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Complaint

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 respondents Nipkow & Kobelt, Inc., and its officers, and Werner A. Kobelt and Emil G. Gress, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from furnishing a false guaranty under the Flammable Fabrics Act, that any fabric is not, under the provisions of Section 4 of said Act, so highly flammable as to be dangerous when worn by individuals, when respondents have reason to believe such fabric may be introduced, sold, or transported 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.

 IN THE MATTER OF

 JOSEPH LOUIS ZELDON DOING BUSINESS AS
 GUILD INSTITUTE OF MUSIC

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

Docket C-1279. Complaint, Dec. 19, 1967—Decision, Dec. 19, 1967

Consent order requiring a Washington, D.C., seller of accordions and music lessons to cease misrepresenting that his music lessons are free or at reduced prices, that prospective customers are specially selected, that his telephone contacts are for survey purposes only, that his music tests determine musical aptitude, and neglecting to disclose all the terms and conditions of his offer to do business.

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 Joseph

Louis Zeldon, an individual, doing business as Guild Institute of Music, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Joseph Louis Zeldon is an individual doing business as Guild Institute of Music, with his principal office and place of business located at 1319 F Street, NW., Washington, D.C.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the offering for sale, sale and distribution of music lessons and accordions to the public.

PAR. 3. In the course and conduct of his business, respondent now causes, and for some time last past has caused, his said merchandise and services to be sold to purchasers located within the District of Columbia and to purchasers in the States of Maryland and Virginia, and respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in said merchandise and services in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of his business, and for the purpose of initially inducing the purchase of music lessons and ultimately inducing the purchase of an accordion, respondent has developed and employs a deceptive sales technique whereby numerous oral statements and representations are made respecting the nature and purpose of respondent's solicitation.

The initial step in respondent's sales technique consists of the use of telephone canvassers who use the telephone and street address directory to obtain telephone numbers to call people at home. The canvasser states that she is making a survey or listing of school age children and she asks the person called whether he or she has children and, if so, their sex and age. On occasions the child's name is asked. When the person called asks the identity of the caller or the purpose of the requested information, the canvasser is instructed to give the purpose only as a "survey" or "listing." The canvasser is instructed to avoid all questions. The canvasser is paid at the rate of 10 cents per name submitted to respondent.

The next step in respondent's technique consists of a telephone contact by a salesman whose purpose is to obtain an appointment at the parent's residence. The salesman makes oral representations

of which the following are typical and illustrative, but not all inclusive:

Hello Mrs. Jones, this is (Bob Stone) calling. I'm going to be in the neighborhood this evening testing the school children for our special music program and am interested in your (8 year old boy). Is he taking music now? Well, this is a program for the elementary and junior high school children, sponsored by the Guild Institute of Music. It's designed to see if the children have any ability along musical lines *without* the parents having to buy or rent an instrument. What I do is test your child to see if he has the interest and talent.

Answers to some questions:

"Where are you located?" Try not to give our address. "We have locations in Maryland, Washington and Virginia, and home teaching. Did you ever study music Mrs. Jones?" (change the subject).

"How much does this cost?" Try not to give any prices. "It depends on the child's talent. Is 7:00 or 7:30 o.k.?"

"What instruments do you teach?" "We can arrange lessons on most instruments. I will discuss that with you this evening. Is 7:00 or 7:30 o.k.?"

During the visit to the home the salesman's "presentation" is made. This "presentation" includes inducing the parent to permit the child to be "tested" for musical aptitude. The parent is told that:

This is a program sponsored for the elementary & Jr. High school children by the Guild Institute of Music. We work only with the younger children at this time, and have a very successful program for children with talent. The hard part of the program is finding the children with the necessary requirements.

However, most of the children accepted for this program succeed. We find that children between 8 and 12 can be orientated to music very quickly; and because of our success in working with the younger children, we have devised an excellent beginner's course to analyze your child's abilities. If your child passes the test I'm going to give him this evening, he will be acceptable to participate in this trial program. The cost of this 8 week program is \$59, which is less than our cost.

* * * The first 8 lessons are given on the piano accordion. The reasons for this are that the piano accordion is the easiest instrument to learn; it is a basic instrument, which lays the foundation for all other instruments * * *.

