush it (Tr. 45-46).

Even though this special process was not revealed by Sibert to the expert witnesses, we are convinced that Mr. Sibert's cross-examination of them and their testimony in reply would not have been any different had the precise formula been known by them. Mr. Sibert carefully examined both of the expert witnesses offered by complaint counsel on whether it would be possible to treat bone char by a special process in order to prevent it from deteriorating and losing its filtering properties.

Dr. Seitz and Dr. Dean both affirmed that nothing could be done to bone char to prevent it, after usage, from clogging and to enable it to be reactivated by backflushing. Dr. Deitz, a leading expert on bone char, testified that respondents' claim as to the permanent effectiveness of their bone char was "against all [his] chemical training." His testimony on cross-examination continued as follows:

All adsorbents gradually die out in their activity.

Q. But if something was done to that bone char that would make it do that, would you then believe it?

A. I have studied it for 25, 30 years, and we made a lot of—we doped the bone char up with many things. This is an old chestnut. And we have never been able to modify the surface in such a way that its adsorbing cycle was any better than it was originally. * * * (Tr. 130).

Dr. Robert B. Dean, Director of Laboratory Research for Ad-

vanced Waste Treatment, of the U.S. Public Health Service, testified to the same effect:

> I know of no special treatment or anything that you could do to bone char that would make it effective toward the removal of tastes, odors, colors or detergents indefinitely (Tr. 163).

Sibert argued on appeal that respondents had been deprived of a fair hearing because of the refusal of the hearing examiner to permit him to disclose his secret process to the examiner. We find no merit in this contention. It is clear that if respondents were in any way handicapped or prejudiced at the hearing because the experts could not be interrogated directly and expressly on their opinion of the efficacy of respondents' process, that handicap or prejudice was created by respondents' refusal to disclose this process to them as they had been urged to do by the hearing examiner. However, we find that in fact respondents were not in any way handicapped or prejudiced in their defense by the nondisclosure of the details of respondents' alleged secret process.

Considering all of the evidence offered in this record and weighing it in the light of all of the various contentions made with respect to it by respondents, we conclude that respondents' water filtration unit will not permanently remove water impurities without regeneration and that respondents' representations to the contrary are false and misleading and in violation of Section 5 of the Federal Trade Commission Act.

Respondents claim that the examiner refused to permit them to introduce into evidence the testimonials of their customers as to the efficacy of the unit and also that he terminated the hearing prematurely before respondents had completed offering their defense. We have carefully examined the record on these points and find no merit in either of these contentions. The record demonstrates that respondents were given every opportunity to introduce the alleged customer testimonials but refused to take advantage of it because of their unwillingness to disclose the names of their customers. The transcript on this point reads as follows:

> HEARING EXAMINER GROSS: I have to advise you that your bare statement that you have these letters is not sufficient—I cannot consider it, because it would have, certainly, have been no expense to have brought them with you.
>
> MR. SIBERT: I have the letters here.
>
> HEARING EXAMINER GROSS: If you want to put them in evidence, all right. You show them to Mr. Feldman and he might be willing to have them brought into evidence.

MR. SIBERT: The reason that I do not want to put them in evidence is because it discloses the names. This particular one I did mention, but it discloses the names of the people, of the customers, let us say, of mine, and I understand that I do not have to disclose the names of them (Tr. 235-236).

During the oral argument on this appeal, the Commission offered to receive the proposed letters *in camera* (the meaning of which term was again explained to Sibert), but Sibert nevertheless once more failed to make them available.

We find a similar absence of factual basis for respondents' claim that their defense was arbitrarily cut off by the hearing examiner.

On page 11 of his brief, Sibert stated that he had had

* * * plenty of written proof with me at the hearing of satisfied customers who had been using our Water Purifier and expected to show it as evidence, but at the second day of the hearing it was after 4 pm and the hearing examiner said he wanted to close the hearing, before 5 pm that day. I could not come back the next day, due to lack of funds, so I was unable to provide this evidence, that now seems vital in this case. I was nervous and I felt like there was some sort of pressure on me, because I did not have the money to stay over another night in Washington, so I skipped a lot of the things I wanted to say and evidence I should have left there, to help convince the hearing examiner that we were right and were not trying to mislead anyone * * *.

