in fact, competes in the resale and distribution of respondent's products with the purchaser paying the higher prices.

It is further ordered, That, in addition to and apart from the provisions of the preceding paragraph, if respondent at any time after the effective date of this order institutes a price schedule whereby it charges a different price for its products to any person, group or class of its competing customers on the basis or in the belief that such difference in price is justified by savings to the respondent in the cost of manufacture, sale or delivery to the members of such customer group or class, respondent shall

(a) promptly notify the Federal Trade Commission of the institution of such price schedules and submit to the Commission a written statement with necessary underlying data in support of the cost justification of such price discrimination; and

(b) adequately and regularly publicize to all customers that prices to some are higher than to others, together with reasons and details of the price differences or discounts.

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 respondent William H. Rorer, 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 it has complied with the order to cease and desist.

IN THE MATTER OF

LAKELAND NURSERIES SALES CORP. trading as LAKELAND NURSERIES SALES ET AL.

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

Docket 8670. Complaint, Nov. 1, 1965—Decision, May 12, 1966

Order dismissing a complaint against a New York City distributor of nursery products charging that it misrepresented the blooming charac-

teristics of its plants; the order also reserves the right to reopen the complaint and order against respondent's predecessor company, Docket No. 6666, 53 F.T.C. 1189.

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 Lakeland Nurseries Sales Corp., a corporation trading as Lakeland Nurseries Sales, and Henry L. Hoffman and Chester Carity, 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 Lakeland Nurseries Sales Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 16 West 61st Street in the city of New York, Borough of Manhattan, State of New York. Said corporate respondent also trades as Lakeland Nurseries Sales.

Respondents Henry L. Hoffman and Chester Carity are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of rose plants, chrysanthemum plants and other nursery products to the public.

As used in this complaint and in the attached proposed form of order the term "nursery products" includes all types of trees, small fruit plants, shrubs, vines, ornamentals, herbaceous annuals, biennials and perennials, bulbs, corms, rhizomes, and tubers which are offered for sale or sold to the general public. Included are products propagated sexually or asexually and whether grown in a commercial nursery or collected from the wild state.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, said products when sold, to be shipped from independent nurseries in the States of Minnesota, Maryland and other States to purchasers thereof

located in States other than those in which said shipments originate 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, the respondents have distributed circulars, brochures, catalogues and other advertising material through the United States mails to prospective purchasers located outside the State of New York, and have furnished advertising material to others for use in soliciting sales, containing numerous statements and representations respecting respondents' status as a grower or propagator of the nursery products they offer for sale.

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

* * * * * * *

The reason we are willing to release part of our precious propagating stock at this time is simply this:

* * * * * * *

Yes, as one of America's largest nursery organizations, we've sold many, many magnificent rose varieties throughout the years—a good number of them international prize winners. On our annual trips all over the country to visit leading hybridizers, as well as to inspect our own crops of roses produced in vast growing fields in 6 states, we usually see a total of more than 10 million roses each summer, including the crops of "friendly rival" nurserymen.

* * * * * * *

If you should come and visit the vast greenhouses and experimental "GARDENS OF TOMORROW" where our Azaleamums are hybridized you would see the answer!

* * * * * * *

The respondents' Azaleamum brochure contains a picture of several rows of plants in bloom growing in a field. Beneath the picture is the caption, "You are now looking at a few rows in the growing fields—showing how Azaleamums look the very first season you plant them."

* * * * * * *

PAR. 5. Through the use of the aforesaid corporate name, "Lakeland Nurseries Sales Corp." and through the use of the trade name, "Lakeland Nurseries Sales," separately or in connection with the statements, representations and illustrations set forth in Paragraph Four hereof, and others similar thereto but not expressly set out herein, and through the use of said statements, representation and illustrations and of a Garden City, New York mailing address, respondents have represented, directly or by implication that they actually grow or propagate the nursery prod-

ucts which they offer for sale and sell and that they own, operate or control nurseries, farms or properties in or on which the said products are grown or propagated.

PAR. 6. In truth and in fact the respondents do not actually grow or propagate the nursery products which they offer for sale and sell, nor do they own, operate, or control nurseries, farms, or properties in or on which said products are grown or propagated.

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

PAR. 7. There is a preference on the part of members of the purchasing public for dealing directly with nurseries and growers of nursery products rather than with retailers, dealers or other intermediaries, such preference being due to a belief that by dealing directly with the nurseries or growers, various advantages may be obtained. The Commission takes official notice of the preference.

PAR. 8. In the further course and conduct of their business as aforesaid, respondents have made numerous statements and representations respecting the amount and size of blossoms, duration of blooming period, and other blooming characteristics of the nursery products they offer for sale and the rate of growth, appearance, height, size and other physical characteristics which can and will be achieved with said products by purchasers thereof.

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

A. In connection with the offering for sale of the "Nearly Wild" rose, also advertised as a Superblooming Hedge Rose:

Yes, just imagine the incredible gardening thrills that now await you, if you accept this offer promptly. The thrill of seeing fresh, colorful, fragrant 3-inch roses burst into lavish clusters of 10, 12 and even 15 blossoms to a single stem . . . roses that erupt into fiery red 'n pink MASSES OF 30, 40 and even 50 NEW ROSES day after day, week after week from one single plant . . . roses to fill every room in your house with their color and exotic fragrance all summer long from just one single plant . . . roses that literally pour out their blossoms like a never-ending fountain of beauty in June, July, August, September, October, November . . . right up to first frosts and even beyond . . . and all from one single plant! Roses that start blooming a few weeks from now in your garden and once established will literally give you THOUSANDS OF BLOOMS each year . . . from each single plant!

* * * * * * *

Leading Eastern Agriculture College Reports: This Fabulous Rose Variety Produced 4,076 Roses all from one single plant!

* * * * * * *

Requires Less Care! An ideal Rose for Beginners! So Easy To Plant and Grow for a Lifetime of Gorgeous Bloom! And because it can so easily withstand conditions that would kill off its more tender cousins, Nearly Wild is almost a foolproof rose—guaranteed to thrive and produce heavy masses of bloom for you even if you've never planted a seed before in your life!

* * * * * * *

In addition, the brochure, advertising this rose, contains a close-up photograph of rose blossoms which purports to be a photograph of the blossoms produced by the "Nearly Wild" rose plant.

B. In connection with the offering for sale of the Ray Bunge Scarlet Showers Rose:

* * * * * * *

Soars 20 Feet High . . . Spreads 40 Feet Wide The *First Growing Season*" . . . For this wonder rose streaks skyward at a rate simply unheard of in roses . . . as much as 18 inches in a single week . . .

* * * * * * *

Up To 300 Giant Roses In Bloom At One Time—Dramatic Fountains of Color 5 Months of The Year!

* * * * * * *

So, if you can spare a few minutes of time and a few inches of ground in your yard to plant it, you can own the rose that defies rubber tree roots, 20° below zero winters, even semi-shaded conditions . . . to soar higher than any other everblooming, climbing rose has ever been known to grow before!

* * * * * * *

Imagine the glory of a rosebush that bursts into gigantic blossoms up to 5 inches across . . . roses that burst again and again into fiery masses of color in June, July, August, September, October . . . until snow starts to fly!

* * * * * * *

As little as 3 hours daily sunlight produces ravishing masses of bloom!

* * * * * * *

In addition the brochure, advertising this rose, contains a picture of a house with roses growing over it from the ground to the roof.

C. In connection with the offering for sale of the Wilson's Climbing Doctor rose, also known as the Climbing Doctor:

Roses that burst into everblooming fountains of color . . . soaring up to 11 feet high . . . up to 20 feet wide!

* * * * * * *

Roses that flare again and again into living walls of color in June, July, August, September, October . . . right up to wintry frost.

* * * * * * *

Gives you a lavish outpouring of exquisite hybrid tea-like roses from June

to Frost. Blossoms are truly gigantic . . . usually measuring 6 to 8 inches across!

Soars Approx. 11 feet high . . .

* * * * * * *

A few Minutes to Plant and A Bare Spot Becomes The Showplace of the Neighborhood.

* * * * * * *

In addition the brochure advertising this rose contains a picture of a rose 8 inches wide at the widest point described as "Actual Size of Bloom"; a picture of a young lady before a background of roses most of which are large enough to cover the major portion of her face; and a picture of a woman standing beside a wide spreading rose bush which is approximately twice her height.

D. In connection with the offering for sale of chrysanthemums known as Fragramums:

. . . *they're the first fragrant chrysanthemums in garden history!*

* * * * * * *

You'll Get Hundreds of Sweet-Scented Mums This Season From Each Single Plant—Thousands More Year After Year.

* * * * * * *

And you can do it in just 20 minutes whether you're an expert gardener or the greenest beginner. Because they're shipped to you ready-to-plant in a special "grow enroute" wrap, and it only takes a few minutes to scoop out a few holes and plant them.

* * * * * * *

It means mounds and mounds of fiery-hued chrysanthemums . . . as many as 200 . . . 300 . . . even 400 blossoms on a single plant . . . some up to 4" across . . . blossoms clustered so closely on the plant, you can barely push your hand into the mass to try to count them.

* * * * * * *

A Fragramum Planting Gives you Lovely, Sweet-Scented Banks of Color in August, September, October, November . . . Right Up To Frost And Beyond!

E. In connection with the offering for sale of chrysanthemums known as Azaleamums:

* * * * * * *

. . . and then cover themselves with solid unbroken masses of dazzling 2 to 4 inch blossoms!

* * * * * * *

. . . beginning in August (sometimes even in July) . . . each of these wonder-plants erupts into a gigantic fireball of color spreading nearly a full 8 feet around. Then in September, October, November—instead of fading, instead of dropping its blooms—each and every Azaleamum bursts again and again into a continuous never-ending shower of hundreds, even thousands of colorful gold, white, pink or flaming red blossoms!

* * * * * * *

"PROBABLY WORLD'S GREATEST FLOWERING PLANT!" . . . said garden editor of N. Y. Journal American: "500 or 600 blooms open at one time is moderate; many people have reported over 1,000 blooms and in a few cases the record even stretches up to 2,000 blooms."

G. A. Bernard, Illinois, writes:

"You say 600 flowers. I'll bet there are 1,000 flowers on one single plant."

* * * * * * *

And you can do it all with just 6 plants we send you . . . in just 20 minutes . . . whether you're an expert gardener or the greenest beginner. Because they're shipped to you packed in their own "grow en route" containers and it only takes 20 minutes to scoop out a few holes and plant them! . . .

PAR. 9. Through the use of the aforesaid statements and representations and others similar thereto but not expressly set out herein, the respondents have represented, directly or by implication, that all purchasers of plants offered for sale and sold by them would obtain or could obtain the results listed below for each plant irrespective of the purchaser's lack of gardening experience or horticultural knowledge or of any required special care and handling of the plant.

A. Results from a single Nearly Wild Rose plant (also called a Hedge Rose) in the first season it is planted:

1. 1,000—4,076 blossoms.
2. The majority of the blooms will be 3 inches in diameter.
3. Continuous blooming from June to November.
4. Blossoms that resemble those shown in the close-up photo in the brochure advertising the Nearly Wild Rose.
5. 30 to 50 blossoms in a single day.

B. Results from a single Ray Bunge Scarlet Showers rose plant in the first season it is planted:

1. A growth of 18 inches in height in a single week, and 20 feet in height and 40 feet in width in the season.
2. The majority of blossoms will be 5 inches in diameter.
3. Repeat blooming in each month from June to October.
4. At least 300 blossoms.
5. Only 3 hours of sunlight a day are necessary to obtain the advertised results.

C. Results from a single Wilson's Climbing Doctor rose plant in the first season it is planted:

1. A growth of 11 feet in height in the season.
2. The majority of blossoms will be 6–8 inches in diameter.
3. Continuous blooming from June to October.

D. Results from a single Fragramum chrysanthemum plant the first season it is planted:

1. 200 to 400 blossoms in the first season and at least 1,000 blossoms per season each subsequent season.
2. Many blossoms 4 inches in diameter.
3. Continuous blooming from August to November.
4. The blossoms will be fragrant.

E. Results from a single Azaleamum chrysanthemum plant in the first season it is planted:

1. 500 to 2,000 blossoms.
2. Many blossoms will exceed 2 inches in diameter.
3. Continuous blooming from August to November.

PAR. 10. In truth and in fact, many purchasers of the nursery products offered for sale by respondents did not obtain the results hereinabove set forth for the Nearly Wild rose plant, the Scarlet Showers rose plant, the Wilson's Climbing Doctor rose plant and the Azaleamum chrysanthemum plant, and, in the case of the Fragramum chrysanthemum plant could not obtain such results.

The statements and representations as set forth in Paragraphs Eight and Nine hereof were and are exaggerated, false, misleading and deceptive.

PAR. 11. In seasons subsequent to the season of initial offering the respondents have distributed advertising material in which they represented that said Scarlet Showers, Wilson's Climbing Doctor and Fragramums were new at the time of the then current offer and were being offered to the public for the first time and that all varieties of Azaleamums were new in 1960 and were being offered to the public for the first time.

PAR. 12. In truth and in fact the said Scarlet Showers, Wilson's Climbing Doctor and Fragramum plants were not new at the time of the then current offers and had been offered to the public by the respondents in preceding seasons and some varieties of Azaleamums had been offered by others in preceding seasons.

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

PAR. 13. 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 nursery products of the same general kind and nature as those sold by respondents.

PAR. 14. Respondents by and through the use of the aforesaid

acts and practices place in the hands of retailers and dealers, the means and instrumentalities by and through which they may mislead and deceive members of the public in the manner and as to the things hereinabove alleged.

PAR. 15. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of nursery products offered for sale by respondents by reason of said erroneous and mistaken belief.

PAR. 16. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

ORDER DISMISSING COMPLAINT

On February 17, 1966, respondents brought suit in the United States District Court for the District of Columbia seeking a declaratory judgment and mandatory injunction requiring the Commission to withdraw the complaint in this proceeding and to restrict its action against respondents with respect to the allegations in the complaint herein to the reopening, pursuant to Section 3.28 (b) of the Commission's Rules of Practice, of the proceedings in *Lakeland-Deering Nurseries Sales,* Docket No. 6666. *Lakeland Nurseries Sales Corp., et al.* v. *Dixon, et al. and the Federal Trade Commission,* Civil Action No. 419–66 (D.D.C. 1966). By stipulation dated May 4, 1966, respondents agreed to entry of an order dismissing the complaint filed in the District Court upon the entry by the Commission of an order dismissing the complaint in this proceeding. It was further agreed that the dismissal of the complaint herein would be without prejudice to the Commission's issuance of an amended complaint in Docket No. 6666, containing the allegations of the complaint issued herein and to the reopening of that proceeding, respondents having waived the requirement that the Commission first establish changed conditions of fact or law or public interest. Accordingly,

It is ordered, That

(1) The complaint in this proceeding be, and it hereby is, dismissed; and

(2) The dismissal of the complaint herein is without prejudice to the reopening of the proceedings in *Lakeland-Deering Nurseries Sales,* Docket No. 6666 and to the issuance of an amended complaint therein, as provided by, and in accordance with, the terms of the stipulation dated May 4, 1966, filed with the United States District Court for the District of Columbia in *Lakeland Nurseries Sales Corp., et al.* v. *Dixon, et al. and the Federal Trade Commission,* Civil Action No. 419–66.

Commissioner MacIntyre not participating.

IN THE MATTER OF

LOUIS LEEDS trading as LEEDS MANUFACTURING

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

Docket C–1065. Complaint, May 12, 1966—Decision, May 12, 1966

Consent order requiring a Bronx, N.Y., importer and manufacturer of sweaters to cease importing, manufacturing or selling wearing apparel made from dangerously flammable fabric.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and Flammable Fabrics Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Louis Leeds, an individual trading as Leeds Manufacturing, hereinafter referred to as respondent, has violated the provisions of said Act and Rules and Regulations promulgated under the Flammable Fabrics Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Louis Leeds, is an individual trading as Leeds Manufacturing. He is engaged in the manufacture and distribution of sweaters. The business address of the respondent is 4241 Park Avenue, Bronx, New York. 10057.

