representation and the insurer does in fact indemnify for residence in such a hospital.

10. Representing to insured individuals who file claims that the policy under which they claim does not cover injuries if the accident from which the injuries resulted was caused by the insured's negligence or intoxication unless the policy is in fact so limited and such limitations are clearly and conspicuously disclosed in the advertising material for the policy.

11. Representing 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, limitations, costs and possible additional assessments affecting the indemnification actually provided is set forth conspicuously, prominently and in sufficiently close conjunction with the representation or representations as will fully relieve it of all capacity to deceive.

12. Omitting any material limitations in the coverage of any policy in any advertising which purports to describe the coverage in the policy.

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

CONSOLIDATED MORTGAGE COMPANY ET AL.

ORDER DISMISSING AN ORDER IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

Docket 8723. Complaint, Dec. 8, 1966—Decision, Apr. 19, 1968

Order reopening an order dated February 19, 1968, page 376 herein, against a now dissolved Providence, R.I., mortgage loan company and its officers, and dismissing the complaint and setting aside the order as to the corporate respondent.

ORDER REOPENING AND DISMISSING COMPLAINT AND SETTING ASIDE ORDER AS TO CORPORATE RESPONDENT

Respondents, on March 18, 1968, filed with the Commission a petition, requesting the Commission to reconsider its opinion and final order issued February 19, 1968, on the grounds that the Commission

assertedly failed or did not have the opportunity to consider respondents' submission of February 21, 1968, relating to a petition for dissolution filed in Superior Court of Rhode Island and that the Commission assertedly did not follow an interpretation of law as contained in certain cases referred to, and further requesting the Commission to grant respondents a reasonable time within which to submit to the Commission a final court order dissolving respondent corporation and to grant respondents an oral hearing on their petition. Complaint counsel, on March 25, 1968, filed an answer in opposition to the petition.

Subsequently, on April 8, 1968, respondents filed a letter with the Commission, enclosing a copy of the final decree of Superior Court of the State of Rhode Island, entered April 3, 1968, ordering that Consolidated Mortgage Company be dissolved. Complaint counsel filed a supplemental answer April 11, 1968, in which he states he is opposed to any reconsideration of the Commission's decision and final order but that he has no objection to the exclusion of the corporate respondent from the order to cease and desist in view of its dissolution.

In the circumstances, the Commission is of the opinion that this proceeding should be reopened pursuant to § 3.72(a) of the Commission's Rules of Practice, the complaint dismissed and the order set aside as to the dissolved corporate respondent. This action will render moot or irrelevant respondents' other specific requests. Accordingly,

It is ordered, That this matter be, and it hereby is, reopened.

It is further ordered, That the order to cease and desist as to respondent Consolidated Mortgage Corporation be, and it hereby is, set aside and that the complaint as to such respondent be, and it hereby is, dismissed.

IN THE MATTER OF

HEAD SKI CO., INC., ET AL.

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

Docket C-1323. Complaint, April 19, 1968—Decision, April 19, 1968

Consent order requiring two Maryland manufacturers of skis, ski accessories and ski clothing to cease using unlawful resale price fixing and price maintenance tactics in the sale of their products to franchise dealers.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal

Trade Commission, having reason to believe that the parties named in the caption hereof, and hereinafter more fully described, have violated and are now violating the provisions of Section 5 of the Federal Trade Commission Act (15 U.S.C. § 45), 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 Head Ski Co., Inc., hereinafter referred to as Head Ski, is a corporation organized and doing business under the laws of the State of Delaware, with its office and principal place of business located at 15 West Aylesbury Road, Timonium, Maryland.

Respondent Head Ski & Sports Wear, Inc., hereinafter referred to as Head Ski & Sports Wear, is a subsidiary of Head Ski which owns and controls over 80 percent of its stock. Head Ski & Sports Wear is a corporation organized and doing business under the laws of the State of Maryland, with its office and principal place of business located at 208 Wight Avenue, Cockeysville, Maryland.

PAR. 2. Head Ski is now, and has been for many years engaged in the manufacture, distribution, and sale of combination metal, plastic, and wood skis, ski poles, and various ski accessory products, including but not limited to, edge sharpeners, surface repair kits, tip protectors, spray bases, and pole rings.

Head Ski & Sports Wear is engaged in the marketing of ski pants, parkas, sweaters, and accessory products used for skiing and other outdoor activities.

PAR. 3. Respondents both sell and distribute their merchandise by means of a network of franchised retail dealers throughout the United States. These dealers offer such merchandise for resale or rental to the public, except in some instances, where respondent Head Ski reserves for itself the sole right to offer its products for sale to certain specified classes of purchasers.

PAR. 4. In the course and conduct of their business respondents are now and have been at all times referred to herein engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondents ship their products, or cause such products to be shipped, from States wherein they do business to purchasers located in other States. The dollar volume of net sales of skis and ski accessory products by respondent Head Ski has increased from over $1,000,000 in 1957, to an amount in excess of $9,000,000 in 1966. There is and has been at all times mentioned herein a continuous and increasingly substantial current of trade in commerce in such products between and among the several States of the United States and the District of Columbia.

PAR. 5. Except to the extent that competition has been hindered, frustrated, lessened, and eliminated as set forth in this complaint, respondents have been and are now in substantial competition with other corporations, individuals, and partnerships engaged in the sale and distribution of products similar to those described in Paragraph 2 hereinabove.

PAR. 6. For many years, and continuing to the present time, it has been the practice and policy of Head Ski, and recently of Head Ski & Sports Wear to establish, maintain, and enforce a merchandising or distribution program and policy under which contracts, agreements, understandings, and arrangements are entered into with their retail dealers which have the purpose and effect of fixing, establishing, and maintaining the prices, terms, and conditions of sale or rental of their products.

PAR. 7. Respondents require their dealers annually to execute a contract or agreement under the terms of which such retail dealers agree, among other things:

Not to display, advertise, offer for sale, or sell directly or indirectly, merchandise purchased from respondents at prices less than, or under terms or conditions other than those established and provided by respondents;

That products shipped to them by respondents will, under no circumstances, be transferred or sold, by retail sale or otherwise to any other shop or dealer not an authorized Head Ski Dealer;

To resell to respondents any unsold stock of respondents' products in the event that business relations between respondents and the dealers are terminated.

PAR. 8. Head Ski requires its dealers to refrain from selling its products to certain designated classes of retail customers including, but not limited to, ski schools, ski instructors, professional skiers, and ski patrol members. As to these classes, respondent insists that it alone make such sales.

PAR. 9. Head Ski urges, advocates, induces, compels, and aids and abets its franchised retail dealers to combine for the purpose of agreeing upon uniform policies and prices with regard to such matters as rental fees, binding mounting charges, trade-in allowances, and the application or applicability of a rental charge to the purchase price of new skis.

PAR. 10. Respondents have established a system of policing their dealers in order to ascertain deviations by such dealers from the provisions of respondents' merchandising programs. Respondents conduct

such policing by various means and methods including, but not limited to, the following:

Affixing serial numbers on all skis shipped by Head Ski to its dealers for the purpose, among others, of tracing sales violating respondent's merchandising programs and to unauthorized retail outlets;

Requiring and soliciting from their dealers assistance and cooperation in securing and reporting information to respondents as to the failure of other dealers to support, observe, or comply with respondents' merchandising programs;

Circulating notices to their dealers informing them of dealers added or dropped within the dealer's general area for the purpose, among others, of providing such dealers with a current listing of other dealers whom they are to police; and

Directing their area representatives and other employees to secure and report information as to the failure of their dealers to observe and comply with respondents' merchandising programs.

PAR. 11. Respondents, upon learning of deviations by their dealers from the prices, terms, or conditions established under their merchandising programs, enforce their programs and policies by various means and methods of which the following are examples:

Contacting such deviating dealers and securing, or attempting to secure assurances from such dealers, that they will observe and comply with respondents' merchandising programs;

Threatening to discontinue doing business with such dealers who fail to observe and comply with their merchandising programs; and

Terminating dealerships by refusing to sell to such dealers.

PAR. 12. The foregoing programs and policies and respondents' acts and practices in furtherance thereof, have had and do now have a dangerous tendency or effect of unduly hindering, lessening, restraining or eliminating competition and trade in the sale and distribution of skis, ski equipment, and accessory and related products.

PAR. 13. The foregoing programs and policies, and acts and practices, as alleged, are prejudicial and injurious to the public and constitute unfair acts and practices and unfair methods of competition in commerce within the meaning and intent 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 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 alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of 30 days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, 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 Head Ski Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 15 West Aylesbury Road, in the city of Timonium, State of Maryland.

Respondent Head Ski & Sports Wear, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 208 Wight Avenue, in the city of Cockeysville, State of Maryland.

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

I. *It is ordered*, That respondent Head Ski Co., Inc., a corporation, its subsidiaries, successors, assigns, officers, directors, agents, representatives, and/or employees, individually or in concert, directly or through any corporate or other device, in connection with the manufacture, distribution, offering for sale, sale, or rental of skis, ski poles or ski accessory products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Establishing, maintaining, or enforcing any merchandising or distribution program, plan or policy under which contracts, agreements, understandings, arrangements, or planned common courses of action or courses of dealing are entered into with its dealers which have the purpose or effect of fixing, establishing, maintaining or enforcing the prices, terms, or conditions of sale or rental at which its skis, ski poles or ski accessory products, are to be resold or rented. This paragraph shall apply regardless of whether or not such contracts, agreements, understandings, or arrangements are otherwise lawful under the statutes, laws, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia.

For the purposes of this Order the phrase "terms, or conditions of sale or rental" shall mean service charges, rental fees, trade-in allowances, methods of payment, time restrictions on sale and customer restrictions.

B. Entering into, continuing or enforcing, or attempting to enforce any contract, agreement, understanding, or arrangement, or any provision therein, which is inconsistent with subparagraph (A) above or subparagraph (C) below.

