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

IN THE MATTER OF

HOFFMAN–MORTON CO. TRADING AS HOFFMAN–MORTON FURRIERS ET AL.

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

Docket C–1264. Complaint, Oct. 25, 1967—Decision, Oct. 25, 1967

Consent order requiring a Chicago, Ill., furrier to cease misbranding, falsely advertising and deceptively 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 Hoffman-Morton Co., a partnership, trading under its own name and as Hoffman-Morton Furriers, and Morton H. Hoffman, Mabel Hoffman, Ida Hoffman and David Veltman, individually and as copartners trading as Hoffman-Morton Co., hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Hoffman-Morton Co. is a partnership existing and doing business in the State of Illinois and trading under its own name and as Hoffman-Morton Furriers. Respondents Morton H. Hoffman, Mabel Hoffman, Ida Hoffman and David Veltman are copartners in the said partnership.

Respondents are manufacturers and retailers of fur products with their office and principal place of business located at 679 North Michigan Avenue, Chicago, Illinois.

PAR. 2. Respondents are now, and for some time last past have 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 trans-

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

PAR. 3. Certain of said fur products were misbranded in that they were falsely and deceptively labeled or otherwise falsely or deceptively identified with respect to the name of the country of origin of furs contained in such fur products, in violation of Section 4(1) of the Fur Products Labeling Act.

Among such misbranded fur products, but not limited thereto, were fur products labeled to show the country of origin of furs used in such fur products as Canada when the country of origin of such furs was, in fact, Russia.

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

Among such misbranded fur products, but not limited thereto, were fur products which were labeled as "Opossum," when fur contained in such fur products was, in fact, "Australian Opossum."

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

PAR. 5. Certain of said fur products were misbranded in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

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

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

3. To show the country of origin of the imported furs contained in the fur products.

PAR. 6. Certain of said fur products were misbranded in that labels attached thereto, set forth the name of an animal other than the name of the animal that produced the fur from which the said fur products had been manufactured, in violation of Section 4(3) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder.

PAR. 7. 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 "Persian-broadtail Lamb" was not set forth on labels in the manner required by law, in violation of Rule 8 of said Rules and Regulations.

(b) The term "Dyed Broadtail-processed Lamb" was not set forth on labels in the manner required by law, in violation of Rule 10 of said Rules and Regulations.

(c) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in handwriting on labels, in violation of Rule 29(b) of said Rules and Regulations.

(d) Information required under Section 4(2) of the Fur products Labeling Act and the Rules and Regulations promulgated thereunder was not set forth in the required sequence, in violation of Rule 30 of said Rules and Regulations.

PAR. 8. Certain of said fur products were falsely and deceptively invoiced by the respondents in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated under such Act.

Among such falsely and deceptively invoiced fur products, but not limited thereto, were fur products covered by invoices which failed:

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

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

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) The term "Persian Lamb" was not set forth on invoices in the manner required by law, in violation of Rule 8 of said Rules and Regulations.

(b) The term "Persian-broadtail Lamb" was not set forth on invoices in the manner required by law, in violation of Rule 8 of said Rules and Regulations.

(c) The term "Dyed Broadtail-processed Lamb" was not set forth on invoices in the manner required by law, in violation of Rule 10 of said Rules and Regulations.

(d) 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.

PAR. 10. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that certain advertisements intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of such fur products were not in accordance with the provisions of Section 5(a) of the said Act.

Among and included in the aforesaid advertisements but not limited thereto, were advertisements of respondents which appeared in issues of the Chicago Daily News, a newspaper published in the city of Chicago, State of Illinois and having a wide circulation in Illinois and in other States of the United States.

Among such false and deceptive advertisements, but not limited thereto, were advertisements which failed to show the true animal name of the fur used in any such fur product.

PAR. 11. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondents falsely and deceptively advertised fur products in violation of the Fur Products Labeling Act in that the said fur products were not advertised in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) The term "Persian Lamb" was not set forth in the manner required, in violation of Rule 8 of the said Rules and Regulations.

(b) The term "Broadtail Lamb" was not set forth in the manner required, in violation of Rule 8 of the said Rules and Regulations.

(c) The term "Persian-broadtail Lamb" was not set forth in the manner required, in violation of Rule 8 of the said Rules and Regulations.

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

(e) All parts of the information required under Section 5(a) of the Fur Products Labeling Act and the Rules and Regulations

promulgated thereunder were not set forth in type of equal size and conspicuousness and in close proximity with each other, in violation of Rule 38(a) of the aforesaid Rules and Regulations.

PAR. 12. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair 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 and the Fur Products Labeling Act; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Hoffman-Morton Co. is a partnership existing and doing business in the State of Illinois and trading under its own name and as Hoffman-Morton Furriers, with its office and principal place of business located at 679 North Michigan Avenue, Chicago, Illinois.