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

Among the articles of wearing apparel mentioned hereinabove were sweaters.

PAR. 3. Respondent subsequent to July 1, 1954, the effective date of the Flammable Fabrics Act, has manufactured for sale, sold and offered for sale, articles of wearing apparel made of fabric which was, under Section 4 of the Act, as amended, so highly flammable as to be dangerous when worn by individuals, which fabric had been shipped and received in commerce, as the terms "article of wearing apparel," "fabric" and "commerce" are defined in the Flammable Fabrics Act.

Among the articles of wearing apparel mentioned above were sweaters.

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

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of the Federal Trade Commission Act and the Flammable Fabrics 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 Louis Leeds is an individual trading as Leeds Manufacturing under and by virtue of the laws of the State of New York with his office and principal place of business located at 4241 Park Avenue, Bronx, 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 the respondent Louis Leeds, an individual trading as Leeds Manufacturing, or under any other name, and respondent's representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from:

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

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

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

2. Manufacturing for sale, selling, or offering for sale any article of wearing apparel made of fabric, which fabric has been shipped or received in commerce, and which under Section 4 of the Act, as amended, is so highly flammable as to be dangerous when worn by individuals.

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

UNIVERSAL PUBLISHING & DISTRIBUTING CORPORATION

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

Docket C-1066. Complaint, May 13, 1966—Decision, May 13, 1966

Consent order requiring a New York City publisher of paperback books and magazines, to cease discriminating among its competing customers in payment of promotional allowances, in violation of Section 2(d) of the Clayton Act.

COMPLAINT

The Federal Trade Commission, having reason to believe that Universal Publishing & Distributing Corporation, a corporation, sometimes hereinafter referred to as respondent, 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), hereby issues its complaint stating its charges in respect thereof as follows:

PARAGRAPH 1. Respondent Universal Publishing & Distributing Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 800 Second Avenue, New York, New York. Said respondent, among other things, has been engaged and is presently engaged in the business of publishing, selling and distributing various publications, including magazines and paperback books, under copyrighted titles. Respondent's total sales of publications for its fiscal year ending March 31, 1963 were $4,594,182 and its total sales for the year ending March 31, 1964 were $5,957,720.

PAR. 2. Paperback books and magazines published by respondent are distributed to customers by respondent's national distributor, Kable News Company, located in Mount Morris, Illinois. In

its capacity as distributor for respondent, Kable News Company served, and is now serving, as a conduit or intermediary between respondent and respondent's customers for the sale, distribution and promotion of paperback books and magazines published by respondent.

Respondent also distributes paperback books and magazines directly to some wholesalers and to retailers such as chain stores, sporting goods stores and hardware stores.

PAR. 3. Respondent and its conduit or intermediary, Kable News Company, have sold and distributed and now sell and distribute respondent's publications in substantial quantities in commerce, as "commerce" is defined in the Clayton Act, as amended, to competing customers located throughout various states of the United States and in the District of Columbia.

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

Such payments were made by respondent to its favored customers on the basis of individual negotiations, and, even among the favored customers, many of whom were in competition, such payments were not made on proportionally equal terms.

PAR. 5. The acts and practices of respondent, as alleged above, are in violation of the provisions of subsection (d) of Section 2 of the Clayton Act, as amended.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Restraint of Trade proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of Section 2(d) of the Clayton Act, as amended; and

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

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

The Commission, having reason to believe that the respondent has violated Section 2(d) of the Clayton Act, as amended, and having determined that complaint should issue stating its charges in that respect, hereby issues its complaint, accepts said agreement, makes the following jurisdictional findings and enters the following order:

1. Respondent Universal Publishing & Distributing Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 800 Second Avenue, New York, New York.

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

ORDER

It is ordered, That respondent Universal Publishing & Distributing Corporation, a corporation, its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the distribution, sale or offering for sale of publications, including magazines and paperback books, in commerce, as "commerce" is defined in the amended Clayton Act, do forthwith cease and desist from:

> Paying or contracting for the payment of an allowance or anything of value directly or indirectly to, or for the benefit of, any customer as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the handling, offering for sale, sale or distribution of publications, including magazines and paperback books, published, distributed, sold or offered for sale by respondent unless such payment or consideration is affirmatively offered and otherwise made available on proportionally equal terms to all of respondent's other customers competing with such favored customer in the distribution of such publications, including magazines and paperback books.

The word "customer" as used above shall be deemed to mean anyone who purchases from respondent, acting either as principal

or agent, or from a distributor, where such transaction with such purchaser is essentially a sale by respondent, acting either as principal or agent.

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

LEROY KNITTED SPORTSWEAR, INC., ET AL.

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

Docket C-1067. Complaint, May 17, 1966—Decision, May 17, 1966

Consent order requiring a Los Angeles, Calif., manufacturer, importer, and jobber of wool products to cease misbranding wool sweaters and other wool products.

COMPLAINT

Pursuant to provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that LeRoy Knitted Sportswear, Inc., a corporation, and Samuel Scharf, Leon Scharf and Roy Scharf individually and as officers of said corporation hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent LeRoy Knitted Sportswear, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California.

Individual respondents Samuel Scharf, Leon Scharf, and Roy Scharf are officers of said corporation and cooperate in formulat-

ing, directing, and controlling the acts, policies and practices of the corporate respondent including the acts and practices hereinafter referred to.

Respondents are manufacturers, importers, and jobbers of wool products with their office and principal place of business located at 1245 South Hope Street, Los Angeles, California.

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

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

Among such misbranded wool products, but not limited thereto, were sweaters stamped, tagged, labeled or otherwise identified as containing 89% Mohair, 11% Nylon, whereas in truth and in fact, such sweaters contained substantially different amounts of fibers than represented.

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

Among such misbranded wool products, but not limited thereto, were certain sweaters with labels on or affixed thereto, which failed to disclose the percentage of the total fiber weight of the wool product, exclusive of ornamentation, not exceeding 5 per centum of said total fiber weight of, (1) woolen fibers; (2) each fiber other than wool if said percentage by weight of such fiber is 5 per centum or more; (3) the aggregate of all other fibers.

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

fibers described as "Mohair" were not entitled to such designation, in violation of Rule 19 of the Rules and Regulations under the Wool Products Labeling Act of 1939.

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

DECISION AND ORDER

The 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 Textiles and Furs 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 Wool Products Labeling Act of 1939; 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 said Acts, and having determined that complaint should issue stating its charges in that respect, hereby issues its complaint, accepts said agreement, makes the following jurisdictional findings and enters the following order:

1. Respondent LeRoy Knitted Sportswear, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its office and principal place of business located at 1245 South Hope Street, Los Angeles, California.

Respondents Samuel Scharf, Leon Scharf, and Roy Scharf are officers of said corporation and their office and principal place of business is the same as that of said corporation.

2. The Federal Trade Commission has jurisdiction of the sub-

ject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents LeRoy Knitted Sportswear, Inc., a corporation, and its officers, and Samuel Scharf, Leon Scharf, and Roy Scharf, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from introducing into commerce, or offering for sale, selling, transporting, distributing or delivering for shipment in commerce, wool sweaters or any other wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939:

1. Which are falsely or deceptively stamped, tagged, labeled or otherwise identified as to the character or amount of the constituent fibers contained therein.

2. Unless each of such products has securely affixed thereto, or placed thereon, a stamp, tag, label or other means of identification correctly showing in a clear and conspicuous manner each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

3. To which is affixed a label wherein the term "Mohair" is used in lieu of the word "Wool" in setting forth the required information on labels affixed to such wool products unless the fibers described as "Mohair" are entitled to such designation and are present in at least the amount stated.

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

HOLIDAY PRODUCTS, INC., ET AL.

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

Docket 8675. Complaint, Dec. 22, 1965—Decision, May 19, 1966

Order requiring a South Minneapolis, Minn., distributor of stainless steel cooking utensils, to cease using false health claims and other misrepresentations to sell its products.

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 Holiday Products, Inc., a corporation, and Bernard Hermsen and Elizabeth Michelson, 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 Holiday Products, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its office and principal place of business located at 2920 Lyndale Avenue, South Minneapolis, Minnesota.

Respondents Bernard Hermsen, and Elizabeth Michelson are officers of said corporation. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

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

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, the said cooking utensils, which they advertise and sell under their brand name, Holiday, when sold, to be transported from their place of business located in the State of Minnesota, or from the manufacturer of said products, the Vollrath Company, located in the State of Wisconsin, to purchasers thereof located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said 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 stainless steel cooking utensils respondents through the oral statements of their sales

agents and representatives, and through pamphlets and other advertising literature have represented and are representing directly or by implication:

1. That use of respondents' stainless steel cooking utensils will enable the user to:

(a) Cook foods more quickly than with competing cooking utensils.

(b) Spend less money for food.

(c) Spend less money on fuel or electricity.

(d) Keep food hot for hours in the utensils after heat is turned off.

2. That the use of respondents' stainless steel cooking utensils:

(a) Is more conductive to good health than is the use of cooking utensils manufactured from materials other than stainless steel regardless of the method of cooking used.

(b) Will prevent disease.

(c) Will cause the food cooked therein to retain more vitamins, minerals and other food nutrients than will be retained in similar foods cooked in utensils manufactured from materials other than stainless steel regardless of the method of cooking used.

3. That the use of cooking utensils manufactured from materials other than stainless steel is injurious to health.

PAR. 5. In truth and in fact:

1. Use of respondents' stainless steel cooking utensils will not enable users to:

(a) Cook foods more quickly than with competing cooking utensils.

(b) Spend less money for food.

(c) Spend less money on fuel or electricity.

(d) Keep food hot for hours in the utensils after the heat is turned off.

2. Use of respondents' stainless steel cooking utensils.

(a) Is not more conducive to good health than is the use of cooking utensils manufactured from other materials when an efficient method of cooking is used.

(b) Will not prevent disease.

(c) Will not cause the food cooked therein to retain more vitamins, minerals or other food nutrients than will be retained in similar foods cooked in utensils manufactured from materials other than stainless steel when an efficient method of cooking is used.

3. The use of cooking utensils manufactured from materials other than stainless steel is not injurious to health.

Therefore the representations referred to in Paragraph Four are false, misleading and deceptive.

PAR. 6. The use by respondents and their sales agents and representatives of the above mentioned false, misleading, deceptive and disparaging statements, disseminated as aforesaid, has had and now has, the tendency and capacity to mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that all of said statements and representation were and are true, and to induce a substantial number of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondents' stainless steel cooking utentils.

PAR. 7. 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 and unfair methods of competition, in commerce, in violation of Section 5 of the Federal Trade Commission Act.

Mr. William E. McMahon, II, supporting the complaint.
Mr. Samuel Segall, of Minneapolis, Minn., for respondents.

INITIAL DECISION BY JOSEPH W. KAUFMAN, HEARING EXAMINER

The complaint herein was issued on December 22, 1965. It alleges violation of section 5 of the Federal Trade Commission Act by the making of false and misleading representations in connection with the selling of stainless steel cooking utensils. In addition to naming the respondent corporation, the complaint names as respondents Bernard Hermsen and Elizabeth Michelson, individually and as officers of said corporation. Respondents are located in Minneapolis, Minnesota.

A notice of appearance for all three respondents, the corporation, and the two individuals, as named and designated was duly filed by Samuel Segall, attorney at law, located in Minneapolis.

Thereafter an answer was interposed by said attorney. Actually the answer was subscribed by him only as attorney for the corporation and Benard Hermsen. Although the name of Elizabeth Michelson does not show up in the appearance, the answer was careful to protect her from individual liability.

Primarily the answer was a naked general denial (par. II), not

conforming with the Rules of the Commission, although it did make some affirmative statements. (It was later amended, as will appear below.)

The answer admitted that respondent "Bernard Hermsen does operate said corporation in its business affairs" but it denied this as to respondent Elizabeth Michelson, who is referred to as "having recently resigned and left said corporation."

The answer also stated that the corporation "has sold products manufactured by the Vollrath Company of Sheboygan, Wisconsin, in various states," but otherwise denied the interstate commerce allegation. The answer stated that the corporation used literature and brochures furnished by the Vollrath Company containing representations which respondent believed to be true.

In general, however, as already stated, the answer generally denied all allegations in the complaint and in express words it put "the Federal Trade Commission upon its strict proof."

The answer also stated that respondents were without funds to appear in the District of Columbia, either for prehearing or hearing, and requested that all hearings or prehearings be held in Minneapolis, where respondents are located. This theme of lack of funds to litigate a case in Washington had also been pressed by the attorney directly in letters received by the hearing examiner from him.

By order dated February 3, 1966, the examiner ruled that the answer was defective under section 3.5(b)(1) of the Rules, but he authorized an amended answer provided that it conform strictly with the said section and make affirmative disclosure, as meticulously specified by the order, in respect to each denial of the allegations of the complaint, treated subdivision by subdivision, and sentence by sentence.

The examiner's purpose, in addition to trying to obtain a responsive answer, was to eliminate the necessity for a prehearing in Washington, D.C., which respondents stated they could not afford.

An amended answer was duly filed by the aforesaid attorney, subscribing himself as "Attorney for Respondents." There is no express statement or indication as to whether this subscription extended to Elizabeth Michelson, although her interest is carefully protected in the amended answer.

In general, this amended answer conforms to the examiner's

order, despite some ambiguities.[1] The amended answer, significantly, makes substantial admissions bearing on liability.

The amended answer sets forth that the activities of Elizabeth Michelson were "limited to office work only" and that in October 1965 she completely sold out her interest in the corporation to respondent Hermsen and the corporation.

The amended answer in effect admits the engaging in interstate commerce (although not since the issuance of the complaint).

The amended answer also admits that two of the main alleged misrepresentations were and are false, although it denies that the misrepresentations have been made by respondents.

Thereafter, as the examiner was informed, complaint counsel telephoned respondents' counsel and arranged to meet him in Minneapolis. This was for the purpose of favoring respondents by not putting them to the expense of a prehearing in Washington, unless absolutely necessary, of discussing with counsel the issues or the remaining issues, and of arriving at any stipulations which might expedite the disposition of this case.

The result was a document entitled *Agreement Containing Stipulation of Facts and Agreed Order,* which was duly filed herein on March 3, 1966. This agreement is signed by Samuel Segall as "Attorney for Respondents," as well as by respondent corporation, respondent Bernard Hermsen, individually and as an officer, and, of couse by complaint counsel. The agreement is not signed by Elizabeth Michelson, although again her interests seem to be fully protected.

The Stipulation of Facts proper disposes of the allegations of the complaint as follows:

"A" sets forth the agreed facts exactly as alleged in the first sentence of Paragraph One of the complaint, *i.e.,* as to identification of respondent corporation.

"B" sets forth the agreed facts exactly as alleged in the other sentence of Paragraph Two of the complaint, *i.e.,* as to individual direction and control—except that they are made to apply only to Bernard Hermsen and not to Elizabeth Michelson. As to her, further agreed facts are that in October 1965 (prior to the time the complaint was issued) she completely divested herself of her interest in the corporation in favor of Hermsen and the corporation, and that prior thereto, although an officer, her "activities

[1] One ambiguity is created by the fact that the preamble states that the amended answer realleges all of the allegations of the old answer.

were limited to general corporate office work," with no part in the "formulation, direction, or control of the acts and practices" of the corporation.

"C" reads as follows: "Respondents Holiday Products, Inc. and Bernard Hermsen admit all of the material allegations of fact contained in Paragraphs Two, Three, Four and Five of the Complaint."

There is no express statement in the agreement and stipulation as to the remaining two paragraphs of the complaint, to wit, Six and Seven. However, the examiner, after consideration, deems this to be unimportant. Paragraph Six is merely an expansion of Paragraph Five, last sentence, already stating, although more briefly, that the representations are false and misleading. Paragraph Seven is merely a conclusion that section 5 of the Act has been violated. Moreover, the parties, obviously on the basis of there being adequate supporting facts, do agree to an order, which will be referred to below.