C. Engaging in any one or more of the following acts or practices:

1. Prior to selling to a prospective dealer, requiring assurances, whether by understanding, agreement, or otherwise, from such person or persons that they will agree to abide by, and will abide by the provisions of any merchandising or distribution program or policy inconsistent with the provisions of this Order:

2. Requiring, directly or indirectly, any dealer to resell to respondent any unsold stock of respondent's products in the event that business relations between respondent and the dealer are terminated: *Provided*, That respondent shall not be prohibited from repurchasing such unsold stock at the request of a dealer or from obtaining an option from a dealer to repurchase such unsold stock in the event that the dealer is unable to meet his financial obligations to respondent;

3. Preventing, encouraging, restraining, regulating, interfering with or limiting, in any manner, or for any reason, any dealers from reselling, renting, exchanging, or transferring products purchased from respondent to any other dealers whether or not such other dealers are dealers of respondent except that this provision shall not prevent respondent, Head Ski Co., Inc., from excluding from the scope of its warranty or guarantee, defects caused by faulty service or improper mounting of bindings on its products by persons other than franchised dealers;

4. Preventing, restraining, regulating, or limiting dealers from selling, at retail, products purchased from respondent, to any particular class or classes of customers (including, but not limited to professional skiers, ski school personnel, ski patrol members, federal and state agencies, the military, and educational institutions) at whatever prices, terms, or conditions of sale are independently determined by such dealers, and without prior clearance from or authorization by respondent:

5. Urging, advocating, inducing, compelling, or aiding and abetting its retail dealers to combine locally for the purpose or with the effect of arranging or agreeing upon uniform policies and programs relating to rental fees, binding mounting charges, trade-in allowances, or any other prices, fees, or charges, or terms or conditions pertaining to the sale or rental of any products purchased from respondent;

6. Using registration numbers, serial numbers or other similar identifying marks on its products as a means of tracing to particular dealers sales of skis where the purpose or effect of such tracing is to implement any programs or policies of respondent forbidden by this Order;

7. For a period of three (3) years after the effective date of this Order, publishing, disseminating or circulating to its dealers, or including in any advertising aids supplied or sold to its dealers, any prices or lists of prices, suggested or mandatory, at which its products may or must be resold or rented by such dealers, and after said period of three years unless each reference to such prices is accompanied by a clear and conspicuous statement that the resale prices stated are "manufacturer's suggested retail prices only";

8. For a period of 3 years after the effective date of this order, including in its own advertising any retail prices unless such prices are stated in terms of a multiple of five dollars and are prefaced by the phrase "sells for around," and after such three year period from including such prices in its own advertising unless such prices are clearly and conspicuously accompanied by one of the following statements: "Manufacturer's suggested retail (list) price(s) only"; "Suggested retail (list price(s) only": "Sells for around (about)": or "Around";

9. Circulating or publishing (1) lists of dealers or (2) notices to dealers informing them of franchises which have been added or dropped: *Provided*, That respondent may, as a matter of courtesy, once each year in the spring, inform franchised dealers

in any particular area of all franchises effective in that area for that year, and respondent may sponsor advertising which lists authorized dealers in a particular area;

10. Requiring, requesting, or soliciting from its dealers assistance and cooperation in securing and reporting information to respondent regarding the failure of other dealers to observe and comply with any merchandising programs or policies of respondent containing any prices, terms, or conditions of sale or rental established or suggested by respondent;

11. Directing or requiring its area representatives, salesmen or other employees or agents to secure and report information as to the failure of its dealers to observe and comply with any merchandising programs or policies of respondent containing any prices, terms, or conditions of sale or rental established or suggested by respondent which are forbidden by this Order;

12. Securing or attempting to secure assurances from its dealers, if informed that such dealers have failed to comply with or observe the prices, terms and conditions of resale or rental established by respondent, that said dealers will observe and will comply with any merchandising programs or policies of respondent containing any prices, terms or conditions of sale or rental established or suggested by respondent;

13. Threatening to terminate any dealer or threatening to refuse to fill reasonable orders or reorders of any franchised dealer, because such dealer has failed to observe and comply with any merchandising programs or policies of respondent containing any prices, terms, or conditions of sale or rental established or suggested by respondent;

14. For a period of three years after entry of this Order, terminating *any* dealer, or refusing to fill reasonable orders or reorders of any franchised dealer, because such dealer has failed to observe and comply with any merchandising programs or policies of respondent containing any prices, terms, or conditions of sale or rental established or suggested by respondent, and, after such three year period, establishing or following a program or policy of systematically or generally refusing to continue dealing with or filling reasonable orders and re-orders of dealers who fail to observe and comply with any merchandising programs or policies of respondent containing any prices, terms, or conditions of sale or rental established or suggested by respondent.

D. For a period of three (3) years after the effective date of this Order establishing or following a policy of systematically or generally

refusing to sell to any dealer who desires to sell, at retail, respondent's products, for the reason that such dealer has a reputation or potentiality for discounting or cutting prices or for selling at retail to any particular customer or class of customers.

E. For a period of three years (3) after the effective date of this Order, refusing to continue selling products to any existing dealer for any reason whatsoever, unless respondent at the time it notifies such dealer of its refusal simultaneously notifies the Commission of such refusal and provides the Commission with a detailed explanation of all reasons prompting such refusal.

II. *It is further ordered*, That respondent Head Ski Co., Inc., shall, within sixty (60) days after service upon it of this Order, serve by registered mail:

A. On all of its dealers, on official Head Ski Co., Inc., stationery, together with a copy of this Order, a copy of Letter X attached to this Order signed by the Chairman of the Board of Head Ski Co., Inc.; and,

B. On each dealer terminated since January 1, 1962, a letter advising him that he may apply, within thirty (30) days from receipt of that letter, for reinstatement as a Head Ski Co., Inc., dealer.

III. *It is further ordered*, That respondent Head Ski Co., Inc., shall cease and desist from refusing or failing to reinstate any former dealer terminated since January 1, 1962, for failure to support, observe, or comply with respondent's merchandising policies or programs containing any prices, terms or conditions of sale or rental established or suggested by respondent, where such dealer (A) requests reinstatement pursuant to the provisions of Paragraph II of this Order and (B) is willing to adequately service and sell respondent's products.

IV. *It is further ordered*, That respondent Head Ski Co., Inc., shall submit to the Commission:

A. Within sixty (60) days after service upon it of this Order a list of all dealers terminated since January 1, 1962; and

B. Within one hundred and twenty (120) days after service upon it of this Order: (a) a list of all dealers who have been reinstated since service upon respondent of this Order; and (b) a list of all dealers who have not been reinstated and the reason or reasons therefor.

V. After a period of three years from the effective date of this Order, nothing in this Order shall be construed to prohibit respondent Head Ski Co., Inc., from entering into, establishing, maintaining and enforcing, in any lawful manner, any price agreement excepted from the provisions of the Federal Trade Commission Act by virtue of

the McGuire Act amendments to said Act or by any other applicable statutes, whether now in effect or hereafter enacted.

VI. *It is further ordered*, That respondent Head Ski & Sports Wear, Inc., a corporation, its subsidiaries, successors, assigns, officers, directors, agents, representatives and/or employees, individually or in concert, directly or through any corporate or other device, in connection with the manufacture, distribution, offering for sale, sale or rental of ski clothing or accessory items, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Establishing, maintaining, or enforcing any merchandising or distribution program, plan or policy under which contracts, agreements, arrangements, understandings or planned common courses of action or courses of dealings are entered into with its dealers which have the purpose or effect of fixing, establishing, maintaining or enforcing the prices, terms or conditions of sale or rental at which their ski clothing or accessory items are to be resold or rented.

For the purposes of this Order, the phrase "terms, or conditions of sale or rental" shall mean service charges, rental fees, trade-in allowances, methods of payment, time restrictions on sale and customer restrictions.

B. Entering into, continuing, or enforcing or attempting to enforce any contract, agreement, understanding, or arrangement, or any provision therein, which is inconsistent with subparagraph (A) above or subparagraph (C) below.

C. Engaging in any one or more of the following acts or practices:

1. Prior to selling to a prospective dealer, requiring assurances, whether by understanding, agreement, or otherwise, from such person or persons that they will agree to abide by, and will abide by the provisions of any merchandising or distribution program or policy inconsistent with the provisions of this Order;

2. Requiring, directly or indirectly, any dealer to resell to respondent any unsold stock of respondent's products in the event that business relations between respondent and the dealer are terminated: *Provided*, That respondent shall not be prohibited from obtaining an option from a dealer to repurchase such unsold stock in the event that the dealer is unable to meet his financial obligations to respondent;

3. Urging, advocating, inducing, compelling, or aiding and abetting its retail dealers to combine locally for the purpose or with the effect of arranging or agreeing upon uniform policies and programs relating to any prices, fees, or charges, or terms or conditions pertaining to the sale or rental of any products purchased from respondent;

4. Using registration numbers, serial numbers or other similar identifying marks on its products as a means of tracing to particular dealers sales of its products where the purpose or effect of such tracing is to implement any programs or policies of respondent forbidden by this Order;

5. Publishing, disseminating or circulating to its dealers any lists of prices at which its products may be resold by such dealers unless such prices are accompanied by a clear and conspicuous statement that the stated prices are suggested prices only;

6. Advertising any retail prices in its own advertising or in any advertising aids supplied or sold to its dealers unless such prices are clearly and conspicuously described as manufacturer's suggested retail prices only;

7. Circulating or publishing (1) lists of dealers or (2) notices to dealers informing them of franchises which have been added or dropped: *Provided*, That respondent may, as a matter of courtesy, once each year in the spring, inform franchised dealers in any particular area of all franchises effective in that area for that year, and respondent may sponsor advertising which lists authorized dealers in a particular area;

8. Requiring, requesting, or soliciting from its dealers assistance and cooperation in securing and reporting information to respondent regarding the failure of other dealers to observe and comply with any merchandising programs or policies of respondent containing any prices, terms, or conditions of sale or rental established or suggested by respondent;

9. Directing or requiring its area representatives, salesmen or other employees or agents to secure and report information as to the failure of its dealers to observe and comply with any merchandising programs or policies of respondent containing any prices, terms, or conditions of sale or rental established or suggested by respondent which are forbidden by this Order;

10. Securing or attempting to secure assurances from its dealers, if informed that such dealers have failed to comply with or observe the prices, terms and conditions of resale or rental established by respondent, that said dealers will observe and will comply with any merchandising programs or policies of respondent containing any prices, terms or conditions of sale or rental established or suggested by respondent;

11. Threatening to terminate a particular dealership because such dealer has failed to observe and comply with any merchandising pro-

grams or policies of respondent containing any prices, terms or conditions of sale or rental established or suggested by respondent.

D. Nothing in this order shall be interpreted to prohibit respondent Head Ski & Sports Wear, Inc., from entering into, establishing, maintaining, and enforcing in any lawful manner any price agreement excepted from the provisions of the Federal Trade Commission Act by virtue of the McGuire Act amendments to said Act or any other applicable statutes, whether now in effect or hereafter enacted.

VII. *It is further ordered*, That respondents herein shall forthwith distribute a copy of this Order to all of their operating divisions.

VIII. *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.

LETTER X

(Official Head Ski Company, Inc. Letterhead)

(date)

Dear ————:

We have been directed by the Federal Trade Commission to inform you that the FTC has entered a Consent Order against Head Ski Company which, among other things, prohibits us from requiring you to support any programs or policies which establish the prices or fees at which you may sell or rent our products, which control your service charges, which limit the customers to whom you may sell or rent, or which prohibit you from selling whenever you wish. This company has consented to the Order and wishes to cooperate with the FTC, although, as our agreement with the Commission acknowledges, we have not admitted, and do not admit, any violation of the law on our part.

The Commission's Order will have a direct and important effect upon you as a Head Ski Dealer. For this reason, we have enclosed a copy of the Order. As a result of this Order, despite any existing contracts, agreements, or understandings, and despite any past or present practices or dealings, you may determine independently your own merchandising policies with respect to sale and rental prices, service charges and customers for our products without supervision, interference, or reprisals by the Head Ski Company, and without fear of being dropped or cut off as a Head Ski Dealer. For example, you may:

1. Sell or advertise for sale Head Ski products at whatever prices

you yourself desire. In connection with this, you will be receiving no more suggested retail prices from the Head Ski Company for the next three years;

2. Sell to whomever you want, including other dealers, ski school personnel, ski patrol members, ski teams, educational institutions, federal and state agencies, the military and your own employees. Furthermore, you may make such sales at whatever prices you want, and without obtaining authorization from the Head Ski Company;

3. Rent Head skis for whatever fee you yourself want; and

4. Sell rental skis whenever you desire (without waiting for any specified period of time), for whatever price you want.

Very truly yours,

(Chairman of the Board, Head Ski Co.)