The record in no sense bears out Sibert's contention that he had been cut off and deprived of an opportunity to offer evidence. The hearing examiner made sure that Sibert understood that no time limitation was imposed by him. At the end of the first day's hearing, the hearing examiner stated as follows:

Now, Mr. Sibert, as you sit there now, and this doesn't necessarily bind you, do you intend to offer any evidence other than such evidence as you may be able to get through examining the government's witnesses? And I don't mean by asking that question to imply that you are being limited as to time at all. You may within the bounds of relevancy put in all the evidence you want. Or you may take the stand again and testify further if you wish (Tr. 135).

Sibert answered, "I have no one that I can bring here because I don't have the money for it."

At the end of the second day, the hearing examiner announced that he would like to leave no later than 4:40 p.m.; but he further specified:

That does not mean, sir, that you do not have the rest of the week, if you want it * * *. Take all the time you want, because Mr. Feldman has shown no indication to shut you off and I hope I have not (Tr. 245).

There is no indication that Sibert had any serious intention of bringing in any witnesses. At one point, he referred to "the chemist of that company that we have been buying the material from" but said that he had "refused to come here and help me" (Tr. 43). The hearing examiner then explained at length how Sibert could obtain a subpoena from the hearing examiner who could require any "witness anywhere in the United States" to attend the hearing (Tr. 44). Sibert once again declined because of lack of funds. As noted above, to the extent this alleged evidence referred to his customers' testimonials, it was his decision not to offer them, a decision which he persisted in on this appeal as well.

Finally, we find that there is no merit to Sibert's claim that he was cut off by the Commission in his oral argument and prevented from making various arguments which he had intended to make. Sibert was not only accorded the opportunity to argue his case in full, but indeed presented his arguments before this Commission with great clarity and at considerable length. He also submitted an 18-page, closely spaced typewritten statement (in lieu of a brief), together with four attachments, to the Commission, in which he set forth each of the hearing examiner's findings and presented detailed comments as to why, in his opinion, these findings and conclusions were in error. We are convinced that Mr. Sibert has in fact fully presented all of his evidence and arguments, both during the hearing before the examiner and on the appeal, as to why the hearing examiner erred in his findings and conclusions and why an order is unnecessary in this case.

In conclusion, we find that respondents' contentions on the merits are without factual support in the record and contrary to the established case law. We also find that in no way have respondents been deprived of any of their rights or treated unfairly.

IV

The order entered by the hearing examiner, in our judgment, is both appropriate and necessary to ensure that respondents will cease and desist from making the representations which we have found to be deceptive. While respondents voluntarily revised some of their sales literature prior to and during the proceedings in this case, these revisions in some cases were not extensive enough and in other instances did not encompass all of respondents' sales literature. During the oral argument on the appeal from the initial decision the Commission directed the parties to attempt to negotiate a satisfactory disposition of this proceeding, so that it would be unnecessary for the Commission to issue a formal decision and

order. Subsequent to the argument complaint counsel advised the Commission that he had been unable to work out a satisfactory agreement with respondents. Accordingly, we have concluded that it is essential that a formal cease and desist order be issued by the Commission in this case.

The initial decision, as supplemented and modified to conform to the views expressed in this opinion, and the order issued by the examiner, will be adopted as the decision and order of the Commission.

Commissioner Elman concurs in the result.

FINAL ORDER

This matter having been heard by the Commission on an appeal by respondents from the initial decision of the hearing examiner, and upon briefs and argument in support thereof and in opposition thereto; and

The Commission having rendered its decision determining that the appeal should be denied, that the initial decision, as supplemented and modified to conform to the views expressed in the accompanying opinion, should be adopted as the decision of the Commission, and that the order issued by the hearing examiner should be adopted as the order of the Commission:

It is ordered, That the initial decision, as modified and supplemented by the accompanying opinion be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the order issued by the hearing examiner be, and it hereby is, adopted as the order of the Commission.

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.

Commissioner Elman concurring in the result.