One further question about the sufficiency of the agreement and stipulation is presented by a footnote in this part entitled Stipulation of Facts, stating: "Respondents aver that any violation of the law that may legally be attributed to them as the result of this admission occurred without their knowledge and consent, and represent that it is respondents' intent to fully comply with the provisions of the order hereinafter set forth." Although this is an unusual provision, the examiner regards it as harmless in this case and in the nature of surplusage.

The "Agreed Order" is, word for word, precisely the same order as proposed in the complaint herein, except in two particulars, both designed to exonerate respondent Elizabeth Michelson as named and described in the complaint.

First, the very beginning and body of the order is altered so as not to be expressly directed against "Elizabeth Michelson, individually and as an officer of said corporation," which would have followed the proposed order in the complaint. However, entirely like the proposed order in the complaint, it is directed generally against unnamed corporate officers (as well as described agents, representatives, and employees), which still might conceivably include Elizabeth Michelson.

Second, the Agreed Order adds the following final paragraph:

It is further ordered, That the complaint herein be dismissed as to Elizabeth Michelson, in her individual capacity and as an officer of Holiday Products, Inc.

In the examiner's opinion the intent of each of the two changes is precisely the same, namely, to exonerate Elizabeth Michelson from individual liability, and to put her in the same status as if she had never been named in the complaint as a respondent, as described therein—although not put her in the same status as if she had never been an officer or otherwise connected with the corporation, which she concededly once was, and, of course, could possibly become again.

The first alteration simply, by omission, makes the order inapplicable to her individually as well as an officer. It is still applicable to her, however remote the actual possibility in a practical sense, as one of the unnamed "officers" (or described agents, etc.) —past, present, or future.

The second alteration, by addition of the paragraph quoted above, is obviously not intended to destroy the first and main prohibition directed against the "officers" (and agents, etc.) generally—including Elizabeth Michelson, in the remote possibility that she might be involved by reasons of conceivable future connection with the corporation or for any other reason dating, perhaps, from her past connection as an officer. The purpose, as the examiner finds, is simply to make doubly clear that there is no order against her by *name,* in her individual capacity and as an officer, *i.e.,* the description used in naming such a person as an individual respondent in a Commission complaint and ensuing order.

The complaint is dismissed by the said additional paragraph in the Agreed Order only, in the examiner's opinion, insofar as Elizabeth Michelson is named as a respondent in her individual capacity as an officer of the corporation. The result is much the same as if she had not been so named as a respondent in the complaint, *i.e.,* she can be bound by the order only insofar as officers, as well as described agents, etc., are generally bound even though not named as respondents in the complaint.

On this construction of the two alterations of the Agreed Order, the examiner adopts the same in his order appended to this decision. He had added, however, by footnote to his order, an appropriate *caveat* that the additional paragraph is not in derogation of the first and main part of the order. It is the examiner's opinion that this does not change the provisions of the Agreed Order. He also points out that, even if this can be construed as a change, the stipulation of the parties does not, certainly not explicity, con-

fine the examiner to an order precisely following the Agreed Order word for word.

One more point deserves passing consideration here, namely, that Elizabeth Michelson is technically in default for not interposing an answer, even though the attorney did file a preliminary appearance in her behalf. On such default, section 3.5(2) (c) of the Rules of the Commission does "authorize" the examiner to enter, without further notice, an initial decision with "appropriate" conclusions and order. However, it is the examiner's opinion that he is not required by this section to issue an order directed against Elizabeth Michelson by name even though not warranted by the facts. Moreover, he believes that the appended order, reaching out to officers, agents, and employees generally, is altogether appropriate, *i.e.*, without naming Elizabeth Michelson.

The agreement and stipulation also provides, under III, entitled "Further Procedural Steps," that findings of fact and conclusions of law may be made on the basis of the facts stipulated, that the record on which the decision shall be based shall consist solely of the complaint and the stipulation, and that any further procedural steps and rights of review are waived.

The examiner herewith accepts the said agreement and stipulation of the parties, dated March 1, 1966. Based thereon he hereby makes the following Findings of Fact as well as Conclusions, to which is appended his Order.

FINDINGS OF FACT

1. Respondent Holiday Products, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its office and principal place of business located at 2920 Lyndale Avenue, South Minneapolis, Minnesota.

Respondent Bernard Hermsen is the principal officer of said corporation. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices set forth in said complaint and which are alleged therein to be unlawful.

Respondent Elizabeth Michelson, during, or about, the month of October 1965 did completely divest herself of her interest in the corporate respondent to the said Bernard Hermsen and to the corporate respondent. Prior to that time, and when she was an officer of the corporate respondent, Elizabeth Michelson's activities were limited to general corporate office work and she had no part

in the formulation, direction or control of the acts and practices of Holiday Products, Inc.

2. Respondents [2] are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of stainless steel cooking utensils to the public.

3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, the said cooking utensils, which they advertise and sell under their brand name, Holiday, when sold, to be transported from their place of business located in the State of Minnesota, or from the manufacturer of said products, the Vollrath Company, located in the State of Wisconsin, to purchasers thereof located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

4. In the course and conduct of their business, and for the purpose of inducing the purchase of their stainless steel cooking utensils, respondents, through the oral statements of their sales agents and representatives, and through pamphlets and other advertising literature, have represented and are representing directly or by implication:

(1) That use of respondents' stainless steel cooking utensils will enable the user to:

a. Cook foods more quickly than with competing cooking utensils.

b. Spend less money for food.

c. Spend less money on fuel or electricity.

d. Keep food hot for hours in the utensils after heat is turned off.

(2) That the use of respondents' stainless steel cooking utensils:

a. Is more conducive to good health than is the use of cooking utensils manufactured from materials other than stainless steel regardless of the method of cooking used.

b. Will prevent disease.

c. Will cause the food cooked therein to retain more vitamins, minerals and other food nutrients than will be retained in similar foods cooked in utensils manufactured from materials other than stainless steel regardless of the method of cooking used.

[2] "Respondents," as used in these Findings, and also the Conclusions, refers only to Holiday Products, Inc., and Bernard Hermsen, individually, etc.

(3) That the use of cooking utensils manufactured from materials other than stainless steel is injurious to health.

5. In truth and in fact:

(1) Use of respondents' stainless steel cooking utensils will not enable users to:

a. Cook foods more quickly than with competing cooking utensils.

b. Spend less money for food.

c. Spend less money on fuel or electricity.

d. Keep food hot for hours in the utensils after the heat is turned off.

(2) Use of respondents' stainless steel cooking utensils:

a. Is not more conducive to good health than is the use of cooking utensils manufactured from other materials when an efficient method of cooking is used.

b. Will not prevent disease.

c. Will not cause the food cooked therein to retain more vitamins, minerals or other food nutrients than will be retained in similar foods cooked in utensils manufactured from materials other than stainless steel when an efficient method of cooking is used.

(3) The use of cooking utensils manufactured from materials other than stainless steel is not injurious to health.

CONCLUSIONS

1. The use by respondents and their sales agents and representatives of the above mentioned false, misleading, deceptive and disparaging statements, disseminated as aforesaid, has had and now has, the tendency and capacity to mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that all of said statements and representations were and are true, and to induce a substantial number of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondents' stainless steel cooking utensils.

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

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents.

ORDER

It is ordered, That respondents Holiday Products, Inc., a corporation, and its officers, and Bernard Hermsen, individually and as an officer of said corporation, and said respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of cooking utensils made of stainless steel or of any other product of substantially similar composition, design, construction or purpose, do forthwith cease and desist from:

I. Representing directly or by implication:

A. That use of respondents' cooking utensils will enable the user to:

(1) Cook foods more quickly than with other cooking utensils.

(2) Spend less money on food.

(3) Spend less money on fuel or electricity.

(4) Keep food hot for hours after the heat is turned off, or that food will remain hot, under such conditions, for any length of time not in accordance with the facts.

B. That the use of respondents' cooking utensils:

(1) Is more conducive to good health than the use of cooking utensils manufactured from materials other than stainless steel.

(2) Will prevent disease.

(3) Will cause the food cooked therein to retain more vitamins, minerals and other nutrients than will be retained in similar foods efficiently cooked in utensils manufactured from materials other than stainless steel.

C. That the use of cooking utensils manufactured from materials other than stainless steel is injurious to health.

II. Misrepresenting the construction, efficacy or any other feature of respondents' products.

III. Supplying to or placing in the hands of any distributor, dealer or salesman brochures, sales manuals, charts, pamphlets, or any other advertising materials which are dis-

played, or may be displayed, to the purchasing public which contain any of the false or misleading representations prohibited in Paragraphs I and II hereof.

IV. Furnishing or supplying to distributors, dealers or salesmen such products for resale to the public when such distributors, dealers or salesmen refuse to, or do not comply with, all of the prohibitions set forth in Paragraphs I, II and III of this order.[3]

It is further ordered, That the complaint herein be dismissed as to Elizabeth Michelson, in her individual capacity and as an officer of Holiday Products, Inc.

FINAL ORDER

No appeal from the initial decision of the hearing examiner having been filed, and the Commission having determined that the case should not be placed on its own docket for review and that pursuant to Section 3.21 of the Commission's Rules of Practice (effective August 1, 1963), the initial decision should be adopted and issued as the decision of the Commission:

It is ordered, That the initial decision of the hearing examiner shall, on the 19th day of May 1966, become the decision of the Commission.

It is further ordered, That respondent Holiday Products, Inc., a corporation, and Bernard Hermsen, individually and as an officer of said corporation, shall, within sixty (60) days after service of this order upon them, file with the Commission a report in writing, signed by each respondent named in this order, setting forth in detail the manner and form of their compliance with the order to cease and desist.

IN THE MATTER OF

IDEAL CEMENT COMPANY

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

Docket 8678. Complaint, Jan. 26, 1966—Decision, May 19, 1966

Consent order requiring the second largest portland cement manufacturing

[3] This further paragraph of the order is not in derogation of the rest of the order, which applies generally to *all* officers, agents, employees, etc., including Elizabeth Michelson, in any such capacity now or in the future.

company in the country with headquarters in Denver, Colo., to divest itself within two years of a Houston, Texas, ready-mixed concrete company, acquired in March 1965, in violation of the Federal Trade Commission Act.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondent has violated the provisions of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and that a proceeding in respect thereof would be in the public interest, issues this complaint, stating its charges as follows:

I. DEFINITIONS

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

a. "Portland cement" includes Types I through V of portland cement as specified by the American Society for Testing Materials. Neither masonry nor white cement is included.

b. "Ready-mixed concrete" includes all portland cement concrete which is manufactured and delivered to a purchaser in a plastic and unhardened state. Ready-mixed concrete includes central-mixed concrete, shrink-mixed concrete and transit-mixed concrete.

c. "The Houston Area" consists of Harris County, Texas.

II. IDEAL CEMENT COMPANY

2. Ideal Cement Company, hereinafter referred to as "Ideal," is a corporation organized and existing under the laws of the State of Colorado with its principal offices located at 821 Seventeenth Street, Denver, Colorado.

3. Ideal, the largest or second largest portland cement manufacturing company in the United States, operates eighteen portland cement manufacturing plants and nine distribution terminals located in sixteen different States. In 1964, Ideal had sales of approximately $125 million, assets of about $187 million and net income of about $14 million.

4. In the State of Texas, Ideal operates a portland cement manufacturing plant at Galena Park, near Houston. In 1964, the total shipments of portland cement by this plant amounted to approximately 3.8 million barrels; about 1.4 million barrels, or approximately 37%, were shipped to customers located in the Houston Area.

5. Ideal is and for many years has been engaged in the ship-

ment of portland cement across States lines. Ideal is engaged in commerce, as "commerce" is defined in the Clayton and Federal Trade Commission Acts.

III. BUILDERS SUPPLY CO. OF HOUSTON

6. Builders Supply Co. of Houston, hereinafter referred to as "Builders Supply," is a corporation organized and existing under the laws of the State of Texas with its principal office and place of business located at 3707 Chimney Rock, Houston, Texas.

7. At the time of the acquisition, Builders Supply was engaged in the production and sale of ready-mixed concrete in the Houston Area, operating three ready-mixed concrete plants. In 1964, Builders Supply had sales of approximately $4 million, assets of about $1.2 million and net income of about $223,000.

8. Builders Supply was, at the time of the acquisition, one of the five largest producers of ready-mixed concrete and one of the five largest consumers of portland cement in the Houston Area. In 1964, Builders Supply sold approximately 216,000 cubic yards of ready-mixed concrete and consumed about 323,000 barrels of portland cement.

IV. THE ACQUISITION

9. On or about March 22, 1965, Ideal acquired all of the issued and outstanding stock of Builders Supply in exchange for 155,166 shares of Ideal's common stock. The acquisition of Builders Supply by Ideal was an act or practice in commerce within the meaning of the Federal Trade Commission Act.

V. NATURE OF TRADE AND COMMERCE

10. Portland cement is a material which in the presence of water binds aggregates, such as sand and gravel, into concrete. Portland cement is an essential ingredient in the production of ready-mixed concrete. There is no practical substitute for portland cement in the production of concrete.

11. The portland cement industry in the United States is substantial. In 1964, there were about 52 cement companies in the United States operating approximately 181 plants. Total shipments of portland cement in that year amounted to approximately 365 million barrels, valued at about $1.1 billion.

12. Cement manufacturers sell their portland cement to consumers such as ready-mixed concrete companies, concrete products companies, and to contractors and building materials dealers.

However, on a national basis, approximately 57% of all portland cement is shipped to firms engaged in the production and sale of ready-mixed concrete.

13. In recent years, there has been a significant trend of mergers and acquisitions by which ready-mixed concrete companies in major metropolitan markets in various portions of the United States have become integrated with portland cement companies. Since 1959, there have been at least 35 such acquisitions.

14. In the Houston Area the trend toward vertical integration is well advanced. Three of the five largest portland cement consumers in this area have become integrated, (two by acquisition,) with portland cement companies since 1961. More than 40% of the market for portland cement in the Houston Area has been potentially foreclosed by vertical integration.

15. Each vertical merger or acquisition which occurs in the portland cement industry potentially forecloses competing cement manufacturers from a segment of the market otherwise open to them and places great pressure on competing manufacturers likewise to acquire portland cement consumers in order to protect their markets. Thus, each such vertical acquisition may form an integral part of a chain reaction of such acquisitions—contributing both to the share of the market already foreclosed, and to the impetus for further such acquisitions.

VI. VIOLATION CHARGED

16. The effect of the acquisition of Builders Supply by Ideal, both in itself and by aggravating the trend of vertical mergers and acquisitions, may be substantially to lessen competition or to tend to create a monopoly in the manufacture and sale of portland cement and ready-mixed concrete in the United States as a whole and various parts thereof, including the State of Texas and the Houston Area, in the following ways, among others:

a. Ideal's competitors may have been and/or may be foreclosed from a substantial segment of the market for portland cement.

b. The ability of Ideal's nonintegrated competitors effectively to compete in the sale of portland cement and ready-mixed concrete has been and/or may be substantially impaired.

c. The entry of new portland cement and ready-mixed concrete competitors may have been and/or may be inhibited or prevented.

d. The production and sale of ready-mixed concrete, now a decentralized, locally controlled, small business industry, may be-

come concentrated in the hands of a relatively few manufacturers of portland cement.

Now therefore, The acquisition of Builders Supply by Ideal constitutes an unfair act or practice in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having issued its complaint on January 26, 1966, charging the respondent named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, and the respondent having been served with a copy of that complaint; and

The respondent and counsel for the Commission having executed an agreement containing a consent order, an admission of all the jurisdictional facts set forth in the complaint, 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 such agreement having been certified to the Commission by the hearing officer pursuant to Section 3.15(c) (9) of said rules; and

The Commission having duly determined that in the circumstances presented the public interest would be served by waiver here of the provision of Section 2.4(d) of its Rules that the consent order procedure shall not be available after issuance of complaint; and

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

1. Respondent Ideal Cement Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its office and principal place of business located at 821 Seventeenth Street, Denver, Colorado.