IN THE MATTER OF

THE COLEMAN COMPANY, INC.

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

Docket C-1324. Complaint, April 19, 1968—Decision, April 19, 1968

Consent order requiring a Wichita, Kans., manufacturer of heating and air conditioning units and trailer and camping equipment to cease misrepresenting the guarantees on its products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that The Coleman Company, Inc., a corporation, hereinafter referred to as the 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. The Coleman Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Kansas, with its principal office and place of business located at 250 North St. Francis Avenue in the city of Wichita, State of Kansas.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of heating units, air conditioning units, automobile trailers and camping equipment to distributors, wholesalers and retailers for resale to the public and in the offering for sale, sale and distribution of heating units and air conditioning units directly to the public.

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

PAR. 4. In the course and conduct of its aforesaid business, and for the purpose of inducing the purchase of its products, the respondent has made, and is now making, numerous statements and representations in newspapers and in promotional material with respect to product guarantees or warranties.

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

Coleman AIR CONDITIONING

* * * * * * *

FREE SERVICE WITHIN WARRANTY!

Parts, labor, even the serviceman's call mileage! Every Coleman product for Mobile Homes and Travel Trailers is covered by full-protection Warranty.

* * * * * * *

Coleman COOL RAY LP-GAS LITE . . .

* * * * * * *

WARRANTED BY COLEMAN as are all Coleman products. Coleman guarantees the performance, the service, the satisfaction of every Coleman product. Backs it with a unique $1000 Warranty Bond issued by one of the world's best known bonding underwriters.

PAR. 5. By and through the use of the above-quoted statements and representations, and others of similar import and meaning but not expressly set out herein, the respondent has represented, and is now representing, directly or by implication, that its products are guaranteed or warranted without condition or limitation.

PAR. 6. In truth and in fact, respondent's guarantees or warranties of its products are subject to conditions and limitations which are not revealed in its advertised guarantees or warranties.

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 its aforesaid business, and at all times mentioned herein, respondent has been, and now is, in substantial competition, in commerce, with corporations, firms, and individuals in the sale of heating units, air conditioning units, automobile trailers and camping equipment of the same general kind and nature as those sold by respondent.

PAR. 8. By and through the use of the aforesaid acts and practices, respondent places in the hands of distributors, retailers, dealers and others the means and instrumentalities by and through which it may mislead and deceive the public in the manner and as to the things hereinabove alleged.

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

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

DECISION AND ORDER

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

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

plaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of 30 days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, 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 The Coleman Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Kansas, with its office and principal place of business located at 250 North St. Francis Avenue, in the city of Wichita, State of Kansas.

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

ORDER

It is ordered, That respondent The Coleman Company, Inc., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of heating units, air conditioning units, automobile trailers, camping equipment or other products, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that its 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.

2. Furnishing or otherwise placing in the hands of others any means or instrumentality by or through which they may mislead or deceive the public in the manner or as to the things prohibited by this order.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

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

THE VOLLRATH COMPANY ET AL.

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

Docket 8698. Complaint, July 20, 1966—Decision, Apr. 24, 1968

Order requiring a Sheboygan, Wis., distributor of cooking utensils to cease using false health and savings claims, misrepresenting the construction and efficacy of its cookware, and supplying others with promotional materials containing prohibited representations.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that The Vollrath Company, a corporation, and Walter J. Kohler and Carl H. Rickmeier, Jr., 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 The Vollrath Company 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 1236 N. 18th Street, Sheboygan, Wisconsin.

Respondents Walter J. Kohler and Carl H. Rickmeier, Jr., are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of stainless steel cookware to dealers and distributors for resale to the public. The said cooking utensils are represented by respondents as utilizing the "waterless" or the "Vacumatic" methods of cooking in which no water or a small amount of water is used depending upon the nature of the food to be cooked.

PAR. 3. In the course and conduct of their business respondents now cause, and for some time last past have caused, their products when sold to be shipped from their place of business in the State of Wisconsin to dealers, distributors and purchasers thereof located in

various other States of the United States, and maintain and at all times mentioned herein have maintained, substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, at all times mentioned herein, respondents have been in substantial competition with corporations, firms and individuals likewise engaged in the business of selling and distributing cooking utensils of the same general kind and nature as those sold by respondents.

PAR. 5. Respondents in the course and conduct of their business have furnished and supplied to dealers and distributors and to the agents and representatives thereof, who sell said products to the public, various types of advertising literature, including, but not limited to, sales manuals, charts, leaflets, cookbooks, and brochures.

The method of sale chiefly employed by said dealers, distributors, and their agents and representatives, is the display and demonstration of respondents' products accompanied by sales talks, the material for which has been supplied by respondents. Statements and representations made by said dealers and distributors and their agents and representatives are therefore, suggested by, and have the expressed or implied approval of the respondents; and sales made in the course, or as a result of, said sales talks, displays or demonstrations inure to the benefit of the respondents.

PAR. 6. Respondents, through their said advertising material and through said dealers and distributors and their agents and representatives, to induce the purchase of their stainless steel cooking utensils, as outlined in Paragraph Five herein, and otherwise, have represented directly and by implication that:

1. When their cooking utensils are covered, for cooking, with the lids supplied therewith a vapor "seal" or "lock" is formed, and as a result no vapor loss occurs during the cooking of food in said utensils.

2. Food cooked in their cookware by means of the "waterless" or "Vacumatic" cooking methods retains substantially more of the vitamin and mineral content than food cooked in other types of cookware regardless of the method of cooking used.

3. Less food is required to satisfy hunger when prepared in respondents' utensils utilizing the "waterless" or "Vacumatic" methods of cooking, than when otherwise prepared, for the reason that more vitamins and minerals are retained through the use of respondents' utensils and methods of cooking.

4. The use of respondents' utensils and the "waterless" or "Vacumatic" methods of cooking will prevent certain illnesses and diseases.

5. The use of respondents' cooking utensils will enable users to realize the following:

(a) Substantial savings on food.

(b) Substantial savings on fuel.

(c) Savings in time spent in the kitchen of up to one and one half hours daily.

6. The use of respondents' cookware with the "waterless" or "Vacumatic" methods of cooking is the most healthful way to prepare food.

7. The sales agents and representatives of respondents' dealers and distributors are members of respondents' advertising department, and that said persons are conducting an advertising campaign on behalf of the respondents and in regard to respondents' products.

PAR. 7. In truth and in fact:

1. The so-called vapor "seal" or "lock" formed by placing a cover, or lid, on respondents' stainless steel cookware does not prevent all vapor loss during the cooking of food in said utensils.

2. Food cooked in respondents' stainless steel cookware by means of the "waterless" or "Vacumatic" cooking methods does not retain substantially more of the vitamin and mineral content than food cooked in other types of cookware when an efficient method of cooking is used.

3. The amount of food which will be consumed by an individual, if unrestricted, will depend upon how appetizing the food is and the bulk it occupies in the stomach. Hunger will not return until the stomach becomes empty. Neither of these conditions has any relationship to the vitamin and mineral content of the food.

4. Neither the use of respondents' utensils nor the "waterless" or "Vacumatic" methods of cooking, nor their combination, will prevent any illness or disease.

5. The use of respondents' cooking utensils will not enable users to realize substantial savings on food or on fuel bills, nor will they be able to save up to one and a half hours, or any other substantial amount of time, from the time spent daily in the kitchen in the cooking of food.

6. The use of respondents' cookware with or without the "waterless" or "Vacumatic" methods of cooking is not more healthful than other efficient, commonly employed methods of cooking.

7. The agents and representatives of respondents' dealers and distributors who sell respondents' cooking utensils to the public are not members or employees of respondents' advertising department, nor are they conducting an advertising campaign on behalf of respond-

ents. On the contrary they are salesmen whose sole purpose is to sell such products to the public.

Therefore, the representations referred to in Paragraph Six hereinabove were and are false, misleading and deceptive.

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

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

Mr. Garland S. Ferguson, supporting the complaint.

Foley, Sammond and Lardner by *Mr. David E. Beckwith* and *Mr. Edwin P. Wiley*, Milwaukee, Wisconsin, for respondents.

INITIAL DECISION BY WILLIAM K. JACKSON, HEARING EXAMINER

JULY 31, 1967

This proceeding was commenced by the issuance of a complaint on July 20, 1966, charging the corporate respondent and the two named individual respondents, individually and as officers of said corporation, with unfair and deceptive acts and practices and unfair methods of competition in commerce, in violation of Section 5 of the Federal Trade Commission Act by making false savings claims and misrepresenting the construction, efficacy and other features of stainless steel cookware the corporate respondent sells. Specifically, the complaint alleges that through the use of advertising literature—such as sales manuals, charts, cookbooks and brochures—furnished by the corporate respondent to its distributors, dealers and sales representatives, it has falsely represented that: 1) a vapor "seal" or "lock" formed by cooking in its covered utensils results in no vapor loss. 2) food cooked in its cookware by the "waterless" or "Vacumatic" method retains substantially more vitamin and mineral content than that cooked in other types of cookware regardless of the method of cooking used,

and because of such retention less food is required to satisfy hunger, 3) use of its cooking utensils and the "waterless" or "Vacumatic" method of cooking will prevent certain illnesses and diseases and is the most healthful way to prepare food, 4) use of its cooking utensils will enable users to realize substantial savings on food and fuel and savings in time spent in the kitchen of up to one and one half hours daily, and 5) sales agents and representatives of its dealers and distributors are members of its advertising department and are conducting an advertising campaign on behalf of the respondent and in regard to its products.

After being served with the said complaint, both the corporate and individual respondents appeared by counsel and on August 18, 1966, filed their joint answer admitting a number of the specific allegations in the complaint, denying others, and neither admitting nor denying the remainder. With respect to certain representations, which they have admitted that they made, they deny that they are in any way false, misleading or deceptive.

A prehearing conference was held on September 12, 1966, at Washington, D.C. to discuss the dates and places of hearings, the exchange of lists of witnesses and documents, and the simplification and clarification of the issues.

Pursuant to the order of the Commisison dated October 14, 1966, granting leave to hold hearings in more than one place, and the order of the Commission dated November 16, 1966, granting leave to hold noncontinuous hearings, hearings were held at Washington, D.C. on November 28, 29, 30, and December 1, 1966; Chicago, Illinois, on December 5, 6, 7, 8 and 9, 1966; at Chicago, Illinois, on January 23, 24, 25 and 26, 1967; and rebuttal hearings at Washington, D.C. on May 3, 1967. Proposed findings of fact, conclusions of law, and briefs have been submitted by both parties. These proposals have been considered and those proposed findings not herein adopted, either in form or in substance, are rejected as not being supported by the record or as not being necessary; and the hearing examiner having considered the entire record, makes the following findings of fact, conclusions drawn therefrom, and order.

FINDINGS OF FACT

1. Respondent, The Vollrath Company (hereafter referred to as "Vollrath") 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 1236 N. 18th Street, Sheboygan, Wisconsin (Ans. par. 1).