Respondents Morton H. Hoffman, Mabel Hoffman, Ida Hoffman and David Veltman are individuals and copartners in said partnership and their address is the same as that of said partnership.

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 Hoffman-Morton Co., a partnership, trading under its own name or as Hoffman-Morton Furriers or any other name or names, and Morton H. Hoffman, Mabel Hoffman, Ida Hoffman and David Veltman, individually and as copartners trading as Hoffman-Morton Co., and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding any fur product by:

1. Falsely or deceptively labeling or otherwise identifying any such fur product as to the country of origin of furs contained in such fur product.

2. Falsely or deceptively labeling or otherwise identifying such fur product as to the name or designation of the animal or animals that produced the fur contained in the fur product.

3. 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.

4. Setting forth on a label attached to such fur product the name or names of any animal or animals other than the name of the animal producing the fur contained in the fur product as specified in the Fur Products Name Guide, and as prescribed by the Rules and Regulations.

5. Failing to set forth the term "Persian-broadtail Lamb" on a label in the manner required where an elec-

tion is made to use that term instead of the word "Lamb."

6. Failing to set forth the term "Dyed Broadtail-processed Lamb" on a label in the manner required where an election is made to use that term in lieu of the term "Dyed Lamb."

7. Setting forth information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in handwriting on a label affixed to such fur product.

8. Failing to set forth information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder on a label in the sequence required by Rule 30 of the aforesaid Rules and Regulations.

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. Failing to set forth the term "Persian Lamb" in the manner required where an election is made to use that term instead of the word "Lamb."

3. Failing to set forth the term "Persian-broadtail Lamb" in the manner required where an election is made to use that term instead of the word "Lamb."

4. Failing to set forth the term "Dyed Broadtail-processed Lamb" in the manner required where an election is made to use that term instead of the words "Dyed Lamb."

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.

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

1. Fails to set forth in words and figures plainly legible all the information required to be disclosed by

each of the subsections of Section 5(a) of the Fur Products Labeling Act.

2. Fails to set forth the term "Persian Lamb" in the manner required where an election is made to use that term instead of the word "Lamb."

3. Fails to set forth the term "Broadtail Lamb" in the manner required where an election is made to use that term instead of the word "Lamb."

4. Fails to set forth the term "Persian-broadtail Lamb" in the manner required where an election is made to use that term instead of the word "Lamb."

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

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

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

GLADSTONE-ARCUNI, INC.

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

Docket 8664. Complaint, July 30, 1965—Decision, Nov. 2, 1967

Order requiring a New York City manufacturer of women's dresses to cease discriminating among its customers in the payment of promotional allowances.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter

more particularly described, has violated and is now violating the provisions of subsection (d) of Section 2 of the Clayton Act, as amended (U.S.C., Title 15, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, Gladstone-Arcuni, 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 71 Fifth Avenue, New York, New York, 10003.

PAR. 2. Respondent is now and has been engaged in the manufacture, sale and distribution of "women's and misses' " dresses under the trade names of "Hattie Leeds," "Miss Smith," "Diane Carter," and "Active Woman." Respondent sells its products to retail specialty and department stores located throughout the United States. Respondent's sales of its products are substantial having exceeded $4,800,000 for the calendar year ending December 31, 1960.

PAR. 3. In the course and conduct of its business, respondent has engaged and is now engaging in commerce, as "commerce" is defined in the Clayton Act, as amended, in that respondent sells and causes its products to be transported from its place of business located in the State of New York, to customers located in other States of the United States and in the District of Columbia. There has been at all times mentioned herein a continuous course of trade in commerce in said products across State lines between said respondent and its customers.

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

PAR. 5. Included among the payments alleged in Paragraph Four were credits, or sums of money, paid either directly or indirectly by way of discounts, allowances, rebates or deductions, as compensation or in consideration for promotional services or facilities furnished by customers in connection with the offering for sale, or sale of respondent's products, including advertising in various forms, such as newspapers and catalogues.

Illustrative of such practices, but not limited thereto, respondent, during the period 1961 through 1963, made payments and allowances to various customers in various cities, including Chicago, Illinois; Cleveland, Ohio, and Baltimore, Maryland, for, or for the purpose of, advertising its products as follows:

Chicago, Illinois

Customer	Amount of Allowance		
	1961	1962	1963
Carson, Pirie, Scott & Co.	$8,565.00	$5,250.00	$5,350.00
Wieboldt Stores, Inc.	1,028.44	1,211.66	4,003.71

Cleveland, Ohio

Customer	Amount of Allowance		
	1961	1962	1963
The Halle Bros. Co.	$500.00	$350.00	$1,050.00
The May Company	500.00	100.00	450.00

Baltimore, Maryland

Customer	Amount of Allowance	
	1961	1962
Hutzler Bros.	$846.00	$395.60
Stewart & Co.	96.00	60.00

Respondent did not offer or otherwise make available such promotional allowances on proportionally equal, or any, terms to all other customers in Chicago, Illinois; Cleveland, Ohio, and Baltimore, Maryland, competing with those who received such allowances.