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 Ideal Cement Company (hereinafter "Ideal") divest, unto a purchaser or purchasers approved by

the Federal Trade Commission, all stock and/or assets acquired by Ideal as the result of its acquisition of Builder's Supply Co. of Houston, together with all additions thereto and replacements thereof: *Provided, however,* That Ideal may, at its option, retain ownership of the approximately thirty-one acre site on which the acquired Chimney Rock ready-mixed concrete plant is situated, and the improvements to this real property that are unrelated to the production and distribution of ready-mixed concrete: *Provided further,* That if Ideal elects to retain said real property and improvements, it shall lease to the purchaser of the Chimney Rock plant so much of said real property as is necessary for the efficient operation of the Chimney Rock plant for a term, which, if all renewal options are exercised, will extend for a period of at least ten years. *It is further ordered,* That Ideal begin to make good faith efforts to divest said stock and/or assets promptly after the effective date of this Order, and that it continue such efforts to the end that the divestiture thereof be accomplished within two (2) years.

II

It is further ordered, That, pending divestiture, Ideal not make any changes in any of the aforesaid stock and/or assets which would impair their present capacity for the production and sale of ready-mixed concrete, or other products produced, or their market value.

III

It is further ordered, That, in the aforesaid divestiture, none of the stock and/or assets be sold or transferred, directly or indirectly, to any person who is at the time of divestiture an officer, director, employee or agent of, or under the control or direction of, Ideal or any of its subsidiaries or affiliates, or to any person who owns or controls, directly or indirectly, more than one (1) percent of the outstanding shares of common stock of Ideal or any of its subsidiaries or affiliates.

IV

It is further ordered, That Ideal, within sixty (60) days of the effective date of this Order, and every sixty (60) days thereafter until it has fully complied with the provisions of Paragraphs I through III of this Order, submit in writing to the Federal Trade Commission a report setting forth in detail the manner and form in which it intends to comply, is complying, and/or has complied with this Order. All compliance reports shall include, among

other things that will be from time to time required, a summary of all contacts and negotiations with potential purchasers of the stock and/or assets to be divested under this Order, the identity of all such potential purchasers, and copies of all written communications to and from such potential purchasers.

IN THE MATTER OF

PECK AND PECK

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

Docket C-1068. Complaint, May 19, 1966—Decision, May 19, 1966

Consent order requiring a New York City wearing apparel chainstore to cease knowingly inducing or receiving discriminatory promotional allowances from its suppliers, in violation of Section 5 of the Federal Trade Commission Act.

COMPLAINT

The Federal Trade Commission, having reason to believe that the respondent herein, Peck and Peck, has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act (15 U.S.C., Section 45), 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 as follows:

PARAGRAPH 1. Respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Its office and principal place of business is located at 260 Park Avenue South, New York, New York.

PAR. 2. Respondent, directly and by means of subsidiary corporations, is principally engaged in the purchase, sale and distribution of retail merchandise, including wearing apparel and accessories such as, but not limited to, costume jewelry, handbags, millinery, gloves, and leather goods. The capital stock of such subsidiaries is wholly owned by respondent and, unless otherwise required by state law, the officers and directors of respondent and its subsidiaries are identical. Respondent exercises complete domination and control over its subsidiaries, formulating, directing, and controlling their acts and practices, including the acts and

practices complained of herein. Such domination and control renders the acts and practices of the subsidiaries to all intents and purposes the acts and practices of respondent. It sells to thousands of consumers through 66 retail outlets located in 16 States and the District of Columbia.

PAR. 3. In the course and conduct of its business, respondent is, and has been for several years last past, engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondent purchases products from suppliers located in various States of the United States, and in some cases causes such products to be shipped from such suppliers to itself across State lines. In other cases, in response to orders placed by respondent with suppliers for future delivery of products, such products are caused to be manufactured and to be transported across State lines to such suppliers for delivery to respondent. The products which respondent receives from its suppliers are shipped by respondent across State lines to its retail outlets for resale to consumers. Respondent advertises the products it offers to sell in various media which have an interstate circulation.

Respondent's suppliers also sell, and for several years last past have sold, products to other retailer customers for resale to consumers. Such suppliers ship or cause to be shipped such products across State lines to those customers.

Thus there is and has been, during all periods relevant herein, a continuous course of trade in commerce in such products.

PAR. 4. In the course and conduct of its business, respondent is now, and has been, in active competition with other corporations, partnerships, firms and individuals, including the aforesaid customers of respondent's suppliers, in the purchase, sale and distribution of such products within the various trading areas wherein it does business.

PAR. 5. In the course and conduct of its business, respondent, directly or indirectly, induces or receives, and has induced or received, from many of its suppliers various payments, allowances or other things of value to or for its benefit as compensation or in consideration for services or facilities furnished by or through it in connection with the handling, sale or offering for sale of the products of such suppliers. Such payments, allowances, or other things of value are and were not made available by such suppliers on proportionally equal terms to such suppliers' aforesaid customers competing with respondent in the sale and distribution of the suppliers' products.

For example, respondent causes, and has caused, to be published catalogs, direct mailers, statement enclosures, and newspaper and magazine advertisements which advertise respondent's outlets and its trade name. Such advertisements also advertise one or more of its suppliers' products which are available at respondent's outlets, but in most instances the products bear respondent's private brand and neither the suppliers' identities nor brands are mentioned in the advertisements. In many instances the suppliers of the advertised product or products pay or allow respondent payments, allowances, or other things of value which offset, wholly or in substantial part, the total cost of such advertising. At the same time the suppliers do not make available such payments, allowances, or other things of value on proportionally equal terms to customers competing with respondent in the resale of the suppliers' products. In fact, during 1962, among the many suppliers making such payments to respondent, a sampling of 22 such suppliers disclosed that those suppliers paid respondent approximately $109,000, with several of such suppliers paying over $10,000 each and one paying over $20,000, while at the same time they did not make such payments available on proportionally equal terms to customers competing with respondent.

One instance of the above-described acts or practices involved respondent's dealings with a manufacturer of women's sweaters. During the year 1963 an agreement was reached between this supplier and respondent whereby the supplier agreed to pay one-half the production costs and all the space costs of four of respondent's national magazine advertisements, and respondent agreed to expend a comparable amount of money for newspaper advertisements, all of which advertisements were to advertise respondent's outlets and to feature the supplier's products. Pursuant to such agreement the supplier paid respondent the amount of $14,170.51. The agreement was reached prior to any order being placed by respondent with the supplier for the products to be advertised, and the amount of money paid by the supplier was not related to the dollars or units of either any past or expected future sales to respondent. At the same time the supplier did not make available to competitors of respondent such payments on proportionally equal terms.

PAR. 6. Respondent, in so directly or indirectly inducing or receiving the aforesaid payments, allowances or other things of value from such suppliers, knew or should have known that such suppliers were not making available to their customers competing

with respondent in the resale and distribution of such products such payments, allowances or other things of value on proportionally equal terms.

PAR. 7. The acts and practices, as above alleged, are all to the prejudice of the public and constitute unfair methods of competition or unfair acts or practices within the intent and meaning of, and in violation of, Section 5 of the Federal Trade Commission Act (15 U.S.C., Section 45).

DECISION AND ORDER

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

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

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

1. Respondent Peck and Peck, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 260 Park Avenue South, in the city of New York, State of New York.

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

ORDER

It is ordered, That respondent Peck and Peck a corporation, and its officers, employees, agents and representatives, directly or through any corporate or other device, in or in connection with any purchase in commerce, as "commerce" is defined in the Fed-

eral Trade Commission Act, of products for resale, do forthwith cease and desist from:

Inducing and receiving, receiving, or contracting for the receipt of, anything of value from any supplier as compensation or in consideration for advertising services or facilities furnished by or through respondent in magazines, newspapers, catalogs, brochures, enclosures, or mailing pieces in connection with the handling, sale or offering for sale of products purchased from such supplier, when respondent knows or should know that such compensation or consideration is not made available by such supplier on proportionally equal terms to all of its other customers competing with respondent in the sale and distribution of such supplier's 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.

IN THE MATTER OF

REYNOLDS METALS COMPANY

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

Docket 7009. Complaint, Dec. 27, 1957—Decision, May 26, 1966

Order modifying a divestiture order of January 21, 1960, 56 F.T.C. 743, issued against a major producer of aluminum and aluminum products, pursuant, to a modified final decree of the Court of Appeals for the District of Columbia Circuit, dated May 18, 1966, which modified its final decree of October 22, 1962, and opinion of September 27, 1962, 309 F. 2d 223. The modified order prohibits respondent from manufacturing aluminum florist foil for a period of 5 years, from acquiring any manufacturer, wholesaler, or retailer of such foil for the same period, and from using the trade name, "Arrow Brands," except for collecting accounts receivable.

MODIFIED ORDER

The Commission and Reynolds Metals Company having jointly moved that the Court of Appeals for the District of Columbia Circuit modify its final decree of October 22, 1962, which in turn

modified the Commission's divestiture order of January 21, 1960, entered in the above-entitled matter; and the Court having issued its modified final decree on May 18, 1966, affirming and enforcing the decree as proposed by the Commission and Reynolds Metals Company;

Now, therefore, it is hereby ordered, That the order of January 21, 1960, be, and it hereby is, further modified in accordance with the modified final decree of the Court to read as follows:

It is ordered, That Reynolds Metals Company shall, within six (6) months from the effective date of this order, cease and desist from manufacturing and selling at wholesale or retail in the United States aluminum florist foil (i.e., foil especially designed or packaged for the florist trade) and shall report the fact of such discontinuance to the Federal Trade Commission and shall not, for a period of five (5) years subsequent to such discontinuance manufacture and sell at wholesale or retail in the United States such aluminum florist foil.

It is further ordered, That Reynolds Metals Company shall, for a period of five (5) years from the effective date of this order, cease and desist from acquiring, directly or indirectly, any interest in any concern in the United States a substantial part of whose business is the manufacture and sale at either wholesale or retail of laminated aluminum gift wrap or aluminum florist foil.

It is further ordered, That the Reynolds Metals Company, within six (6) months of the date of this order, shall cease and desist from using in any manner whatsoever the trade name "Arrow Brands" except for the purpose of collecting accounts receivable or enforcing collection thereof.

It is further ordered, That Reynolds Metals Company shall, within one (1) year from the effective date of this order and thereafter annually for a period of five (5) years, submit to the Commission a report in writing setting forth the manner and form of its compliance with the provisions of this order.

IN THE MATTER OF

THE FRENCH POODLE, INC., ET AL.

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

Docket C-1069. Complaint, May 26, 1966—Decision, May 26, 1966

Consent order requiring a Washington, D.C., retail furrier, to cease falsely advertising and invoicing its fur products in violation of the Fur Products Labeling Act.

COMPLAINT

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

PARAGRAPH 1. Respondent, The French Poodle, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland.

Individual respondent Louella Epstein is an officer of the corporate respondent. Said individual respondent Louella Epstein alone is responsible for the acts, practices and policies of the corporate respondent, including the acts and practices hereinafter referred to.

Respondents are in the business of retailing fur products and have their office and principal place of business located at 1623 Connecticut Avenue, NW., Washington, D.C., with two branch stores located at 1211 Connecticut Avenue, NW., and 511 11th Street, NW., Washington, D.C.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, the 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 advertised in violation of the Fur Products Labeling Act in that certain advertisements intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of such fur products were not in accordance with the provisions of Section 5(a) of the said Act.

Among and included in the aforesaid advertisements, but not limited thereto, were advertisements of the respondents which appeared in issues of the Washington Post, a newspaper published in the city of Washington, D.C.

Among such false and deceptive advertisements, but not limited thereto, were advertisements which failed:

1. To show the true animal name of the fur used in the fur product.

2. To show that fur products were composed of used fur, when such was the fact.

PAR. 4. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, the 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 the following respects.

(a) 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.

(b) All parts of the information required under Section 5(a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder were not set forth in type of equal size and conspicuousness and in close proximity with each other, in violation of Rule 38(a) of the aforesaid Rules and Regulations.

PAR. 5. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, the respondents falsely and deceptively advertised fur products, in that certain of said advertisements contained the name or names of an animal or animals other than those producing the

fur contained in the fur product, in violation of Section 5(a) (5) of the Fur Products Labeling Act.

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

PAR. 7. 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:

1. To show the true animal name of the fur used in the fur product.

2. To show that the fur product contained or was composed of, used fur, when such was the fact.

3. To disclose that the fur contained in the fur product was bleached, dyed, or otherwise artifically colored, when such was the fact.

4. To show the country of origin of imported furs used in fur products.

PAR. 8. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act, in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in the following respects:

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

(b) 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.

(c) The disclosure "second hand," where required, was not set forth on invoices, in violation of Rule 23 of said Rules and Regulations.

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

PAR. 9. The aforesaid acts and practices of the respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent The French Poodle, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 1623 Connecticut Avenue, NW. Washington, D.C.

Respondent Louella Epstein is an officer of the said corporate respondent and her office and principal place of business is the same as that of the 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 The French Poodle, Inc., a corporation, and its officers, and Louella Epstein, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce; as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. 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 porduct, and which:

1. Fails to set forth in words and figures plainly legible all the information required to be disclosed by each of the subsections of Section 5(a) of the Fur Products Labeling Act.

2. Sets forth the name or names of any animal or animals other than the name of the animal producing the furs contained in the fur product as specified in the Fur Products Name Guide and as prescribed by the Rules and Regulations.

3. Fails to set forth the term "natural" as part of the information required to be disclosed in the 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.

4. Fails to set forth all parts of the information required under Section 5(a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in type of equal size and conspicuousness and in close proximity with each other.

B. Falsely or deceptively invoicing fur products by:

1. Failing to furnish invoices, as the term "invoice" is

defined in the Fur Products Labeling Act, showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of Section 5(b) (1) of the Fur Products Labeling Act.

2. Setting forth information required under Section 5(b) (1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form.

3. 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 the Rules and Regulations promulgated thereunder to describe fur products which are not pointed, bleached, dyed, tip-dyed or otherwise artificially colored.

4. Failing to disclose that fur products contain or are composed of second-hand used fur.

5. Failing to set forth on invoices the item number or mark assigned to fur products.

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

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

IN THE MATTER OF

EVERGREEN WAREHOUSE DISTRIBUTORS, INC., ET AL.

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

Docket C-1070. Complaint, June 1, 1966—Decision, June 1, 1966

Consent order requiring fifty-five automotive parts jobbers and their buying organization of Seattle, Wash., to cease knowingly inducing and receiving discriminatory prices from their suppliers in violation of Section 2(f) of the Clayton Act.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondents named in the caption hereof, and hereinafter more particularly designated and described, have violated and are now violating the provisions of subsection (f) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Evergreen Warehouse Distributors, Inc., hereinafter sometimes referred to as respondent Evergreen, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 1024 Sixth Avenue South, Seattle, Washington.

Respondent Evergreen, although utilizing corporate form, is a membership organization, organized, maintained, managed, controlled and operated by and for its members. The membership of respondent Evergreen is composed of corporations, partnerships and individuals whose business consists of the jobbing of automotive products and supplies.

Respondent Evergreen, as constituted and operated, is known and referred to in the trade as a buying group.

PAR. 2. The following respondent corporations and individuals, sometimes hereinafter referred to as respondent jobbers, constitute respondent Evergreen:

Respondent, Airport Machinery Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Alaska, with its principal office and place of business located at Anchorage, Alaska, P.O. Box 539.

Respondent Automotive Products, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, and doing business under the firm name and style of Allen Auto Electric, with its principal office and place of business locaated at 9810 14th Avenue, SW., Seattle, Washington.

Respondent Lyle's Auto Parts, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 15411 Ambaum Blvd., SW., Seattle, Washington.

Respondent Burns Auto Parts, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 303 North Main Street, Colfax, Washington.

Respondent Car Parts, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its

principal office and place of business located at 3132—133rd Street, NE., Seattle, Washington.

Respondent Materiel, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, and doing business under the firm name and style of Ephrata Auto Parts, with its principal office and place of business located at 1050 Basin Street, SW., Ephrata, Washington.

