IN THE MATTER OF

# A. GREENHOUSE, INC., ET AL.

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

*Docket C-1201. Complaint, Apr. 27, 1967—Decision, Apr. 27, 1967*

Consent order requiring an Albany, N.Y., grocery products wholesaler and two brokerage concerns to cease engaging in illegal brokerage practices.

## COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly described, have been and are violating the provisions of subsection (c) of Section 2 of the Clayton Act, as amended, (15 U.S.C. § 13) hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent A. Greenhouse, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at Dott and Railroad Avenues, Albany, New York. This organization is a closed corporation, the entire stock of which is owned by respondent Saul Greenhouse.

PAR. 2. Respondent A. Greenhouse, Inc., has been and is engaged in business primarily as a wholesale distributor, buying, selling and distributing grocery products. This respondent purchases its grocery products from a large number of suppliers located in many sections of the United States. Its volume of business in the purchase and sale of such products is substantial, estimated to be somewhat in excess of $3 million annually.

PAR. 3. Respondent Saul Greenhouse is president of respondent A. Greenhouse, Inc., owns all of the capital stock of the said corporate respondent, and together with Eugene Greenhouse, directs and controls the acts, practices and policies thereof.

Respondent Eugene Greenhouse was, prior to July 1, 1963, vice president of respondent A. Greenhouse, Inc., and owned a substantial part of the capital stock of said corporate respondent. Despite his ostensible severance of any connection with A. Greenhouse, Inc., subsequent to that date, he continues to act as its agent in the manner described in Paragraph Ten.

PAR. 4. Respondent Food Trends, Inc., is a corporation organized, existing and doing business under and by virtue of the laws

of the State of New York, with its office and principal place of business located in the building partially occupied by respondent A. Greenhouse, Inc., at Dott and Railroad Avenues, Albany, New York.

PAR. 5. Respondent Consumer Motivation, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located in the building partially occupied by respondent A. Greenhouse, Inc., at Dott and Railroad Avenues, Albany, New York.

PAR. 6. Respondents Food Trends, Inc., and Consumer Motivation, Inc., are now, and for the past several years have been, engaged in the brokerage business, purportedly representing various seller-principals located throughout the United States in connection with the sale and distribution of grocery products. However, a substantial part of the business done by respondents Food Trends, Inc., and Consumer Motivation, Inc., consists of arranging sales to respondent A. Greenhouse, Inc. In representing alleged seller-principals in sales to A. Greenhouse, Inc., respondents Food Trends, Inc., and Consumer Motivation, Inc., are paid brokerage fees or commissions by such sellers.

PAR. 7. Respondent Eugene Greenhouse owns a substantial amount of the capital stock of respondents Food Trends, Inc., and Consumer Motivation, Inc., and serves as an officer of both corporate respondents. Said individual respondent, Eugene Greenhouse, along with other officers and directors of said corporations, directs and controls the acts, practices and policies of the corporate respondents Food Trends, Inc., and Consumer Motivation, Inc., including the acts and practices hereinafter mentioned.

PAR. 8. In the course and conduct of its business for the past several years, respondent A. Greenhouse, Inc., has purchased and distributed, and is now purchasing and distributing, grocery products in commerce, as "commerce" is defined in the Clayton Act, as amended, from suppliers or sellers located in several States of the United States other than the State of New York, in which said respondent is located. Said respondent transports or causes such grocery products, when purchased, to be transported from the places of business or packing plants of its suppliers located in various other States of the United States to said respondent which is located in the State of New York or to said respondent's customers located in said State or elsewhere. Thus, there has been at all times mentioned herein a continuous course of trade in commerce in the purchase of said grocery products by said respondent

and the sale of such grocery products by its respective suppliers.

PAR. 9. Respondents Food Trends, Inc., and Consumer Motivation, Inc., in the course and conduct of their brokerage business, have been, and are now effecting the sale and distribution of grocery products in commerce, as "commerce" is defined in the Clayton Act, as amended, for their suppliers located in the various States of the United States other than the State of New York in which said respondents are located. Said respondents have transported or caused said grocery products, when sold, to be transported from their purported principals' places of business to the buyers' places of business located in other States, or to their customers located therein. Thus, there has been at all times mentioned herein a continuous course of trade in commerce in the sale of said grocery products by said respondents for their purported principals.

PAR. 10. In the course and conduct of their business for a number of years last past, but more particularly since May 1963, the individual respondents, Saul and Eugene Greenhouse have made and are now making substantial purchases of grocery products for the corporate respondent A. Greenhouse, Inc. Many of said purchases were made from suppliers through respondents Food Trends, Inc., and Consumer Motivation, Inc., who received a commission, brokerage or other compensation or allowances or discounts in lieu thereof, in connection with such sales from said suppliers. Respondents Food Trends, Inc., and Consumer Motivation, Inc., are receiving assistance from full-time employees of respondent A. Greenhouse, Inc., who are under the direct control of said corporate respondent. In addition, respondent Eugene Greenhouse, who ostensibly no longer has any connection with respondent A. Greenhouse, Inc., continues to act as its agent in conducting the affairs of said corporate respondent, particularly as they relate to the purchase, marketing and sale of grocery products, including the grocery products purchased through the brokerage operations of respondents Food Trends, Inc., and Consumer Motivation, Inc.

PAR. 11. The brokerage commissions received from sellers of grocery products by Food Trends, Inc., and Consumer Motivation, Inc., on sales made by these sellers to respondent A. Greenhouse, Inc., are substantial. In many instances, respondent A. Greenhouse, Inc., has been the principal account for which respondents Food Trends, Inc., and Consumer Motivation, Inc., have arranged sales.

PAR. 12. In view of the control and relationship described

above, respondents Food Trends, Inc., and Consumer Motivation, Inc., in the conduct of their business have been acting for and in behalf of the buyer, respondent A. Greenhouse, Inc., or have been subject to the direct or indirect control of the buyer, A. Greenhouse, Inc.

PAR. 13. The acts and practices of respondents, and each of them, in receiving and accepting a brokerage or commission, or an allowance or discount in lieu thereof, from sellers on their own purchases, through respondent brokerage companies, Food Trends, Inc., and Consumer Motivation, Inc., are in violation of subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Commissioner Elman dissented from the issuance of the complaint.

## DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of subsection (c) 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 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 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 A. Greenhouse, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at Dott and Railroad Avenues, Albany, New York.

Respondent Saul Greenhouse is president of A. Greenhouse, Inc., and his business address is the same as that of said corporation.

Respondent Food Trends, Inc., is a corporation organized, exist-

ing 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 in the building partially occupied by respondent A. Greenhouse, Inc., at Dott and Railroad Avenues, Albany, New York.

Respondent Consumer Motivation, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located in the building partially occupied by respondent A. Greenhouse, Inc., at Dott and Railroad Avenues, Albany, New York.

Respondent Eugene Greenhouse is an officer of both Food Trends, Inc., and Consumer Motivation, Inc., and his business address is the same as that of said corporations.

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

ORDER

*It is ordered,* That respondents A. Greenhouse, Inc., a corporation, and its officers, and Saul Greenhouse, individually and as an officer and stockholder of A. Greenhouse, Inc., and respondents' agents, representatives and employees, directly or through any corporate or other device, in or in connection with the purchase of grocery products in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

> Receiving or accepting, directly or indirectly, from any seller, anything of value as a commission, brokerage or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase of grocery products for respondents' own account, or on purchases made through Food Trends, Inc., or Consumer Motivation, Inc., or any other brokerage organization where, and so long as, any relationship exists between the brokerage organization and the respondents named herein, either through ownership, control, management or representation.

*It is further ordered,* That respondents Food Trends, Inc., Consumer Motivation, Inc., corporations, and their officers, and Eugene Greenhouse, individually and as an officer and stockholder of Food Trends, Inc., and Consumer Motivation, Inc., and respondents' agents, representatives and employees, directly or through any corporate or other device, in or in connection with the purchase or sale of grocery products in commerce, as "com-

merce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

> Receiving or accepting, directly or indirectly, from any seller, anything of value as a commission, brokerage or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase of grocery products for their own account, or for the account of A. Greenhouse, Inc., so long as any relationship exists between said brokerage organizations and the buyer organization, either through ownership, control or management, or where respondents Food Trends, Inc., Consumer Motivation, Inc., or Eugene Greenhouse, is the agent, representative or other intermediary acting for or in behalf or is subject to the direct or indirect control of any buyer, including A. Greenhouse, Inc.

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

Commissioner Elman dissented from the issuance of the complaint.

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IN THE MATTER OF

## UNION BAG-CAMP PAPER CORPORATION

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

*Docket 7946. Complaint, June 15, 1960—Decision, May 1, 1967*

Order modifying a divesture order dated February 12, 1965, 67 F.T.C. 138, requiring a manufacturer of paper products to divest itself of certain acquisitions by allowing an alternate plant to be divested.

### MODIFICATION OF ORDER

ORDER MODIFICATION

Union Bag-Camp Paper Corporation, having by communications dated December 6, 1966, and February 9, 1967, requested that Part VI of the Commission's order issued in this matter on February 12, 1965 [67 F.T.C. 138], be modified, and the Commission, having duly considered the requested modification

and being of the opinion that the requested modification should be made;

*Now, therefore, it is hereby ordered,* That Part VI of the order of February 12, 1965, be, and it hereby is, modified as follows:

*It is further ordered,* That Union Camp Corporation (formerly Union Bag-Camp Paper Corporation) shall divest itself within a period not exceeding twenty-one (21) months after the service upon it of this modified Part VI, absolutely and in good faith, subject to the prior approval of the Commission, of either (a) the corrugated box plant located at 10200 Miles Avenue, Cleveland, Ohio, or (b) alternatively the corrugated box plant located at Washington, Pennsylvania (which latter plant was acquired by respondent as a result of its acquisition of River Raisin Paper Company), including all assets, properties, rights and privileges, tangible or intangible, which are now located at the plant so divested and used at said plant in the manufacture of corrugated shipping containers (including without limitation the machinery and equipment now used at said plant in such manufacture), in a manner contemplating the operation of the plant so divested by the purchaser as a going concern in the manufacture and sale of corrugated shipping containers.

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## IN THE MATTER OF

## GRABER MANUFACTURING COMPANY, INC., ET AL.

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

*Docket 8038. Complaint, July 12, 1960—Decision, May 2, 1967*

Consent order requiring a Middleton, Wisc., manufacturer of drapery hardware and related products to cease discriminating in price among competing resellers of its products.

### COMPLAINT*

The Federal Trade Commission, having reason to believe that the named respondents have violated and are now violating the provisions of subsection (a) of Section 2 of the Clayton Act (U.S.C., Title 15, Section 13), as amended by the Robinson-Patman Act, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Graber Manufacturing Co., Inc., is a

*Respondent Graber Manufacturing Company, Inc., erroneously referred to in the complaint as Graber Manufacturing Co., Inc.

corporation organized and doing business under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business located at 2615 University Avenue, Middleton, Wisconsin. Individual respondents John N. Graber, Joseph V. Graber and Marie Graber are now, and were, during all times hereinafter stated, officers of said corporate respondent. These individual respondents are and have been controlling and directing the operations of the corporate respondent during the period from 1955 to date.

Respondents Marie Graber, Joseph V. Graber, and Arthur R. Jones, as trustee, are copartners, trading and doing business as Graber Company, a partnership, with their office and principal place of business located at 2615 University Avenue, Middleton, Wisconsin. Marie Graber and Joseph V. Graber are and have been directing the operations of Graber Company during the period from 1955 to date.

Respondent Arthur R. Jones is trustee of a trust established by John N. Graber and he, with the other two copartners, Joseph V. Graber and Marie Graber, shares in the benefits as one of the copartners doing business as Graber Company.

Both Graber Manufacturing Co., Inc., and the copartners, trading and doing business as Graber Company, are jointly and severally named as respondents herein.

PAR. 2. Respondent Graber Manufacturing Co., Inc., is engaged in the business of manufacturing a complete line of drapery hardware, including curtain rods, traverse rods, cafe rods and accessories. All of its production is sold or transferred to the Graber Company, the partnership, which acts as its selling agent and is engaged in the business of distributing and selling drapery hardware. Graber Company's net sales amounted to approximately $2,000,000 in 1959.

PAR. 3. In the course and conduct of its business Graber Manufacturing Co., Inc., ships, or causes to be shipped and transported, its drapery hardware from the State where such products are manufactured to branches of Graber Company, its selling agent, located in other States.

In the course and conduct of its business Graber Company ships, or causes to be shipped and transported, its drapery hardware from the State where such products are manufactured, or are temporarily stored in anticipation of sale and shipment, to purchasers located in other States.

In the aforesaid manner and method, respondents are now, and

have been at all times referred to herein, engaged in commerce, as "commerce" is defined in the amended Clayton Act.

Such products are, and have been, sold by respondents to purchasers for use or resale in the various States of the United States.

PAR. 4. In the course and conduct of their business in commerce, respondents have been, and are now, in competition with other corporations, partnerships, firms and individuals engaged in the manufacturing, selling and distributing of drapery hardware.

Many of the purchasers of respondents' products are competitively engaged with each other and with customers of respondents' competitors in the resale of drapery hardware.

PAR. 5. Respondents sell their drapery hardware primarily to retailers and also to wholesalers who resell it to retailers. When sales are made to such wholesalers and delivered to them, respondents customarily grant a 20% discount from the list price charged retailers. When sales are made to such wholesalers but delivery is made to the wholesaler's customer, respondents customarily grant the wholesaler a 15% discount from the list price.

PAR. 6. In the course and conduct of their business in commerce, respondents have sold, and are now selling, drapery hardware to some purchasers at prices substantially higher than those charged other purchasers of these products of like grade and quality who have been, and are now, competing with said unfavored purchasers.

Illustrative of respondents' said discriminations in price are respondents' sales of drapery hardware to the Aimcee Wholesale Corporation, New York, New York. Aimcee Wholesale Corporation is a wholly owned subsidiary of Associated Merchandising Corporation, New York, New York. All of the capital stock of Associated Merchandising Corporation, both voting and nonvoting, is owned by twenty-seven large department stores located in many of the principal cities of the United States. No store owns more than one share of voting stock.

These twenty-seven department stores completely dominate and control all policies and business operations of both Associated Merchandising Corporation and its wholly owned and controlled subsidiary Aimcee Wholesale Corporation.

It is, therefore, alleged that Associated Merchandising Corporation and Aimcee Wholesale Corporation are the agents and instrumentalities of these twenty-seven member department stores for the buying of merchandise for the account of such stores, and for other purposes.

Illustrative of such sales is the sale by respondents, through Aimcee Wholesale Corporation, to L. S. Ayres & Company, Indianapolis, Indiana, one of the twenty-seven member stores, of a quantity of traverse rods (Item #3022) on August 19, 1959, at a discount of 15% off list price. This merchandise was drop shipped by respondents direct to the store of L. S. Ayres & Company, in Indianapolis, Indiana. Aimcee Wholesale Corporation retained 3% of this discount and transmitted the remainder, or 12%, to L. S. Ayres & Company. On September 14, 1959, respondents sold the same item to Ramsey Interiors, Indianapolis, Indiana, a competing retailer-purchaser, charging the list price with no discount.

PAR. 7. The effect of respondents' discriminations in price, as above alleged, may be to substantially lessen competition or tend to create a monopoly in the lines of commerce in which the respondents and their favored purchasers, respectively, are engaged, or to injure, destroy, or prevent competition with the respondents and their purchasers who receive the benefits of such discriminations.

PAR. 8. The acts and practices of the respondents, as alleged above, violate subsection (a) of Section 2 of the amended Clayton Act.