2. Vollrath was founded by Jacob J. Vollrath in 1874 as a manufacturer of enamelware products for home use (Tr. 758). Vollrath commenced the manufacture of stainless steel products in 1941/42 (Tr. 759) and its production of stainless steel cookware began in 1946. Vollrath supplied cookware to one customer exclusively until the early 1950's when that company agreed to modify their exclusive relationship and permitted Vollrath to furnish its stainless steel cookware to other distributors east of the Mississippi River (Tr. 762–3). Initially, Vollrath sold to only a few distributors in the East and furnished no sales aids or other literature. Prior to 1959 Vollrath distributors prepared their own sales literature and sales aids (Tr. 764–5). Subsequent to 1959, as will be developed hereafter, Vollrath developed its own sales aids and made available to its distributors its own literature (Tr. 248, 764–765).

3. At the present time Vollrath is engaged in the manufacture of cookware, equipment for hospitals including patient-care equipment and operating room equipment, equipment for restaurants, cafeterias and food vending, a line of mixing bowls and gift items sold in retail stores, government contract work, a line of equipment used in medical research such as animal cages, and a stainless steel foundry. Vollrath has nine separate divisions including its cookware division (Tr. 759–762) and has over 700 employees (Tr. 793). Vollrath presently has approximately 100 Vollrath cookware dealers and distributors in the United States and approximately ten in Canada (Tr. 430).

4. Respondents Walter J. Kohler and Carl H. Rickmeier, Jr., are president and vice-president in charge of marketing of Vollrath respectively, with their offices in Sheboygan, Wisconsin. Respondent Rickmeier has since 1959 been responsible for the formulation, direction and control of Vollrath's sales policies and practices as they relate to the sale of stainless steel cookware (Tr. 757, 765–7, 771–2). Following his employment in 1959 by The Vollrath Company, he became manager of the Vollrath cookware division (Tr. 424). In 1962 Rickmeier was promoted to assistant sales manager for Vollrath and in 1964 was made vice-president in charge of marketing (Tr. 757). He was brought into the Vollrath organization for the express purpose of determining the marketing potential of Vollrath stainless steel cookware (Tr. 765) and as manager of the cookware division it was his duty to organize methods of selling more cookware. In this regard he personally developed a Vollrath prospectus and other advertising material on the basis of what Vollrath competitors were using (CX 8, CX 43; Tr. 766). It is clear from the record that Rickmeier formulates, directs and controls the acts and practices of the corporate re-

spondent which are in issue in this proceeding and that any order issued should include respondent Rickmeier in his individual capacity as well as an officer of the corporate respondent.

5. Respondent Walter J. Kohler is president of the respondent corporation (Tr. 426) and has held this position since 1947 with the exception of the time that he served as Governor of Wisconsin. Respondent Kohler is also chairman of the Board of Directors of Vollrath (Tr. 431). Paragraph One of the complaint alleges that respondent Kohler formulates, directs and controls acts and practices of the corporation including the acts and practices thereinafter set forth in the complaint. Respondents' answer puts this squarely in issue when it states: "Admit the allegation contained in Paragraph One of the Commission's complaint; except that they *deny* that the corporate respondent engaged in, or that the individual respondents directed, certain of the acts and practices alleged in the Commission's complaint." (Ans. par. 1) No evidence was adduced at the hearing to show that respondent Kohler formulates, directs or controls any of the sales policies or practices that are the subject matter of this proceeding or that he was involved in the preparation of or approved the sales aids which have been presented in evidence.[1] In the absence of any evidence of personal participation by respondent Kohler in the alleged deceptive acts and practices, and in view of the size of the corporate respondent particularly since only one of its nine divisions (cookware) is involved in the acts complained of, an order against respondent Kohler in his individual capacity would not appear to be warranted in this proceeding. Accordingly, as hereinafter provided, the complaint is dismissed as against Walter J. Kohler in his individual capacity but not as an officer of the corporate respondent.

6. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of stainless steel cookware to dealers and distributors for resale to the public. The said cooking utensils are designed to employ and are represented by respondents as utilizing the "waterless" and "Vacumatic" methods of cooking in which no water or a small amount of water is used depending upon the nature of the food to be cooked (Ans. par. 2).

Vollrath advocated the use of the stainless steel cookware and the "waterless" method of cooking until 1964 (CXs 4, 7, 8, 10, 11, 12, 20, 21, 22; Tr. 772). Although they now recommend and advertise "Vacumatic" cooking with their cookware, which will be discussed in more

[1] Respondent Kohler was not called as a witness.

detail hereafter, they continue to manufacture cookware without the "Vacumatic" vent or valve for which a different cookbook is available (RX 50; CXs 5, 30, 43 and others; see also testimony of Poore, Tr. 717). Respondents' counsel has stipulated that the Vollrath "Vacumatic" cookware with a vent may be used for either the "Vacumatic" or "waterless" method of cooking (Tr. 346) and a Vollrath utensil without the "Vacumatic" vent may also be used to cook either the "waterless" or "Vacumatic" way (Tr. 346). As a matter of fact, the use of the "vent" so highly advertised by Vollrath (CXs 51, 74; RX 11) as being necessary to create the vacuum advertised by Vollrath as existing in "Vacumatic" cooking, is in fact not necessary or essential in order to cook efficiently (Tr. 777). According to witness Bray, one of the Vollrath salesmen, the vent was merely a "sales gimmick" (Tr. 306). Respondent Rickmeier also admitted that there is nothing unique about Vollrath cookware which contains a vent, but that by putting the vent on he thought it would be easier to cook "vacumatically" (Tr. 777–779, see also Boardman, Tr. 950).

7. In the course and conduct of their business, respondents cause, and for some time last past have caused, their products when sold to be shipped from their place of business in the State of Wisconsin, to dealers, distributors, and 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 (Ans. par. 3).

8. In the course and conduct of their business, at all times mentioned herein, respondents have been in substantial competition with corporations, firms and individuals likewise engaged in the business of selling and distributing cooking utensils of the same general kind and nature as those sold by respondents (Ans. par. 4).

9. Respondents in the course and conduct of their business have furnished and supplied to dealers and distributors and to the agents and representatives thereof who sell said products to the public, various types of advertising literature, including but not limited to, sales manuals, charts, leaflets, cookbooks, and brochures (Ans. par. 5). The method of selling chiefly employed by Vollrath dealers and distributors and the agents and representatives of such dealers and distributors, is the display and demonstration in prospective customers' homes of respondents' products accompanied by sales talks and sales aids, the material for which has been supplied and furnished by Vollrath. Vollrath approves of the use by its customers of the sales and advertising materials furnished by it (Ans. par. 5).

Respondents admit that they "may be held responsible for the contents of their sales literature and, if the allegations of the complaint are proven, they may be ordered to cease and desist from making any false, misleading or deceptive statements or representations in such literature" (Respondents' brief, p. 8).

10. Vollrath does not sell cookware directly to the consuming public but sells through franchised distributors who employ their own salesmen, and it also sells through independent sales representatives (Tr. 765). Vollrath has no contractual relationship with its so-called franchised dealers or distributors (Tr. 767) and several distributors who were called by complaint counsel to testify in these proceedings stated that they had no contract with Vollrath (Bray, Tr. 279; Goodwin, Tr. 333). These dealers also made it clear that they were not agents or employees of Vollrath (Bray, Tr. 313) but simply purchased cookware from Vollrath on their own account and resold it at prices which they establish (Bray, Tr. 308; Goodwin, Tr. 333; Markwardt, Tr. 701).

In all but two instances, Vollrath's customers have had prior experience selling cookware manufactured by others (Tr. 256–7, 767, 950); they are very mobile; they may, and do, move from one brand of cookware to another and Vollrath has no hold on them (Tr. 767, 768). The dealers that testified stated that they had handled one or more different brands of cookware before deciding to purchase and sell Vollrath cookware (Bray, Tr. 275; Goodwin, Tr. 330; Markwardt, Tr. 701, 708; Poore, Tr. 717, 733); and they are free to abandon Vollrath and purchase cookware from another source at any time (Tr. 768).

11. Many Vollrath dealers do not operate under the Vollrath name but they have their own trade names and they use their own labels which are stamped upon the cookware by Vollrath before delivery (Loquasto, Tr. 253–4; Goodwin, Tr. 352–A; Krogman, Tr. 693; Markwardt, Tr. 701, 707; Poore, Tr. 717). Only one of the dealers called by complaint counsel testified that he sold Vollrath cookware stamped with the Vollrath name (Bray, Tr. 299). However, one of the features used by Vollrath to attract new customers is that respondents will imprint the utensils that they make with the dealer's own trade name if he so desires and they have over 100 different such stamps belonging to their dealers (Tr. 794, 983). Vollrath dealers also are free to handle other manufacturers' products such as china, silver, etc. (Bray, Tr. 274; Rickmeier, Tr. 768). Several of the salesmen-witnesses testified that they received no training from Vollrath (Bray, Tr. 278–279; Krogman, Tr. 694; Markwardt, Tr. 705).

Vollrath holds annual seminars to which it invites personnel of their major distributors and key salesmen to attend (Loquasto, Tr. 239–248;

Bray, Tr. 279, 294, 295; Goodwin, Tr. 339–340; Krogman, Tr. 694–695; Markwardt, Tr. 704; Poore, Tr. 721; Rickmeier, Tr. 769). Top officials of Vollrath attend these seminars including Rickmeier (Goodwin, Tr. 340; Krogman, Tr. 695; Markwardt, Tr. 705; Poore, Tr. 722). At these seminars Vollrath shows its training films (Tr. 239, 294; CX 6). In addition, Vollrath selling aids are prominently displayed and are for sale (Bray, Tr. 280; Goodwin, Tr. 333; CXs 14, 33; RX 29). Individuals attending Vollrath seminars pay their own expenses, except that they are furnished several meals (Goodwin, Tr. 352–352A). Respondents provide credit for approximately one-third of their dealers and distributors (Tr. 770) through Continental Credit Company, a wholly owned subsidiary that offers financing to said dealers and distributors (Tr. 428). The Continental Credit Company has the same officers as the respondent corporation (Stipulation, Tr. 429).

12. Vollrath prepares and makes available to its distributors and independent salesmen brochures, sales manuals, cookbooks, loose-leaf flip charts depicting respondents' products, films, and other sales aids which are designed for their use in selling respondents' cookware (Tr. 765–766; Sales Manuals—CX 31A–31AAA, CX 42A–42EEE; Cookbooks—CX 4A–4LL, CX 5A–5SS; RX 50; Loose-leaf Flip Charts—CX 7A–7L, CX 8A–8G, 8I–8W, 8BB–8HH, 8WWW, CX 30A–30W, CX 43A–43U; Folding Brochures depicting cookware—CXs 9 through 12, CXs 20, 21, 22, 36, 37, 51; Films—CX 6). It is clear from the testimony of several of the salesmen called to testify that Vollrath distributors and salesmen make use of the sales aid material made available to them by Vollrath (Loquasto, Tr. 228; Bray, Tr. 283; Goodwin, Tr. 335–339; Krogman, Tr. 695–696; Markwardt, Tr. 702–704; Poore, Tr. 718; Rickmeier, Tr. 768). Respondents generally charge their dealers and distributors for the sales aid material (see Order Forms, Price Lists and Billings, CXs 14, 16, 17, 33; RX 29) although some dealers have been allowed merely to place a "deposit" with respondents in regard to certain material (Tr. 354) with the understanding that upon the return of the material the "deposit" will be returned. Vollrath does not direct its dealers to use any particular sales technique or any particular sales literature (Bray, Tr. 317; Goodwin, Tr. 353; Poore, Tr. 732; Markwardt, Tr. 708).