Respondent Gardner Supply Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Idaho, with its principal office and place of business located at 501 Sherman Avenue, Coeur D'Alene, Idaho.

Respondent Gosney Motor Parts is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 220 "C" Street, NW., Auburn, Washington, P.O. Box 858.

Respondent Hill Auto Parts, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 1539 Leary Way, NW., Seattle, Washington.

Respondent Jameson Machine Supply, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Idaho, with its principal office and place of business located at 12th and Idaho Streets, Lewiston, Idaho.

Respondent Kellogg Automotive Supply, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 1340 Vandercook Way, Longview, Washington.

Respondent Lyle's Auto Parts, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 118–120 South Third Street, Yakima, Washington.

Respondent Marilley Auto Parts Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 919 East Pine Street, Seattle, Washington.

Respondent Middleton Motor Parts Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 123 South Peabody Street, Port Angeles, Washington.

Respondent Motor Car Supply Co. of Seattle, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 1621—12th Avenue, Seattle, Washington.

Respondent Motor Parts & Equipment, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 1745 Jefferson Avenue, Tacoma, Washington.

Respondent Motor Parts Machine Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of

Washington, with its principal office and place of business located at 815 East Pike Street, Seattle, Washington.

Respondent Northwest Motor Parts & Mfg. Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 2930—6th Avenue South, Seattle, Washington.

Respondent Olympian Auto Parts, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 509 East Fourth Avenue, Olympia, Washington.

Respondent Pacific Wholesale, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 147 South Third Street, Raymond, Washington.

Respondent Piston Service, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 519 Sixth Avenue South, Seattle, Washington.

Respondent Piston Service of University, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 5339 Roosevelt Way, NE., Seattle, Washington.

Respondent Piston Service of Wenatchee, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 240 North Wenatchee Avenue, Wenatchee, Washington.

Respondent Piston Service of Westlake, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 315 Westlake North, Seattle, Washington.

Respondent Regalia Auto Parts, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 1509 Broadway, Seattle, Washington.

Respondent Siler Auto Parts, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 606 Park Avenue, Bremerton, Washington.

Respondent Skaggs Automotive, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 1110 West Second Street, Spokane, Washington.

Respondent Spoon Automotive Parts, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 216 West Market Street, Aberdeen, Washington.

Respondent Sullivan Distributing Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 1446 NW. 53rd Street, Seattle, Washington.

Respondent Ulins, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at Forks, Washington, P.O. Box 338.

Respondent Walla Walla Motor Supply, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 128 East Alder Street, Walla Walla, Washington.

Respondent West Seattle Auto Parts, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its office and principal place of business located at 4505—38th Avenue, S.W., Seattle, Washington.

Respondent G & M Auto Supply, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its office and principal place of business located at West 36 Second Avenue, Spokane, Washington.

Respondent Gale Pfueller and Gladys Gooding are copartners doing business under the firm name and style of Automotive Parts Service, with their principal office and place of business located at 1322 State Street, Bellingham, Washington.

Respondent Albert C. Shields is a sole proprietor doing business under the firm name and style of Bert Shields Auto Supply, with his principal office and place of business located at North 4407 Evergreen Road, Spokane, Washington.

Respondent R. R. Caldwell is a sole proprietor doing business under the firm name and style of Caldwell Brg. & Parts Co., with his principal office and place of business located at 303 West Market Street, Aberdeen, Washington.

Respondent Conrad A. Charles is a sole proprietor doing business under the firm name and style of Con's Auto Parts, with his principal office and place of business located at 10619 NE. 8th Street, Bellevue, Washington.

Respondent Hercules Specialty Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 17325 East Sprague Avenue, Greenacres, Washington.

Respondent Charles Douglas Miller is a sole proprietor doing business under the firm name and style of Miller-Pybus Auto Parts, with his principal office and place of business located at 3 Orondo Avenue, Wenatchee, Washington.

Respondents Richard Lagerquist and Milton Lagerquist are copartners doing business under the firm name and style of Motor Specialty Company, with their principal office and place of business located at 620 East Pine Street, Seattle, Washington.

Respondents Robert D. Williams and Fred W. Robb are copartners doing business under the firm name and style of Mountain Auto Parts, with their principal office and place of business located at 112 West Railroad Street, Cle Elum, Washington.

Respondents Frank H. Van Valkenburg and J. Robert Van Valkenburg are copartners doing business under the firm name and style of Piston Service

Co., with their principal office and place of business located at 418 Second Street, Mount Vernon, Washington.

Respondents Roland L. Huggins and Raymond E. Huggins are copartners doing business under the firm name and style of Sedro Woolley Auto Parts, with their principal office and place of business located at 916 Murdock, Sedro Woolley, Washington.

Respondent C. A. Solberg Company is a corporation organized, existing and doing business under and by virtue of the laws of the state of Washington, with its principal office and place of business located at 1122 East Pike Street, Seattle, Washington.

Respondents Glen M. Shearer and Allan Pedee are copartners doing business under the firm name and style of Valley Auto Parts, with their principal office and place of business located at 210 North Sixth Street, Sunnyside, Washington.

Respondent Fred L. Pease is a partner in the firm of Pease Brothers and also trustee of the estate of Arthur W. Pease, deceased. Prior to the death of Arthur W. Pease, Fred L. Pease and Arthur W. Pease were copartners doing business under the firm name and style of Pease Brothers, with their principal office and place of business located at 708 Broadway, Tacoma, Washington. Fred L. Pease continues to operate Pease Brothers as a partnership, acting as a partner in his own behalf, and also acting as trustee of the estate of Arthur W. Pease, the other partner.

Respondent Ernest V. Pitzer is a sole proprietor doing business under the firm name and style of Yakima Grinding Co., with his principal office and place of business located at 120 South Second Street, Yakima, Washington.

Respondent John R. Selland is a sole proprietor doing business under the firm name and style of Selland Motor Parts, with his principal office and place of business located at 1626 Cole Street, Enumclaw, Washington.

Respondent Ellsworth O. Sawyer is a sole proprietor doing business under the firm name and style of Sawyers Valley Parts, with his principal office and place of business located at 704 East Main Avenue, Puyallup, Washington.

Respondent Mario A. Bianchi is a sole proprietor doing business under the firm name and style of Rainier Auto Parts, with his principal office and place of business located at 4728 Rainier Avenue, Seattle, Washington.

Respondent Frank Padavich is a sole proprietor doing business under the firm name and style of North Bend Auto Parts, with his principal office and place of business located at Box 389, North Bend, Washington.

Respondent Jack Sheridan is a sole proprietor doing business under the firm name and style of Motor Parts Co., with his principal office and place of business located at North 2708 Division Street, Spokane, Washington.

Respondent Donald E. Cornell is a sole proprietor doing business under the firm name and style of Cornell Automotive Parts Co., with his principal office and place of business located at 221 West First Street, Port Angeles, Washington.

Respondent Wayne T. McCann is a sole proprietor doing business under the firm name and style of Wayne's Auto Parts, with his principal office and place of business located at 207 Kirkland Avenue, Kirkland, Washington.

Respondent Woodrow C. Wilson is a sole proprietor doing business under

the firm name and style of Woody's Auto Parts, with his principal office and place of business located at 2715 N.E. Blakely, Seattle, Washington.

PAR. 3. The respondent jobbers set forth in Paragraph Two have purchased and now purchase in commerce from suppliers engaged in commerce numerous automotive products and supplies for use, consumption or resale within the United States. Respondent jobbers and said suppliers cause the products and supplies so purchased to be shipped and transported among and between the several States of the United States from the respective State or States of location of said suppliers to the respective different State or States of location of the said respondent jobbers.

PAR. 4. In the purchase and the resale of said automotive products and supplies, respondent jobbers are in active competition with independent jobbers not affiliated with respondent Evergreen; and the suppliers selling to respondent jobbers and to their independent jobber competitors are in active competition with other suppliers of similar automotive products and supplies.

PAR. 5. Respondent Evergreen, since its formation in 1953, has been, and is now maintained, managed, controlled, and operated by and for its members the respondent jobbers set forth in Paragraph Two, and each said respondent has participated in, approved, furthered, and cooperated with the other respondents in the carrying out of the procedures and activities hereinafter described.

In practice and effect, respondent Evergreen has been and is now serving as the medium or instrumentality by, through, or in conjunction with which, said members and/or respondent jobbers exert the influence of their combined bargaining power on the competitive suppliers hereinbefore described. As a part of their operating procedure, said respondent jobbers direct the attention of said suppliers to their aggregate purchasing power as a buying group and, by reason of such, have knowingly demanded and received, upon their individual purchases, discriminatory prices, discounts, allowances, rebates, and terms and conditions of sale. Suppliers not acceding to such demands are usually replaced as sources of supply for the commodities concerned and such market is closed to them in favor of such suppliers as can be, and are, induced to afford the discriminatory prices, discounts, allowances, rebates, and terms and conditions of sale so demanded.

Respondent jobbers demand that those suppliers who sell their products pursuant to a quantity discount schedule shall consider their several purchases in the aggregate as if made by one pur-

chaser and grant quantity discounts, allowances, or rebates on the resultant combined purchase volume in accordance with said suppliers' schedule. This procedure effects a discrimination in price on goods of like grade and quality between respondent jobbers and competing independent jobbers whose quantity discounts, allowances, or rebates from such suppliers are based upon only their individual purchase volumes. From other suppliers the respondent jobbers demand the payment or allowance of trade discounts, allowances, or rebates which such suppliers do not ordinarily pay or allow to jobber customers. This procedure effects a discrimination in price on goods of like grade and quality between respondent jobbers and competing independent jobbers who are not afforded such trade discounts, allowances, or rebates.

When and if a demand is acceded to by a particular supplier, the subsequent purchase transactions between said supplier and the individual jobber respondents have been and are billed to, and paid for through, the aforesaid organizational device of respondent Evergreen. Said corporate organization thus purports to be the purchaser when in truth and in fact it has been, and is now, serving only as agent for the several respondent jobbers and as a means for facilitating the inducement and receipt by the afore-described respondent jobbers of the price discriminations concerned.

PAR. 6. Respondents have induced or received from their suppliers, in the manner afore-described, favorable prices, discounts, allowances, rebates, terms and conditions of sale which they knew or should have known constituted discriminations in price prohibited by subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

PAR. 7. The effect of knowing inducement or receipt by respondents of the discriminations in price, as above alleged, has been, and may be, substantially to lessen, injure, destroy or prevent competition between suppliers of automotive products and supplies granting such discriminations and other suppliers of such products and supplies who do not grant or allow such discriminations, and also between respondent jobbers and competing independent jobbers not receiving or securing such discriminations.

PAR. 8. The foregoing alleged acts and practices of respondents in knowingly inducing or receiving discriminations in price prohibited by subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, are in violation of subsection (f) of Section 2 of said Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of subsection (f) of Section (2) of the Clayton Act, as amended, 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 having thereafter signed an "Agreement Containing Consent Order to Cease and Desist" which agreement contemplates that, if it is accepted by the Commission, the Commission may, without further notice to respondents, issue (1) its complaint consistent in form and substance with the copy attached to said agreement, and (2) its decision containing the order to cease and desist as attached to said complaint; and further, which agreement contains, *inter alia,* an admission by the 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 Evergreen Warehouse Distributors, Inc., hereinafter sometimes referred to as respondent Evergreen, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 1024 Sixth Avenue South, Seattle, Washington.

Respondent Evergreen, although utilizing corporate form, is a membership organization, organized, maintained, managed, controlled and operated by and for its members. The membership of respondent Evergreen is composed of corporations, partnerships and individuals whose business consists of the jobbing of automotive products and supplies.

The following respondent corporations and individuals constitute respondent Evergreen:

Respondent Airport Machinery Co., Inc., is a corporation organized, exist-

ing and doing business under and by virtue of the laws of the State of Alaska, with its principal office and place of business located at Anchorage, Alaska, P.O. Box 539.

Respondent Automotive Products, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, and doing business under the firm name and style of Allen Auto Electric, with its principal office and place of business located at 9810 14th Avenue, SW., Seattle, Washington.

Respondent Burien Auto Parts, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 15411 Ambaum Blvd., SW., Seattle, Washington.

Respondent Burns Auto Parts, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 303 North Main Street, Colfax, Washington.

Respondent Car Parts, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 3132—133rd Street, NE., Seattle, Washington.

Respondent Materiel, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, and doing business under the firm name and style of Ephrata Auto Parts, with its principal office and place of business located at 1050 Basin Street, SW., Ephrata, Washington.

Respondent Gardner Supply Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Idaho, with its principal office and place of business located at 501 Sherman Avenue, Coeur D'Alene, Idaho.

Respondent Gosney Motor Parts is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 220 "C" Street, NW., Auburn, Washington, P.O. Box 858.

Respondent Hill Auto Parts, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 1539 Leary Way, NW., Seattle, Washington.

Respondent Jameson Machine Supply, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Idaho, with its principal office and place of business located at 12th and Idaho Streets, Lewiston, Idaho.

Respondent Kellogg Automotive Supply, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 1340 Vandercook Way, Longview, Washington.

Respondent Lyle's Auto Parts, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 118–120 South Third Street, Yakima, Washington.

Respondent Marilley Auto Parts Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 919 East Pine Street, Seattle, Washington.

Respondent Middleton Motor Parts Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 123 South Peabody Street, Port Angeles, Washington.

Respondent Motor Car Supply Co. of Seattle, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 1621—12th Avenue, Seattle, Washington.

Respondent Motor Parts & Equipment, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 1745 Jefferson Avenue, Tacoma, Washington.

Respondent Motor Parts Machine Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 815 East Pike Street, Seattle, Washington.

Respondent Northwest Motor Parts & Mfg. Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 2930—6th Avenue South, Seattle, Washington.

Respondent Olympian Auto Parts, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 509 East Fourth Avenue, Olympia, Washington.

Respondent Pacific Wholesale, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 147 South Third Street, Raymond, Washington.

Respondent Piston Service, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 519 Sixth Avenue South, Seattle, Washington.

Respondent Piston Service of University, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 5339 Roosevelt Way, NE., Seattle, Washington.

Respondent Piston Service of Wenatchee, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 240 North Wenatchee Avenue, Wenatchee, Washington.

Respondent Piston Service of Westlake, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 315 Westlake North, Seattle, Washington.

Respondent Regalia Auto Parts, Inc., is a corporation organized, existing

and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 1509 Broadway, Seattle, Washington.

Respondent Siler Auto Parts, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 606 Park Avenue, Bremerton, Washington.

Respondent Skaggs Automotive, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 1110 West Second Street, Spokane, Washington.

Respondent Spoon Automotive Parts, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 216 West Market Street, Aberdeen, Washington.

Respondent Sullivan Distributing Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 1446 NW. 53rd Street, Seattle, Washington.

Respondent Ulins, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at Forks, Washington, P.O. Box 338.

Respondent Walla Walla Motor Supply, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 128 East Alder Street, Walla Walla, Washington.

Respondent West Seattle Auto Parts, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 4505—38th Avenue, SW., Seattle, Washington.

Respondent G & M Auto Supply, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at West 36 Second Avenue, Spokane, Washington.

Respondents Gale Pfueller and Gladys Gooding are copartners doing business under the firm name and style of Automotive Parts Service, with their principal office and place of business located at 1322 State Street, Bellingham, Washington.

Respondent Albert C. Shields is a sole proprietor doing business under the firm name and style of Bert Shields Auto Supply, with his principal office and place of business located at North 4407 Evergreen Road, Spokane, Washington.

Respondent R. R. Caldwell is a sole proprietor doing business under the firm name and style of Caldwell Brg. & Parts Co., with his principal office and place of business located at 303 West Market Street, Aberdeen, Washington.

Respondent Conrad A. Charles is a sole proprietor doing business under the firm name and style of Con's Auto Parts, with his principal office and place of business located at 10619 NE. 8th Street, Bellevue, Washington.

Respondent Hercules Specialty Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 17325 East Sprague Avenue, Greenacres, Washington.

Respondent Charles Douglas Miller is a sole proprietor doing business under the firm name and style of Miller-Pybus Auto Parts, with his principal office and place of business located at 3 Orondo Avenue, Wenatchee, Washington.