## ORDER AMENDING COMPLAINT AND GRANTING MOTION TO SUBSTITUTE, AND DECISION AND ORDER IN DISPOSITION OF PROCEEDING

The Commission having issued its complaint in this proceeding on July 12, 1960, charging the respondents named in the caption hereof with violation of Section 2(a) of the Clayton Act, as amended, and the respondents having been thereafter served with a copy of that complaint; and

The hearing examiner having certified to the Commission a "Motion to Amend Complaint" and a proposed consent agreement, and the respondents and counsel supporting the complaint having thereafter filed a joint motion requesting that an agreement dated April 4, 1967, executed by all the respondents except John N. Graber, deceased, and by their attorney and counsel supporting the complaint, be substituted for the said agreement certified by the hearing examiner to the Commission, which executed agreement dated April 4, 1967, contains, *inter alia*, an admission of all the jurisdictional facts alleged in the complaint as amended in the manner requested in the above motion to amend, and state-

ments that the record on which the decision of the Commission shall be based shall consist solely of such complaint and said agreement, and that said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in such complaint; and

The Commission having determined that in the circumstances the public interest would be served by waiving, and hereby having waived, the requirement for the timely filing of notice of intent to enter into a consent agreement as prescribed by the Commission's Notice of July 14, 1961; and

The Commission, having considered the aforesaid agreement dated April 4, 1967, containing consent order, which also provides for dismissal of the complaint as to respondent John N. Graber, deceased, and respondent Arthur R. Jones, trustee, and it appearing that formulation, direction and control of the policies, acts and practices of Graber Company of which respondent Arthur R. Jones, trustee, is a copartner, is exercised solely by respondents Joseph V. Graber and Marie Graber and that dismissal of the proceeding with respect to respondent Arthur R. Jones is therefore warranted; and the Commission having duly determined that said agreement constitutes an adequate basis for appropriate disposition of this proceeding and that the aforementioned joint motion for substitution should be granted; and

The Commission having considered the aforesaid motion to amend the complaint wherein movants state that such motion is concurred in by counsel for respondents and the Commission having determined that it should be granted;

*It is ordered,* That the complaint herein be, and it hereby is, amended as follows:

(1) By striking from Paragraph Six thereof the first sentence of the second unnumbered paragraph, the first word of which is "Illustrative", and substituting therefor the words "Respondents' said discriminations in price involve respondents' sales of drapery hardware to the Aimcee Wholesale Corporation, New York, New York.";

(2) By striking the words "as above alleged" from the first and second lines of Paragraph Seven thereof and substituting therefor the words "as above alleged in Paragraph Six";

(3) By striking the words "as alleged above" from the first and second lines of Paragraph Eight thereof and substituting therefor the words "as alleged above in Paragraph Six and Paragraph Seven".

*It is further ordered*, That the proposed agreement certified to the Commission by the hearing examiner be, and it hereby is, stricken and that the agreement dated April 4, 1967, be, and it hereby is, substituted therefor and accepted.

Now, therefore, the Commission makes the following jurisdictional findings and enters the following order to cease and desist:

1. Respondent Graber Manufacturing Company, Inc., erroneously referred to in the complaint as Graber Manufacturing Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business located at 7549 Graber Road, in the city of Middleton, State of Wisconsin.

Respondent John N. Graber is deceased. Respondents Joseph V. Graber and Marie Graber are officers of respondent Graber Manufacturing Company, Inc., and, together with respondent Arthur R. Jones, trustee, are copartners trading and doing business as Graber Company, a partnership, with their office and principal place of business located at 7549 Graber Road, in the city of Middleton, State of Wisconsin. Respondents Joseph V. Graber and Marie Graber solely formulate, direct and control the policies, acts and practices of Graber Company.

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

ORDER

*It is ordered*, That respondents Graber Manufacturing Company, Inc., a corporation, and Joseph V. Graber and Marie Graber, individually and as officers of said corporation, and Joseph V. Graber and Marie Graber, copartners, trading and doing business as Graber Company, and their respective officers, employees, assignees, and representatives, directly or through any corporate or other device, in or in connection with the sale of curtain and drapery hardware, curtain and drapery hardware components, parts and accessories, and related products in commerce, as commerce is defined in the Clayton Act, as amended, forthwith cease and desist twelve months from the date of service of this order from:

> Discriminating, directly or indirectly, in the price of said products of like grade and quality by selling to any purchaser at net prices higher than the net prices charged to any other purchaser who, in fact, competes with the purchaser paying the higher price in the resale and distribution of respondents' products.

*It is further ordered,* That the complaint be, and the same hereby is, dismissed as to respondent Arthur R. Jones.

*It is further ordered,* That the complaint be, and the same hereby is, dismissed as to respondent John N. Graber.

*It is further ordered,* That respondents Graber Manufacturing Company, Inc., a corporation, and Joseph V. Graber and Marie Graber, individually and as officers of said corporation, and Joseph V. Graber and Marie Graber, copartners, trading and doing business as Graber Company, shall, within sixty (60) days after the operative date of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist as set forth in this order.

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IN THE MATTER OF

## MERCURY LIFE AND HEALTH COMPANY ET AL.

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

*Docket 8704. Complaint, Aug. 16, 1966—Decision, May 2, 1967*

Consent order requiring a San Antonio, Texas, insurance company and its advertising affiliate to cease making claims as to the benefits provided by its insurance policies without disclosing conspicuously and in close proximity to the claims all the limitations contained in the policies.

### COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as that Act is applicable to the business of insurance under the provisions of Public Law 15, 79th Congress (Title 15, U.S. Code, Sections 1011 to 1015, inclusive), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Mercury Life and Health Company, a corporation, Mercury United Advertising Corporation, a corporation, and Leonard Hyatt, individually and as an officer of each of said corporations, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Mercury Life and Health Company

is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at 301 Majestic Building in the city of San Antonio, State of Texas.

Respondent Mercury United Advertising Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at 301 Majestic Building in the city of San Antonio, State of Texas.

Respondent Leonard Hyatt is an officer of each of the corporate respondents. He formulates, directs and controls the acts and practices of the corporate respondents, including those hereinafter set forth. His address is the same as that of the corporate respondents.

PAR. 2. Respondents Mercury Life and Health Company and Leonard Hyatt are now, and for some time last past have been, engaged as insurers in the business of insurance in commerce, as "commerce" is defined in the Federal Trade Commission Act. As a part of said business in "commerce," said respondents enter into insurance contracts with insureds located in various States of the United States other than the State of Texas in which States the business of insurance is not regulated by State law to the extent of regulating the practices of said respondents alleged in this complaint to be illegal.

Respondent Mercury United Advertising Corporation prepares for and distributes on behalf of respondent Mercury Life and Health Company and respondent Leonard Hyatt advertising material to be used in the course and conduct of said insurance business.

PAR. 3. Respondents, in conducting the business aforesaid, have sent and transmitted and have caused to be sent and transmitted, by means of the United States mails and by various other means, letters, application forms, contracts, checks and other papers and documents of a commercial nature from their place of business in the State of Texas to purchasers and prospective purchasers located in various other States of the United States and have thus maintained a substantial course of trade in said insurance contracts, policies and other papers and documents of a commercial nature in commerce between and among the several States of the United States.

PAR. 4. Respondents Mercury Life and Health Company and Leonard Hyatt are licensed, as provided by State law, to conduct the business of insurance only in the State of Texas. Said re-

spondents are not now, and for some time last past have not been, licensed as provided by State law to conduct the business of insurance in any State other than the State of Texas.

PAR. 5. Respondents Mercury Life and Health Company and Leonard Hyatt solicit business by mail in various States of the United States in addition to the State named in Paragraph Four above. As a result thereof, they have entered into insurance contracts with insureds located in many States in which they are not licensed to do business. Said respondents' business practices are, therefore, not regulated by State law in any of those States in which said respondents are not licensed to do business as they are not subject to the jurisdiction of such States.

PAR. 6. In the course and conduct of said business, and for the purpose of inducing the purchase of said policies, respondents have made, and are now making, numerous statements and representations concerning the premiums, coverage, benefits, effective date, renewal and other provisions of said policies by means of letters and other printed advertising material and by means of radio broadcasts transmitted by radio stations located in various States of the United States, having sufficient power to carry such broadcasts across State lines.

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

Maximum Policy Benefits

For Hospital Care
$5,000.00
For Death Natural Cause
$10,000.00
For Accidental Death Double Indemnity
$20,000.00

* * * * * * *

This big living Family Plan is designed to fit any family large or small and the premium is only a few dollars monthly—that may insure ten members, subject to age and policy modifications, for $5,000.00 *cash* hospital expense, $10,000.00 *cash* for natural death and $20,000.00 *cash* for accidental death, all in the one policy plan for only $6.25 monthly and the benefits start when the policy is issued.

* * * * * * *

But neighbors, that's not all—you are also protected if any member of your family has to go to the hospital. You get hospital care up to $5,000.00.

* * * * * * *

Let's review the outstanding benefits of this policy offered by Mercury. It's a plan that pays three ways.

1. Hospital expense care for either sickness or accident that pays up to $5,000.00.

2. Life protection up to $10,000.00.

3. Accidental death except, of course, suicide, which pays up to $20,000.00. All of this protection in one single policy which includes as many as 10 members of the family and up to 65 years of age.

* * * * * * *

No waiting period in the policy. Benefits in effect immediately.

* * * * * * *

With accidental death, except suicide, of course, you can receive $20,000.00 on your entire family.

* * * * * * *

All of this protection in one single policy which protects as many as ten members of a family up to 65 years of age.

Think about it my friends—*Ten Thousand Cash* Natural Life Insurance—*Five Thousand Cash* Hospital care and *Twenty Thousand Cash* Accidental Deaths Insurance on a family of ten people ages from baby to sixty-five years * * *.

PAR. 7. By and through the use of the aforementioned statements, and others of similar import and meaning not specifically set out herein, respondents have represented, directly or by implication:

1. That respondents will issue an insurance policy which will provide the following benefits to each of as many as ten (10) members of a family:

A. $5,000 for hospital expenses arising from any sickness or accident;

B. $10,000 for death resulting from natural causes;

C. $20,000 for death resulting from all accidental causes.

2. That full benefits accrue to insureds as soon as the policy is issued.

3. That said policy provides for cash benefits for all accidental deaths, excepting suicide.

4. That said policy provides full and equal benefits for as many as ten members of a family of all ages from baby to sixty-five years.

PAR. 8. In truth and in fact:

1. Respondents do not issue an insurance policy which will provide the following benefits to each of as many as ten (10) members of a family:

A. $5,000 for hospital expenses arising from any sickness or accident. On the contrary, said policy provides, among other things, that the total amount payable for hospital care benefits in any policy year shall not exceed $500 for any one insured and the total hospital care benefits accruing for any one calendar month shall not exceed $5 per day and for not more than twenty-five days. Further, said policy provides that no hospital care

benefits are payable for hospitalization the cause of which is pregnancy or any complications therefrom.

B. $10,000 for death resulting from natural causes. On the contrary, the amount payable for natural death for each insured under the terms of the policy is only a fraction of the represented amount and in no event does it exceed the sum of $2,000 for any one death resulting from natural causes.

C. $20,000 for death resulting from accidental causes. On the contrary, the amount payable for death resulting from accidental causes for each insured under the terms of the policy is only a fraction of the represented amount and in no event does it exceed the sum of $4,000 for any one death resulting from accidental causes. Further, death must occur, independently and exclusively of disease and all other causes, within ninety days of the date of the accident.

2. Full benefits do not accrue to insureds as soon as the policy is issued. On the contrary, the policy provides that, during the first three months after date of issuance, the benefits thereunder shall be twenty-five percent of the maximum amount therein stated and shall increase twenty-five percent of such maximum amount at the end of each three months the policy has been in continuous force thereafter, until the maximum amount has been reached at the end of one year.

3. Said policy does not provide for cash benefits for all accidental deaths, excepting suicide. On the contrary, death by drowning is also excluded from accidental death benefits under the terms of said policy.

4. Said policy does not provide full and equal benefits for as many as ten members of a family of all ages from baby to sixty-five years. On the contrary, the policy provides that benefits payable on account of any child under five years of age at the time such benefits accrue shall be twenty-five percent of the benefits otherwise payable thereunder. Further, the policy states that the benefits payable on account of any insured who was fifty-five years of age or older at the date of this policy shall be the following proportion of the amount otherwise payable: ages 55 to 59: 75%; 60 and over: 50%.

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

PAR. 9. 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

insurance of the same general kind and nature as that sold by respondents.

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

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

## DECISION AND ORDER

The Commission having issued its complaint in this proceeding on August 16, 1966, charging the respondents, Mercury Life and Health Company, a corporation, Mercury United Advertising Corporation, a corporation, and Leonard Hyatt, individually and as an officer of said corporations, with violation of the Federal Trade Commission Act, and the respondents having been served with a copy of that complaint; and

The respondents having thereafter filed with the hearing examiner a motion requesting waiver of § 2.4(d) of the Commission's Rules and acceptance of a consent order agreement, to which motion was attached an executed consent agreement entered into between respondents and counsel supporting the complaint, and counsel supporting the complaint having filed an answer to respondents' motion, stating that it appears that the public interest would be served by granting such motion; and

The hearing examiner having certified to the Commission the aforementioned motion with the attached agreement, which agreement contains, *inter alia*, a consent order, an admission by respondents of all the jurisdictional facts alleged in the complaint, 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 alleged in the complaint, and waivers and provisions as required by the Commission's Rules; and

The Commission having determined that in the circumstances

the public interest would be served by waiving, and hereby having waived, the provision of Rule 2.4(d) that the consent procedure shall not be available after issuance of complaint; and

The Commission having considered the aforesaid executed agreement, and having now determined that said agreement constitutes 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 Mercury Life and Health Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at 301 Majestic Building in the city of San Antonio, State of Texas.

Respondent Mercury United Advertising Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at 301 Majestic Building in the city of San Antonio, State of Texas.

Respondent Leonard Hyatt is an officer of each of the corporate respondents, and his address is the same as that of the corporate respondents.

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 Mercury Life and Health Company, a corporation, Mercury United Advertising Corporation, a corporation, and their respective officers and Leonard Hyatt, individually and as an officer of each of said corporations, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of any insurance policy or policies, in commerce, as "commerce" is defined in the Federal Trade Commission Act, except in those states where respondents are licensed and regulated by State law to conduct the business of insurance, do forthwith cease and desist from:

Representing, directly or by implication:

1. That any policy may be continued in effect indefinitely or for any stated period of time unless full disclosure of any reduction in benefits or any other such provision, condition or limitation contained in the policy

is made conspicuously, prominently and in sufficiently close conjunction with the representation as will fully relieve it of all capacity to deceive.

2. That any policy provides for indemnification against disability or loss due to sickness, disease, accident or death, in any amount or for any period of time, unless a statement of all the conditions, exceptions, restrictions and limitations affecting the indemnification actually provided is set forth conspicuously, prominently and in sufficiently close conjunction with the representation as will fully relieve it of all capacity to deceive.

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

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IN THE MATTER OF

## LEADER GARMENT COMPANY

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

*Docket C-1202. Complaint, May 2, 1967—Decision, May 2, 1967*

Consent order requiring a St. Louis, Mo., manufacturer of fur products to cease misbranding and falsely invoicing its fur products.

### 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 Leader Garment Company, hereinafter referred to as respondent, has violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Leader Garment Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri.

Respondent is a manufacturer of fur products with its office and principal place of business located at 1136 Washington Avenue, St. Louis, Missouri.

PAR. 2. Respondent is now and for some time last past has been engaged in the introduction into commerce, and in the manufacture for introduction into commerce, and in the sale, advertising, and offering for sale in commerce, and in the transportation and distribution in commerce, of fur products; and has manufactured for sale, sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of furs which have been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were misbranded in that they were falsely and deceptively labeled to show that fur contained therein was natural, when in fact such fur was pointed, bleached, dyed, tip-dyed, or otherwise artificially colored, in violation of Section 4(1) of the Fur Products Labeling Act.

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

Among such misbranded fur products, but not limited thereto, were fur products with labels which failed to disclose that the fur contained in the fur products was bleached, dyed, or otherwise artificially colored, when such was the fact.