13. Vollrath did not develop its own sales aids and make them available to its customers until 1959 (Loquasto, Tr. 248; Rickmeier, Tr. 765–767). In that year Mr. Rickmeier made a tour of Vollrath's customers and determined that if Vollrath was to be competitive it would have to develop sales aids which dealers could purchase (Rickmeier, Tr. 766). Initially, Vollrath copied the sales literature of other

manufacturers with the understanding that the literature was a stopgap and would have to be replaced with new literature as soon as time and talent were available to prepare it (Rickmeier, Tr. 766–767).

In 1961 Mr. Richard A. Boardman, a former cookware salesman and dealer, was hired by Vollrath as manager of its cookware division, and one of his first assignments was to prepare new literature (Rickmeier, Tr. 771–772). The program which Vollrath now calls "Vacumatic" was started late in 1961 and continued to be developed through 1964 (Rickmeier, Tr. 772). The vent in the covers of certain models of Vollrath cookware was conceived and placed into production in 1964 (Rickmeier, Tr. 772). Respondents' prime objective in developing the "Vacumatic" method of cooking was to sell more cookware by reducing the tendency of dealers to shift from Vollrath to other brands (Rickmeier, Tr. 779–789). To do this Vollrath hoped to come up with something different (Rickmeier, Tr. 771) and something that would overcome the deficiencies in the "waterless" method of cooking that Vollrath and other manufacturers were recommending (Rickmeier, Tr. 771–773). Essentially, the difference between "waterless" cooking and what Vollrath describes as the "Vacumatic" method is that in "waterless" cooking only that amount of water which clings to the vegetable after it is washed is used in the cooking process and a very low heat is maintained under the pan during the entire cooking process. In the "Vacumatic" method a measured amount of water—3 ounces—is placed in the pan and is permitted to boil for 3 to 5 minutes. The heat is then turned off (or the pan removed from the stove) and if there is a vent in the cover of the pan the vent is closed. The cooking process continues for 20 minutes with the heat and moisture retained in the pan (Loquasto, Tr. 251–52; Goodwin, Tr. 350; Rickmeier, Tr. 773–77).

Mr. Rickmeier testified that in developing the "Vacumatic" method of cooking Vollrath hoped to eliminate the disadvantages of waterless cooking and at the same time incorporate what most home economists, nutritionists and government publications were recommending as the elements of an efficient method of cooking (Rickmeier, Tr. 773, 781; Boardman, Tr. 949–950; Watt, Tr. 189–192; see CX 70, p. 27). Boardman and Rickmeier consulted various publications of the Department of Agriculture, a report by Dr. Krehl, who was a witness in these proceedings, and textbooks used in schools of home economics to determine what was recommended as an efficient method of cooking. They then endeavored to simplify the method to make it easily understood (Rickmeier, Tr. 781, 789) and they coined a name for it. They conceived the idea of putting a valve or vent in the cover of the pans to make it easier to time the period when steam was allowed to escape and

to release any vacuum that was created so that the covers might be easily removed (Rickmeier, Tr. 773–74, 776–77).

14. In essence, the Vollrath "Vacumatic" method of cooking is the same, or at least builds upon, the so-called "efficient method" of cooking vegetables. Complaint counsel's expert witnesses agreed that the "efficient method" of cooking vegetables retains a maximum amount of nutrients. The "efficient method" of cooking vegetables as described by these experts requires a minimal amount of water—approximately 3 ounces—pans with a tight-fitting lid, the placing of the vegetables in rapidly boiling water and cooking for a short time or until the vegetables are just tender. (See testimony of Dr. Watt, nutritional analyst, Research Services, United States Department of Agriculture, Tr. 151–159, 179–188, 203–207; Dr. Frances Olivia Van Duyne, professor of Foods and Nutrition Division, Department of Home Economics, University of Illinois, Tr. 360–364, 382, 385–386, 391, 412–417; Dr. Gladys Ellen Vail, dean, Department of Food and Nutrition, Purdue University, Tr. 454, 478–479, 482–484; Dr. Willard Arthur Krehl, director of the Clinical Research Center and professor of medicine, University of Iowa, Tr. 629–630, 649–51; CX 7H; RX 49.)

It has been stipulated by respondents' counsel and complaint counsel that Vollrath's utensils that have vents in the lids may be used for either "Vacumatic" or "waterless" cooking and that Vollrath utnesils without vents may be used for either method (Tr. 346–348; see also Bray, Tr. 305–306). Respondents admit that its utensils, both with and without vents, may be used for efficient cooking or may be used to boil vegetables in what respondents describe as the standard method most commonly employed by housewives.

15. The franchised distributors, dealers, and salesmen of respondents' cookware primarily direct their sales approaches to single women between the ages of 17 and 23 (Loquasto, Tr. 232, 255; Goodwin, Tr. 352A; Markwardt, Tr. 708; Rickmeier, Tr. 790–791). Vollrath estimates that between 60 and 70 percent of current sales made by dealers are to single girls. Such sales approach is known in the trade as the "single girl" approach or the "hope chest" program (Loquasto, Tr. 232). Another sales approach used by dealers is the "dinner demonstration" program or method made generally to married couples. This accounts for 30 or 40 percent of the sales of respondents' cookware (Rickmeier, Tr. 790–791). Demonstration appointment cards used by distributors to set up dinner demonstration parties (Tr. 247) are in evidence (CXs 15, 23, 39; RX 7). There has been, since Vollrath first prepared its sales aids, a trend toward the so-called "single girl" or

"hope chest" sales technique and away from the so-called "dinner party plan" (Loquasto, Tr. 265).

Most sales of respondents' cookware are made to customers in urban areas (Tr. 790). The respondents make available to their distributors and dealers a color training film sales aid depicting one of the door to door demonstration sales approaches (CX 6; transcript of oral portion, CX 44). Generally this film is used by distributors to train their own salesmen (Loquasto, Tr. 241; Goodwin, Tr. 334–35). However, one dealer testified that he had shown this film to several of his prospective customers (Bray, Tr. 293–294, 315). Respondents admit they do not restrict or police the use of their selling aids in any way (Tr. 769). Respondents' dealers and distributors and their salesmen are free to use or not to use sales aids, whether they be respondents' literature or that of their competitors (Bray, Tr. 317; Goodwin, Tr. 353; Markwardt, Tr. 708; Poore, Tr. 732; Rickmeier, Tr. 769; respondents' brief, pp. 11 and 12).

16. Respondents, through their said advertising material and through said dealers and distributors and their agents and representatives, to induce the purchase of their stainless steel cooking utensils, are charged with representing directly and by implication:

A. The "Vapor Seal" and/or "Vapor Lock" Representation

1. *The Allegation*

When their cooking utensils are covered, for cooking with the lids supplied therewith a vapor "seal" or "lock" is formed and as a result no vapor loss occurs during the cooking of food in said utensils.
(Complaint par. 6 (1).)

2. *Actual Representations Made*

Respondents have repeatedly represented in their advertising, brochures and other literature that when their cooking utensils are covered, for cooking with lids supplied therewith a vapor "seal" or "lock" is formed and as a result *no vapor loss occurs* during the cooking of food in said utensils.

Among and typical of the statements and representations contained in respondents' brochures, sales manuals, charts, leaflets, cookbooks, etc., are the following:

The scientifically designed Vapor Seal rim of pan and cover fit together to seal moisture in (see cut-away view). You cook with less heat, less water because no vapor escapes. (CXs 10, 12, 20, 21, 36 and 37.)

Deep Vapor Seal * * * Covers fit snugly in a deep vapor seal recess to form a moisture seal that permits Vacumatic cooking.

Vacumating cooking is automatic cooking * * * Foods are cooked from all directions—from the top and sides as well as from the bottom of the pan—all the appetizing goodness is sealed in by the Vacumatic process. (CX 38.)

Covers precision—fit into utensil rims forming a vapor seal that retains all the subtle flavors, all the healthful vitamins and minerals so often lost by other cooking methods. (CXs 9, 11 and 22.)

VAPOR-SEAL RIMS

Specially designed rims permit foods to cook in their own rich savory juices and save a maximum of food values. For best results use "low" heat and avoid lifting the cover more than necessary to maintain a perfect vapor-seal. (CX 4E.)

DEEP VAPOR SEAL

Covers fit snugly in deep, wide recess in pans to form a moisture seal that permits Vacumatic Cooking. (CX 51; RX 34.)

* * * The scientifically designed rims and covers of the stainless steel cookware * * * are designed so you can cook with less heat and less water—the "vacuum" does the cooking.

* * * * * * *

It is most important not to remove the cover during the cooking for vacumatic works only if the seal is unbroken. The covers are designed to fit snugly in a vapor seal rim. Foods cook in their own savory juices and retain maximum food values. (CX 74C.)

3. *Evidence Relating to Validity of Claim*

The evidence in this proceeding clearly establishes that during the period food is being cooked over high or medium high heat, either by the "waterless" method or by the "Vacumatic" method in respondents' utensils, vapor escapes.

Witness Bray testified:

In cooking waterless, you use just a little water on vegetables, heat the pan until you see little puffs of vapor, say, medium high, you turn burner back to a low simmer, turn the flame back to a low simmer cooking for the duration of the cooking time. (Tr. 305.)

Bray, when asked to explain the purpose of the vent, testified:

Well, in my thinking, it is a sales gimmick. (Tr. 306.)

Witness Goodwin, in answer to questions by respondents' counsel, testified:

Q. You can take a current vacumatic pan or a pan that is now being sold and you can use that for waterless cooking, can you not?

A. Yes.

Q. And, conversely, you can take a pan that was being made in prior years by Vollrath that has no vent and you can use it for the vacumatic method except that the steam will escape around the lid; is that right?

A. That is right.

Q. In methods of cooking, however, it is important that the lid be put on and kept on during the entire cooking process; is that not correct?

A. Yes, it is. (Tr. 351.)

At the prehearing conference held in this matter respondents' counsel stated:

* * * there is no question but what our materials, our sales materials do represent a vapor seal or lock is formed. (Tr. 22.)

* * * the fact is that it's not a perfect lock or seal. It'd have to be a piece of scientific instrumentation to do that, so we concede that if we represent there is no vapor lost we shouldn't do that. (Tr. 22; see also Tr. 23, 24.)

In their brief, respondents state:

* * * In waterless cooking it is possible to apply enough heat to the bottom of the pan to create enough steam to bubble out from under the cover of the pan and the users of Vollrath cookware have been so advised. CX 4K, CX 4F. The Vollrath waterless cookbook (CX 4) specifically instructs the user to watch closely to avoid any vapor puffs. CX 4F (Brief, p. 26.)