PAR. 6. The acts and practices of respondent as alleged above are in violation of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C., Title 15, Sec. 13).

Mr. Benjamin H. Vogler supporting the complaint.

Mr. Erwin Feldman, New York, N.Y., for the respondent.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

FEBRUARY 10, 1967

PRELIMINARY STATEMENT

This is a proceeding under Section 2(d) of the Clayton Act, as amended.[1] The complaint was issued July 30, 1965. Respondent's answer was filed August 30, 1965.

Respondent Gladstone-Arcuni, Inc., a New York corporation, is a manufacturer of "daytime" dresses that sell at wholesale for $45, $51 and $69 per dozen. It seeks to defend its admittedly nonproportionalized advertising payments and promotional allowances to customers in Chicago, Illinois; Cleveland, Ohio; and Baltimore, Maryland, during the years 1961, 1962 and 1963, by asserting that its payments and allowances (1) in fact did not violate Section 2(d) of the amended Clayton Act; (2) were made in good faith to "meet competition";[2] and (3) were granted for the purpose of "defending respondent's position" with its customers. In addition, it asserts that this proceeding is not in the public interest.

Substantially the same defenses were asserted by the same counsel before the same hearing examiner in a similar Section 2(d) proceeding, *Rabiner & Jontow, Inc.*, Docket 8629 [70 F.T.C. 638]. These defenses were rejected by the hearing examiner and the Federal Trade Commission in *Rabiner & Jontow* (slip opinion dated September 19, 1966 [70 F.T.C. 638, 683]). *Rabiner & Jontow* is now on appeal to the United States Court of Appeals for the Second Circuit. At page 9 of its proposed findings in the instant proceeding, respondent states: "We are fully aware of the fact that a majority of the Commission has already decided this issue against the contentions of this respondent but this respondent takes the position that as long as the *Rabiner & Jontow, Inc.*, case is on appeal, it will adhere to its position until the matter is finally adjudicated."

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[1] § 2(d) "That it shall be unlawful for any person engaged in commerce to pay or contract for the payment of anything of value to or for the benefit of a customer of such person in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such person, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities."

[2] Section 2(b) of the Clayton Act, as amended, provides:

"Provided * * * That nothing * * * shall prevent a seller * * * showing that his * * * furnishing of services or facilities * * * was made in good faith to meet * * * the services or facilities furnished by a competitor."

On page 11 of his proposed findings, respondent's counsel asserts:

> It is the duty of the Commission to go to Congress and point out the inequities created by its inability to enforce the Act and in the case of industry-wide action should have the right to issue an order, after a single public hearing, against the entire industry which it could enforce without having to take up each case individually.
>
> Under such circumstances, no one would be heard to complain as the Act would then be uniformly enforceable against all persons in the industry. But to single out a handful because the Commission does not know of any other way of handling the situation is hardly an appropriate answer.

Implicit in this argument are assumptions that are not supported by this record. There is no evidence of "inequities" nor of the Commission's "inability" to enforce Sec. 2(d) of the Clayton Act against daytime dress manufacturers who violate the law. If respondent's counsel knows of any manufacturer who is violating the law, such information would be welcomed by the Commission. If, on the other hand, respondent's counsel feels that the present law should be changed, his long association with the daytime dress industry should assure him a respectful hearing by the Congress.

His suggestion that Congress authorize the Federal Trade Commission to issue a blanket cease and desist order against the "more than 500" manufacturers of daytime dresses without according each manufacturer his "day in court" is novel to say the least. The appropriate place to urge such a proceeding is before the Congress of the United States or the Federal Trade Commission, not before this hearing examiner.

The Commission has adequately dealt with all of this respondent's arguments in its opinion in *Rabiner & Jontow,* and no useful purpose would be served by repeating here *in extenso* what the Commission said in that case.

In confirming a Section 2(d) cease and desist order in *Ace Books, Inc., et al,* Docket 8557 (slip opinion of June 18, 1965, 67 F.T.C. 1073, 1129–1130), the Federal Trade Commission, *inter alia,* said:

> It has been recognized that the burden of establishing the Section 2(b) defense is upon the proponent. *Federal Trade Commission* v. *Sun Oil Co.,* 371 U.S. 505 (1963). Since the defense has the effect of exculpating a discrimination which would otherwise be forbidden, the evidence upon which the defense is predicated must be of sufficient preciseness to permit an informed determination. [citing cases] We think the evidence presented here does not permit such a determination. The evidence does not show when respondents' competitors began granting allowances * * * or when respondents themselves initiated

the practice. The record fails to establish the rates used by respondents' competitors to compute their allowances or the amounts of such allowances. No conclusive determination can be made with regard to the rates used by respondents. Respondents failed to show any of the circumstances surrounding the initiation of their allowances to these retailers and made no effort to establish that their allowances did not in fact exceed those of competitors, by reference either to the rates or the total amounts of these allowances. Without evidence of a more specific nature, the Commission is unable to make an informed determination on the various questions which must be resolved and, as a result, is compelled to reject respondents' contention that they have met their burden in establishing the defense.