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

Among such falsely and deceptively invoiced fur products, but not limited thereto, were fur products covered by invoices which failed to disclose that the fur contained in the fur products was bleached, dyed, or otherwise artificially colored, when such was the fact.

PAR. 6. Certain of said fur products were falsely and deceptively invoiced in that said fur products were invoiced to show that the fur contained therein was natural, when in fact such fur was pointed, bleached, dyed, tip-dyed, or otherwise artificially colored, in violation of Section 5(b)(2) of the Fur Products Labeling Act.

PAR. 7. The aforesaid acts and practices of respondent, 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 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 Fur Products Labeling 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 Leader Garment Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 1136 Washington Avenue, St. Louis, Missouri.

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 Leader Garment Company, a corporation, and its officers, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale

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

A. Misbranding any fur product by:

1. Representing directly or by implication on a label that the fur contained in such fur product is natural when the fur contained therein is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

2. Failing to affix a label to such fur product showing in words and in figures plainly legible all of the information required to be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act.

B. Falsely or deceptively invoicing any fur product by:

1. Failing to furnish an invoice, 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. Representing directly or by implication on an invoice that the fur contained in such fur product is natural when such fur is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

*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.

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## IN THE MATTER OF

## MIDWEST AUTOMATION TRAINING—KANSAS CITY, INC., ET AL.

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

*Docket C-1203. Complaint, May 2, 1967—Decision, May 2, 1967*

Consent order requiring a Kansas City, Mo., correspondence school in electronic data processing to cease making deceptive claims as to employment

and earnings for its graduates, exaggerating its equipment and facilities, making deceptive offers of interest free tuition loans, and falsely claiming affiliation with a large equipment manufacturer.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Midwest Automation Training—Kansas City, Inc., a corporation, and Jule M. Blum, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Midwest Automation Training—Kansas City, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business located at 2022 Main Street, Kansas City, Missouri.

Respondent Jule M. Blum is an individual and an officer of said corporation. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

Said corporate respondent was initially incorporated under the name of Center for Automation Training and operated and did business under that name until some months last past when the present corporate name was adopted.

PAR. 2. Respondents are now, and have been for some time last past, engaged in the advertising, offering for sale, sale and distribution of courses of instruction intended to prepare students thereof for employment in the field of electronic data processing. Said courses are pursued by correspondence through the United States mails and by resident training in the operation of equipment used in electronic data processing.

PAR. 3. In the course and conduct of their business, respondents have caused their courses of study and instruction to be sent from their place of business in the State of Missouri to, into and through States of the United States other than the State of Missouri, to purchasers thereof located in such other States. Respondents also utilize the services of salesmen who call on prospective purchasers of their courses of instruction in States

other than the State of Missouri. There has been at all times mentioned herein a substantial course of trade in said courses of instruction in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, as aforesaid, respondents have caused to be published in newspapers distributed through the United States mails and by other means to prospective purchasers in the several States in which respondents do business, advertisements of which the following are typical and illustrative but not all inclusive:

(1)

JOB OPPORTUNITIES

In IBM:

IBM DATA PROCESSING
IBM PANEL WIRING
IBM OFICE AUTOMATION
IBM KEY PUNCH

EARN $350–$750 A MONTH

The automation industry's growing fast. See if you can qualify now. Interest free tuition loans available for a limited number of qualified applicants. Placement service for all graduates. Write today giving age, education, address, present employment and phone number to:

Director of IBM Automation Development
Box No. 1005, The Daily Gate City, Keokuk, Iowa

NOTE: SPECIAL PROGRAM FOR GRADUATING HIGH SCHOOL SENIORS

(2)

JOBS OPEN

IBM AUTOMATION
IBM DATA PROCESSING
IBM PANEL WIRING
IBM OFFICE AUTOMATION
IBM KEY PUNCH

WE TRAIN YOU TO
EARN $350—$750

Solid security opportunity for both men and women—ages 18–49. Send your name, address, phone, education, marital status and present employment today to:

Director of IBM Automation Development
Box K
Carrollton Democrat
Carrollton, Missouri

NOTE: SPECIAL PROGRAM FOR GRADUATING HIGH SCHOOL SENIORS.

PAR. 5. By and through use of the statements and representations appearing in the advertisements as set forth in Paragraph Four hereof, respondents represent, directly or by implication,

that inquiries are solicited for the ultimate purpose of offering employment to qualified applicants who will be trained to operate various types of data processing equipment manufactured or distributed by the International Business Machines Corporation, or "IBM" as it is popularly known.

PAR. 6. In truth and in fact, inquiries are not solicited for the purpose of offering employment to qualified applicants, but for the sole purpose of obtaining leads to prospective purchasers of respondents' courses of instruction.

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

PAR. 7. In the course and conduct of their business, as aforesaid, and for the purpose of inducing the sale of their courses of instruction, respondents have made certain statements and representations, directly and by implication, in advertisements such as but not limited to the foregoing, in brochures and promotional material sent to prospective purchasers through the United States mails, in material exhibited to prospective purchasers by respondents' salesmen or representatives, and through oral statements made to prospective purchasers by said salesmen or representatives.

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

1. Respondents' school was well established at the time the statements and representations were made.

2. Respondents, at the time the statements and representations were made, possessed the requisite facilities for providing the resident training which is a part of respondents' courses of instruction.

3. Respondents, at the time the statements and representations were made, provided a placement service which had obtained employment for respondents' graduates.

4. Persons completing respondents' courses are assured of employment in the geographical area of their choice.

5. Interest free tuition loans are available which will enable the recipient thereof to pay the cost of respondents' course in installments without any additional cost for that privilege.

6. Persons who agree to pay the cost of respondents' course in installments will not be required to complete those payments until the resident training portion of the course has been completed and employment obtained.

7. Respondents' school or course has been accredited or ap-

proved by the International Business Machines Corporation (IBM) or respondents' school is sponsored by or in some other way affiliated with IBM.

8. Respondents limit the enrollment in their courses.

9. Respondents' graduates earn from $350—$750 per month.

PAR. 8. In truth and in fact:

1. Respondents' school was not well established at the time the statements and representations were made.

2. At the time the statements and representations were made, respondents did not own, control or otherwise have available the equipment or facilities for providing the resident training which is a part of respondents' courses.

3. At the time the statements and representations were made, respondents did not provide a placement service and had not obtained employment for graduates of respondents' courses. At the time the statements and representations were made, respondents had no graduates.

4. Persons completing respondents' courses are not assured of any job much less a job in the geographical area of their choice.

5. Respondents do not make loans of any kind available to their students. While respondents may allow the tuition to be paid in installments, the cost when paid in that manner is $75 more than the cost when paid in cash in full at the time of enrollment.

6. Persons who agree to pay the cost of respondents' course in installments are not permitted to defer those payments until such time as the student has completed the course and obtained employment. Such promissory notes as are obtained by respondents from persons purchasing respondents' courses are discounted with a third party finance company and demand is made for payment on a regular basis at once.

7. Neither respondents' school nor respondents' course is in any way accredited, approved, or sponsored by IBM nor are respondents or their school in any way affiliated with that company.

8. Respondents do not limit the number of enrollees in their courses.

9. Respondents' graduates do not earn $350—$750 per month. Respondents had no graduates at the time such representations were made.

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

PAR. 9. In the course and conduct of their business and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of courses of study and instruction covering the same or similar subjects.

PAR. 10. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the tendency and capacity to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true and into the purchase of substantial numbers of respondents' courses of study and instruction by reason of said erroneous and mistaken belief.

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

## DECISION AND ORDER

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

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

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

1. Respondent Midwest Automation Training—Kansas City, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its

office and principal place of business located at 2022 Main Street, in the city of Kansas City, State of Missouri.

Respondent Jule M. Blum is an officer of said corporation and his address is the same as that of said corporation.

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

ORDER

*It is ordered,* That respondents Midwest Automation Training —Kansas City, Inc., a corporation, and its officers, and Jule M. Blum, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of courses of instruction in electronic data processing or any other subject, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that employment is being offered when the real purpose of the offer is to obtain leads to prospective purchasers of respondents' courses.

2. (a) Representing, directly or by implication, that respondents' school is well established or that respondents possess the requisite equipment and facilities for providing the resident training which is a part of respondents' courses of instruction: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that respondents' school is well established and respondents have the physical facilities, equipment, instructional material, personnel and other resources necessary to provide training of the quality needed to obtain the stated objectives of respondents' courses.

(b) Misrepresenting in any manner the length of time that respondents' school has been in existence.

3. (a) Representing, directly or by implication, that respondents provide a placement service: *Provided, however,* It shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that they operate an active and effective service to assist persons completing respondents' courses to obtain employment in the positions for which such persons have been trained.

(b) Representing, directly or by implication, that persons completing respondents' courses are assured of placement in the geographical area of their choice; or misrepresenting in any manner respondents' ability or facilities for assisting graduates in finding employment.

4. Representing, directly or by implication, that respondents provide interest free tuition loans; or representing in any manner that payment of the cost of respondents' courses in installments will involve no interest or other costs in addition to the cash price of the course.

5. Representing, directly or by implication, that when the cost of respondents' courses is to be paid in installments, payment need not be completed until after the resident training has been completed and the graduate has obtained employment: *Provided, however,* It shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that in each instance when such representation is made, an express provision to that effect is endorsed on the enrollment contract and completion of payment is not required until after the course is completed and the graduate obtains employment.

6. Representing, directly or by implication, that respondents' school or courses have been accredited or approved by the International Business Machines Corporation (IBM) or respondents' school is sponsored by or in any other way affiliated with IBM; or misrepresenting in any manner the status or affiliation of respondents' salesmen, their representatives or their school.

7. (a) Representing, directly or by implication, that there is any limitation on the number of persons who can be enrolled in respondents' courses: *Provided, however,* That nothing herein shall be deemed to prohibit respondents from making truthful and nondeceptive references to the maximum number of students who can be provided resident training at any given time.

(b) Misrepresenting in any manner the selectivity exercised by respondents in enrolling students in their courses.

8. (a) Representing, directly or by implication, that upon completion of respondents' courses, graduates will obtain employment with a starting salary of $350 per month or any other specific salary or range of salaries: *Provided, however,* It shall be a defense in any enforcement proceeding insti-

tuted hereunder for respondents to establish that the represented starting salaries are typical of those obtained by such persons.

(b) Misrepresenting in any manner the earnings of persons completing respondents' courses of instruction.

*It is further ordered,* That respondents shall deliver, and obtain acknowledgment of receipt thereof, a copy of this order to all sales agents, representatives or other persons who solicit enrollments in respondents' courses.

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

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## IN THE MATTER OF

## ELNORA C. KINCAID DOING BUSINESS AS BROADWAY HOBBY HOUSE

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

*Docket C-1204. Complaint, May 8, 1967—Decision, May 8, 1967*

Consent order requiring a Seattle, Wash., retailer of hobby and handicraft materials to cease importing or selling any highly flammable fabric dangerous to the wearer.

### COMPLAINT

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

PARAGRAPH 1. Respondent Elnora C. Kincaid is an individual doing business as Broadway Hobby House. Respondent is a retailer of hobby and handicraft materials with her office and prin-

cipal place of business located at 618 Broadway East, Seattle, Washington.

PAR. 2. Respondent, subsequent to July 1, 1954, the effective date of the Flammable Fabrics Act, has 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, fabric, as the term is defined therein, which fabric was, under Section 4 of the Flammable Fabrics Act, as amended, so highly flammable as to be dangerous when worn by individuals.

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

## DECISION AND ORDER

The 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 Flammable Fabrics 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 Elnora C. Kincaid is an individual doing busi-

ness under the name Broadway Hobby House, with her office and principal place of business located at 618 Broadway East, Seattle, Washington.

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 Elnora C. Kincaid, an individual doing business as Broadway Hobby House, or under any other trade name, and respondent's representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from:

(a) Importing into the United States; or

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

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

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

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

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## IN THE MATTER OF

## DEAN FOODS COMPANY ET AL.

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

*Docket 8674. Complaint, Dec. 22, 1965—Decision, May 22, 1967*

Order modifying a divesture order dated November 14, 1966, 70 F.T.C. 1146, requiring a food products company to divest itself of certain acquisitions by substituting a new plan of divestiture agreed upon between the Commission and the company and affirmed on April 21, 1967, by the Court of Appeals, Seventh Circuit.

MODIFIED ORDER

Dean Foods Company, having filed in the United States Court of Appeals for the Seventh Circuit on December 8, 1966, a petition to review and set aside the order of divestiture issued herein on November 14, 1966 [70 F.T.C. 1146]; and the Commission and Dean Foods Company, having subsequently agreed upon a plan of divestiture and upon the provisions of a final order modifying the order entered by the Commission on November 14, 1966; and the Court on April 21, 1967 [8 S.&D. 474], having issued its final decree affirming and enforcing said order as submitted by the Commission and Dean Foods Company;

*Now, therefore, it is hereby ordered,* That the order of November 14, 1966, be, and it hereby is, modified in accordance with the final decree of the Court to read as follows:

*It is ordered,* That:

I

Respondent Dean Foods Company ("Dean"), a corporation, through its officers, directors, agents, representatives and employees, shall divest itself absolutely, in good faith, and as a unit, of all right, title and interest and all assets, properties, rights and privileges, tangible and intangible, including without limitation all manufacturing plants, equipment and operating facilities, lands, leases and the warehousing facilities, delivery equipment, machinery, inventory, customer lists and good will of the dairy products businesses located in Columbus (Ohio), Terre Haute (Indiana), Bettendorf (Iowa), Racine (Wisconsin), and Tomah (Wisconsin), and the "Bowman" trade name and related trademarks acquired by Dean as a result of its acquisition of certain assets of Bowman Dairy Company ("Bowman") pursuant to their purchase agreement of December 13, 1965, together with all additions and improvements thereto which are presently utilized or which may hereafter and prior to divestiture be utilized by Dean in its operation of the above-specified businesses, to a purchaser approved by the Federal Trade Commission who shall operate said businesses as a going concern in the dairy industry.

II

Respondent Dean, a corporation, through its officers, directors, agents, representatives and employees, shall divest itself absolutely, in good faith to the purchaser of the assets required to be divested pursuant to Section I of this Order, of all right, title and

interest and all assets, properties, rights and privileges, tangible and intangible, including without limitation all inventory, delivery equipment, customer lists and good will of the dairy products businesses located in Cleveland (Ohio) and New Albany (Indiana) acquired by Dean as a result of its acquisition of certain assets of Bowman pursuant to their purchase agreement of December 13, 1965, together with all additions and improvements thereto which are presently utilized or which may hereafter be utilized by Dean in its operation of the above-specified businesses, but excluding manufacturing plants, lands, and processing machinery, and equipment: *Provided, however*, That Dean may divest separately the Cleveland assets required to be divested pursuant to this Section, exclusive of the "Bowman" trade name and related trademarks which Dean shall divest in accordance with Section I of this Order, to a separate purchaser approved by the Commission who shall operate said assets as a going concern in the dairy industry.

III

Respondent Dean, a corporation, through its officers, directors, agents, representatives and employees, shall divest itself absolutely, in good faith, and as a unit, of all right, title and interest and all assets, properties, rights and privileges, tangible and intangible, including without limitation all manufacturing plants, equipment and operating facilities, lands, leases, warehousing facilities, delivery equipment, machinery, inventory, trade names, trademarks and good will of the dairy products business located at Saginaw (Michigan) acquired by Dean as a result of its acquisition of certain assets of Bowman pursuant to their purchase agreement of December 13, 1965, together with all additions and improvements thereto which are presently utilized or which may hereafter and prior to divestiture be utilized by Dean in its operation of that business, but not including the "Bowman" trade name and related trademarks which Dean shall divest in accordance with Section I of this Order, to a purchaser approved by the Federal Trade Commission who shall operate that business as a going concern in the dairy industry.