Again in their brief, respondents state:

An analysis of the sales aids relating to Vacumatic cooking leads to substantially the same conclusion. When Vacumatic cooking is explained to the potential purchaser with the use of Vollrath sales aids the purchaser is informed that for a period of 3 to 5 minutes the 3 ounces of water which have been placed in the pan are *allowed to boil and steam to escape from either around the edges of the cover or through the vent*, if the cover has a vent. CX 43M. See also CX 30G and CX 30H. The narrative instructions that accompany the Vollrath Vacumatic flip charts also make it clear that for 3 to 5 minutes *vapor is allowed to escape from around the edges of the cover or through the vent.* CX 31CC. CX 38 and RX 32 and 34 are other examples of Vollrath brochures which contain both the representation of a "flavor seal" or "moisture seal" and an illustration that for 3 to 5 minutes the user is to *"allow vapor to escape from cover vent."* The user is also instructed *to permit vapor to escape for a stated period of time in the Vacumatic cookbook.* CX 5G, RX 50H (p. 5). [Emphasis added.] (Resp. Brief, p. 27.)

Finally, respondents' expert witness, Dr. Blair, professor of mechanical engineering, Illinois Institute of Technology, Chicago, Illinois, who conducted laboratory experiments with respondents' utensils, testified that the term "vapor seal" or "vapor lock" is a misnomer and that "water seal" would be a more appropriate term (Tr. 1132, 1148, 1157). Dr. Blair's experiments were not conducted under actual kitchen conditions cooking vegetables pursuant to the instructions for the "waterless" or "vacumatic" method of cooking as set forth in respondents' cookbooks, but were laboratory tests made with respondents' utensils using no foods and no attempt was made to stimulate actual cooking conditions. On the contrary, Dr. Blair placed one of respondents' utensils containing three ounces of water over a Bunsen burner. Once the water started to boil and he visually observed vapor escaping around the unvented lid, he made numerous periodic downward adjustments of the flame until he could no longer visually observe vapors escaping.

According to his test report (RX 59) it took approximately 45 minutes to adjust the flame to a sufficiently low setting in order to achieve an equilibrium between the pressure inside and outside the pan thereby creating what Dr. Blair termed a "water seal" around the edge of the lid (see RX 59–C, Table I; RX 59D, Table II, and RX 59–E, Conclusion). Far from supporting respondents' contentions, Dr. Blair's tests actually affirm the allegations of the complaint.

Accordingly, the hearing examiner finds that respondents' representations of "vapor seal," "vapor lock," and "no vapor loss" are false, misleading and deceptive and should be prohibited.

B. *Vitamin and Mineral Retention Representation*

1. *The Allegation*

Food cooked in their cookware by means of the "waterless" or "Vacumatic" cooking methods retains substantially more of the vitamin and mineral content than food cooked in other types of cookware regardless of the method of cooking used. (Complaint par. 6(2).)

2. *Actual Representations Made*

Since the issue of whether Vollrath makes the representations alleged in Paragraph Six, 2, of the complaint is crucial to a determination of this subparagraph, the hearing examiner is setting out in full the statements relied upon by complaint counsel to support the allegations of the complaint and which can be found at pp. 19–23 of his brief.

(a) Covers precision-fit into utensil rims forming a vapor-seal that retains all the rich subtle flavors, all of the healthful vitamins and minerals so often lost by other cooking methods. (CX 9B, CX 11D, CX 22D.)

(b) Because * * * cooking is a Profession and a Professional needs Proper Tools!

This (picture) NOT this (Picture). (CX 7F.)

OLD FASHIONED AND IMPROPER COOKING METHODS OFTEN ROB YOU OF WHAT NATURE HAS PROVIDED . . . . (CX 7G.)

NUTRITIONAL LOSSES . . . OLD FASHIONED. (retention comparison chart—(CX 7H) reproduction of table 3 in Dr. Krehl's report (RX 49G).)

(c) Why waste the valuable nutrients nature has so generously provided? * * * SCIENTIFIC COOKING METHODS—NOW MADE PRACTICAL WITH TRIPLY STAINLESS STEEL COOKING UTENSILS—WILL MINIMIZE THIS NEEDLESS WASTE. (CX 8G.)

Your Body Depends on Vital Nutritional Elements * * * The Problem is how to save them until they are served at the table.

The Secret is fine stainless steel cookware and scientific cooking methods to preserve the maximum nutritional values. (CX 8H.)

* * * * * * *

These are not ordinary pots and pans; but scientifically designed utensils to prepare your meals in the healthiest and most economical method known to science. (CX 8N.)

(d) *Vapor-Seal Rims.*

Specially designed rims permit foods to cook in their own rich savory juices and save a maximum of food values. (CX 4E.)

(e) Congratulations—with the purchase of your stainless steel cookware you have not only obtained a set of the finest stainless steel cooking utensils to be offered directly to the American homemakers you have taken an important step toward assuring your family better health * * *. These utensils will give you a lifetime of service and satisfaction. They are of superior construction and beautifully and scientifically designed * * * Cooking the vacumatic way can be helpful in retaining the greatest possible percentage in foods and therefore provide better and more healthful food for your family. (CX 5B.)

* * * * * * *

Deep Vacumatic Seal covers are designed to fit snugly in vapor seal rim. Foods cook in their own savory juices and retain maximum food values. (CX 5F.)

* * * * * * *

* * * Natural vitamins and minerals; as found in food, are far superior to those taken in pill form. Natural vitamins and minerals, however, are often lost or destroyed by use of high heat or cooking in too much water. The real secret to a healthful diet is to include a variety of foods in your daily menus and to cook the Vacumatic way. (CX 5–I.)

(f) For your cookware you should consult * * * a franchised representative who is trained to demonstrate how scientifically designed cookware can provide you with the healthiest, most economical method of food preparation known * * * Vacumatic cooking. (CX 30G.)

* * * * * * *

Here's How We Did It!

Vollrath manufactures utensils to a standard of quality that surpasses all other cooking utensils.

All stainless steel is not alike. 304S is a superior grade of Stainless. (CX 30K.)

* * * * * * *

* * * It's easy to join the thousands of homemakers who are replacing their pots and pans with a beautiful new cookware set that will enable them to prepare healthful foods the Vacumatic way. (CX 30U.)

(g) Vollrath utensils manufactured for Vacumatic cooking must be to a standard of Excellence that is superior to all other cooking utensils.

* * * From knowledge accumulated over 85 years of experience in manufacturing that there are many formulas of Stainless Steel but that the Miracle Metal 304–S Stainless is a Superior Grade. (CX 43K.)

* * * * * * *

Vacumatic cooking allows you to "Cook and Conserve Food Value." Scientific research has definitely proved that an appalling amount of precious vitamins in vegetables can be lost through improper cooking. * * * To safeguard these vitamins we recommend that you use the 4 steps of Vacumatic cooking. (CX 43M.)

* * * * * * *

The Value of Vacumatic cooking speaks for itself because:

1. * * *
2. * * *
3. * * *
4. * * *
5. * * *
6. You will be saving vitamins and minerals to protect your family's health. (CX 43S.)

(h) For the last few years "waterless" cooking has been the "in" way to cook, but "Vacumatic" cooking is one step up on this * * *.

Because of the method of cooking used with this cookware, the greatest possible percentage of essential nutrients in food are retained. Therefore, better and more healthful food will be in store for your family. (CX 74C.)

(i) * * * Vacumatic the new 3 minute food preparation concept with exclusive Vac-control value * * * makes all other cookware obsolete * * *. (RX 11.)

(j) And the beautiful part is we can protect all those material food colors and flavors plus all those healthful vitamins and minerals that nature provides. (CX 44D.)

* * * Now with Vacumatic cooking there's no pot watching and there's no burning or scorching and you don't stir the food and don't let extra air in. As you may know air destroys certain vitamins * * *. (CX 44E.)

3. *Do Respondents' Statements With Regard to Vitamin Retention Contain Representations As Alleged in the Complaint?*

In order to answer this fundamental question, the statements quoted above must first be examined to determine whether in their overall effect or individually, such statements create the impression as alleged in the complaint that respondents are representing that food cooked in their utensils together with their cooking methods retains substantially more of the vitamin and mineral content than food cooked in other types of cookware without regard to the method of cooking employed; or on the other hand do such statements more correctly reflect that respondents are representing that the use of Vollrath cookware with the "waterless" or "Vacumatic" methods of cooking is an *efficient method* of cooking which maximizes the retention of nutrients.

The hearing examiner has carefully considered and studied the sales aids in the context of respondents' overall sales promotions and finds that complaint counsel has not sustained the burden of demonstrating that respondents represent either directly or by implication that food cooked in their cookware by means of the "waterless" or "Vacumatic" cooking methods will permit the user to retain substantially more of the vitamin and mineral content than food cooked in other types of cookware regardless of the method of cooking used. In general, the examiner finds that Vollrath in its selling aids represents

that the "waterless" and "Vacumatic" methods of cooking are efficient methods of cooking, that Vollrath cookware is designed for the "waterless" or "Vacumatic" methods, that these methods of cooking will result in the retention of more nutrients than the old-fashioned method of peeling, boiling in substantial quantities of water and draining vegetables, and will retain a maximum amount of nutrients.

The record in this proceeding is replete with evidence that the most efficient method of cooking vegetables—that is one which retains a maximum amount of nutrients—requires a minimal amount of water—approximately three ounces—pans with a tight-fitting lid, placing of the vegetables in rapidly boiling water and cooking for a short time or until the vegetable is just tender (see Finding No. 14, above). Complaint counsel's witnesses acknowledged that the "Vacumatic" method of cooking is an efficient method (Dr. Watt, Tr. 185–187; Dr. Van Duyne, Tr. 395–96). The waterless method, although it has certain disadvantages, was also acknowledged to be an efficient method (Dr. Krehl, Tr. 664–665; RX 49). Dr. Krehl's study (RX 49) and in particular Table 1 (RX 49C and RX 49D) provide indisputable evidence that the waterless or the use of ½ cup of water methods of cooking results in the highest percentage retention of nutrients when compared to other methods of cooking. It is interesting to note at this point that one of respondents' selling aids (CX 7H), which is a chart showing retention of various nutrients using several cooking methods, is based upon and uses the exact figures from Dr. Krehl's study and Table 3 contained therein (RX 49G; see also Tr. 660–661). Based upon the testimony of Dr. Watt (Tr. 147–215), Dr. Van Duyne (Tr. 358A–413), Dr. Vail (Tr. 452–488), and Dr. Krehl (Tr. 623–684), the hearing examiner finds that the "waterless" and "Vacumatic" methods of cooking in respondents' utensils are efficient methods of cooking, that such methods result in the retention of more nutrients than the old-fashioned methods of peeling, boiling in substantial quantities of water, and draining vegetables, and that such methods retain a maximum amount of nutrients.

In the final analysis, the question then is whether respondents represent in any of their selling aids that their cookware is the only cookware in which one can cook efficiently. After culling each of the representations set forth above in subparagraphs 2(a) through 2(j), the hearing examiner finds only three which are couched in the language of comparison with "all other cooking utensils." Paragraphs 2(f) (CX 30K), and 2(g) (CX 43K) contain a reference to "all other cooking utensils," but in the context of the manufacture and con-

struction of the cookware rather than in any frame of reference to retention of nutrients. In short, CX 30K states, "Vollrath manufactures utensils to a standard of quality that surpasses all other cooking utensils." Similarly, CX 43K states, "Vollrath utensils manufactured for Vacumatic cooking must be to a standard of Excellence that is superior to all other cooking utensils." Since these representations relate only in general to the manufacture and construction of respondents' cookware, it does not appear that they have any relevance to the allegation set forth in this subparagraph of the complaint.