* * * * *

[Closing arguments:] Please get a decision while you are still in the home. It is better to get a yes or no right away, because your chances after you leave are very slim. Many people go through life with a talent and never make use of it, whether it be in music, art, sports, etc. Now is the time to give your child the chance. Many parents decide to give their children music, and go out and buy or rent an expensive instrument. The child may take a few lessons and quit, and you are stuck with the instrument. But with us the instrument is furnished. There are many ways to spend \$59 on a child and not have him get anything out of it, but this is something that the child will appreciate for the rest of his life. Now is the time to give your child a chance.

After the child is allowed to operate an accordion during the "test," the parent is informed that the child shows promise and indicates above-average talent. The parent is told that the child can go a long way in music, and enrollment for music lessons is recommended. At this point the salesman is instructed to "immediately get out your contract pad and start writing. Always assume the sale. Never wait for an OK from the parents. As you finish writing the contract, ask the parents if this will be cash or check."

In those instances in which the parent is agreeable, the child is accepted for a "trial program" of eight weeks duration and, after agreeing to pay a nominal tuition fee, the child commences a schedule of accordion lessons. During the course of or at the end of these lessons, the parent is again contacted and is informed that the child is found to be eligible for a "scholarship" consisting of free music lessons of a designated duration.

PAR. 5. By and through the use of the aforesaid oral statements and representations, and others of similar import not specifically set out herein, and through the use of the aforesaid technique and activities, respondent represents, and has represented, directly or by implication, that:

1. The purpose of the canvasser's call is to obtain information for a bona fide survey or listing of school age children;
2. There is nothing to buy as a consequence of listening to the oral presentation of respondent's representative;
3. The representative who calls upon the parent at home is concerned only with the child's interests and musical talent;
4. Respondent gives music instruction on most instruments;
5. Respondent's program is only for specially selected children who can meet certain musical qualifications;
6. The parent should reach a decision right away because the chances of the child's acceptance in respondent's program at some later time are very slim;
7. The "musical talent test" administered by respondent's representative is a bona fide test employed to obtain a true determination of the child's musical aptitude;
8. Respondent is making a bona fide offer of a scholarship consisting of free music lessons.

PAR. 6. In truth and in fact:

1. The purpose of the canvasser's call is not to obtain information for a bona fide survey or listing of school age children;
2. As a consequence of listening to the oral presentation of respondent's representatives, respondent endeavors to enroll the child in a course of music instruction for which a charge is made;

3. The representative who calls upon the parent at home is not concerned only with the child's interests and musical talent. In fact, respondent's principal interest is in obtaining leads to parents of children who are of a certain age, for the initial purpose of selling music lessons and for the ultimate purpose of selling an accordion;

4. Respondent does not give music instruction on most instruments; his course of instruction is devoted only to the accordion;

5. Respondent's program is not only for specially selected children who can meet certain musical qualifications. In fact, the only qualifications are that the child be of proper age to take music lessons (usually 7½ to 12 years old) and that the child have parents who can ultimately afford to purchase an accordion;

6. The chances of the child's acceptance in respondent's program will not be significantly diminished if the parent decides upon enrollment at some later time;

7. The "musical talent test" administered by respondent's representatives is not a bona fide test employed to obtain a true determination of the child's musical aptitude;

8. Respondent is not making a bona fide offer of a scholarship consisting of free music lessons. In fact, receipt of the "scholarship" is predicated upon the parents' purchase of an accordion, at various prices ranging generally from \$400 to \$2,500, depending upon the quality of the accordion and upon the sales resistance of the parents.

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

PAR. 7. In the conduct of his business, at all times mentioned herein, respondent has been in substantial competition, in commerce, with corporations, firms and individuals in the sale of music lessons and accordions of the same general kind and nature as those sold by respondent.