IV

Respondent Dean, a corporation, through its officers, directors, agents, representatives and employees, within ten (10) days after the date of service upon it of this Order, shall begin to offer, and continue to make good faith efforts to divest the dairy prod-

ucts businesses required to be divested pursuant to Section I through III of this Order, to the end that such divestitures shall be fully completed no later than two (2) years from the effective date of this Order: *Provided, however,* That if Dean shall fail to effect such divestitures despite its good faith efforts, it may apply to the Federal Trade Commission for an extension of time or such other relief as may be appropriate under Rule 3.28 of the Commission's Rules of Practice for Adjudicative Proceedings. Upon Dean's application and showing of its good faith efforts to divest, the Commission shall, in its discretion, either grant an extension of time or order such other relief as it may deem appropriate: *Provided, however,* That such other relief shall be no broader than that provided for in this Order.

V

Notwithstanding the provisions of Sections I through III of this Order, respondent Dean shall be entitled to the exclusive use of the "Bowman" trade name and related trademarks in sales of dairy products (Standard Industrial Classification Group No. 202) to Dean customers using the "Bowman" trade name as of the effective date of this Order, within the Illinois counties of Lake, Cook, DuPage, Will and Kane for a period of six (6) months from the effective date of this Order: *Provided, however,* That at the option of the purchaser of the assets required to be divested pursuant to Section I of this Order, Dean shall make available to such purchaser, for a period of two (2) years commencing at the expiration of the above-mentioned six (6) month period, dairy products under the "Bowman" trade name for sale within the above-mentioned Illinois counties at a negotiated price or at the lowest *bona fide* price available to such purchaser within the above-mentioned Illinois counties.

VI

The Bowman businesses required to be divested pursuant to Sections I through III of this Order shall not be sold or transferred, directly or indirectly, to any person who, at the time of divestiture, is a stockholder, officer, director, employee or agent of, or otherwise directly or indirectly connected with, or under the control or influence of, Dean or any of Dean's subsidiaries or affiliated companies, or who owns or controls, directly or indirectly, more than one (1) percent of the outstanding stock of Dean.

VII

Pending effectuation of the divestitures required by Section I through III of this Order, Dean shall not, except with the approval of the Federal Trade Commission, make any material changes, directly or indirectly, with respect to the Bowman assets or businesses required to be divested, including the operation and policies affecting said assets and businesses, except such changes which may be required in the ordinary course of business or which may be required to improve the salability of said assets and businesses or to prevent the impairment of value of said assets and businesses: *Provided, however,* That pending the divestitures required by Sections II and III of this Order, Dean may transfer production from the New Albany (Indiana), Cleveland (Ohio) and Saginaw (Michigan) facilities to Dean facilities, with the understanding that Dean will make no change in labeling, delivery of products or billing of customers.

VIII

Respondent Dean, a corporation, for a period of ten (10) years from the date this Order becomes final, shall cease and desist from acquiring, directly or indirectly, by any device or through subsidiaries or otherwise, the whole or any part of the stock, share capital, or assets (other than products sold in the regular course of business), of any firm engaged in the manufacture, processing, distribution or sale of dairy products, without the prior approval of the Federal Trade Commission.

IX

Respondent Dean, a corporation, within thirty (30) days from the effective date of this Order, and every ninety (90) days thereafter until it has fully complied with Sections I through VII of this Order, shall submit in writing to the Federal Trade Commission a compliance report setting forth in detail the manner and form in which it intends to comply, is complying, or has complied with Sections I through VII of this Order. All compliance reports shall include without limitations a specification of the steps taken by Dean to inform brokers, investment bankers and prospective purchasers of its desire to sell those assets, a list of all persons, including dairy and nondairy companies, bankers, brokers and management consultant firms to whom this notice of sale has been given, a summary of all discussions and negotiations, together with the identity of all such potential pur-

chasers or intermediaries with whom these discussions or negotiations were undertaken and copies of all written communications to and from all such intermediaries or potential purchasers and all contracts entered into with purchasers.

X

Respondent Dean, a corporation, within thirty (30) days from the effective date of this Order, and annually thereafter until it has fully complied with Section VIII of this Order, shall file with the Federal Trade Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, or has complied with Section VIII of this Order.

XI

As used in this Order, the word "person" shall include all members of the immediate family of the individual specified and shall include corporations, partnerships, associations and other legal entities as well as natural persons.

Commissioner Elman not participating.

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IN THE MATTER OF

## ROBERT J. MUEHE, DOING BUSINESS AS BOB'S FLORETTE

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

*Docket C-1205. Complaint, May 22, 1967—Decision, May 22, 1967*

Consent order requiring a Denver, Colorado, retailer of handicraft materials to cease importing and selling any fabric so highly flammable as to be dangerous when worn.

### COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Robert J. Muehe, an individual doing business as Bob's Florette, hereinafter referred to as respondent, has violated the provisions of said Acts and the Rules and Regulations promulgated under the Flammable Fabrics Act and it appearing to the Commission that a proceeding by it in respect

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

PARAGRAPH 1. Respondent Robert J. Muehe is an individual doing business as Bob's Florette. Respondent is a retailer of handicraft materials with his office and principal place of business located at 4401 Tennyson Street, Denver, Colorado.

PAR. 2. Respondent, subsequent to July 1, 1954, the effective date of the Flammable Fabrics Act, has 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, fabric, as that term is defined therein, which fabric was, under Section 4 of the Flammable Fabrics Act, as amended, so highly flammable as to be dangerous when worn by individuals.

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

## DECISION AND ORDER

The 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 Flammable Fabrics 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 Robert J. Muehe is an individual doing business under the name Bob's Florette, with his office and principal place of business located at 4401 Tennyson 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

*It is ordered,* That respondent Robert J. Muehe, an individual doing business as Bob's Florette, 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:

(a) Importing into the United States; or

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

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

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

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

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IN THE MATTER OF

## SCARSDALE QUILTING MILLS, INC., ET AL.

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

*Docket C-1206. Complaint, May 23, 1967—Decision, May 23, 1967*

Consent order requiring a Tupelo, Mississippi, textile manufacturer to cease misbranding its textile fiber and wool products, failing to keep required records, and furnishing false guaranties on its textile fiber products.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Wool Products Labeling Act of 1939 and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Scarsdale Quilting Mills, Inc., a corporation, and Robert Kutak, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939 and the Textile Fiber Products Identification Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Scarsdale Quilting Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Mississippi.

Respondent Robert Kutak is an officer of said corporate respondent. He formulates, directs and controls the acts, practices and policies of said corporate respondent.

Respondents are engaged in the manufacture and sale of wool and textile fiber products, including quilted fabrics, with their office and principal place of business located at Tupelo, Mississippi.

PAR. 2. Respondents, now and for some time last past, have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, shipped, and offered for sale, in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products as "wool product" is defined therein.

PAR. 3. Certain of said wool products were misbranded by the respondents within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act of 1939 and 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 quilted fabrics stamped, tagged, labeled, or otherwise identified by respondents as 90% Acrylic, 10% Unknown Fibers, whereas in truth and in fact, said products contained woolen

fibers as well as substantially different fibers and amounts of fibers other 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, was a wool product with a label on or affixed thereto which failed to disclose the percentage of the total fiber weight of the said wool product, exclusive of ornamentation not exceeding 5% of the total fiber weight, of (1) wool; (2) reprocessed wool; (3) reused wool; (4) each fiber other than wool, when said percentage by weight of such fiber was 5% or more; and (5) the aggregate of all other fibers.

PAR. 5. The acts and practices of the respondents as set forth 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 methods of competition and unfair and deceptive acts and practices, in commerce within the meaning of the Federal Trade Commission Act.

PAR. 6. Respondents, for some time last past have been, and are now, engaged in the introduction, delivery for introduction, manufacture for introduction, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, and the importation into the United States, of textile fiber products; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, textile fiber products, which had 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. 7. Certain of said textile fiber products were misbranded by respondents within the intent and meaning of Section 4(a) of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder in that they were falsely and deceptively stamped, tagged, labeled, invoiced, advertised, or otherwise identified as to the name of the constituent fibers contained therein.

Among such misbranded textile fiber products, but not limited thereto, were quilted fabrics that were labeled as 90% Acrylic, 10% Other Fibers, whereas, in truth and in fact, such products contained substantially different fibers and amounts of fibers other than as represented.

PAR. 8. Certain of the textile fiber products were misbranded by respondents in that they were not stamped, tagged, labeled, or otherwise identified to show each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act, and in the manner and form prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded textile fiber products, but not limited thereto, were quilted fabrics with labels which failed:

(1) To disclose the true percentage of the fibers present by weight; and

(2) To disclose the true generic names of the fibers present.

PAR. 9. Respondents have failed to maintain proper records showing the fiber content of the textile fiber products manufactured by them, in violation of Section 6 of the Textile Fiber Products Identification Act and Rule 39 of the Regulations promulgated thereunder.

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

PAR. 11. The acts and practices of respondents, as set forth above were, and are, in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices in commerce, under the Federal Trade Commission Act.

## DECISION AND ORDER

The 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, the Wool Products Labeling Act of 1939 and the Textile Fiber Products Identification Act; and

The respondents and counsel for the Commission having there-

after 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 Scarsdale Quilting Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Mississippi, with its office and principal place of business located at Tupelo, Mississippi.

Respondent Robert Kutak is an officer of said corporation and his address is the same as that of said corporation.

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

ORDER

*It is ordered,* That respondents Scarsdale Quilting Mills, Inc., a corporation, and its officers, and Robert Kutak, 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, or manufacture for introduction, into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

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

2. Failing to securely affix to, or place on, each such product a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

*It is further ordered,* That respondents Scarsdale Quilting Mills, Inc., a corporation, and its officers, and Robert Kutak, 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, delivery for introduction, manufacture for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by:

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

2. Failing to affix a stamp, tag, label, or other means of identification to each such product showing in a clear, legible and conspicuous manner each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

B. Failing to maintain and preserve proper records showing the fiber content of the textile fiber products manufactured by said respondents, as required by Section 6 of the Textile Fiber Products Identification Act and Rule 39 of the Regulations promulgated thereunder.

*It is further ordered,* That respondents Scarsdale Quilting Mills, Inc., a corporation, and its officers, and Robert Kutak, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from furnishing a false guaranty that any textile fiber product is not misbranded or falsely invoiced under the provisions of the Textile Fiber Products Identification Act.

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

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IN THE MATTER OF

## BIANCHINI, FERIER, INC.

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

*Docket C-1207. Complaint, May 23, 1967—Decision, May 23, 1967*

Consent order requiring a New York City distributor of fabrics to cease importing and selling fabrics so highly flammable as to be dangerous when worn.

### COMPLAINT

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

PARAGRAPH 1. Respondent Bianchini, Ferier, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

The respondent is engaged in the sale and distribution of fabrics, with its office and principal place of business located at 663 Fifth Avenue, New York, New York.

PAR. 2. Respondent, subsequent to July 1, 1954, the effective date of the Flammable Fabrics Act, has 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, fabric, as that term is defined therein, which fabric was,

under Section 4 of the Flammable Fabrics Act, as amended, so highly flammable as to be dangerous when worn by individuals.

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

## DECISION AND ORDER

The 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 Flammable Fabrics 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 Bianchini, Ferier, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 663 Fifth Avenue, New York, 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 Bianchini, Ferier, Inc., a corporation, and its officers, and respondent's representatives, agents

and employees, directly or through any corporate or other device do forthwith cease and desist from:

(a) Importing into the United States; or

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

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

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

*It is further ordered,* That respondent's report of compliance with the order herein, dated March 28, 1967, and submitted simultaneously to the Commission with the agreement containing consent order to cease and desist, be received and filed.

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## IN THE MATTER OF

## NAT MORGAN

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

*Docket C-1208. Complaint, May 23, 1967—Decision, May 23, 1967*

Consent order requiring a New York City manufacturing furrier to cease misbranding and falsely invoicing his fur products.

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

PARAGRAPH 1. Respondent Nat Morgan is an individual trading as Nat Morgan.

Respondent is a manufacturer of fur products with his office

and principal place of business located at 370 West 35th Street, New York, New York.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the introduction into commerce, and in the manufacture for introduction into commerce, and in the sale, advertising, and offering for sale in commerce, and in the transportation and distribution in commerce, of fur products; and has manufactured for sale, sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of furs which have been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were misbranded in that they were falsely and deceptively labeled to show that fur contained therein was natural, when in fact such fur was pointed, bleached, dyed, tip-dyed, or otherwise artificially colored, in violation of Section 4(1) of the Fur Products Labeling Act.

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

Among such misbranded fur products, but not limited thereto, were fur products with labels which failed to disclose that the fur contained in the fur product was bleached, dyed, or otherwise artificially colored, when such was the fact.

PAR. 5. Certain of said fur products were misbranded in violation of the Fur Products Labeling Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

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

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

PAR. 6. Certain of said fur products were falsely and deceptively invoiced by the respondent 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 any such fur product.

2. To disclose that the fur contained in the fur products was bleached, dyed, or otherwise artificially colored, when such was the fact.

PAR. 7. Certain of said fur products were falsely and deceptively invoiced in that said fur products were invoiced to show that the fur contained therein was natural, when in fact such fur was pointed, bleached, dyed, tip-dyed, or otherwise artificially colored, in violation of Section 5(b)(2) of the Fur Products Labeling Act.

PAR. 8. Certain of said fur products were falsely and deceptively invoiced with respect to the name or designation of the animal or animals that produced the fur from which the said fur products had been manufactured, in violation of Section 5(b)(2) of the Fur Products Labeling Act.

Among such falsely and deceptively invoiced fur products, but not limited thereto, were fur products which were invoiced as "Balkan Cat" when in truth and in fact such animal name does not appear in the Fur Products Name Guide.

PAR. 9. 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) Required item numbers were not set forth on invoices, in violation of Rule 40 of said Rules and Regulations.

PAR. 10. The aforesaid acts and practices of respondent, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

## DECISION AND ORDER

The Federal Trade Commission having initiated an investiga-

tion 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 Fur Products Labeling 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 Nat Morgan is an individual trading as Nat Morgan, with his office and principal place of business located at 370 West 35th Street, New York, 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 Nat Morgan, an individual trading as Nat Morgan or any other name, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding any fur product by:

1. Failing to affix a label to such fur product showing in words and in figures plainly legible all of the information required to be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act.

2. Representing, directly or by implication, on a label that the fur contained in such fur product is natural when such fur is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

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

4. Failing to set forth on a label the item number or mark assigned to such fur product.

B. Falsely or deceptively invoicing any fur product by:

1. Failing to furnish an invoice, 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 on an invoice pertaining to such fur product any false or deceptive information with respect to the name or designation of the animal or animals that produced the fur contained in such fur product.

3. Representing directly or by implication on an invoice that the fur contained in such fur product is natural when such fur is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

4. 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.

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

6. Failing to set forth on an invoice the item number or mark assigned to such fur product.

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

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IN THE MATTER OF

## GRAMERCY MILLS, INC., ET AL.

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

*Docket C-1209. Complaint, May 23, 1967—Decision, May 23, 1967*

Consent order requiring a Passaic, N.J., manufacturer of children's swimwear to cease misbranding and falsely advertising its textile fiber products.

### COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Gramercy Mills, Inc., a corporation, and A & S Sales Corporation, a corporation, and Simon Glasser and Arthur Glasser, individually and as officers of said corporations, sometimes hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Textile Fiber Products Identification Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Gramercy Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey. Said corporation is engaged in the manufacture and sale of textile fiber products, including children's swimwear, with its office and principal place of business located at 435 Van Houten Avenue, Passaic, New Jersey.

Respondent A & S Sales Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey. With regard to certain accounts, said corporation acts as a selling agent for corporate respondent

Gramercy Mills, Inc., with its office and principal place of business located at 435 Van Houten Avenue, Passaic, New Jersey.