Respondents Richard Lagerquist and Milton Lagerquist are copartners doing business under the firm name and style of Motor Speciality Company, with their principal office and place of business located at 620 East Pine Street, Seattle, Washington.

Respondents Robert D. Williams and Fred W. Robb are copartners doing business under the firm name and style of Mountain Auto Parts, with their principal office and place of business located at 112 West Railroad Street, Cle Elum, Washington.

Respondents Frank H. Van Valkenburg and J. Robert Van Valkenburg are copartners doing business under the firm name and style of Piston Service Co., with their principal office and place of business located at 418 Second Street, Mount Vernon, Washington.

Respondents Roland L. Huggins and Raymond E. Huggins are copartners doing business under the firm name and style of Sedro Woolley Auto Parts, with their principal office and place of business located at 916 Murdock, Sedro Woolley, Washington.

Respondent C. A. Solberg Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 1122 East Pike Street, Seattle, Washington.

Respondents Glen M. Shearer and Allan Pedee are copartners doing business under the firm name and style of Valley Auto Parts, with their principal office and place of business located at 201 North Sixth Street, Sunnyside, Washington.

Respondent Fred L. Pease is a partner in the firm of Pease Brothers and also trustee of the estate of Arthur W. Pease, deceased. Prior to the death of Arthur W. Pease, Fred L. Pease and Arthur W. Pease were copartners doing business under the firm name and style of Pease Brothers, with their principal office and place of business located at 708 Broadway, Tacoma, Washington. Fred L. Pease continues to operate Pease Brothers as a partnership, acting as a partner in his own behalf, and also acting as trustee of the estate of Arthur W. Pease, the other partner.

Respondent Ernest V. Pitzer is a sole proprietor doing business under the firm name and style of Yakima Grinding Co., with his principal office and place of business located at 120 South Second Street, Yakima, Washington.

Respondent John R. Selland is a sole proprietor doing business under the firm name and style of Selland Motor Parts, with his principal office and place of business located at 1626 Cole Street, Enumclaw, Washington.

Respondent Ellsworth O. Sawyer is a sole proprietor doing business under the firm name and style of Sawyers Valley Parts, with his principal office and place of business located at 704 East Main Avenue, Puyallup, Washington.

Respondent Mario A. Bianchi is a sole proprietor doing business under the firm name and style of Rainier Auto Parts, with his principal office and place of business located at 4728 Rainier Avenue, Seattle, Washington.

Respondent Frank Padavich is a sole proprietor doing business under the firm name and style of North Bend Auto Parts, with his principal office and place of business located at Box 389, North Bend, Washington.

Respondent Jack Sheridan is a sole proprietor doing business under the firm name and style of Motor Parts Co., with his principal office and place of business located at North 2708 Division Street, Spokane, Washington.

Respondent Donald E. Cornell is a sole proprietor doing business under the firm name and style of Cornell Automotive Parts Co., with his principal office and place of business located at 221 West First Street, Port Angeles, Washington.

Respondent Wayne T. McCann is a sole proprietor doing business under the firm name and style of Wayne's Auto Parts, with his principal office and place of business located at 207 Kirkland Avenue, Kirkland, Washington.

Respondent Woodrow C. Wilson is a sole proprietor doing business under the firm name and style of Woody's Auto Parts, with his principal office and place of business located at 2715 NE. Blakely, Seattle, Washington.

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

ORDER

It is ordered, That, respondents Evergreen Warehouse Distributors, Inc., a corporation; Airport Machinery Co., Inc., a corporation; Automotive Products, Inc., a corporation, doing business under the firm name and style of Allen Auto Electric; Burien Auto Parts, Inc., a corporation; Burns Auto Parts, Inc., a corporation; Car Parts, Inc., a corporation; Materiel, Inc., a corporation, doing business under the firm name and style of Ephrata Auto Parts; Gardner Supply Co., a corporation; Gosney Motor Parts, a corporation; Hill Auto Parts, Inc., a corporation; Jameson Machine Supply, Inc., a corporation; Kellogg Automotive Supply, Inc., a corporation; Lyle's Auto Parts, Inc., a corporation; Marilley Auto Parts Co., a corporation; Middleton Motor Parts Co., a corporation; Motor Car Supply Co. of Seattle, Inc., a corporation; Motor Parts & Equipment, Inc., a corporation; Motor Parts Machine Co., Inc., a corporation; Northwest Motor Parts & Mfg. Co., a corporation; Olympian Auto Parts, Inc., a corporation; Pacific Wholesale, Inc., a corporation; Piston Service, Inc., a corporation; Piston Service of University, Inc., a corporation; Piston Service of Wenatchee, Inc., a corporation; Piston Service of Westlake, Inc., a corporation; Regalia Auto Parts, Inc., a corporation; Siler Auto Parts, Inc., a corporation; Skaggs Auto-

motive, Inc., a corporation; Spoon Automotive Parts, Inc., a corporation; Sullivan Distributing Co., a corporation; Ulins, Inc., a corporation; Walla Walla Motor Supply, Inc., a corporation; West Seattle Auto Parts, Inc., a corporation; G & M Auto Supply, Inc., a corporation; Gale Pfueller and Gladys Gooding, copartners doing business under the firm name and style of Automotive Parts Service; Albert C. Shields, doing business under the firm name and style of Bert Shields Auto Supply, a sole proprietorship; R. R. Caldwell, doing business under the firm name and style of Caldwell Brg. & Parts Co., a sole proprietorship; Conrad A. Charles, doing business under the firm name and style of Con's Auto Parts, a sole proprietorship; Hercules Specialty Co., a corporation; Charles Douglas Miller, doing business under the firm name and style of Miller-Pybus Auto Parts, a sole proprietorship; Richard Lagerquist and Milton Lagerquist, copartners doing business under the firm name and style of Motor Specialty Company; Robert D. Williams and Fred W. Robb, copartners doing business under the firm name and style of Mountain Auto Parts; Frank H. Van Valkenburg and J. Robert Van Valkenburg, copartners doing business under the firm name and style of Piston Service Co.; Roland L. Huggins and Raymond E. Huggins, copartners doing business under the firm name and style of Sedro Woolley Auto Parts; C. A. Solberg Company, a corporation; Glen M. Shearer and Allan Pedee, copartners doing business under the firm name and style of Valley Auto Parts; Fred L. Pease, individually and as controlling member of a partnership doing business under the firm name and style of Pease Brothers; Ernest V. Pitzer, doing business under the firm name and style of Yakima Grinding Co., a sole proprietorship; John R. Selland, doing business under the firm name and style of Selland Motor Parts, a sole proprietorship; Ellsworth O. Sawyer, doing business under the firm name and style of Sawyers Valley Parts, a sole proprietorship; Mario A. Bianchi, doing business under the firm name and style of Rainier Auto Parts, a sole proprietorship; Frank Padavich, doing business under the firm name and style of North Bend Auto Parts, a sole proprietorship; Jack Sheridan, doing business under the firm name and style of Motor Parts Co., a sole proprietorship; and Donald E. Cornell, doing business under the firm name and style of Cornell Automotive Parts Co., a sole proprietorship; Wayne T. McCann, doing business under the firm name and style of Wayne's Auto Parts, a sole proprietorship; Woodrow C. Wilson, doing business under the firm name and style of

Woody's Auto Parts, a sole proprietorship; and respondents' officers, agents, representatives, employees, and members directly or through any corporate or other device, in connection with the offering to purchase or purchase of any automotive products or supplies in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Knowingly inducing, or knowingly receiving or accepting, any discrimination in the price of such products and supplies by directly or indirectly inducing, receiving or accepting from any seller a net price known by respondents to be below the net price at which said products and supplies of like grade and quality are being sold by such seller to other customers, where the seller is competing with any other seller for respondents' business, or where respondents are competing with other customers of the seller.

For the purpose of determining "net price" under the terms of this order, there should be taken into account discounts, rebates, allowances, deductions, or other terms and conditions of sale by which net prices are effected.

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

AMOS OSBORNE trading as OSBORNE HOSIERY COMPANY

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

Docket C-1071. Complaint, June 7, 1966—Decision, June 7, 1966

Consent order requiring a Dallas, Ga., finisher and wholesaler of men's and children's hosiery, to cease misrepresenting imperfect hosiery as first or perfect quality, failing to disclose their true quality, and misbranding such products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and by virtue of

the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Amos Osborne, an individual trading as Osborne Hosiery Company, hereinafter referred to as respondent, has violated the provisions of the said Acts, and the Rules and Regulations promulgated under the Textile Fiber Products Identification Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Amos Osborne is an individual trading as Osborne Hosiery Company with his office and principal place of business located at Georgia State Highway 92, Dallas, Georgia. Respondent's mailing address is P.O. Box 393, Dallas, Georgia.

Respondent is a finisher and wholesaler of men's and children's hosiery.

PAR. 2. Subsequent to the effective date of the Textile Fiber Products Identification Act on March 3, 1960, respondent has been and is now engaged in the introduction, delivery for 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 including men's and children's hosiery; and has sold, offered for sale, advertised, delivered, transported and caused to be transported, textile fiber products, which have been advertised or offered for sale in commerce; and has sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products; as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

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

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products, namely men's and children's hosiery, which were not labeled to show:

1. The constituent fiber or combination of fibers in the textile fiber product;

2. The percentage of each fiber present, by weight, in the total fiber content of the textile fiber product, exclusive of ornamentation not exceeding 5 per centum by weight of the total fiber content;

3. The name, or other identification issued and registered by the Commission, of the manufacturer of the product or one or more persons subject to Section 3 with respect to such product.

PAR. 4. The acts and practices of respondent as set forth above were and are in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, and constituted, and now constitute unfair methods of competition, and unfair and deceptive acts or practices, in commerce, under the Federal Trade Commission Act.

PAR. 5. In the course and conduct of his business, respondent purchases hosiery which is imperfect and causes such hosiery to be repaired and finished. In certain instances respondent causes such hosiery to be sorted, with respect to color and size, and to be bundled into selling units of several pairs to the bundle, and then sells such hosiery to wholesalers and to retailers who in turn sell it to the purchasing public. In other instances such hosiery, after repairing and finishing, is sold by respondent to dealers who sort and bundle the hosiery and in turn sell such hosiery to wholesalers and retailers for resale to the purchasing public. Such hosiery products are known in the trade as "irregulars," "seconds," or "thirds," depending upon the nature of the imperfection.

PAR. 6. In the course and conduct of his business, respondent now causes, and for some time last past has caused his said products, including hosiery, when sold, to be shipped from his place of business in the State of Georgia 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. 7. In the conduct of his business, at all times mentioned herein, respondent has been in substantial competition, in commerce, with corporations, firms and individuals in the sale of products of the same general kind as that sold by respondent.

PAR. 8. Respondent does not mark his said hosiery products in a clear, conspicuous manner to disclose that they are "irregulars" or "seconds," so as to inform purchasers thereof of their imperfect quality. The purchasing public in the absence of markings showing that hosiery products are "irregulars" or "seconds," understands

and believes that they are of perfect quality. Respondent's failure to mark or label his products in such a manner as will disclose that said products are imperfect, has had, and now has, the capacity and tendency to mislead dealers and members of the purchasing public into the erroneous and mistaken belief that said products are perfect quality products, and into the purchase of substantial quantities of respondent's products by reason of said erroneous and mistaken belief.

Official notice is hereby taken of the fact that, in connection with the sale or offering for sale of imperfect hosiery, the failure to disclose on such hosiery products that they are "irregulars" or "seconds," as the case may be, is misleading, which official notice is based upon the Commission's accumulated knowledge and experience, as expressed in Rule 4 of the Commission's amended Trade Practice Rules for the Hosiery Industry promulgated August 30, 1960 (amended June 10, 1964).

PAR. 9. Respondent in selling his hosiery as aforesaid has labeled certain of said packaged hosiery as "First in quality," thereby representing that said hosiery is of first quality. Respondent's practice of labeling such packaged hosiery as "First in quality" has had, and now has, the capacity and tendency to mislead dealers and members of the purchasing public into the erroneous and mistaken belief that said products are first quality products and into the purchase of substantial quantities of respondent's products by reason of said erroneous and mistaken belief.

PAR. 10. The use by such respondent of the aforesaid false, misleading and deceptive practices has had, and now has, the capacity and tendency to mislead dealers and other purchasers 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. 11. The aforesaid acts and practices of respondent, as herein alleged, were and are, all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning 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 respondent named in the cap-

tion hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act and the Textile Fiber Products Identification Act; and

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

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

1. Respondent Amos Osborne is an individual trading as Osborne Hosiery Company with his office and principal place of business located at Georgia State Highway 92, Dallas, Georgia. Respondent's mailing address is P.O. Box 393, Dallas, Georgia.

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 Amos Osborne, an individual trading as Osborne Hosiery Company or under any other name, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any tex-

tile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from misbranding textile fiber products by failing to affix labels to such textile fiber products showing each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act;

It is further ordered, That respondent Amos Osborne, an individual trading as Osborne Hosiery Company or under any other name, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of hosiery, or other related "industry products," which are "irregulars," "seconds," or otherwise imperfect, as such terms are defined in Rule 4(c) of the Amended Trade Practice Rules for the Hosiery Industry (16 CFR 152.4(c)), in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Selling or distributing any such product without clearly and conspicuously marking on each stocking, sock or other unit the words "irregular" or "second," as the case may be, in such degree of permanency as to remain on the product until the consummation of the consumer sale and of such conspicuousness as to be easily observed and read by the purchasing public.

B. Using any advertisement or promotional material in connection with the offering for sale of any such product unless it is disclosed therein that such article is an "irregular" or "second" as the case may be.

C. Using the words "First in quality" or words of a similar import on the package in which such product is sold or in reference to any such product in any advertisement or promotional material.

D. Representing in any other manner, directly or by implication, that such products are first quality or perfect quality.

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

EDWARD H. MANZ, JR., trading as ED MANZ HOSIERY COMPANY

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

Docket C-1072. Complaint, June 7, 1966—Decision, June 7, 1966

Consent order requiring a Chattanooga, Tenn., finisher and wholesaler of men's and children's hosiery, to cease misrepresenting imperfect hosiery as first or perfect quality, failing to disclose their true quality, and misbranding such products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Edward H. Manz, Jr., an individual trading as Ed Manz Hosiery Company, hereinafter referred to as respondent, has violated the provisions of the said Acts and the Rules and Regulations promulgated under the Textile Fiber Products Identification Act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Edward H. Manz, Jr., is an individual trading as Ed Manz Hosiery Company with his office and principal place of business located at 2311 McCallie Avenue, Chattanooga, Tennessee. Respondent is a finisher and wholesaler of men's and children's hosiery.

PAR. 2. Subsequent to the effective date of the Textile Fiber Products Identification Act on March 3, 1960, respondent has been and is now engaged in the introduction, delivery for 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 including men's and children's hosiery; and has sold, offered for sale, advertised, delivered, transported and caused to be transported, textile fiber products, which have been advertised or offered for

sale in commerce; and has sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products; as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

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

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products, namely men's and children's hosiery, which were not labeled to show:

1. The constituent fiber or combination of fibers in the textile fiber products;

2. The percentage of each fiber present, by weight, in the total fiber content of the textile fiber product, exclusive of ornamentation not exceeding 5 per centum by weight of the total fiber content;

3. The name, or other identification issued and registered by the Commission, of the manufacturer of the product or one or more persons subject to Section 3 with respect to such product.

PAR. 4. The acts and practices of respondent as set forth above were and are in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, and constituted, and now constitute unfair methods of competition and unfair and deceptive acts or practices, in commerce, under the Federal Trade Commission Act.

PAR. 5. In the course and conduct of his business, respondent purchases hosiery which is imperfect and causes such hosiery to be repaired and finished. In certain instances respondent causes such hosiery to be sorted, with respect to color and size, and to be bundled into selling units of several pairs to the bundle, and then sells such hosiery to wholesalers and to retailers who in turn sell it to the purchasing public. In other instances such hosiery, after repairing and finishing, is sold by respondent to dealers who sort and bundle the hosiery and in turn sell such hosiery to wholesalers and retailers for resale to the purchasing public. Such hosiery products are known in the trade as "irregulars," "seconds," or "thirds," depending upon the nature of the imperfection.