In *Exquisite Form Brassiere Inc.* v. *Federal Trade Commission*, 360 F. 2d 492 (D.C. Cir. 1965), *certiorari denied*, 384 U.S. 959, a Section 2(d) proceeding wherein a meeting competition defense was rejected, the Court, *inter alia*, said:

Exquisite Form in the present case essentially premises its position upon the proposition that in a Section 2(d) case, if the accused company establishes that its competitors have plans or systems whereby they make advertising allowances to their customers, any company in the industry can combat such systems by inventing and operating a system or plan of its own. Exquisite Form states a number of points, but all of them arise from or are enveloped in the proposition just stated. This, as it phrases the matter, is the crux of the case. Admittedly the Supreme Court has held [*F.T.C.* v. *A. E. Staley Co.*, 324 U.S. 746 (1945).] that in a price discrimination case (a Section 2(a) case) it is not an effective protection for an accused company to show that it operated a plan or system in order to combat its competitors' plans or systems; in other words, that in those cases a plan to combat other plans is not an effective defense under the proviso in Section 2(b). The Court held that in such cases the combative act had to be a specific act aimed at a lower price on the part of a competitor in "individual competitive situations, rather than * * * [in] a general system of competition." Exquisite Form argues that that rule cannot apply to the advertising allowance practices in the brassiere industry, because of the factual characteristics of that industry and the practices in it.

We think the doctrine of *Staley* must be applied here. There are differences, of course, between a price discrimination (Section 2(a)) case and a case involving advertising allowances. But we are not shown that any such difference goes to the basic thesis involved in the statute or to the rationale of *Staley*. We are not shown any compelling reason for different treatment.

Exquisite Form also contends that, even if the doctrine of *Staley* applies, its proof satisfied the requirements of that case. The only evidence which related to individual competitive situations consisted of a table which set forth the dates of retailers' advertisements of Exquisite Form products and competitors' products. There was no testimony which explained how this table related to company policy. The Commission found that Exquisite Form's evidence was insufficient to support its contention. We agree with the Commission.

The first prehearing conference[3] in this proceeding, set for

[3] Prehearing conferences were held on October 11, 1965, December 1, 1965, and January 25, 1966.

September 15, 1965, was continued to October 5, 1965, at the request of respondent's counsel. In the meantime, on September 18, 1965, Joseph P. Arcuni, the sole stockholder and chief executive officer of Gladstone-Arcuni, was critically injured in an automobile accident. He suffered such severe injuries that he was unable to confer for any extended period of time with his counsel concerning the defense of this proceeding and was unable to be present at the hearings. After the first prehearing conference was held, respondent's counsel himself was confined to the hospital on two separate occasions for surgery. Because of Mr. Joseph P. Arcuni's state of health and the health of respondent's counsel, generous extensions of time have been granted to respondent.

The evidentiary record in this proceeding consists of a stipulation filed on April 13, 1966, the stenographic transcript of hearings in New York, New York, on September 26 and 27, 1966, and the exhibits received in evidence at such hearings.

Proposed findings, conclusions, and order have been submitted to and given careful consideration by the hearing examiner. Findings that are not made in this initial decision in the form proposed, or in substantially that form, are hereby rejected. Any motions heretofore made but not ruled upon are hereby denied. Respondent's proposed findings contain few findings of fact that are relevant to its "meeting competition" or "no public interest" defenses. Respondent's extensive quotations from the dissenting opinion in *Rabiner & Jontow, Inc.* (respondent's proposed findings, pp. 8–9, 13) merely reiterate arguments that had been considered by the majority of the Commission and had been rejected.

Based upon the stipulation filed herein on April 13, 1966, the hearing examiner makes the following:

FINDINGS OF FACT

1. Respondent, Gladstone-Arcuni, 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 71 Fifth Avenue, New York, New York, 10003.[4]

2. Respondent is now and has been engaged in the manufacture, sale and distribution of women's and misses' dresses under the trade names of "Hattie Leeds," "Miss Smith," "Diane Carter," and "Active Woman." These products sell for $45, $51 and $69 per dozen. The style numbers identifying respondent's dresses gen-

[4] Findings 1–9 constitute the stipulation of counsel *in haec verba.*