Respondents Simon Glasser and Arthur Glasser are officers of corporate respondents Gramercy Mills, Inc., and A & S Sales Corporation. They formulate, direct and control the policies, acts and practices of said corporations and their address is 435 Van Houten Avenue, Passaic, New Jersey.

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

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

Among such misbranded textile fiber products, but not limited thereto, were children's swimsuits labeled by respondents as "50% Nylon, 50% Cotton" and "75% Cotton, 25% Nylon" whereas, in truth and in fact, such fabrics contained substantially different amounts of fibers other than as represented.

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

Among such textile fiber products, but not limited thereto, were children's swimsuits without labels, and some with labels which failed:

(a) To disclose the true generic names of the fibers present; and

(b) To disclose the true percentage of the fibers present by weight; and

(c) To set forth 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 of the Textile Fiber Products Identification Act with respect to such product.

PAR. 5. Certain of said textile fiber products were falsely and deceptively advertised in that respondents in making disclosures or implications as to the fiber content of such textile fiber products in written advertisements used to aid, promote, and to assist, directly or indirectly, in the sale or offering for sale of said products, failed to set forth the required information as to fiber content as specified by Section 4(c) of the Textile Fiber Products Identification Act and in the manner and form prescribed by the Rules and Regulations promulgated under said Act.

Among such textile fiber products, but not limited thereto, were children's swimsuits which were falsely and deceptively advertised by means of printed matter, in brochure form, distributed by the respondents to customers and salesmen in various parts of the United States. The aforesaid swimsuits were described by means of such terms as "Gingham," "Sharkskin," "Denim," "Arnel" and "Madras," and the true generic names of the fibers contained in such products were not set forth.

PAR. 6. 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.

## 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 Textile Fiber Products Identification Act; and

The respondents and counsel for the Commission having there-

after 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 Gramercy Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 435 Van Houten Avenue, Passaic, New Jersey.

Respondent A & S Sales Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 435 Van Houten Avenue, Passaic, New Jersey. With regard to certain accounts, said corporation acts as selling agent for respondent Gramercy Mills, Inc.

Respondents Simon Glasser and Arthur Glasser are officers of said corporations and their address is the same as that of said corporations.

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 Gramercy Mills, Inc., a corporation, and its officers, and A & S Sales Corporation, a corporation, and its officers, and Simon Glasser and Arthur Glasser, individually and as officers of said corporations, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, manufacture for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce; or in

connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by:

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

2. Failing to affix a stamp, tag, label, or other means of identification to each such product showing each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

B. Falsely and deceptively advertising textile fiber products by making any representations, by disclosure or by implication, as to fiber content of any textile fiber product in any written advertisement which is used to aid, promote, or assist, directly or indirectly, in the sale or offering for sale of such textile fiber product unless the same information required to be shown on the stamp, tag, label, or other means of identification under Section 4(b)(1) and (2) of the Textile Fiber Products Identification Act is contained in the said advertisement, except that the percentages of a fiber present in the textile fiber product need not be 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.

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## IN THE MATTER OF

## CALIFORNIA SPORTSWEAR COMPANY ET AL.

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

*Docket C-1210. Complaint, May 25, 1967—Decision, May 25, 1967*

Consent order requiring a Los Angeles, Calif., clothing manufacturer to cease misbranding its wool products.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that California Sportswear Company, a corporation, and Samuel Tyco Cohen, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the 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 California Sportswear Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of California.

Individual respondent Samuel Tyco Cohen is an officer of the corporate respondent. He formulates, directs and controls the acts, practices and policies of said corporation, including the acts and practices hereinafter referred to.

Respondents are manufacturers of leather coats and wool products with their office and principal place of business located at 1030 S. Maple Avenue, Los Angeles, California.

PAR. 2. Respondents now, and for sometime last past, have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, shipped, and offered for sale, in commerce, as "commerce" is defined in said Wool Products Labeling Act of 1939, wool products as "wool product" is defined therein.

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

Among such misbranded wool products, but not limited thereto, were coats stamped, tagged, labeled, or otherwise identified as containing 40% wool, 35% reprocessed wool, 15% unknown reprocessed fabric, 10% other fibers, whereas in truth and in fact, such wool products 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, was a wool product, namely a coat, with a label 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) wool; (2) reprocessed wool; (3) reused wool; (4) each fiber other than wool, when said percentage by weight of such fiber was 5 percentage or more; (5) the aggregate of all other fibers.

PAR. 5. The acts and practices of the respondents as set forth above were, and are, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

## DECISION AND ORDER

The 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 California Sportswear Company 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 1030 South Maple Avenue, Los Angeles, California.

Respondent Samuel Tyco Cohen is an officer of said corporation and his address is the same as that of said corporation.

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

ORDER

*It is ordered*, That respondents California Sportswear Company, a corporation, and its officers, and Samuel Tyco Cohen, 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, or manufacture for introduction, into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

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

2. Failing to securely affix to, or place on, each such product a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

*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

# MONITEAU MILLS, 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–1211. Complaint, May 26, 1967—Decision, May 26, 1967*

Consent order requiring a California, Mo., fabric manufacturer to cease misbranding its wool products.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Moniteau Mills, Inc., a corporation, and Frank A. Peck, individually and as an officer of said corporation, and Andrew H. Strickfaden, individually and as plant manager 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 Moniteau Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri.

Individual respondent Frank A. Peck is president of said corporation. Individual respondent Andrew H. Strickfaden is the plant manager of said corporation. The individual respondents are responsible for and formulate the acts, practices and policies of said corporation, including the acts and practices hereinafter referred to.

Respondents are manufacturers of wool products (fabric) with their office and principal place of business located at California, Missouri.

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

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

Among such misbranded wool products, but not limited thereto, were fabrics stamped, tagged, labeled, or otherwise identified as containing all wool whereas in truth and in fact, such fabrics contained substantially different fibers and 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 wool products namely fabrics with labels on or affixed thereto, which failed to disclose the percentage of the total fiber weight of the wool products exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (1) wool; (2) reprocessed wool; (3) reused wool; (4) each fiber other than wool, when said percentage by weight of such fiber was 5 percentage or more; (5) the aggregate of all other fibers.

PAR. 5. The acts and practices of the respondents as set forth above were, and are, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

## DECISION AND ORDER

The 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 Moniteau Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at California, Missouri.

Respondents Frank A. Peck and Andrew H. Strickfaden are president and plant manager, respectively, 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 Moniteau Mills, Inc., a corporation, and its officers, and Frank A. Peck, individually and as an officer of said corporation, and Andrew H. Strickfaden, individually and as plant manager of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding of such products by:

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

2. Failing to securely affix to, or place on, each such product a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner each element of infor-

mation required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

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

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IN THE MATTER OF

## ROYAL CONSTRUCTION COMPANY TRADING AS ATLAS ALUMINUM COMPANY ET AL.

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

*Docket 8690. Complaint, June 27, 1966—Decision, June 1, 1967*

Order requiring a Memphis, Tenn., home improvement firm to cease using false pricing, guarantee and "free" claims, deceptive time limited offers, "bait" tactics, and other misrepresentations in selling aluminum siding and other 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 Royal Construction Company, a corporation, trading as Atlas Aluminum Company, and Bernard Kleiman, Molly T. Kleiman and Eugene B. Kleiman, 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 Royal Construction Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located, 3214 Summer Avenue, Memphis, Tennessee, and formerly located at 224 East Gaston Street, Greensboro, North Carolina.

At various times during the past few years Royal Construction Company has used the trade name Atlas Aluminum Company.

Respondents Bernard Kleiman, Molly T. Kleiman and Eugene

*Respondent Mollie T. Kleiman erroneously referred to as Molly T. Kleiman in the complaint.

B. Kleiman are officers of the corporate respondent. They cooperate and act together in formulating, directing and controlling the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their business address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the offering for sale, sale, distribution and installation of various items of home improvements, including aluminum siding, to the purchasing 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 North Carolina 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. Respondents also introduced advertising circulars and other promotional material in commerce as "commerce" is defined in the Federal Trade Commission Act for the purpose of inducing the sales of their products.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the purchase of their products, respondents have made numerous statements and representations in advertising circulars and other promotional material respecting the nature of their offer, price, time limitations, quality and free gifts. Typical and illustrative of the foregoing, but not all inclusive thereof, is the following:

S A V E !
—Limited Time Only—
Aluminum Siding Sale
BIG SAVINGS DURING
THIS SALE
S P E C I A L
OUR REGULAR—$569$^{00}$
ALUMINUM SIDING
NOW ONLY
$ 2 4 9 $^{00}$
COMPLETELY INSTALLED
NO EXTRAS
A L U M I N U M S I D I N G
IN BEAUTIFUL DECORATOR COLORS
As Low As
$ 2 4 9 $^{00}$
Installed With All Costs of Labor And
Material for Average Home of 1000 Sq. Ft.

FREE BONUS GIFT!
If You Mail This Card Now We Will Include
FREE: • RADIO CLOCK WITH ALARM OR
• 10,000 Top Value Stamps with
Purchase of Aluminum Siding Special
FREE
Clock Radio
With Alarm
—or—
10,000
S & H
Green
Stamps
If
You
Act
NOW!

PAR. 5. By and through the use of the aforesaid statements and representations, and others of similar import and meaning not specifically set out herein, and through oral statements made by their salesmen and representatives, respondents have represented, directly or by implication, that:

1. The offer set forth in said advertisement was a bona fide offer to sell said siding material of the kind therein described at the prices and on the terms and conditions stated.

2. The offer set forth in said advertisement was for a limited time only.

3. That respondents' products are being offered for sale at special or reduced prices, and that savings are thereby afforded purchasers from respondents' regular selling prices.

4. Homes of prospective purchasers had been specially selected as model homes for the installation of respondents' siding; after installation such homes would be used for demonstration and advertising purposes 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.

5. Their siding materials are unconditionally guaranteed.

6. All persons who purchase said aluminum siding would receive either a clock radio with alarm, 10,000 Top Value Stamps or 10,000 S & H Green Stamps.

PAR. 6. In truth and in fact:

1. The offer set forth above, was not a genuine or bona fide offer but was made for the purpose of obtaining leads as to persons interested in the purchase of respondents' products. After

obtaining such leads, respondents, their salesmen or representatives would call upon such persons at their homes or wait upon them at respondents' place of business. At such times and places, respondents, their salesmen or representative would disparage the advertised aluminum siding and otherwise discourage the purchase thereof and would attempt to sell, and did sell, different and more expensive aluminum siding.

2. The offer set forth above, was not for a limited time only. Said merchandise was advertised regularly at the represented prices and on the terms and conditions therein stated.

3. Respondents' products are not being offered for sale 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 resistance of the prospective purchaser.

4. Homes of prospective purchasers are not specially selected as model homes for installations of respondents' siding; after installations such homes are not used for demonstration and advertising purposes by respondents; and purchasers, as a result of allowing their homes to be used as models, are not granted reduced prices, nor did they receive allowances, discounts or commissions.

5. Respondents' siding materials are not unconditionally guaranteed. Such guarantee as may have been provided was subject to numerous terms, conditions and limitations, and the guarantee failed to set forth the nature and extent of the guarantee, the identity of the guarantor, and the manner in which the guarantor, would perform thereunder.

6. Many of the individuals who purchased respondents' aluminum siding did not receive either a clock radio with alarm, 10,000 Top Value Stamps, or 10,000 S & H Green Stamps.

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

PAR. 7. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of aluminum siding and other building materials of the same general kind and nature as that sold by respondents.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices

has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

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

*Mr. John T. Walker* and *Mr. Stanley W. Brown, Jr.*, supporting the complaint.

*Mr. Joseph J. Lyman* and *Mr. Jacob A. Stein*, of Washington, D.C., for respondents.

INITIAL DECISION BY DONALD R. MOORE, HEARING EXAMINER

JANUARY 30, 1967

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## PRELIMINARY STATEMENT*

The complaint in this proceeding was issued by the Federal Trade Commission on June 27, 1966, and was duly served on all respondents. It charges respondents with violation of Section 5 of the Federal Trade Commission Act. Specifically, it alleges mis-

*Respondent Mollie T. Kleiman erroneously referred to as Molly T. Kleiman in the complaint. See footnote 7.

representation in the sale of home improvements, including aluminum siding. Respondents filed on July 15, 1966, a Motion for a More Definite Statement, to which counsel supporting the complaint filed answer in opposition on July 25, 1966. The motion was denied by the examiner on July 25, 1966, and respondents filed answer on August 1, 1966, generally denying the allegations of the complaint.

At a prehearing conference on August 8, 1966, the complaint was amended to reflect the current business address of respondents (Prehearing Conference Transcript, pp. 9–10; Order Confirming Amendment of Complaint, October 7, 1966), and respondents admitted certain factual allegations of the complaint while continuing to deny any violation of law.

At the prehearing conference, complaint counsel voluntarily furnished to respondents' counsel copies of questionnaire responses signed by witnesses scheduled to testify on behalf of the Government (Prehearing Conference Transcript, pp. 53–55). Complaint counsel also furnished to the examiner for *in camera* inspection the interview reports relating to such prospective witnesses, with the understanding that if the examiner found they were producible to respondents under Commission precedents interpreting the Jencks Act, 18 U.S.C. § 3500, they might be given to respondents in advance of the hearing. After inspection, the examiner ruled that there was no basis for making the reports available to respondents (Order Denying Respondents Access to Interview Reports, October 7, 1966). Meanwhile, on August 19, 1966, respondents filed a motion for the production and disclosure of other documents. This motion was opposed by complaint counsel (see answer filed October 5, 1966) and was certified to the Commission on October 7, 1966, with a recommendation that it be denied. By order filed October 17, 1966, the Commission denied respondents' request for access to the documents.[2]

Hearings for the reception of testimony and other evidence in support of the complaint were held in Roanoke, Virginia, October 24–27, 1966, with a hearing for the reception of defense testimony and other evidence following in Washington, D.C., on November 1, 1966.[3]

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[2] Respondents renewed their request at the hearing (Tr. 181–95, 211–16, 276–78) and again in their Proposed Findings (p. 8), but the request was and is denied on the authority of the Commission's order of October 17, 1966.

[3] This deviation from § 3.16(d) of the Rules of Practice for Adjudicative Proceedings was authorized by Commission order of October 17, 1966, pursuant to the examiner's certificate of necessity filed on October 4, 1966.

At the hearings, testimony and other evidence were offered in support of and in opposition to the allegations of the complaint. Such testimony and evidence have been duly recorded and filed in the office of the Commission. The parties were represented by counsel and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues.

Proposed findings of fact and conclusions of law and a proposed form of order, accompanied by supporting briefs, have been filed by counsel supporting the complaint and by counsel for respondents.

Proposed findings not adopted, either in the form proposed or in substance, are rejected as not supported by the evidence or as involving immaterial matters.

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

As required by Section 3.21(b)(1) of the Commission's Rules of Practice, the Findings of Fact include references to principal supporting items in the record. Such references to testimony and exhibits are thus intended to comply with that rule and to serve as convenient guides to the principal items of evidence supporting the findings of fact, but those record references do not necessarily represent complete summaries of the evidence considered in arriving at such findings. Where reference is made to proposed findings submitted by the parties, such references are intended to include their citations to the record.

References to the record are made in parentheses, and certain abbreviations are used:

| | |
|---|---|
| CB | Brief of complaint counsel |
| CPF | Proposed Findings, etc., of complaint counsel [4] |
| CX | Commission exhibits |
| p. | page |
| pp. | pages |
| Par. | Paragraph |
| RPF | Respondents' Proposed Findings, etc.[4] |
| RX | Respondents' exhibits |
| Tr. | Transcript [5] |

[4] References to the submittals of counsel are to *page numbers*—for example, CPF 19.

[5] Sometimes, references to testimony cite the name of the witness and the transcript page number without the abbreviation Tr.—for example, Wilson 292.

Counsel supporting the complaint may be variously referred to as complaint counsel, Government counsel, or the Government, and witnesses called by Government counsel may be referred to as Government witnesses.