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

PAR. 9. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted, and now

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

DECISION AND ORDER

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

The respondent and counsel for the Commission having executed an agreement containing a consent order, and the Commission having accepted same and placed it on the public record for a period of thirty days, and the Commission having thereafter reconsidered the matter and withdrawn its acceptance of such agreement and the respondent having been so notified; and

Counsel for respondent and counsel for the Commission having subsequently, on November 28, 1967, executed another agreement containing an admission by the respondent of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules, and also containing an order identical to that set forth in the agreement previously accepted by the Commission except that paragraph 13 thereof has been appropriately revised and paragraph 14 appropriately added; and which agreement also provides that if it is accepted by the Commission, the Commission, if it so elects, may forthwith issue its complaint corresponding in form and substance with the copy heretofore served on respondent and enter its decision containing the order contemplated by the agreement; and

The Commission having considered such agreement and having accepted same, and it appearing to the Commission that the said paragraphs 13 and 14 of the order are not substantive in nature but solely directed to effectuating compliance with the substantive provisions of the order, and the Commission having determined that the public interest will be better served by issuance of decision now rather than staying final disposition thereof, attendant to also placing the new agreement on the public record for a period of 30 days for the reception of comments;

Now, therefore, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Joseph Louis Zeldon is an individual doing business as Guild Institute of Music, with his principal office and place of business located at 1319 F Street, NW., Washington, D.C.

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 Joseph Louis Zeldon, an individual, doing business as Guild Institute of Music or under any other name or names, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, canvassing, soliciting for purchase, offering for sale, sale or distribution of music lessons or any other course of instruction, accordions or other musical instrument, or any other products or services, 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 the purpose of a telephone canvasser's request for information is to obtain information for a survey or listing of school children; or misrepresenting in any manner the nature or purpose of any request for information.

2. Representing, directly or by implication, that there is nothing to buy as a consequence of listening to an oral presentation; or misrepresenting in any manner the nature or purpose of an oral presentation.

3. Representing, directly or by implication, that the representative who calls upon the parent at home is concerned only with the child's interests or musical talent.

4. Representing, directly or by implication, that respondent gives music lessons on any musical instrument other than the accordion; or misrepresenting in any manner the nature or scope of respondent's business.

5. Representing, directly or by implication, that respondent's program is only for specially selected children who can meet certain musical qualifications; or misrepresenting in any manner the method of selection or enrollment employed by or the qualifications required by respondent.

6. Representing, directly or by implication, that the parent should reach a decision right away because the chances of the child's acceptance in respondent's program at some later time are slim or will be significantly diminished or reduced; or misrepresenting in any manner the time or other limitations placed upon respondent's offer.

7. Representing, directly or by implication, that any musical talent test, or other test administered by respondent or respondent's representatives, is a test employed to obtain a true determination of the child's musical aptitude; or misrepresenting in any manner the nature or purpose of any test or examination given by respondent or respondent's representatives.

8. Representing, directly or by implication, through the offer of a "scholarship," or otherwise, that music lessons will be given without charge by respondent, when the offer is contingent upon the purchase of a musical instrument or when the offer is in any other respect conditional.

9. Representing, directly or by implication, that any service or article of merchandise is being given free or as a gift, or without cost or charge, or at a reduced price, in connection with the purchase of other merchandise, unless the stated price of the merchandise required to be purchased in order to obtain said article is the same or less than the customary and usual price at which such merchandise has been sold separately for a substantial period of time in the recent and regular course of business.

10. Using canvassers to contact people for the purpose of obtaining leads to persons with school age children, unless the canvasser orally discloses at the outset that the true purpose of the contact is to obtain sales leads.

11. Failing or refusing to orally disclose, regardless of any affirmative request for the information, the full name and address of respondent's business whenever contact is made with a parent for the purpose of obtaining a sales lead or for the purpose of obtaining an interview or appointment with a sales lead.

12. Instructing canvassers, salesmen or representatives to try not to give respondent's address, or the prices of any service or product, or in any manner to avoid or evade any legitimate question asked by a prospective purchaser of respondent's services or product; or failing or refusing to

answer any legitimate request for information from a purchaser or prospective purchaser.

13. Failing to deliver a copy of this order to cease and desist to all present and future salesmen or other persons engaged in the sale of respondent's products or services, and failing to secure from each such salesman or other person a signed statement acknowledging receipt of said order.

14. Failing, after the acceptance of the initial report of compliance, to submit a report to the Commission once every year during the next three years describing all complaints respecting unauthorized representations, all complaints received from customers respecting representations by salesmen which are claimed to have been deceptive, the facts uncovered by respondent in his investigation thereof and the action taken by respondent with respect to each such complaint.