Finally, subparagraph 2(i) (RX 11) states, "Vacumatic the new three-minute food preparation concept with exclusive Vac-Control valve * * * makes all other cookware obsolete * * *." RX 11 is an advertisement prepared by Vollrath for the use of Vollrath distributors in the event that they wish to use it for the purpose of securing sub-franchise dealers and salespeople (Tr. 961). The unquoted portion of RX 11 goes on to state, "Opportunity to profit with the world's leading manufacturer of cooking equipment can be yours with a nominal investment in inventory. Leads from national advertising, thorough training, proven sales aids and hard-hitting sales films for recruiting; training and sales presentations guarantee unlimited profits." RX 11 is not used in connection with the sale of respondents' cookware to the public or in connection with any of the other sales aids, but as just stated, is directed to the recruitment of sub-franchise dealers and salesmen. The hearing examiner finds that RX 11 has no connection with the alleged nutrient retention representations set forth in the complaint.

The hearing examiner therefore finds that respondents have not represented that their cookware is the only cookware in which one can cook efficiently. Accordingly, complaint counsel has failed to sustain the burden of proving by reliable, probative and substantial evidence the allegations set forth in Paragraph Six, 2, of the complaint.

C. *Less Food Required to Satisfy Hunger Representation*

1. *The Allegation*

Less food is required to satisfy hunger when prepared in respondents' utensils utilizing the "waterless" or "Vacumatic" methods of cooking, than when otherwise prepared, for the reason that more vitamins and minerals are retained through the use of respondents' utensils and methods of cooking. (Complaint par. 6(3).)

2. *Actual Representations Made*

Respondents, in their dinner appointment cards or dinner confirmation cards (CXs 15, 23, 39 and RX 7) have made the representation that less food is required to satisfy hunger when prepared in respondents' cookware and using respondents' methods of cooking.

Among and typical of the statements and representations contained in such material are the following:

FRESH VEGETABLES—No peeling, scraping—food value retained—smaller quantity satisfies (CXs 15, 23, 39 and RX 7—which is presently in use).

In their "flip chart" type of selling aid, respondents state:

Many adults were victims of "HIDDEN HUNGER" * * * They had actually eaten their way to poor health * * * But didn't know of their condition—IT ISN'T THE AMOUNT OF FOOD YOU EAT THAT'S IMPORTANT—BUT THE KIND OF FOOD AND THE WAY YOU PREPARE IT THAT REALLY COUNTS! (CX 30-0.)

* * * * * * *

Vacumatic Cooking Can Help You Avoid * * * "HIDDEN HUNGER" * * * The amount of food you eat is not important—But the type of food and method used to prepare it is important. (CX 43-0.)

3. *Evidence Relating to Validity of Claim*

The only witness that testified affirmatively on the question of satisfying hunger and appetite was Dr. Krehl who testified as follows (Tr. 629–30):

Q. In your opinion, what is necessary to satisfy hunger in the average individual?

A. Food in a general term. By this I would include commonly available foodstuffs that would provide protein, carbohydrates, and fat, primarily calories. This would delay the hunger sensation related to the hunger—physiological reaction of hunger.

Q. What part, if any, in your opinion, would the vitamin content of the food of an individual play in his hunger?

A. This is a hard question to answer, but I will try to answer it the best way that I can.

I think the sensation of hunger could be allayed without having any vitamins whatsoever in the food merely by inducing foodstuffs and having them in the stomach. However, if a person becomes more or less vitamin deficient, they may become more or less hungry. One of the difficult problems with regard to vitamins is the fact that lack of vitamins may diminish hunger or may diminish appetite. I think we have to consider this primarily in animals because we don't know about appetite in animals.

Q. What part, if any, would the mineral content of food consumed by an individual play in the satisfaction of his hunger?

A. Generally, none.

Q. What part, if any, in your opinion, would the vitamin content of food consumed by an individual play in the satisfaction of the appetite in the individual?

A. Generally, none.

Q. What part, in your opinion, would the mineral content of food consumed play in the satisfaction of the appetite of an individual?

A. None.

Based upon the testimony of Dr. Krehl, the hearing examiner finds that respondents' representations that less food will satisfy a person's hunger when prepared in respondents' cookware and by respondents' cooking methods than when otherwise prepared are false, misleading and deceptive and should be prohibited.

D. *Prevention of Certain Illness and Diseases Representation*

1. *The Allegation*

The use of respondents' utensils and the "waterless" or "Vacumatic" methods of cooking will prevent certain illness and diseases. (Complaint par. 6(4).)

2. *Actual Representations Made*

Respondents, in their flip charts (CXs 7J, 8H, 30N), have represented directly or by implication that the use of their utensils and their methods of cooking will prevent certain illness and diseases. Among and typical of the statements and representations contained in such material are the following:

A lack of minerals may cause * * * liver trouble * * * rickets * * * tuberculosis * * * (etc.) * * *. A lack of vitamins may cause arthritis * * * high blood pressure * * * rheumatic heart disease * * * (etc.) * * *. (CX 7J.)

YOUR BODY DEPENDS ON VITAL NUTRITIONAL ELEMENTS (chart of human body and vital organs, with parts of the body named in conjunction therewith) * * * Phosphorous—Brain tissue— * * * Iodine—Thyroid * * * Florine—Builds resistance * * * Chlorine—Aids liver function * * *.

THE PROBLEM IS how to save them (nutritional elements) until they are served at the table.

THE SECRET IS fine stainless steel cookware and scientific cooking methods to preserve the maximum nutritional values. (CX 8H.)

* * * * * * *

VACUMATIC COOKING with all its versatility, time and money saving features, has a more compelling reason for you to start preparing your food by this scientific method NOW—IF YOU'RE LIKE MOST PEOPLE * * * you love your family. You have great dreams, hopes, plans and ambitions for your future and your children's future.

BUT * * * (Three hospital room pictures of a man, child, and woman, respectively.)

How many dreams have been shattered every year by illness * * * and many illnesses that could have been avoided with the proper diet?

HOW IMPORTANT IS IT TO BE WELL FED? (CX 30N; see also CXs 30P, 30Q, 43N, 43-O, 43P.)

* * * * * * *

Respondents, in their sales manuals (CXs 31MM, 31NN, 31AAA, 31BBB, 42WW, 42XX, 42CCC, 42DDD) which provide sales talks and approaches to go along with their flip charts and display of their cookware, advise salesmen to stress health and prevention of disease in connection with the demonstration of their cookware.

Among and typical of the statements and representations contained in such sales manuals are the following:

* * * Mrs. Prospect, are you the real doctor in your home? Food is your preventive medicine—You can give your family just about any kind of health you want to * * *. (CX 31MM.)

* * * * * * *

* * * The best health insurance is the kind that comes from proper preparation of foods. You cannot afford not to take out some insurance on your perfect health * * *. (CX 31NN; see also CX 31AAA, CX 31BBB.)

* * * * * * *

* * * Doctor bills and dentist bills are more expensive than the right kind of cooking utensils you only have to buy the utensils once * * *. (CX 42WW, CX 42XX; see also CXs 42CCC, 42DDD.)

In their cookbooks (CX 5B; RX 5B and RX 50A) respondents state:

With purchase of your stainless steel cookware you have obtained a set of the finest stainless steel cooking utensils to be offered directly to the American homemaker, you have also taken an important step toward assuring your family better health.

Respondents also state in their cookbooks (RX 5F, RX 50H):

Eating for Health

The food you serve your family plays an important role in maintaining health, growth and vitality and there are five essential food elements—proteins, minerals, vitamins, fats, carbohydrates * * * which make up the foods you serve. Each of these elements serves a specific purpose. Fats and carbohydrates mainly provide energy and warmth for the body. * * * Vitamins are chemical constituents * * *. Each vitamin has a specialized duty to perform * * * they guard against infection, protect the eyes, skin, teeth and bones and keep blood vessels and gums healthy. They are necessary to growth and steady nerves. * * * There are a dozen or more minerals necessary for the maintenance of health, each serving a particular purpose. For instance, calcium is necessary for strong bones and good teeth, and iron is essential for good blood * * *. Natural vitamins and minerals, as found in food, are far superior to those in pill form. Natural vitamins and minerals, however, are often lost or destroyed by the use of high heat or cooking in too much water. The real secret to a beautiful diet, therefore, is to include a variety of foods in your daily menus and cook the VACUMATIC way * * *.

3. *Evidence Relating to Validity of Claim*

Respondents have stipulated that the use of their utensils and the "waterless" or "Vacumatic" methods of cooking will not in fact prevent illness or disease (Tr. 641–643).

The respondents further state in their proposed findings and brief at page 58:

> * * * the representations suggested in respondents' sales manuals (CX 31 and CX 42), together with the heavy emphasis on health and illness in certain pages of respondents' flip charts (CX 30 and CX 43) do convey the impression, directly or by inference, that the method of cooking suggested by Vollrath may improve a person's health or prevent persons from contracting certain illnesses or diseases. Flip chart pages CX 30N, 30–O and 30P, CX 43N, 43–O and 43P, sales manual pages CX 31AAA–BBB and CX42WW–XX, and CX42CCC–DDD. We conclude, therefore, on the basis of respondents' stipulation that their cookware and recommended cooking method will not prevent illness and disease, and their admission that some of their sales aids which have been discontinued but nonetheless are proper objects of this proceeding do in fact state or infer that their cooking methods *will* prevent illness and disease, that the Commission has sustained its burden of proving the allegations of PARAGRAPHS SIX, 4, and SEVEN, 4.

In view of the foregoing, the hearing examiner finds that respondents' representations that the use of their cookware and methods of preparing food will prevent illness and disease are false, misleading and deceptive and should be prohibited.

E. *Savings on Food, Fuel and Time in Kitchen Representation*

1. *The Allegation*

The use of respondents' cooking utensils will enable users to realize the following:

(a) Substantial savings on food.

(b) Substantial savings on fuel.

(c) Savings of time spent in the kitchen of up to one and one half hours daily. (Complaint par. 6(5).)

2. *Actual Representations Made*

Respondents' answer states:

> Admit the allegations contained in subparagraph 5 of PARAGRAPH SIX of the Commission's Complaint, except that they deny, upon information and belief, that the respondents have ever represented that the use of respondents' cooking utensils will enable users to realize savings in time spent in the kitchen of up to 1½ hours daily. (Answer par. 6(5).)

In addition to their admission, the hearing examiner finds that respondents have represented:

(a) Substantial savings on food: (CXs 5B, 7I, 7K, 30S, 30T, 30V, 31JJ, 31QQ, 42F, 42TT, 43R; RX 5B, RX 50A).

(b) Substantial savings on fuel: (CXs 5B, 7I, 7K, 8K, 8S, 8V, 8WWW, 30S, 30T, 43S; RX 5B, RX 50A).

(c) Savings in time spent in the kitchen of up to one and one half hours daily: (CXs 8I, 8J, 8K, 8U, 8V, 31AAA, 42CCC, 43M, 43S).