IN THE MATTER OF

THE S. FRIEDER & SONS COMPANY

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

Docket C-1018. Complaint, Nov. 22, 1965—Decision, Nov. 22, 1965

Consent order requiring a Philadelphia cigar manufacturer, to cease representing falsely that its cigars were made entirely from tobacco grown in

Cuba through the use of the word "Havana" or any other indicative term.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that The S. Frieder & Sons Company, a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, The S. Frieder & Sons Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 129 North Twelfth Street in the city of Philadelphia, State of Pennsylvania.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the manufacture, advertising, offering for sale, sale and distribution of cigars to distributors, wholesalers, dealers and retailers for resale to the public.

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

PAR. 4. In the course and conduct of its aforesaid business, and for the purpose of inducing the purchase of its cigars, the respondent has made numerous statements and representations in connection with the advertising of its cigars by and through the use of brand names as well as descriptive and identifying matters and materials which purport to disclose the composition, formulation, and origin of its cigars.

Typical and illustrative of the aforesaid statements and representations are the following:

HAVANA PALMA THROWOUTS HAVANA PALMA
HAVANA-WRAPT HAVANA PERFECTOS
HAVANA CORONA SMOKERS
HAVANA PANETELA THROWOUTS

PAR. 5. By and through the use of the above-quoted statements and representations, and others of similar import not specifically set out herein, the respondent represented that said cigars were made entirely from tobacco grown on the island of Cuba.

PAR. 6. In truth and in fact, respondent's cigars bearing the aforesaid descriptions and other similar terms were not made entirely from tobacco grown on the island of Cuba.

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

PAR. 7. By the aforesaid practices, respondent places in the hands of distribtuors, wholesalers, dealers and retailers, means and instrumentalities by and through which they may mislead the public as to the composition, formulation and origin of its cigars.

PAR. 8. In the conduct of its business, at all times mentioned herein, respondent has been in substantial competition, in commerce, with corporations, firms and individuals in the sale of merchandise of the same general kind and nature as that sold by respondent.

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

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

DECISION AND ORDER

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

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by

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

The Commission, having reason to believe that the respondent has violated the Federal Trade Commission Act, and having determined that complaint should issue stating its charges in that respect, hereby issues its complaint, accepts said agreement, makes the following jurisdictional findings and enters the following order:

1. Respondent The S. Frieder & Sons Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 129 North Twelfth Street in the city of Philadelphia, State of Pennsylvania.

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

ORDER

It is ordered, That respondent, The S. Frieder & Sons Company, a corporation, and its officers and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the manufacture, offering for sale, sale and distribution of cigars or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the term "Havana" or any other term or terms indicative of tobacco grown on the island of Cuba, either alone or in conjunction with any other terms, to describe, designate or in any way refer to cigars not made entirely from tobacco grown on the island of Cuba; except that cigars containing a substantial amount of tobacco grown on the island of Cuba may be described, designated, or referred to as "blended with Havana", or by any term of similar import or meaning: *Provided,* That the words "blended with," or other qualifying word or words, are set out in immediate connection or conjunction with the word "Havana," or other term indicative of tobacco grown on the island of Cuba, in letters of equal size and conspicuousness.

2. Placing in the hands of distributors, wholesalers, dealers and retailers, and others, means and instrumentalities by and

through which they may deceive and mislead the purchasing public concerning any merchandise in the respects set out above.

It is further ordered, That the 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

TALENTO, INC., ET AL. TRADING AS TALENTO, ETC.

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

Docket C-1019. Complaint, Nov. 23, 1965—Decision, Nov. 23, 1965

Consent order requiring two affiliated Miami, Fla., manufacturers of women's dresses and sportswear, to cease misbranding said textile fiber products by failing to disclose on attached labels the generic names of the constituent fibers, and by furnishing false guaranties that their textile fiber products were not misbranded.

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 Talento, Inc., a corporation, Terrell, Inc., a corporation, both trading as Talento and Sue Anne, and Irving Kashmir and Joe Luccheze, individually and as officers of said corporations, and Jack Lobel, individually and as a former officer of said corporations, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Textile Fiber Products Identification Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Talento, Inc., and Terrell, Inc., trading as Talento and Sue Anne, are corporations organized, existing and doing business under and by virtue of the laws of the State of Florida, with their offices and principal places of business located at 560 N.W. 26th Street, Miami, Florida.