## FINDINGS OF FACT

### *I. Respondents and Their Business*

Respondent Royal Construction Company (sometimes referred to herein as Royal, respondent corporation, or the corporate respondent) is a corporation organized, existing, and doing business under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 3214 Summer Avenue, Memphis, Tennessee, formerly located at 224 East Gaston Street, Greensboro, North Carolina.[6] On occasion during the past few years, Royal has used the trade name Atlas Aluminum Company. (Prehearing Conference Transcript, pp. 9–10; Order Confirming Amendment of Complaint, October 7, 1965; Tr. 18–19; CX 5 C.)

Royal Construction Company was organized in May 1964, succeeding a partnership between Mr. and Mrs. Kleiman that had operated under the same name in Greensboro, North Carolina, since about 1946 (Tr. 14–15; CX 3 A, C).

Respondents Bernard Kleiman, Mollie T. Kleiman,[7] and Eugene B. Kleiman are officers of the respondent corporation. They cooperate and act together in formulating, directing, and controlling the acts and practices of the respondent corporation, including the acts and practices described in these findings. Their business address is and has been the same as that of the respondent corporation.

Although respondents denied the allegations of the complaint concerning the joint responsibility of the Kleimans for corporate actions (Answer, Par. 1; Prehearing Conference Transcript, p. 8), the facts of record furnish the proof. Each individual respondent is and has been an officer of the corporation, as follows:

Bernard Kleiman—President (Tr. 12, 14).

Eugene B. Kleiman—Vice-President (Tr. 88).

Mollie T. Kleiman—Secretary-Treasurer (Tr. 57–58).

Bernard Kleiman and Eugene Kleiman also actively engage in selling (Tr. 15–16, 89), while Mrs. Kleiman supervises the office

[6] The record does not disclose the exact date that respondents moved from Greensboro to Memphis, but tax returns indicate that it was subsequent to April 30, 1965 (CXs 1 A, 2 A).

[7] Mrs. Kleiman's first name was misspelled in the complaint as Molly; see Tr. 57, 333; CXs 1 E–F, 2 E–F, and 3 C; RPF 1, 3.

with the assistance of her son, Eugene (Tr. 58). The respondent corporation is a closely held family corporation, with Mr. and Mrs. Kleiman each owning 37½ percent of the stock, and Eugene Kleiman owning 25 percent (Tr. 15, 17; CXs 1 F, 2 F). On the record as a whole, it is clear that the individual respondents have cooperated and acted together in formulating, directing, and controlling the acts and practices of the respondent corporation (Tr. 22, 40–42, 51, 53, 58–59, 86, 88–89, 363).

Respondents are now, and for some time have been, engaged in the offering for sale, sale, distribution, and installation of various items of home improvements, including aluminum siding. (The practices disclosed by this record relate primarily, if not exclusively, to the advertising and sale of aluminum siding.)

In the course and conduct of their business, respondents now cause, and for some time have caused, their products, when sold, to be shipped from their place of business in the States of North Carolina or Tennessee to purchasers located in various other States of the United States, and maintain, and have maintained, a substantial [8] course of trade in such products, in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondents also introduced advertising circulars and other promotional material in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing the sale of their products (Prehearing Conference Transcript, pp. 8–9; Prehearing Order, Par. 3, p. 4; Tr. 61).

In the course and conduct of their business, respondents are and have been in substantial competition in commerce with other corporations, firms, and individuals in the sale of aluminum siding and other building materials of the same general kind and nature as that sold by respondents (Tr. 27–28, 345, 347).

## *II. The Challenged Practices and Representations*

### *Summary Findings*

On the basis of his consideration of the testimony and other evidence, the examiner makes summary findings as follows:

In the course and conduct of their business, and for the purpose of inducing the purchase of their products, respondents have made numerous statements and representations in advertising circulars and other promotional material respecting the nature of their offer, price, time limitations, quality, and free gifts. Typical

[8] Gross sales approximated $440,000 between May 1, 1965, and April 30, 1966 (CX 2 A; Tr. 68).

and illustrative of such statements and representations, but not all-inclusive, is the following:

SAVE!
—Limited Time Only—
Aluminum Siding Sale
BIG SAVINGS DURING
THIS SALE
SPECIAL
OUR REGULAR—$569.00
ALUMINUM SIDING
NOW ONLY
$249.00
COMPLETELY INSTALLED
NO EXTRAS
ALUMINUM SIDING
IN BEAUTIFUL DECORATOR COLORS
As Low As
$249.00
Installed With All Costs of Labor And
Material for Average Home of 1000 Sq. Ft.
FREE BONUS GIFT!
If You Mail This Card Now We Will Include
FREE:
• RADIO CLOCK WITH ALARM OR
• 10,000 Top Value Stamps with
Purchase of Aluminum Siding Special
FREE
Clock Radio
With Alarm
—or—
10,000
S & H
Green
Stamps
If
You
Act
NOW!

(CXs 5 A–C, 20 B; Tr. 18, 34–35, 346; see also Tr. 59–60.)

By and through the use of such statements and representations, and others of similar import and meaning not specifically set out herein, and through oral statements made by their salesmen and representatives, respondents have represented, directly or by implication, that:

1. The offers set forth in such advertisements were bona fide offers to sell siding material of the kind described at the prices and on the terms and conditions stated.

2. The offers set forth in such advertisements were for a limited time only.

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

4. Homes of prospective purchasers had been specially selected as model homes for the installation of respondents' siding; after installation such homes would be used for demonstration and advertising purposes 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.

5. Their siding materials are unconditionally guaranteed.

6. All persons who purchase aluminum siding would receive either a clock radio with alarm, 10,000 Top Value Stamps, or 10,000 S & H Green Stamps.

In truth and in fact:

1. The advertised offers were not genuine or bona fide offers but were made for the purpose of obtaining leads to persons interested in the purchase of respondents' products. After obtaining such leads, respondents or their salesmen called upon them at their homes or dealt with them at respondents' place of business. At such times and places, respondents or their salesmen disparaged the advertised aluminum siding and otherwise discouraged its purchase and attempted to sell, and did sell, different and more expensive aluminum siding.

2. The advertised offers were not for a limited time only. Such merchandise was advertised regularly at the represented prices and on the terms and conditions therein stated.

3. Respondents' products are not being offered for sale at a special or reduced price, and savings are not granted respondents' customers because of a reduction from respondents' regular selling price. Respondents do not have a regular selling price, but the prices at which respondents' products are sold vary from customer to customer depending on the resistance of the prospective purchaser.

4. Homes of prospective purchasers are not specially selected as model homes for installations of respondents' siding; after installations, such homes are not used for demonstration and advertising purposes by respondents; and purchasers, as a result of allowing their homes to be used as models, are not granted reduced prices; nor do they receive allowances, discounts, or commissions.

5. Respondents' siding materials are not unconditionally guaranteed. Such guarantee as may have been provided was subject to numerous terms, conditions, and limitations, and the guarantee failed to set forth the nature and extent of the guarantee, the identity of the guarantor, and the manner in which the guarantor would perform.

6. Many of the individuals who purchased respondents' aluminum siding did not receive either a clock radio with alarm, 10,000 Top Value Stamps, or 10,000 S & H Green Stamps.

Therefore, respondents' statements and representations, as set forth herein (*supra*, pp. 770–772), were and are false, misleading and deceptive.

*Evidentiary Support for Summary Findings*

The record fully supports the summary findings, which are virtually identical to the allegations of the complaint. The analysis that follows includes detailed findings on the material issues of fact and law, together with record references and an exposition of the reasons or basis for such findings.

*1. Extent and Nature of Advertising*

Respondents annually circulated through the mail several hundred thousand of the advertisements exemplified by CXs 5 A–C and 20 B, the response to which was one-tenth of one percent or less (Tr. 29–30, 59–60, 65–66). In addition, respondents engaged in some newspaper advertising (CX 24; but see Tr. 18, 60, 101). The advertisements represented that respondents' "regular" $569 aluminum siding was being offered for $229 (CX 5 B), or $249 (CX 5 A, C), or $269 (CX 20 B). A newspaper advertisement (CX 24) purported to offer regular $495 siding for $269. The siding advertised by respondents was a second-line aluminum siding material of .019 gauge (Tr. 22–23, 63, 92–94).

*2. "Bait and Switch" Tactics* [9]

The advertised special was merely a "come-on" for the purpose of getting leads for the sale of higher priced aluminum siding—a sales scheme aptly called "bait and switch."

The record fails to disclose any sales at the so-called regular price of $495 or $569; in fact, as far as the advertising of respondents was concerned, the "regular" price has been $229, $249, or $269, so that the higher figures were fictitious prices (Tr.

[9] This section includes findings on price representations and "model home" claims as part of respondents' sales plan.

50–51). They were not the regular selling prices of respondents.

Mr. and Mrs. Kleiman claimed "some" sales at the price of $569 per thousand square feet (Tr. 23–24, 72–73), and their son, Eugene, reported "a few" such sales (Tr. 101–02), but their testimony was vague, unconvincing, and utterly lacking in documentary corroboration (Tr. 50, 73–76).

Moreover, sales of the advertised siding at the "special" prices of $229, $249, or $269 were just as rare. Although there were some isolated sales of the advertised material, most customers were switched to a higher priced product.

Bernard Kleiman conceded that there were "very few sales" of the advertised special (Tr. 358). He frankly acknowledged that the advertising brochures were mailed in vast numbers to "reach people that might have an interest in aluminum siding," but that in most cases, "they don't buy the advertised product" (Tr. 346). Sales of the advertised siding were few, he said, because "when we explain it to the customers, they want the better material" (Tr. 347).

Although he denied that the pattern was to withhold the advertised material (Tr. 347–48), Kleiman gave only a qualified denial of testimony that he had told customers that they would not want the advertised material. He contended that he "never put it in quite that way," but "explained the different materials and it's up to them to make a choice" (Tr. 348).

Eugene Kleiman acknowledged that the "great majority" of the sales he made were the result of customer inquiries stemming from their receipt of the ad for the so-called special (Tr. 102). Denying that he discouraged customers from buying the advertised special (Tr. 95), he testified nevertheless that he sold "any number" of the advertised special—he couldn't estimate how many—but people then changed their minds and bought something better (Tr. 97). He insisted that after a contract was signed for the advertised special, he didn't try to sell the customer something else, but if they wanted a better quality product, he "would show them the advantages of it" (Tr. 117). In a classic understatement, he declared that he was "not reluctant" to tell customers about other siding after they had signed a contract for the advertised special (Tr. 128).

Young Kleiman frankly admitted that he would rather sell the higher priced product because it was more profitable (Tr. 126).

Mrs. Kleiman also confirmed that sometimes salesmen went through the formalities of having the customer sign a contract at the advertised price but then persuaded the customer to "trade

up"—that is, to substitute more expensive siding. She made the revealing comment that "a lot" of sales were made at the advertised price, "but people change their minds and want better material" (Tr. 69, 72). She had "no idea" of the percentage of total sales made at the advertised price (Tr. 69–70).

The inference of disparagement characteristic of bait and switch operations is inescapable. But the bait and switch findings are not based merely on inference. Indeed, respondents disparaged the advertised product while on the witness stand, and eight consumer witnesses told of efforts (generally successful) to switch them to higher priced siding.

Bernard Kleiman said that the second-line siding involved in the advertised special "has certain imperfections," including varying thickness, making it difficult to fit it properly (Tr. 352). Respondents sell more of the first-line products than the advertised special because "the customer preferred it." The reason? "The first line has a better finish on it, and it's more firmly secured, and it has a complete accessory package with it." (Tr. 352–53.)

Mrs. Kleiman described it as "a second material" that is "not regular quality." She agreed that it was "inferior." (Tr. 63–64.)

Similarly, Eugene Kleiman conceded that the advertised product was "a second," but he insisted that "it made a fair looking job. It looks all right for the price" (Tr. 94, 121).

Despite their general concession that there were only a few sales at the advertised price, respondents made an abortive effort to demonstrate the actuality of such sales. But out of four customer files produced for this purpose, only one definitely involved sale and installation of the advertised special (Tr. 349–50, 355–63).

The lack of any good faith interest in selling the advertised special is also established by the fact that respondents purchased only 4,400 square feet during the relevant time period (CXs 11 A–Z–27; Tr. 330–31). They simply did not have it to sell.

When a stubborn customer insisted on holding respondents to the advertised offer, the contract was fulfilled by the installation of more expensive siding (Tr. 298–99, 358–62, 365; CX 25 A–I).

The deceptive pattern of respondents' operation is clearly discernible in the testimony of the eight consumer witnesses presented by complaint counsel. Directly or indirectly, the advertised product was disparaged and the customer was discouraged from

buying it and persuaded—sometimes pressured—into signing a contract for an amount many times the price of the advertised special.

Respondent Bernard Kleiman told one customer that the advertised siding was "not the siding that he would recommend"—that he did not think the customer would want it. On seeing the sample, the customer agreed with him, and signed up instead for a siding job in the amount of $1,690 [10]—which was represented to be a discount from the quoted price of over $2,000. The customer understood from the salesman that the discount was for the use of his home for advertising purposes and that he might obtain additional rebates if sales were made to others on that basis. Nothing ever developed along those lines. (Hinkle 140–44, 149–56.)

Another salesman used substantially the same technique as Bernard Kleiman: He professed willingness to sell the advertised special but warned the customer that he would not be satisfied because he "had too nice of a looking home to put something like that on it." The salesman helped the customer to see the flaws in the advertised product and proceeded to sell a better grade siding for $1,100 after first quoting a price of $1,290. (Martin 220–21.)

In another instance, the disparagement was more subtle, with the salesman capitalizing on the customer's doubts about the product, which evidently had some self-disparaging characteristics. The upshot was that the customer agreed to pay $850 for respondents' "best grade" siding. The salesman (Bernard Kleiman again, CX 22 M) first quoted a price of $1,450 but discounted it to $850, ostensibly for use of the house for demonstration and advertising purposes, but the house never was so used. (Roark 162–64, 167, 173, 178–80.)

Sometimes the technique was to make a quick sale of the advertised special, getting the customer's signature on a contract and then switching him to a higher priced job. For example, after one customer had signed the contract for the advertised special, the salesman (Bernard Kleiman, CX 15–0) brought in a sample and said, "Here's what you have purchased." The salesman then "started throwing off on it * * *." He told the customer that the product "wasn't even fit for a barn * * *," and he would not recommend it to anybody. The salesman next dis-

[10] Although the customer referred to the price as $1,690, this was the cash price (see CX 14–S), and because he contracted to make monthly payments over a period of five years, the "time price differential" amounted to $570.80 for a total price of $2,260.80 (CX 14–D).

played a better grade of siding, which he first priced at around $1,500 or $1,600, but when he met resistance from the customer, "he kept on coming down, maybe $100 at a time until he come down to $1,060." Again, the price reduction was represented as involving the use of the customer's house for demonstration and advertising. (Powers 200–04.)

The record contains still another example of the technique of switching the customer after signing him up for the advertised special. After the contract was signed for the advertised special, the salesman [11] extolled the virtues of a different siding and advised the customer "to trade this siding in and get the other siding." Whereas the price for the advertised special would have been something over $300 (because the size of the house exceeded the 1,000 square feet maximum involved in the advertised offer), the customer ultimately signed a contract to pay $1,736. This supposedly was a discount from $2,000 on the basis that respondents would use the house as a model to promote other sales in the neighborhood.[12] (Hudson 321–23.)

Another witness flatly stated that the salesman "simply discouraged" purchase of the advertised special and detailed all the flaws that made it unsuitable for the customer's house, with the result that the customer signed a contract in the amount of $1,190 for what he called "the good siding." (Hostetter 242–44, 255–56, 260–61.)