PAR. 6. In the course and conduct of his business, respondent now causes, and for some time last past has caused, his said products, including hosiery, when sold, to be shipped from his place of business in the State of Tennessee 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. 7. In the conduct of his business, at all times mentioned herein, respondent has been in substantial competition, in commerce, with corporations, firms and individuals in the sale of products of the same general kind as that sold by respondent.

PAR. 8. Respondent does not mark his said hosiery products in a clear, conspicuous manner to disclose that they are "irregulars" or "seconds," so as to inform purchasers thereof of their imperfect quality. The purchasing public in the absence of markings showing that hosiery products are "irregulars" or "seconds," understands and believes that they are of perfect quality. Respondent's failure to mark or label his products in such a manner as will disclose that said products are imperfect, has had, and now has, the capacity and tendency to mislead dealers and members of the purchasing public into the erroneous and mistaken belief that said products are perfect quality products, and into the purchase of substantial quantities of respondent's products by reason of said erroneous and mistaken belief.

Official notice is hereby taken of the fact that, in connection with the sale or offering for sale of imperfect hosiery, the failure to disclose on such hosiery products that they are "irregulars" or "seconds," as the case may be, is misleading, which official notice is based upon the Commission's accumulated knowledge and experience, as expressed in Rule 4 of the Commission's amended Trade Practice Rules for the Hosiery Industry promulgated August 30, 1960 (amended June 10, 1964).

PAR. 9. Respondent in selling his hosiery as aforesaid has labeled certain of said packaged hosiery as "First in quality," thereby representing that said hosiery is of first quality. Respondent's practice of labeling such packaged hosiery as "First in quality" has had, and now has, the capacity and tendency to mislead dealers and members of the purchasing public into the erroneous and mistaken belief that said products are first quality products and into the purchase of substantial quantities of res-

pondent's products by reason of said erroneous and mistaken belief.

PAR. 10. The use by such respondent of the aforesaid false, misleading and deceptive practices has had, and now has, the capacity and tendency to mislead dealers and other purchasers 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. 11. The aforesaid acts and practices of respondent, as herein alleged, were and are, all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning 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 respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act and the Textile Fiber Products Identification Act; and

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

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

1. Respondent Edward H. Manz, Jr., is an individual trading as Ed Manz Hosiery Company, with his office and principal place of

business located at 2311 McCallie Avenue, Chattanooga, Tennessee.

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 Edward H. Manz, Jr., an individual trading as Ed Manz Hosiery Company or under any other name, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or in the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from misbranding textile fiber products by failing to affix labels to such textile fiber products showing each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act;

It is further ordered, That respondent Edward H. Manz, Jr., an individual trading as Ed Manz Hosiery Company or under any other name, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of hosiery, or other related "industry products," which are "irregulars," "seconds," or otherwise imperfect, as such terms are defined in Rule 4(c) of the Amended Trade Practice Rules for the Hosiery Industry (16 CFR 152.4(c)), in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Selling or distributing any such product without clearly and conspicuously marking on each stocking, sock or other

unit the words "irregular" or "second," as the case may be, in such degree of permanency as to remain on the product until the consummation of the consumer sale and of such conspicuousness as to be easily observed and read by the purchasing public.

B. Using any advertisement or promotional material in connection with the offering for sale of any such product unless it is disclosed therein that such article is an "irregular" or "second," as the case may be.

C. Using the words "First in quality" or words of similar import on the package in which such product is sold or in reference to any such product in an advertisement or promotional material.

D. Representing in any other manner, directly or by implication, that such products are first quality or perfect quality.

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

BOBBY G. OSBORNE trading as BOBBY OSBORNE

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

Docket C-1073. Complaint, June 7, 1966—Decision, June 7, 1966

Consent order requiring a Dallas, Ga., finisher and wholesaler of men's and children's hosiery, to cease misrepresenting imperfect hosiery as first or perfect quality, failing to disclose their true quality, and misbranding such products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Bobby G. Osborne, an

individual trading as Bobby Osborne, hereinafter referred to as respondent, has violated the provisions of the said Acts, and the Rules and Regulations promulgated under the Textile Fiber Products Identification Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Bobby G. Osborne is an individual trading as Bobby Osborne with his office and principal place of business located at Georgia State Highway 92, Dallas, Georgia. Respondent's mailing address is P.O. Box 33, Dallas, Georgia.

Respondent is a finisher and wholesaler of men's and children's hosiery.

PAR. 2. Subsequent to the effective date of the Textile Fiber Products Identification Act on March 3, 1960, respondent has been and is now engaged in the introduction, delivery for 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 including men's and children's hosiery; and has sold, offered for sale, advertised, delivered, transported and caused to be transported, textile fiber products, which have been advertised or offered for sale in commerce; and has sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products; as to the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

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

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products, namely men's and children's hosiery, which were not labeled to show:

1. The constituent fiber or combination of fibers in the textile fiber product;

2. The percentage of each fiber present, by weight, in the total fiber content of the textile fiber product, exclusive of ornamenta-

tion not exceeding 5 per centum by weight of the total fiber content;

3. The name, or other identification issued and registered by the Commission, of the manufacturer of the product or one or more persons subject to Section 3 with respect to such product.

PAR. 4. The acts and practices of respondent as set forth above were and are in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, and constituted, and now constitute unfair methods of competition and unfair and deceptive acts or practices, in commerce, under the Federal Trade Commission Act.

PAR. 5. In the course and conduct of his business, respondent purchases hosiery which is imperfect and causes such hosiery to be repaired and finished. In certain instances respondent causes such hosiery to be sorted, with respect to color and size, and to be bundled into selling units of several pairs to the bundle, and then sells such hosiery to wholesalers and to retailers who in turn sell it to the purchasing public. In other instances such hosiery, after repairing and finishing, is sold by respondent to dealers who sort and bundle the hosiery and in turn sell such hosiery to wholesalers and retailers for resale to the purchasing public. Such hosiery products are known in the trade as "irregulars," "seconds," or "thirds," depending upon the nature of the imperfection.

PAR. 6. In the course and conduct of his business, respondent now causes, and for some time last past has caused his said products, including hosiery, when sold, to be shipped from his place of business in the State of Georgia 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. 7. In the conduct of his business, at all times mentioned herein, respondent has been in substantial competition, in commerce, with corporations, firms and individuals in the sale of products of the same general kind as that sold by respondent.

PAR. 8. Respondent does not mark his said hosiery products in a clear, conspicuous manner to disclose that they are "irregulars" or "seconds," so as to inform purchasers thereof of their imperfect quality. The purchasing public in the absence of markings showing that hosiery products are "irregulars" or "seconds," understands and believes that they are of perfect quality. Respondent's failure to mark or label his products in such a manner as will dis-

close that said products are imperfect, has had, and now has, the capacity and tendency to mislead dealers and members of the purchasing public into the erroneous and mistaken belief that said products are perfect quality products, and into the purchase of substantial quantities of respondent's products by reason of said erroneous and mistaken belief.

Official notice is hereby taken of the fact that, in connection with the sale or offering for sale of imperfect hosiery, the failure to disclose on such hosiery products that they are "irregulars" or "seconds," as the case may be, is misleading, which official notice is based upon the Commission's accumulated knowledge and experience, as expressed in Rule 4 of the Commission's amended Trade Practice Rules for the Hosiery Industry promulgated August 30, 1960 (amended June 10, 1964).

PAR. 9. Respondent in selling his hosiery as aforesaid has labeled certain of said packaged hosiery as "First in quality," thereby representing that said hosiery is of first quality. Resondent's practice of labeling such packaged hosiery as "First in quality" has had, and now has, the capacity and tendency to mislead dealers and members of the purchasing public into the erroneous and mistaken belief that said products are first quality products and into the purchase of substantial quantities of respondent's products by reason of said erroneous and mistaken belief.

PAR. 10. The use by such respondent of the aforesaid false, misleading and deceptive practices has had, and now has, the capacity and tendency to mislead dealers, and other purchasers 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. 11. The aforesaid acts, and practices of respondent, as herein alleged, were and are, all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning 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 respondent named in the

caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act and the Textile Fiber Products Identification Act; and

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

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

1. Respondent Bobby G. Osborne is an individual trading as Bobby Osborne with his office and principal place of business located at Georgia State Highway 92, Dallas, Georgia. Respondent's mailing address is P. O. Box 33, Dallas, Georgia.

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 Bobby G. Osborne, an individual trading as Bobby Osborne or under any other name, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or in the importation into the United States, of any textile fiber product; on in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in

other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from misbranding textile fiber products by failing to affix labels to such textile fiber products showing each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act;

It is further ordered, That respondent Bobby G. Osborne, an individual trading as Bobby Osborne or under any other name, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of hosiery, or other related "industry products," which are "irregulars," "seconds," or otherwise imperfect, as such terms are defined in Rule 4(c) of the Amended Trade Practice Rules for the Hosiery Industry (16 CFR 152.4(c)), in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Selling or distributing any such product without clearly and conspicuously marking on each stocking, sock or other unit the words "irregular" or "second," as the case may be, in such degree of permanency as to remain on the product until the consummation of the consumer sale and of such conspicuousness as to be easily observed and read by the purchasing public.

B. Using any advertisement or promotional material in connection with the offering for sale of any such product unless it is disclosed therein that such article is an "irregular" or "second," as the case may be.

C. Using the words "First in quality" or words of similar import on the package in which such product is sold or in reference to any such product in any advertisement or promotional material.

D. Representing in any other manner, directly or by implication, that such products are first quality or perfect quality.

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.

Complaint

IN THE MATTER OF

ALUMINUM SHINGLE COMPANY, INC., ET AL.

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

Docket C-1074. Complaint, June 14, 1966—Decision, June 14, 1966

Consent order requiring a Great Bend, Kansas, home improvement firm, to cease using deceptive pricing and savings claims and other misrepresentations to sell its residential siding, roofing, and other products to the public.

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 Aluminum Shingle Company, Inc., a corporation, and Robert K. Marmie and John R. Soden, 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. Aluminum Shingle Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Kansas, with its principal office and place of business located at 1013 McKinley Street, in the city of Great Bend, State of Kansas.

Respondents Robert K. Marmie and John R. Soden are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of residential siding, roofing and other 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 products, when sold, to be shipped from their place of business in the State of Kansas 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 products, respondents have, by statements and representations in advertisements in various publications, in direct mail advertising, and by direct oral solicitations made by respondents or their salesmen or representatives, represented, directly or by implication, that:

(1) Respondents' products are being offered for sale at special or reduced prices, and that savings are thereby afforded purchasers from respondents' regular selling price.

(2) Purchasers of respondents' products will receive enough bonuses or commissions under the terms of respondents' supplemental contract to obtain respondents' products at little or no cost.

(3) Homes of prospective purchasers had been specially selected as model homes for the installation of respondents' products; after installation, such homes would be used as points of reference or demonstration by respondents; and, as a result of allowing their homes to be used as models, purchasers would be granted reduced prices or would receive allowances, discounts or commissions.

(4) Respondents' products will last a lifetime and will not require repainting or repairs.

(5) Respondents' salesmen or representatives are special representatives from the Kaiser Aluminum and Chemical Corporation thereby implying that purchasers would be dealing directly with the manufacturer.

PAR. 5. In truth and in fact:

(1) Respondents' products are not being offered at a special or reduced price and savings are not granted respondents' customers because of a reduction from respondents' regular selling price; in fact, respondents do not have a regular selling price but the price at which respondents' products are sold vary from customer to customer depending on the resistence of the prospective customer.

(2) Few, if any, of respondents' customers receive enough bonuses or commissions under the terms of respondents' supplemental contract to obtain respondents' products at little or no cost.

(3) Homes of prospective purchasers are not specially selected as model homes for the installation of respondents' products;

after installation, such homes are not used for demonstration or advertising purposes by respondents; and purchasers, as a result of allowing their homes to be used as models, were not granted reduced prices, nor did they receive allowances, discounts or commissions.

(4) Respondents' products will not last a lifetime and will require repainting and repairs.

(5) Respondents' salesmen or representatives are not representatives of the Kaiser Aluminum and Chemical Corporation, and purchasers do not deal directly with the manufacturer of such products but with respondents.

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

PAR. 6. In the conduct of their business, and at all times mentioned herein, respondents have been in competition, in commerce, with corporations, firms and individuals in the sale of residential siding, roofing and other products, of the same general kind and nature as that sold by respondents.

PAR. 7. The use by the respondents of the aforesaid false, misleading and deceptive statements, representations and practices had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

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

DECISION AND ORDER

The 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 Aluminum Shingle Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Kansas, with its office and principal place of business located at 1013 McKinley Street, city of Great Bend, State of Kansas.

Respondents Robert K. Marmie and John R. Soden are officers of said corporation and their address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents Aluminum Shingle Company, Inc., a corporation, and its officers, and Robert K. Marmie and John R. Soden, individually and as officers of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of residential siding, roofing, or other products and services, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, representing, directly or by implication, that:

1. Any price for respondents' products is a special or reduced price, unless such price constitutes a significant reduction from an established selling price at which such products

have been sold in substantial quantities by respondents in the recent, regular course of their business or misrepresenting, in any manner the savings available to purchasers.

2. Respondents' customers, under the terms of respondents' supplemental contract or by any other means, are able to obtain respondents' products at little or no cost.

3. Respondents' customers will receive bonuses or commissions or compensation in any amount: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder, for respondents to establish that said customers have regularly and consistently received earnings or compensations in such amount in the regular course of respondents' business.

4. The home of any of respondents' customers or prospective customers has been selected to be used or will be used as a model home or otherwise for advertising purposes.

5. Any allowance, discount or commission is granted by respondents to purchasers in return for permitting the premises in which respondents' products are to be installed to be used for model homes or demonstration purposes.

6. The products sold by respondents will last a lifetime or will never require repainting or repairs; or misrepresenting, in any manner, the efficacy, durability or efficiency of respondents' products.

7. Respondents' salesmen or representatives are representatives of the Kaiser Aluminum and Chemical Corporation or that purchasers are or will be dealing directly with the manufacturer; or misrepresenting, in any manner, the status or affiliation of respondents' salesmen or the manufacturer or the source of any of 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

MIDWEST HOSIERY INCORPORATED, ET AL. formerly known as MIDWEST HOSIERY MILLS, INC.

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

Docket 8676. Complaint, Dec. 22, 1965—Decision, June 16, 1966*

Order requiring a Chicago, Ill., wholesaler of men's and children's hosiery to cease misbranding, falsely labeling, and failing to disclose the true quality of its products, and stop misrepresenting itself as a manufacturer.

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 Midwest Hosiery Incorporated, formerly known as Midwest Hosiery Mills, Inc., a corporation, Sidney Leibowitz, Solomon Kopman, and Ann Gruber, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of the said Acts and the Rules and Regulations promulgated under the Textile Fiber Products Identification Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Midwest Hosiery Incorporated, formerly known as Midwest Hosiery Mills, Inc., as 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 1223 South Halsted Street, Chicago, Illinois.

Individual respondents Sidney Leibowitz, Solomon Kopman and Ann Gruber are respectively president, vice president and secretary of the corporate respondent, and formulate, direct, and control the acts, practices, and policies of the corporate respondent, including the acts and practices complained of herein. Their business addresses are the same as said corporate respondent. Respondents are wholesalers of men's and children's textile fiber socks.

PAR. 2. Subsequent to the effective date of the Textile Fiber

*Reported as amended by hearing examiner's order of February 23, 1966, by substituting "Midwest Hosiery Incorporated, formerly known as Midwest Hosiery Mills, Inc.," for the designation "Midwest Hosiery Mills, Inc."

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

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

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products, namely men's and children's hosiery, without labels and with labels which failed:

1. To disclose the constituent fiber or combination of fibers in the textile fiber product;

2. To disclose the percentage of each fiber present, by weight, in the total fiber content of the textile fiber product, exclusive of ornamentation not exceeding 5 per centum by weight of the total fiber content;

3. To disclose the name, or other identification issued and registered by the Commission, of the manufacturers of the product or one or more persons subject to Section 3 with respect to such product.