Individual respondents Irving Kashmir and Joe Luccheze, are officers of the corporate respondents, and formulate, direct and control the acts, practices and policies of the corporate respondents, including the acts and practices complained of herein. Their business addresses are the same as said corporate respondents. The aforesaid respondents are engaged in the manufacture and sale of women's dresses and sportswear.

Respondent Jack Lobel was an officer of each of the corporate respondents until May 20, 1965, and at all times material to this proceeding and cooperated with respondents Irving Kashmir and Joe Luccheze in the formulation, direction and control of the acts, practices and policies of the corporate respondents, including the acts and practices complained of herein. The business address of respondent Jack Lobel is 2550 N.W. Fifth Avenue, Miami, Florida.

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

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

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products, namely women's dresses, with labels which failed to disclose the constituent fiber or combination of fibers in the textile fiber product by their generic names.

PAR. 4. The respondents have furnished false guaranties that their textile fiber products were not misbranded in violation of Section 10 of the Textile Fiber Products Identification Act.

PAR. 5. The acts and practices of respondents as set forth above were and are in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, and constituted, and now constitute unfair 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 respondents named in the caption hereof with violation of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

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

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

1. Respondents Talento, Inc., and Terrell, Inc., both trading as Talento and Sue Anne are corporations organized, existing and doing business under and by virtue of the laws of the State of Florida, with their office and principal place of business located at 560 N.W. 26th Street, in the city of Miami, State of Florida.

Respondents Irving Kashmir and Joe Luccheze are officers of the said corporations and their address is the same as that of the said corporations.

Respondent Jack Lobel was an officer of the said corporations until May 20, 1965. His address is 2550 N.W. Fifth Avenue, Miami, Florida.

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.

Syllabus

ORDER 68 F.T.C.

It is ordered, That respondents Talento, Inc., a corporation, and its officers, Terrell, Inc., a corporation, and its officers, both trading as Talento and Sue Anne, and Irving Kashmir and Joe Luccheze, individually and as officers of said corporations, and Jack Lobel, individually and as a former officer of said corporations, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by failing to affix labels to such products showing each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

B. Furnishing false guaranties that textile fiber products are not misbranded under the provisions of the Textile Fiber Products Identification Act.

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

DAN MILLSTEIN, INC.

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

*Docket C-1020. Complaint, Nov. 23, 1965—Decision, Nov. 23, 1965**

Consent order requiring a New York City wearing apparel manufacturer to cease discriminating among its competing customers in the payment of advertising and promotional allowances, in violation of Sec. 2(d) of the Clayton Act.

*For Commission's opinion and Commissioner Elman's dissenting statement accompanying this decision, see pp. 393, 403, 407 herein.

COMPLAINT

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

PARAGRAPH 1. The respondent is a corporation engaged in commerce, as "commerce" is defined in the amended Clayton Act, and sells and distributes its wearing apparel products from one state to customers located in other states of the United States. The sales of respondent in commerce are substantial.

PAR. 2. The respondent in the course and conduct of its business in commerce 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 and facilities furnished by or through such customers in connection with their sale or offering for sale of wearing apparel products sold to them by respondent, and such payments were not made available on proportionally equal terms to all other customers competing with favored customers in the sale and distribution of respondent's wearing apparel products.

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

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

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and subsequently having determined that complaint should issue, and the respondent having entered into an agreement containing an order to cease and desist from the practices being

investigated and having been furnished a copy of a draft of complaint to issue herein charging it with violation of subsection (d) of Section 2 of the Clayton Act, as amended, and

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

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

1. Respondent Dan Millstein, Inc., is a corporation organized and existing under the laws of the State of New York, with its office and principal place of business located at 205 West 39th Street, New York, New York.

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

ORDER

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

> Paying or contracting for the payment of anything of value to, or for the benefit of any customer of the respondent as compensation or in consideration for advertising or promotional services, or any other service or facility, furnished by or through such customer in connection with the handling, sale or offering for sale of wearing apparel products manufactured, sold or offered for sale by respondent, unless such payment or consideration is made available on proportionally equal terms to all other customers competing with such favored customer in the distribution or resale of such products.

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.

Commissioner Elman dissenting.