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

IN THE MATTER OF

CAROLY OF MIAMI, 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-1280. Complaint, Dec. 21, 1967—Decision, Dec. 21, 1967

Consent order requiring a Miami, Fla., manufacturer of ladies' sportswear to cease misbranding and falsely guaranteeing its textile fiber products and failing to maintain required records.

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 Caroly of Miami, Inc., a corporation, and Lester Greger and Frances Greger, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the 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 Caroly of Miami, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida.

Individual respondents Lester Greger and Frances Greger are respectively president and secretary treasurer of the corporate respondent. They formulate, direct and control the acts, practices and policies of said corporate respondent, including the acts and practices hereinafter referred to.

Respondents are engaged in the manufacture and sale of ladies' sportswear, with their office and principal place of business located at 198 NW. 24th Street, Miami, Florida.

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 the 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 textile fiber products which were labeled to show the contents as "60% Cotton, 40% Dacron," "100% Cotton," and "100% Arnel," whereas in truth and in fact, said products contained substantially different fibers and amounts of fibers than as represented.

PAR. 4. Certain of said textile fiber products were further misbranded in that they were not stamped, tagged, labeled or

otherwise identified as required under the provisions of Section 4(b) of the Textile Fiber Products Identification Act, and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

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

1. To disclose the true generic names of the fibers present; and
2. To disclose the percentage of such fibers by weight.

PAR. 5. Respondents have failed to maintain proper records showing the fiber content of the textile fiber products manufactured by them, in violation of Section 6(a) of the Textile Fiber Products Identification Act and Rule 39 of the Regulations promulgated thereunder.

PAR. 6. Respondents have furnished a false guaranty that certain of their textile fiber products were not misbranded or falsely invoiced, in violation of Section 10 of the Textile Fiber Products Identification Act.

PAR. 7. The acts and practices of the 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 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 respond-

ents 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 Caroly of Miami, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 198 NW. 24th Street, Miami, Florida.

Respondents Lester Greger and Frances Greger are officers of said corporation and their address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents Caroly of Miami, Inc., a corporation, and its officers, and Lester Greger and Frances Greger, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, 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

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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 textile fiber products manufactured by them, as required by Section 6(a) of the Textile Fiber Products Identification Act and Rule 39 of the Regulations promulgated thereunder.

C. Furnishing false guaranties that textile fiber products are 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.

INTERLOCUTORY, VACATING, AND
MISCELLANEOUS ORDERS

SUBURBAN PROPANE GAS CORPORATION

Docket 8672. Order, July 20, 1967

Order denying complaint counsel's request to appeal from examiner's ruling re: cost justification, and respondent's request to join Phillips Petroleum Company as a party respondent.

ORDER RULING ON REQUEST TO FILE AN INTERLOCUTORY APPEAL
AND REQUEST FOR RECONSIDERATION

These matters are before the Commission upon complaint counsel's request for permission to file an interlocutory appeal from the hearing examiner's "Ruling on Respondent's Motion Re Cost Justification," respondent's answer in opposition thereto, and complaint counsel's reply. In addition, respondent has filed a request that the Commission reconsider its Order of May 25, 1967 [71 F.T.C. 1695], ruling on Suburban's interlocutory appeal from the examiner's denial of Suburban's motion to join Phillips Petroleum Company as a party respondent, which is opposed by complaint counsel.

I. Complaint Counsel's Request for Permission to File an
Interlocutory Appeal from the Hearing Examiner's Ruling
on Respondent's Motion Re Cost Justification

On May 25, 1967, the Commission ruled on respondent's interlocutory appeal on the issue of allocation of the burden of proof on the cost justification issue.¹ With that order, the matter was returned to the hearing examiner for an appropriate pretrial order on this issue. It is from the resulting pretrial order issued by the examiner on June 27² that complaint counsel request permission to file an interlocutory appeal.

The operative part of the hearing examiner's pretrial order provides:

(A) that complaint counsel shall have the burden of showing, as part of their prima facie case, that the difference in the methods by which Suburban

¹ *Suburban Propane Gas Corp.* (Order Ruling On Interlocutory Appeals, May 25, 1967), Docket No. 8672 [71 F.T.C. 1695].

² *Suburban Propane Gas Corp.* (Hearing Examiner's Ruling On Respondent's Motion Re Cost Justification, June 27, 1967), Docket No. 8672.