One of the most flagrant examples involved a 71-year-old farmer who actually was satisfied to take the advertised product but ultimately yielded to the high-pressure salesmanship of respondents' representative.[13] The story was graphically told:

> Well, I kept telling him [the salesman] I ought to put that cheap on and he kept on talking to put that other on and he'd give a good job and he wanted to advertise, and give a good job so he could advertise * * * the other aluminum * * *.
>
> Well, he said the cheap wouldn't last like the other. He said it was cheap, you couldn't expect it to last like it, and he said put this other on, he'd give a good price and he wanted to fix it up so he could advertise it. I told him I'd rather take the cheap, I could pay for that, then I decided to take the other. (Carter 269–70; see also Tr. 267–68.)

The "switch" was further described on cross-examination:

> Q Now, you can see yourself that there was a difference between that sid-

[11] It appears that Bernard Kleiman also may have been the salesman in this instance (Tr. 321, 324–25).

[12] This "model home" had no running water and no bath (Tr. 324).

[13] The almost undecipherable signature on the contract in this case appears to be that of Bernard Kleiman (CX 21). The witness did not remember the name of the salesman.

ing that you called the cheap siding, and the siding that you finally bought.

A Yes, sir, but not much.

Q There was a difference?

A Well, there wasn't much difference. There wasn't that much difference in it, because I liked that siding more that I called 'em to put on, but he come and talked [me] out of that.

Q You say he convinced you that what you called the better siding was what you should have, is that correct?

A That's right.

Q But, you really wanted the advertised siding?

A I wanted that cheap siding, something that I could pay for. (Carter 279; see also Tr. 283.)

The customer ultimately signed a contract in the amount of $1,600 (CX 21), compared to about $400 for the advertised special (Tr. 270–71).[14]

The bait and switch nature of respondents' operation is clearly demonstrated by the experience of a Graham, North Carolina, high school principal. The delays and difficulties he encountered after he signed a contract for the advertised special and refused to be switched demonstrate that the advertised special was simply a device to turn up prospects for more lucrative sales. After the customer complained to the Better Business Bureau in Greensboro, and also threatened legal action, respondents finally furnished more expensive siding at the contract price, but they insisted on extra payment for corners. (Wilson 292–300, 312.)

Thus, respondents not only misrepresented the "regular" price of the so-called advertised special, but they also misrepresented the "regular" price of the higher priced siding to which they switched prospects.

The fact is that there was no regular price of $569 from which the advertised special represented a reduction. Similarly, the supposed "discount" offered for other grades of aluminum was a reduction from a wholly fictitious price. The pattern is clear: The respondents and their salesmen simply charged whatever the traffic would bear. If they met sales resistance to a high price, they quickly said that it could be discounted as part of their advertising and promotional plan, usually relying on the "model home" pitch, which, like the quoted prices, was wholly fictitious.

The conclusion is inescapable that respondents had no regular price for any of their siding. Respondents' own records fail to disclose any sales at $569, and respondents concede that there were

[14] The cash price specified in the contract was $1,600, but with payments on the installment plan over a period of five years, the "time balance" was $2,388. However, the customer subsequently refinanced the job through a local bank. (Tr. 271–72, 280–82.)

only a few sales at the advertised prices of $229, $249, or $269. Similarly, respondents' records disclose no regular price for the other grades of siding, and this was confirmed by Bernard Kleiman. His testimony was to the effect that respondents had no regular prices—that prices varied from customer to customer depending upon what the salesman could get for a siding job. (Tr. 49–51.)

One of the techniques used by respondents to disparage the advertised special was their refusal to furnish the accessories required for a complete siding job. Their advertisements (CXs 5 A–C) represented that the siding would be "completely installed" at the advertised price, with "no extras." The advertised price was represented as including "labor & material for an average home up to 1,000 square feet." This representation was coupled with a repetition of the "no extras" promise.

Although customers naturally interpreted the "no extras" representation as meaning no extra charges (Wilson 301–03, 312), respondents interpreted it to mean that they furnished nothing "extra" beyond the actual siding. Their "completely installed" siding job did not include the corners or trim for windows and doors. Such an important omission was used by the salesmen to switch the customer to a job that was "completely installed" at a price many times that of the advertised special.

When Mrs. Kleiman was asked to explain the representations "completely installed" and "no extras," she gave a short but significant answer: "No accessories." She then defined accessories as "Corners, foil, starter strip, backers, molding, caulking, and inner corners and outer corners." She agreed that under her interpretation of the advertisement, "completely installed" simply meant "nailing ten squares of aluminum right on the side of the house." (Tr. 70; see also Tr. 47–48, 106–10, 352–53.)

Finally, the record makes clear that as a general proposition, respondents and their salesmen were strongly motivated to avoid sales of the advertised special. The reason is plain: There was no profit in such sales—perhaps even a loss. No salesman would be satisfied to sell at the advertised price because his commission would amount to little or nothing. (Tr. 44–49, 67–68, 126, 366–67.)

To recite respondents' practices is to present a classic case of bait and switch. Respondents' sales scheme clearly fits the definition of this unfair practice set forth in the Commission's Guides Against Bait Advertising (CCH Trade Regulation Reporter, Par. 7893, November 24, 1959):

Bait advertising is an alluring but insincere offer to sell a product or service which the advertiser in truth does not intend or want to sell. Its purpose is to switch consumers from buying the advertised merchandise, in order to sell something else, usually at a higher price or on a basis more advantageous to the advertiser. The primary aim of a bait advertisement is to obtain leads as to persons interested in buying merchandise of the type so advertised.

The bait and switch nature of respondents' operation is evidenced by practices condemned by the Guides:

1. Respondents' advertisements are not a *bona fide* effort to sell the advertised product (Guide 1).

2. Respondents' advertisements misrepresent the product and the nature of the offer in such a manner that, on disclosure of the true facts, the purchaser may be and is switched from the advertised product to another. The first contact or interview with the customer is secured by deception (Guide 2).

3. Respondents refuse to sell the product offered in accordance with the terms of the offer (Guide 3(a)).

4. Respondents and their representatives disparage the advertised product and its lack of guarantee (Guide 3(b)).

5. Respondents do not have a sufficient quantity of the advertised product to meet reasonably anticipated demands (Guide 3(c)).

6. Respondents show or demonstrate a product that is defective, unusable, or impractical for the purpose represented in the advertisement (Guide 3(e)).

7. Respondents use a sales plan or a method of compensation for salesmen designed to prevent or to discourage them from selling the advertised product (Guide 3(f)).

8. Respondents sometimes actually make a sale of the advertised product and then engage in "unselling" with the intent and purpose of selling other merchandise in its stead. There was at least one instance of failure to make delivery of the advertised product within a reasonable time. There also was disparagement of the advertised product and its lack of guarantee. (Guides 4(b) and (c).)

Even if respondents had made more sales of the advertised products than are disclosed by the record, this would not preclude the existence of a bait and switch scheme. In the language of the Guides, "this is a mere incidental by-product of the fundamental plan * * * intended to provide an aura of legitimacy to the over-all operation."

*3. "Limited Time" of Offer*

Although respondents' advertisements specifically represent that their special offer was for a "limited time only" (CXs 5 A–C, 20 B, 24), the facts of record establish that respondents regularly advertised the so-called aluminum siding special over a period of two years (Tr. 18, 50). The fact that the advertised price was juggled within a range of $20 to $40 ($229, $249, $269) does not detract from the actuality that the so-called special was a continuing offer, albeit merely a bait designed to make sales at higher prices.

*4. Guarantee Representations*

With possibly one exception (CX 20 A),[15] guarantee representations attributable to respondents were orally made by salesmen, including the Messrs. Kleiman, with respect to the higher priced siding. The advertising brochure contained no guarantee claims, and for the most part, salesmen did not represent that any guarantee attached to the advertised special. As a matter of fact, the absence of a guarantee on the advertised product and the furnishing of a guarantee with a higher priced job were part of the bait and switch tactics of respondents. One of the selling points used in switching customers was the lack of any guarantee on the advertised special.

Seven of the eight consumer witnesses presented in support of the complaint testified that they were told that the siding they purchased carried a guarantee, but no written guarantee was ever delivered to them. Four of them testified that they were promised a "lifetime guarantee" (Martin 221–22; Hostetter 243–44, 249, 259; Carter 271; and Hudson 322–23). The other three were told that the siding they purchased carried a 20-year guarantee (Hinkle 142–43; Roark 163, 180; Powers 202–04, 208–09, 211).

Respondents have no guarantee of their own but rely on the guarantees furnished by manufacturers of the siding they sell (Tr. 351). Bernard Kleiman acknowledged failure to furnish copies of the guarantees to all customers but blamed such omissions on "neglect in the office" (Tr. 351) and said the guarantees were generally transmitted to customers (Tr. 354).

Although Kleiman acknowledged that customers were simply told they had a 20-year guarantee, he made the incredible claim that he read the manufacturer's guarantee to some customers

[15] This was a contract for the advertised special specifying "Guaranteed baked enamel finish."

(Tr. 52). The Alsco guarantee (CX 6) contains about 500 words.

Respondents sold aluminum siding purchased from several suppliers, but the only guarantee in the record is that for Alsco aluminium siding, a product of Alsco, Inc. (CX 6; see Tr. 113–17, 330–33). It is represented as a 20-year guarantee, but it is subject to numerous terms and conditions. Among other things, the guarantee is invalid unless the homeowner's certificate of coverage is signed by the purchaser and the dealer or builder and is mailed to Alsco within thirty days after installation. It is obvious that if any of the customers who testified in this proceeding had purchased Alsco siding, they were not covered by the Alsco's limited guarantee since they did not even see the guarantee.

Aside from the self-serving testimony of respondents (Tr. 351, 354), there is no evidence that any written guarantees were furnished to respondents' customers.

Whether or not printed guarantees were furnished to customers, it is apparent that they contained numerous terms, conditions, and limitations undisclosed by respondents or their sales representatives. Thus, respondents' guarantee representations were false, misleading, and deceptive.

*5. "Free Bonus Gifts"*

Regarding the "free bonus gift" offered in connection with the advertised special, the promise in one section of the brochures (CXs 5 A–C, 20 B) is to the effect that respondents would supply "free" a clock radio, a camera, screens, doors, or thousands (either 5,000 or 10,000) of Top Value Stamps or S & H Green Stamps if the customer acted "now." Elsewhere in the brochure is a statement to the effect that if the customer mailed the return card "now," respondents would include the gift "with the purchase of our aluminum siding special."

It is significant that the unqualified offer of a "free" gift for prompt action ("If You Act Now!") is prominently printed in color on that part of the folder containing the homeowner's address. The representation there makes no reference to the alleged requirement that the advertised special must be bought to qualify for the gift. In connection with the exhortation to "mail this card today," there is a further statement that "This card must be mailed to our office within 5 days to become eligible for this savings, plus FREE GIFT." Again, the customer must look further to learn that respondents will include the gift "with the purchase of our aluminum siding special."

To compound the confusion, at still another point in the bro-

chures, the customer is simply promised a "free * * * gift with siding purchase." Notice the absence of any limitation to the "special."

Small wonder that respondents' counsel had to ask witnesses if they read the ad "carefully" (see, for example, Tr. 280, 300–01).

These representations are obviously open to the interpretation that if the customer promptly mailed the return card and made a purchase, he was entitled to the free bonus gift. The examiner and the Commission may infer that a substantial number of the purchasing public would not interpret the offer as being limited to the purchase of the exact product (the "Special") embraced in the advertisement, but would consider themselves eligible if they mailed the card and made a siding purchase. Moreover, such an inference is supported by live testimony.

One customer apparently had some doubt about the meaning of the offer, but wrote respondents to inquire whether he was entitled to a radio. He received no answer, nor did he get the gift (Hinkle 143, 146).

Another customer was told by the salesman that he was not eligible for the gift because he had not bought the advertised special; and he did not receive either the radio or the S & H Green Stamps (Hostetter 244, 249).

A third customer wrote respondents about his failure to receive a free gift but never got a reply (Powers 204). When, on cross-examination, respondents' counsel suggested that the witness was not entitled to the gift because he did not buy the advertised special, the witness replied: "I didn't know for sure, but it looked to me like if you bought the higher priced stuff, you should be entitled to the gift anyway. * * * if they could give it with a $249 job, [if] you get a $1,000 job, surely they can give it" (Tr. 207–08).

A fourth witness had requested the stamps but never received any reply. The salesman had told him he was not sure that he could get him all of the stamps but he would do his best (Martin 222–23). On cross-examination, respondents' counsel again suggested that the customer was not entitled to the stamps because he had not bought the advertised special, but that was not his understanding (Tr. 224–25).

One customer who actually signed the contract for the advertised special, but was then persuaded to trade it in on more expensive siding, was led to believe by the salesman that he was entitled to the bonus gift—either a clock radio or 10,000 stamps, but the gift was never delivered (Hudson 323–24).

Two customers finally received the stamps, but their success was due to their persistence, not respondents' good faith or generosity. One had made many demands and had notified respondents of his having been in contact with the Federal Trade Commission (Roark 164–66, 170–71, 177–78; CX 22 D).

The other—the elderly farmer described *supra* (pp. 777–78)—understood from respondents' advertisement that he was entitled to S & H Green Stamps, but he was initially told that they came only with the advertised special. Ultimately the stamps were delivered, but only after the bank refused to make payment on the contract until this was done (Carter 271–72, 280–83).

Nevertheless, respondents persist in their restrictive interpretation of their offer (Tr. 79–80, 102, 345–46).

Ironically, in the only clear-cut instance in which the customer purchased the advertised special, he was not furnished the 10,000 S & H Green Stamps that the ad promised (Wilson 299–300, 303, 314–16). Respondents' counsel even suggested that this customer was not entitled to the stamps because they were not provided for in the contract he signed for the advertised special (Tr. 314).

It is abundantly clear that the "free bonus gift" offer was part and parcel of the deceptive sales plan operated by respondents. They knew that there would be few, if any, sales of the advertised special, so they could afford to make this apparently generous offer under their restrictive interpretation. And the fact is that their delivery under the free bonus gift offer was minimal (Tr. 81–83; see also CPF 23).

Respondents' basic policy was to interpret the offer strictly, but this policy was flexible enough to permit the use of the offer as a sales gimmick when they met customer resistance to making the switch to a higher priced product or when a customer persisted in demanding his rights under the advertised offer.

Thus, Eugene Kleiman testified that in some cases he gave the gift with non-advertised siding. Respondents had no standard practice for the free gift. "It all depended on the circumstances * * *." (Tr. 102–03.)

The issues respecting the "gift" offer, as delineated by the complaint (Paragraphs Five (6) and Six (6)), are narrow: (1) Did respondents represent that siding purchasers would receive a gift? and (2) Did respondents deliver such gift? The respective answers are clear: (1) Yes and (2) No.

Thus, the "free bonus gift" representation was false, misleading, and deceptive.

Although the foregoing findings dispose of the issues properly before the examiner, it may be worth noting that respondents' "free bonus gift" representations appear dubious in the light of Rule 10 of the Trade Practice Rules for the Residential Aluminum Siding Industry (CCH Trade Regulation Reporter, Par. 41,057, April 6, 1962) and the case law which the Rule synthesizes.

That Rule provides in pertinent part:

> In connection with the sale, offering for sale, or distribution of industry products, it is an unfair trade practice to use the word "free," or any other word or words of similar import, in advertisements or in other offers to the public, as descriptive of an article of merchandise, or service, which is not an unconditional gift, under the following circumstances:
>
> (a) When all the conditions, obligations, or other prerequisites to the receipt and retention of the "free" article of merchandise or service offered are not clearly and conspicuously set forth at the outset so as to leave no reasonable probability that the terms of the offer will be misunderstood * * *.

Even a bare reading of respondents' gift representations—but particularly in the light of the testimony of the consumer-witnesses—suggests that such ambiguous representations hardly meet the Rule's standard that all the conditions, etc., respecting the "free" article must be "clearly and conspicuously set forth at the outset so as to leave no reasonable probability that the terms of the offer will be misunderstood * * *." (See also the "Note" appended to Rule 10.)