PAR. 4. 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 the following respects:

1. All parts of the required information were not conspicuously and separately set out on the same side of the label in such a manner as to be clearly legible and readily accessible to the prospective purchaser, in violation of Rule 16(b) of the aforesaid Rules and Regulations.

2. Non-required information and representations were placed on the label or elsewhere on the product and were set forth in such a manner as to interfere with, minimize, detract from, and conflict with required information, in violation of Rule 16(c) of the aforesaid Rules and Regulations.

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 or practices, in commerce, under the Federal Trade Commission Act.

PAR. 6. In the course and conduct of their business, respondents purchase hosiery which is imperfect. They cause such hosiery to be sorted, with respect to color and size, and to be bundled into selling units of several pairs to the bundle, and then sell such hosiery to other wholesalers, and to retailers who in turn sell it to the purchasing public. Such hosiery products are known in the trade as "irregulars," "seconds," or "thirds," depending upon the nature of the imperfection.

PAR. 7. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, including hosiery, when sold, to be shipped from their place of business in the State of Illinois to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 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 products of the same general kind as that sold by respondents.

PAR. 9. Respondents did not mark their said hosiery products in a clear, conspicuous manner to disclose that they were "irregulars" or "seconds," so as to inform purchasers thereof of their imperfect quality. The purchasing public in the absence of markings showing that hosiery products are "irregulars" or "seconds," understands and believes that they are of perfect quality. Respondents' failure to mark or label their products in such a manner as will disclose that said products are imperfect, has had, and now has, the capacity and tendency to mislead dealers and members of the purchasing public into the erroneous and mistaken belief that said products are perfect quality products, and into the pur-

chase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

Official notice is hereby taken of the fact that, in connection with the sale or offering for sale of imperfect hosiery, the failure to disclose on such hosiery products that they are "irregulars" or "seconds," as the case may be, is misleading, which official notice is based upon the Commission's accumulated knowledge and experience, as expressed in Rule 4 of the Commission's amended Trade Practice Rules for the Hosiery Industry promulgated August 30, 1960 (amended June 10, 1964).

PAR. 10. Respondents in selling their hosiery as aforesaid have labeled certain of said packaged hosiery as "First in quality," thereby representing that said hosiery is of first quality. Respondents' practice of labeling their packaged hosiery as "First in quality" has had, and now has, the capacity and tendency to mislead dealers and members of the purchasing public into the erroneous and mistaken belief that said products are first quality products and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 11. In the course and conduct of their business, the aforesaid respondents, on their invoices, refer to the corporate respondent as "Midwest Hosiery Mills, Inc.," thus stating or implying that said corporate respondent is a manufacturer of the hosiery which it sells. In truth and in fact, the corporate respondent performs no manufacturing functions whatever, but operates exclusively as a wholesaler of said products. Thus the aforesaid representation is false, misleading and deceptive.

PAR. 12. There is a preference on the part of many members of the public to deal directly with a manufacturer, including the manufacturer of clothing, in the belief that by doing so, certain advantages accrue, including better prices.

PAR. 13. The use by such respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead dealers and other purchasers 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. 14. 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 and unfair methods of competition, in commerce, within the intent and meaning of Section 5(a)(1) of the Federal Trade Commission Act.

Mr. Thomas J. Kerwan and *Mr. Thomas C. Marshall* supporting the complaint.

Freeman, Freeman & Haas, by *Mr. Harry Freeman,* Chicago, Ill., for respondents.

INITIAL DECISION BY WILLIAM K. JACKSON, HEARING EXAMINER

MAY 9, 1966

This proceeding was commenced by the issuance of a complaint on December 22, 1965 charging the corporate respondent and the three named individual respondents, individually, and as officers of said corporation with unfair and deceptive acts and practices and unfair methods of competition, in commerce, in violation of Section 5 of the Federal Trade Commission Act, the Textile Fiber Products Identification Act, and the Rules and Regulations promulgated thereunder, by misbranding, falsely labeling and failing to disclose the true quality of men's and children's hosiery it sells, and misrepresenting that it is a manufacturer.

After being served with the said complaint, the aforesaid respondents appeared by counsel and on January 19, 1966 filed their answer admitting a number of the specific allegations in the complaint, but denying generally the illegality of the practices set forth in the complaint.

By order dated February 2, 1966, the hearing examiner scheduled a prehearing conference in this matter for April 25, 1966 at Chicago, Illinois, with the initial hearing to commence the following day on April 26, 1966 in the same city.

By motion of complaint counsel dated March 22, 1966, the hearing examiner was requested to certify to the Commission the necessity of holding hearings in more than one place in conformity with the provisions of Section 3.16(d) of the Commission's Rules. The places requested for the proposed hearings were Atlanta, Georgia; Chattanooga, Tennessee; Washington, D.C.; and Chicago, Illinois.

The hearing examiner issued a Certificate of Necessity March 23, 1966, and by order dated March 28, 1966, the Commission granted leave to hold hearings in the above-mentioned places.

By order dated April 8, 1966, the hearing examiner rescheduled hearings in Atlanta, Georgia, April 25, 1966; Chattanooga, Ten-

nesse, April 27, 1966; Washington, D.C., April 29, 1966, and Chicago, Illinois, May 2, 1966.

By motion dated April 19, 1966, complaint counsel advised the hearing examiner that the parties had entered into a stipulation of facts making the hearings in Atlanta, Chattanooga and Washington, D.C. unnecessary, and requested that the hearings in those cities be cancelled and a hearing be rescheduled for Chicago, Illinois, on April 25, 1966.

By order dated April 19, 1966, the hearings in Atlanta, Chattanooga and Washington, D.C. were cancelled and the initial hearing was rescheduled for April 25, 1966 in Chicago, Illinois.

On April 25, 1966, the initial hearing was held in Chicago, Illinois, at which time the hearing examiner accepted a stipulation of facts entered into by the parties which was made a part of the record and identified as CX 92. Certain physical exhibits and documents identified as CX 1—CX 91 inclusive, were also made a part of the record in this proceeding. After the complaint counsel rested his case, counsel for respondents was granted the opportunity to present evidence and to call witnesses. Respondents' counsel declined and no evidence was adduced on behalf of the respondents. The hearing examiner thereupon ordered that the record be closed for the taking of testimony and reception of evidence.

Based upon the entire record consisting of the complaint, answer, stipulation of facts, exhibits, and other matters of record, the hearing examiner makes the following findings as to facts, conclusions drawn therefrom, and order. All findings not otherwise referenced are to be found in the stipulation of facts entered into by the parties.

FINDINGS OF FACT

1. Respondent Midwest Hosiery Incorporated, 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 1223 South Halsted Street, Chicago, Illinois. Individual respondents Sidney Leibowitz, Solomon Kopman and Ann Gruber are respectively president, vice president and secretary of the corporate respondent, and formulate, direct, and control the acts, practices, and policies of the corporate respondent, including the acts and practices complained of herein. Their business addresses are the same as said corporate respondent. Respondents are wholesalers of textile fiber products, namely men's and children's socks.

2. For at least five years prior to September 17, 1965, corporate respondent Midwest Hosiery Incorporated did business under the name and style of Midwest Hosiery Mills, Inc., but on the aforementioned date had its corporate charter amended to reflect the change of its name to Midwest Hosiery Incorporated. Midwest Hosiery Incorporated is not, and was not during the aforesaid period, a manufacturer of men's and children's hosiery or of any other product.

3. Commission Exhibits 35 through 38, in their present form as to packaging and labeling, which were "hosiery seconds" and other hosiery seconds similarly packaged and labeled, were sold and shipped by Midwest Hosiery Incorporated to Read Drug Stores in Baltimore, Maryland, under invoices identified as CX–41, CX–42 and CX–43.

4. Commission Exhibits 39 and 40, in their present form as to packaging and labeling, which were "hosiery seconds," and other hosiery seconds similarly packaged and labeled, were sold and shipped by Midwest Hosiery Incorporated to Read Drug Stores, Baltimore, Maryland, under invoices identified as CX–45 and CX–46, and that CX–39 and CX–40 were sold at retail as evidence by CX–44.

5. Commission Exhibits 9 and 11, in their present form as to packaging and labeling, which were hosiery "seconds" and other "Hosiery seconds" similarly packaged and labeled, were sold and shipped by Midwest Hosiery Incorporated to Eleventh Avenue Pharmacy in Gary, Indiana, under invoices identified as CX–10 and CX–12.

6. Commission Exhibit 11 which is composed of hosiery classified as "seconds" was prepared, packaged, and labeled by Ed Manz Hosiery Company of Chattanooga, Tennessee, for Midwest Hosiery Incorporated and shipped by said Ed Manz Company to Midwest Hosiery Incorporated in Chicago, Illinois, (as affirmed in Ed Manz' affidavit) and thereafter shipped by Midwest to the Eleventh Avenue Pharmacy in Gary, Indiana, as per invoice identified as CX–12.

7. Commission Exhibts 1, 3, 5 and 7, which were composed of hosiery products classified as "seconds" were received in commerce by Midwest Hosiery Incorporated. The respective invoices relating thereto were identified as CX–2, CX–4, CX–6 and CX–8, and hosiery "seconds" packaged and labeled in the manner of CX–1, CX–3, CX–5 and CX–7 were sold in commerce by Midwest Hosiery Incorporated.

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

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

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products, namely, men's and children's hosiery, without labels and with labels which failed:

1. To disclose the constituent fiber or combination of fibers in the textile fiber product;

2. To disclose the percentage of each fiber present, by weight, in the total fiber content of the textile fiber product, exclusive of ornamentation not exceeding 5 per centum by weight of the total fiber content;

3. To disclose the name, or other identification issued and registered by the Commission, of the manufacturers of the product or one or more persons subject to Section 3 with respect to such product.

10. 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 the following respects:

1. All parts of the required information were not conspicuously and separately set out on the same side of the label in such a manner as to be clearly legible and readily accessible to the

prospective purchaser, in violation of Rule 16(b) of the aforesaid Rules and Regulations.

2. Non-required information and representations were placed on the label or elsewhere on the product and were set forth in such a manner as to interfere with, minimize, detract from, and conflict with required information, in violation of Rule 16(c) of the aforesaid Rules and Regulations.

11. In the course and conduct of their business, respondents purchase hosiery which is imperfect. In some instances respondents sort such hosiery with respect to color and size, and bundle such hosiery into selling units of several pairs to the bundle. The remainder of respondents' hosiery products are packaged and bundled into selling units of several pairs to the bundle by respondents' suppliers who ship such products to respondents' place of business for resale or drop-ship such products to respondents' customers after the sale of such products is effected by respondents. Respondents sell such hosiery to other wholesalers, and to retailers who in turn sell it to the purchasing public. Such hosiery products are known in the trade as "irregulars," "seconds," or "thirds" depending upon the nature of the imperfection.

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

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

14. Respondents' hosiery products were not marked in a clear, conspicuous manner to disclose that they were "irregulars" or "seconds," so as to inform purchasers thereof of their imperfect quality when sold by respondents and shipped in commerce. The purchasing public in the absence of markings showing that hosiery products are "irregulars" or "seconds," understands and believes that they are of perfect quality. The failure to mark or label the said products in such a manner as will disclose that said products are imperfect, has had, and now has, the capacity and tendency to mislead dealers and members of the purchasing

public into the erroneous and mistaken belief that said products are perfect quality products, and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

15. Certain of respondents' hosiery products, as described in Finding No. 14 above, were labeled as "First in quality," thereby representing that said hosiery is of first quality when sold by respondents and shipped in commerce. The practice of labeling such packaged hosiery as "First in quality" has had, and now has, the capacity and tendency to mislead dealers and members of the purchasing public into the erroneous and mistaken belief that said products are first quality products and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

16. In the course and conduct of their business, the aforesaid respondents, on their invoices, refer to the corporate respondent as "Midwest Hosiery Mills, Inc." thus stating or implying that said corporate respondent is a manufacturer of the hosiery which it sells. In truth and in fact, the corporate respondent performs no manufacturing functions whatever, but operates exclusively as a wholesaler of said products. There is a preference on the part of many members of the public to deal directly with a manufacturer, including the manufacturer of clothing, in the belief that by doing so, certain advantages accrue, including better prices. Thus the aforesaid representation is false, misleading and deceptive.

17. The use by such respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead dealers and other purchasers 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.

CONCLUSIONS

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

cation Act, and the Rules and Regulations promulgated thereunder.

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

3. The complaint herein states a cause of action and this proceeding is in the public interest.

The order as hereinafter set forth follows the form of the order contained in the complaint and is also the order stipulated to by the parties. After due consideration, the hearing examiner agrees that such order is appropriate and may be entered.

ORDER

It is ordered, That respondents Midwest Hosiery Incorporated, a corporation, and its officers, and Sidney Leibowitz, Solomon Kopman, and Ann Gruber, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or in the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale advertising, delivery, transportation, or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from misbranding textile fiber products:

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

B. By failing to set forth all parts of the required information conspicuously and separately on the same side of the label in such a manner as to be clearly legible and readily accessible to the prospective purchaser.

C. By setting forth nonrequired information or representations on the label or elsewhere on the product in such a manner as to minimize, detract from, or conflict with information

required by the said Act and the Rules and Regulations promulgated thereunder.

It is further ordered, That respondents Midwest Hosiery Incorporated, a corporation, and its officers, and Sidney Leibowitz, Solomon Kopman, and Ann Gruber, individually and as officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of hosiery, or other related "industry products," which are "irregulars," "seconds," or otherwise imperfect, as such terms are defined in Rule 4(c) of the Amended Trade Practice Rules for the Hosiery Industry (16 CFR 152.4(c)), in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Selling or distributing any such product without clearly and conspicuously marking thereon the words "irregular" or "second," as the case may be, in such degree of permanency as to remain on the product until the consummation of the consumer sale and of such conspicuousness as to be easily observed and read by the purchasing public.

B. Using any advertisement or promotional material in connection with the offering for sale of any such product unless it is disclosed therein that such article is an "irregular" or "second," as the case may be.

C. Using the words "First in quality" or words of similar import on the package in which such product is sold or in reference to any such product in any advertisement or promotional material.

D. Representing in any other manner, directly or by implication, that such products are first quality or perfect quality.

It is further ordered, That respondents Midwest Hosiery Incorporated, a corporation, and its officers, and Sidney Leibowitz, Solomon Kopman, and Ann Gruber, 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 hosiery or other textile products, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing directly or indirectly that the respondents are manufacturers of hosiery or other textile products unless respondents own and operate, or directly and absolutely

control a mill, factory or manufacturing plant wherein said hosiery or other textile products are manufactured.

FINAL ORDER

No appeal from the initial decision of the hearing examiner having been filed, and the Commission having determined that the case should not be placed on its own docket for review and that pursuant to Section 3.21 of the Commission's Rules of Practice (effective August 1, 1963), the initial decision should be adopted and issued as the decision of the Commision:

It is ordered, That the initial decision of the hearing examiner shall, on the 16th day of June 1966, become the decision of the Commission.

It is further ordered, That respondents, Midwest Hosiery Incorporated, a corporation, Sidney Leibowitz, Solomon Kopman, and Ann Gruber, individually and as officers of said corporation, shall, within sixty (60) days after service of this order upon them, file with the Commission a report in writing, signed by such respondents, setting forth in detail the manner and form of their compliance with the order to cease and desist.

IN THE MATTER OF

WILMINGTON CHEMICAL CORPORATION ET AL.

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

Docket 8648. Complaint, Oct. 28, 1964—Decision, June 17, 1966

Order requiring a Chicago, Ill., manufacturer of a water repellent product, to cease misrepresenting the origin and waterproofing qualities of its product and making deceptive claims concerning testing, profitability, discounting of notes, and guarantee coverage.

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 Wilmington Chemical Corporation, a corporation, and Joseph S. Klehman, individually and as an officer of said corporation, here-