Neither the order proposed in the complaint nor that proposed by complaint counsel meets this problem. And the examiner considers that, under the pleadings, it is beyond his authority to broaden the order to cover it.

### *III. Respondents' Defense*

The factual aspects of respondents' defense are largely disposed of in Section II (*supra,* pp. 770–785). Certain of the legal aspects, however, call for some further comment.

In addition to attacking the sufficiency of the evidence, respondents have raised questions concerning (1) their responsibility for the acts of their salesmen and (2) the liability of the individual respondents. The last two points will be considered first.

#### *Liability of Respondents for Acts of Salesmen*

In their answer and throughout the hearing, respondents have

contended that the acts and practices alleged, if committed, were committed by salesmen who were "independent contractors" beyond the control of respondents. This defense is not pressed in respondents' proposed findings and conclusions, perhaps because such a contention finds no support in the evidence or in the controlling law. One major flaw, of course, is that two of the individual respondents were and are salesmen, and the record shows their personal involvement in the unlawful sales practices. They were the only salesmen at the time of hearing (Tr. 104).

During 1964–66, respondents employed an average of four salesmen in addition to Bernard and Eugene Kleiman (Tr. 28, 334). Respondents supplied their salesmen with sample cases, contracts bearing the name Royal Construction Company, and blank promissory notes, as well as leads to prospects based on returns from the direct-mail advertising brochures (Tr. 35–37). Salesmen drew no salaries but were paid commissions and were allowed to draw advances (Tr. 79, 336–37, 343–44). Respondents arranged financing for the installation of the products sold by their salesmen and, if the credit was approved, performed on all contracts and accepted the proceeds (Tr. 39, 364).

Salesmen might be part-time or full-time; some even worked for competitors. Respondents imposed no requirements respecting working hours and, according to their testimony (uncontradicted but suspect as self-serving), gave the salesmen no instructions regarding the sales pitch to be used. Salesmen furnished their own transportation and paid their own expenses (Tr. 336–37).

The contract forms carried and used by salesmen contained the name and address of Royal Construction Company, and each purported to represent an agreement between a property owner and the company. Two types of contracts were used (for example, CXs 12 A and 12 D). One type (CX A) provided space at the bottom of the form for signatures of the customer and of the company's "Representative." This form contained further language indicating the necessity for acceptance by the company, although, in the body of the contract, reference was made to Royal's "duly authorized agent." The other form (CX D) was set up so as to indicate that the salesman was signing on behalf of the company; the form contained the printed signature of Royal Construction Co., and the salesman's signature was placed below it, preceded by the word "By."

Although Bernard Kleiman referred to the salesmen as "agents," he testified that the company had "no control over [them] beyond that fact" (Tr. 30). He testified that when

salesmen were taken on, they were given no instructions as to what they should say or what they should not say in making sales representations. As a general rule, he stated, respondents provided no indoctrination for their salesmen—"just gave them samples and that's all" (Tr. 366). Regardless of the truth of this testimony, it does not relieve respondents of responsibility for the representations made on their behalf.

The salesmen did not purchase respondents' products for resale. They sold respondents' products on behalf of respondents and thus were employees and agents of respondents and not independent contractors and dealers. Whatever limitations there might have been on the actual authority of the salesmen as agents of respondents (and this was not developed), the fact is that they were acting for and on behalf of respondents and were clothed with at least the apparent authority to make representations and otherwise act in the name of respondents.

Whatever the legal relationship between respondents and their salesmen might have been under the law of contracts or the law of agency, it is well established in trade regulation law that respondents are responsible under the Federal Trade Commission Act for the representations of their sales representatives. *Goodman* v. *Federal Trade Commission,* 244 F. 2d 584 (9th Cir. 1957); *Standard Distributors, Inc.* v. *Federal Trade Commission,* 211 F. 2d 7 (2d Cir. 1954); *Steelco Stainless Steel, Inc.* v. *Federal Trade Commission,* 187 F. 2d 693 (7th Cir. 1951); *International Art Co.* v. *Federal Trade Commission,* 109 F. 2d 393 (5th Cir. 1940), *cert. denied,* 310 U.S. 632.

When the facts of this case are considered in the light of the controlling case law, the conclusion must be that whether or not the salesmen were independent contractors for certain purposes, they were nevertheless duly authorized representatives of respondents. Therefore, respondents are properly held liable in this proceeding for the acts of such representatives.

*Liability of Individual Respondents*

A major portion of respondents' Proposed Findings is devoted to a plea that the order be limited to the respondent corporation and not directed against the individual respondents in their individual capacities.

The examiner rejects the argument that to enter an order binding upon the individual respondents would be "a very harsh step" unwarranted by the circumstances.

In considering the necessity and propriety of an order against

the Kleimans individually, as well as in their corporate capacities, we start with the firmly grounded proposition that the Commission has authority to enter an order to cease and desist against officers, directors, and stockholders of a corporation where necessary to effectively prohibit unfair trade practices. *Federal Trade Commission* v. *Standard Education Society*, 302 U.S. 112, 120 (1937); *Pati-Port, Inc.* v. *Federal Trade Commission*, 313 F. 2d 103, 105 (4th Cir. 1963); *Surf Sales Co.* v. *Federal Trade Commission*, 259 F. 2d 744 (7th Cir. 1958); *Standard Distributors, Inc.* v. *Federal Trade Commission*, 211 F. 2d 7, 14–16 (2d Cir. 1954); *Consumer Sales Corp.* v. *Federal Trade Commission*, 198 F. 2d 404, 407–08 (2d Cir. 1952), *cert. denied*, 344 U.S. 912 (1953).

The case of *Flotill Products, Inc.* v. *Federal Trade Commission*, 358 F. 2d 224 (9th Cir. 1966; *petition for cert. filed*, 34 U.S.L. Week 2541 (U.S., Oct. 12, 1966) (No. 668)), is relied on by respondents as discrediting the "alter ego doctrine" applied by the Commission in that case and others as a basis for attaching individual liability. But *Flotill* is readily distinguishable from this case. The two cases are similar in that in both, three individuals owned and controlled the corporation. But there the similarity ends. The history, magnitude, operations, and stability of the two corporations are materially different. In addition, there is missing in *Flotill* the evidence of personal participation in the violations that marks the instant proceeding.

Moreover, the *alter ego* doctrine is but one of the factors impelling the conclusion that personal liability is demanded in this case.

Royal Construction Company is a "family corporation" which succeeded a family partnership. The corporation is completely controlled by the three family members—father, mother, and son. They own 100 percent of the stock. They are the sole officers of the corporation. They formulate the policies of the company, and each actively participates in its business affairs. Directors' meetings were admittedly infrequent and very informal. Respondents ran the business as though there were no corporate organization. They can continue the business in some other form. Conceivably, each may become employed by another business entity in the same or a related field.

The likelihood that the Kleimans, jointly or severally, may engage in the challenged practices as individuals is sufficiently real to warrant an order binding on them personally as well as in their representative capacities, *Lovable Company*, Docket 8620 (June

29, 1965) [67 F.T.C. 1326]. Here there has been such "personal participation" of the officers as to warrant the order sought, *Coro, Inc.* v. *Federal Trade Commission,* 338 F. 2d 149 (1st Cir. 1964), *cert. denied,* 380 U.S. 954 (1965). The order must be directed against the Kleimans as well as the corporation to effectuate the prohibition against continuation of the unfair practices found.

Respondents have failed to show why the attachment of personal liability is "a very harsh step" (RPF 2). They will be subject to sanctions only if they violate the order. In that event, there is no reason they should enjoy immunity because they might be acting other than as officers of Royal.

Perhaps, as respondents' counsel suggests (RPF 3–4), Bernard Kleiman is the dominant figure in the business. If this is a fact, it supports an order against him, but at the same time, it affords no basis for omission of his wife and son from the full coverage of the order.

Counsel's argument (RPF 4) would relieve the stockholder-officers of personal responsibility because they testified truthfully, instead of deceitfully, concerning their active roles in the practices found. A novel concept, but wholly untenable.

The finding under all the circumstances of this case must be that an order against the individual respondents is necessary to effectively prohibit the violations found.

*Other Defense Contentions*

The other principal contention made by respondents (RPF 5) is that their sales scheme lacks key elements characterizing bait and switch operations. The facts found respecting that subject (*supra,* Section II (2), pp. 773–780) essentially dispose of respondents' argument, but some further brief discussion may be useful.

Respondents rely on the case of *Clarence Soles,* Docket 8602 (Order Vacating Initial Decision and Dismissing Complaint, December 3, 1964) [66 F.T.C. 1234], as parallelling the evidence in the instant case. But the facts of the *Soles* case clearly distinguish it from the instant case. There was an evidentiary gap in the *Soles* case, but there is no similar gap in this record. In the *Soles* case, there was no evidence of disparagement and insufficient evidence to support a finding that the advertised offer to sell was not genuine. In the instant case, the evidence of disparagement is not only substantial but actually uncontroverted. Moreover, the evidence that the advertisement was not a *bona fide*

offer to sell comes out of respondents' own mouths and out of their files.

The parallels that respondents profess to see between the *Soles* case and this one (RPF 5) are simply non-existent. Indeed, the rationale of the *Soles* case provides strong support for the decision reached here.

No lengthy citation of authority is required in a bait and switch case as clear as this one, but to round out the record, the precedents are collected in CCH Trade Regulation Reporter, Par. 7815; see also FTC Guides Against Bait Advertising, *supra*.

Finally, the foregoing findings provide the answer to respondents' arguments (RPF 6–8) concerning what they call the failure of proof of the allegations dealing with the "limited time," "model home," and "free bonus gift" representations. Similarly, the well-worn "puffing" defense is unavailing as a basis for dismissal of the "model home" charge. The defense advanced against the deceptive guarantee charge (RPF 7) is essentially irrelevant.

Thus, these defense contentions are likewise rejected.

### *IV. Conclusionary Findings*

Despite respondents' ill-conceived and unsuccessful effort to discredit one Government witness (Wilson 304–16), there is essentially no factual conflict dependent on credibility. Accordingly, in the present state of the record, no further comment is required on that subject or on the weight of the evidence.

Even without the consumer testimony that illuminates the acts and practices of respondents, the record contains persuasive evidence in support of the complaint's allegations drawn from respondents' own testimony and business records. The combination presents a convincing basis for the findings of law violation and the entry of an order against its continuation or resumption.

In addition to violating virtually every prohibition in the Commission's Guides Against Bait Advertising (*supra*, p. 780), respondents' sales activities represent a catalog of deceptive practices prohibited by the Trade Practice Rules for the Residential Aluminum Siding Industry (CCH Trade Regulation Reporter, Par. 41,057, April 6, 1962). See Rules 1–4, 6, 10, and 16.

The facts of record and the applicable law are clear. An order to cease and desist should issue.

## CONCLUSIONS OF LAW

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

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

3. The use by respondents of the false, misleading, and deceptive statements, representations, and practices, as found herein, has had and may have the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that such statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of that erroneous and mistaken belief.

4. The acts and practices of the respondents, as found herein, 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.

5. The examiner having found the facts to be as alleged in the complaint, the order entered is substantially that appended to the complaint as the form of order that the Commission had reason to believe should issue if the allegations were proved.[16]

ORDER

*It is ordered,* That respondents Royal Construction Company, a corporation, trading and doing business as Atlas Aluminum Company or under any other name or names, and its officers, and Bernard Kleiman, Mollie T. Kleiman, and Eugene B. Kleiman, individually and as officers of such corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale, distribution, or installation of residential aluminum siding or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

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

[16] Some minor editorial changes were made.

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

4. Representing, directly or by implication, that any merchandise or services are offered for sale when such offer is not a bona fide offer to sell such merchandise or services.

5. Representing, directly or by implication, that respondents' offer of products is limited as to time, or in any other manner: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that any represented limitation as to time or other represented restriction is actually imposed and in good faith adhered to by respondents.

6. Representing, directly or by implication, that 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.

7. Representing, directly or by implication, that 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.

8. Representing, directly or by implication, that any allowance, discount or commission is granted by respondents to purchasers in return for permitting the premises on which respondents' products are installed to be used for model homes or demonstration purposes.

9. Representing, directly or by implication, that any of respondents' products are guaranteed, unless the nature and extent of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

10. Representing, directly or by implication, that persons will receive a gift of a specified article of merchandise, or anything of value: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the item referred to as a gift was in fact delivered to each eligible person.

## FINAL ORDER

This matter having been heard by the Commission upon the respondents' appeal from the hearing examiner's initial decision

and upon briefs and oral argument in support of and in opposition to such appeal; and

The Commission having determined, with the exception of certain paragraphs in the initial decision, beginning with the first paragraph on page 785 and ending with the fourth paragraph on page 785, which are unclear and unnecessary and should be stricken, that the initial decision of the hearing examiner is appropriate to dispose of this proceeding:

*It is ordered*, That the initial decision be, and it hereby is, modified by striking therefrom the paragraphs beginning with the first paragraph on page 785 to and including the fourth paragraph on page 785.

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

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

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## IN THE MATTER OF

## MAR-CAL SPORTSWEAR OF CALIFORNIA, INC., TRADING AS DI VINCI ET AL.

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

*Docket C-1212. Complaint, June 6, 1967—Decision, June 6, 1967*

Consent order requiring a Los Angeles, Calif., clothing manufacturer to cease misbranding its wool products, and furnishing false guaranties in violation of the Wool Products Labeling Act.

### COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939 and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Mar-Cal Sportswear of California, Inc., a corporation, trading as di Vinci, and Joseph A. Capitano, individually and as an officer of the said corporation, hereinafter referred to as respondents, have violated the provisions of said

Acts and the Rules and Regulations promulgated under the 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 as follows:

PARAGRAPH 1. Respondent Mar-Cal Sportswear of California, Inc., trading as di Vinci, is a corporation organized, existing and doing business under and by virtue of the laws of the State of California.

Respondent Joseph A. Capitano is an officer of the corporate respondent. He formulates, directs and controls the acts, practices and policies of the said corporate respondent including those hereinafter set forth.

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

PAR. 2. Respondents now, and for some time last past, have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, shipped and offered for sale in commerce, as "commerce" is defined in said Wool Products Labeling Act of 1939, wool products as "wool product" is defined therein.

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

Among such misbranded wool products, but not limited thereto, were certain coats stamped, tagged, labeled, or otherwise identified as containing "100% Wool" whereas, in truth and in fact, said coats contained a substantial amount of fibers other than wool.

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 coats 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) wool; (2) reprocessed wool; (3) reused wool; (4) each fiber other than wool when said percentage by weight of such fiber was 5 per centum or more; and (5) the aggregate of all other fibers.

PAR. 5. Respondents furnished false guaranties that certain of their wool products were not falsely or deceptively stamped, tagged, labeled, or otherwise identified when respondents in furnishing such guaranties had reason to believe that wool products so falsely guaranteed would be introduced, sold, transported or distributed in commerce, in violation of Section 9(b) of 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 methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

## DECISION AND ORDER

The 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 the 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 Mar-Cal Sportswear of California, Inc., trading as di Vinci, is a corporation organized, existing and doing busi-

ness under and by virtue of the laws of the State of California, with its office and principal place of business located at 818 South Broadway, in the city of Los Angeles, State of California.

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

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

ORDER

*It is ordered,* That respondents Mar-Cal Sportswear of California, Inc., a corporation, trading as di Vinci, or any other trade name, and its officers, and Joseph A. Capitano, 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, or manufacture for introduction into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

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

2. Failing to securely affix to, or place on, each such product a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

*It is further ordered,* That respondents Mar-Cal Sportswear of California, Inc., a corporation, trading as di Vinci, and its officers, and Joseph A. Capitano, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from furnishing a false guaranty that any wool product is not falsely or deceptively stamped, tagged, labeled, or otherwise identified when respondents have reason to believe that such wool product may be introduced, sold, transported, or distributed in commerce.

*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.