Among and typical of the representations relating to savings in time spent in the kitchen of up to one and one half hours daily are the following:

Here's How Stainless Steel Cookware SAVES YOU UP TO 1½ HOURS IN YOUR KITCHEN DAILY * * *.
(CX 8I, see also CXs 8J, 8K, 8U and 8V.)

* * * * * * *

Vacumatic Cooking will * * *.
1. * * *
2. GIVE YOU MORE FREE TIME FOR FUN AND RELAXATION * * *.
(CX 30T.)

* * * * * * *

Cooking time will be cut in half with Vacumatic cooking * * *.
3. Vacumatic cooking is like having a maid in your kitchen 7 days a week.
(CXs 31AAA, 42CCC.)

* * * * * * *

Start Fast * * * Cook Quickly * * * total cooking time is greatly reduced by bringing foods to a cooking temperature quickly * * *. (CX 43M.)

3. *Evidence Relating to Validity of Claims*

(a) *Food Savings Claim*

Mrs. Diane Rasmussen McComber, assistant professor of food and nutrition, Iowa State University, Ames, Iowa, and holder of a B.S. degree in food science, and a Master of Science degree in food science, testified in support of the complaint (Tr. 490–619) concerning two kitchen cooking test studies (CXs 57 and 58) she undertook at the request of the Federal Trade Commission. The purpose of the tests "was to compare results obtained with food cooked in stainless steel pans manufactured by the Vollrath Company and prepared according to their directions * * * with food prepared by standard procedures" (CX 57C) in club aluminum pans (Tr. 492). To familiarize herself with Vollrath utensils, Mrs. McComber used them in her own kitchen for over a month prior to conducting her cooking tests (Tr. 503).

The first test (CX 57) was conducted in June 1966 using a Vollrath 2-quart saucepan without a vent (CXs 2A, 1B) and a Vollrath 5-quart Dutch oven (CXs 3A, 3B), using the Vollrath Vacumatic

cookbook (CX 5), and cooking several vegetables and meats by the "Vacumatic" method in the Vollrath utensils, by the "Vacumatic" method in other utensils, and by the standard method in club aluminum utensils (Tr. 492). The second test (CX 58) was conducted in August 1966 using a Vollrath 2-quart saucepan without a vent (CXs 2A, 1B), a Vollrath 1-quart saucepan with a vent (CXs 1A, 2B) and a Vollrath 5-quart Dutch oven (CXs 3A, 3B) using the Vollrath "waterless" cookbook (CX 4) and the "Vacumatic" cookbook (CX 5), and cooking two vegetables and two meats each by the "waterless," "Vacumatic" and standard methods (Tr. 495, 498).

The witness defined the so-called "standard method" used by her as follows (Tr. 509):

A. The standard method would be one which in my opinion, would give the best results for the product. And this, of course, varies with each product. I can't just spout off one standard method. But in order to determine what that would be, I used the literature that has come out of research laboratories, that upon which we base our teaching. For instance, of basic food preparation. I also used the American Home Economics handbook of food preparation to determine times, the length of time that food should be cooked.

In the case of vegetables, and in the case of meats, I used the National Livestock Meat Board handbook called, "Lessons on Meat" in the case of meat.

Q. Now, have you set this all forth, your reference works which you have used, have you set this forth in your complaint [sic] in the record that you made?

A. Yes, I did, and I referred to the two handbooks.

Q. Have you referred in the report as to what you meant by the use of the words "standard methods"?

A. Yes, I did.

The results of the June 1966 tests are summarized in charts as follows:

Table 1. Subjective preference of meats: taste panel ranking scores. (CX 57L.)

Table 2. Objective measurements of % total cooking loss, % drip and volatile losses of meat. (CX 57M.)

Table 3. Temperature measurements and calculations of minutes of cooking per pound of meat. (CX 57N.)

Table 4. Subjective and Objective measurement of vegetables. (CX 57–O.)

Table 5. Raw data: weights and measurements used for various data calculations on meats. (CX 57FF.)

The results of the August 1966 tests are summarized in charts as follows:

Table 6. Subjective preference of Meats and Vegetables: taste panel ranking scores. (CX 58E.)

Table 7. Objective measurements of meat. (CX 58F.)

Table 8. Objective measurements of vegetables. (CX 58G.)

Based upon her training and experience, her familiarity with the Vollrath cooking utensils, and the kitchen cooking tests she made comparing the Vollrath methods of cooking using the Vollrath cookware with the "standard method" of cooking in other utensils, Mrs. McComber testified that one could not effectuate a substantial saving on food by using the Vollrath cookware and methods of cooking (Tr. 514).

Respondents also had United States Testing Company, Inc., conduct certain cooking tests the results of which are contained in a report (RX 1). Respondents' tests compared the "Vacumatic" method with the "standard method" of cooking as determined by them after conducting a consumer survey of how housewives cook. No tests, however, were conducted by respondents of their "waterless" cooking method.

Mrs. Betty Hagen, a food technologist, employed by United States Testing Company, Inc., conducted the kitchen tests portion of the Test Report (RX 1). Mrs. Hagen admitted that in her opinion green beans prepared the "Vacumatic" way needed more cooking, that in her own home she added another three ounces of water and steamed them an additional five minutes (Tr. 905). Respondents' counsel stipuated that if food is not cooked sufficiently, it will have to be recooked (Tr. 507). It is self-evident that if food is left undercooked, it will not be eaten and hence wasted.

Mrs. Van Bommel, a consumer research project director employed by United States Testing Company, Inc., who supervised the organoleptic (taste) testing of the test foods, testified that her taste panel preferred the "standard" method prepared potatoes and carrots because they were softer and moister than those prepared the Vollrath "Vacumatic" way (Tr. 883). Mrs. Van Bommel also testified that the taste panel found the Vollrath method green beans equivalent to the "standard" method beans (Tr. 883).

Respondents admit that with respect to losses in cooking meat, neither Mrs. Hagen's nor Mrs. McComber's tests appear to demonstrate any conclusive evidence of savings or losses (CX 57U; RX 1zz, see also Respondents' Proposed Findings and Brief, p. 60).

With respect to food savings, the hearing examiner finds that respondents' test report (RX 1) is inconclusive and in some respects tends to support Mrs. McComber's test results (CXs 57, 58). Accordingly, the hearing examiner finds that respondents' representation that the use of their cookware and methods of preparing food will effect substantial savings on food is false, misleading and deceptive and should be prohibited.

(b) *Fuel Savings Claim*

Mrs. McComber testified that she did not measure fuel consumption in making her tests but that she merely measured the minutes of time that the fuel was on (Tr. 516, 531).

Mrs. McComber also testified that the fuel was not always constant during the time it was on and that she made no adjustment in her reporting of the minutes that the fuel was on based on how high or how low a flame she was using (Tr. 516).

In short, the witness stated, "I just did not measure fuel" (Tr. 516A).

No other evidence in support of the fuel savings allegation of the complaint was placed in the record. Moreover, respondents' submitted affirmative evidence indicating less fuel consumption measured in cubic feet during the cooking of a rump roast by the Vollrath method than by the standard method (RX 1BBB).

Accordingly, the hearing examiner finds that complaint counsel has failed to sustain the burden of proving by reliable, probative and substantial evidence that respondents' representation that the use of their cookware and methods of cooking will effect substantial savings in fuel is false, misleading and deceptive.

(c) *Savings of Time*

With respect to the overall time spent in preparation and cooking of food by the various methods employed, Mrs. McComber testified as follows (Tr. 520–521):

No, I did not keep a precise time log of anything but the total cooking time. On the other hand, I prepared vegetables and meats exactly the same way for cooking. I can't imagine why there would be any difference; then, I would have nothing to compare it with. I would have no comparison to make if I had prepared them differently.

On the clean-up, I noted subjectively that the fats spattered more in cooking by the Vollrath method than they did in cooking by the standard method, for example.

By Mr. Beckwith:

Q. That was one of the meats?

A. Yes.

Q. So it did take more time in clean-up, but you did not log it.

* * * * * * *

The WITNESS: Except in the clean-up, I just gave one example. Really, the Vollrath method required a considerable length of time more in clean-up, although I don't have facts. It did take a longer time to cook by the Vollrath directions in the Vollrath pans than it took by the standard methods. In the cases where the food was acceptable, this was the case. In the case where it took a short(er) time to cook by the Vollrath method than the standard method,

the food was not acceptable as judged by me and as judged by the taste panel who didn't know which food was which.

Mrs. McComber summarized her test results by stating (Tr. 521): "Using the Vollrath system, you wouldn't save time."

The tests conducted by United States Testing Company, Inc., the results of which are contained in their test report (RX 1), made a study of the time consumption during the preparation and cooking of potatoes (Table 29, RX 1ccc), carrots (Table 30, RX 1ddd), green beans (Table 31, RX 1eee) and cabbage (Table 32, RX 1fff), but did not include any measurement of the clean-up time. It is interesting to note that respondents' own test studies show very little time saved in the cooking of potatoes and green beans by the Vollrath method,[2] and actually more time was required to cook carrots and cabbage by the Vollrath method. The exact comparative figures from these tables are as follows:

	Vollrath vacumatic method	Standard method
Potatoes	28 min. 44 sec	31 min. 49 sec. (RX 1ccc).
Carrots	29 min. 12 sec	29 min. (RX 1ddd).
Green Beans	28 min. 35 sec	30 min. 37 sec. (RX 1eee).
Cabbage	28 min. 17 sec	19 min. 33 sec. (RX 1fff).

It should be noted that no time tests were conducted by respondents using their "waterless" method, although the "savings in time" representations were primarily made in connection with this method of cooking (see CX 8I, etc.).

With respect to the "saving of time" representations, the hearing examiner finds that respondents' test report (RX 1) demonstrates insignificant savings of time in the cooking of two vegetables and an actual increase in time spent in cooking two other vegetables when using the Vollrath "Vacumatic" method, exclusive of clean-up time. Based upon Mrs. McComber's testimony and respondents' test report, the hearing examiner finds that respondents' representation that the use of their cookware and methods of preparing food will effect substantial savings of time spent in the kitchen is false, misleading and deceptive and should be prohibited.

[2] See testimony of Mrs. Hagen recited above stating that the green beans prepared the "Vacumatic" way needed more cooking (Tr. 905). See also testimony of Mrs. Van Bommel that her taste panel preferred the potatoes cooked by the standard method because they were softer and moister (Tr. 883).

F. *Health Representation*

1. *The Allegation*

The use of respondents' cookware with the "waterless" or "Vacumatic" methods of cooking is the most healthful way to prepare food. (Complaint Par. Six (6).)

2. *Actual Representation Made*

Respondents in their flip charts (CXs 7D, 7E, 7G, 7H, 8N, and 30T), cookbooks (CXs 5B, 5D, 5J; RXs 5B, 5F, 50A, 50L), and their brochures (CXs 9, 11, 22, 38, 42AAA and 74) have represented directly and by implication that the use of their utensils and methods of cooking will result in better health. Among and typical of the statements and representations contained in such material are the following:

In their cookbooks, on the inside of the cover, respondents state (CX 5B, RXs 5B, 50A):

Congratulations—With the purchase of your stainless steel cookware, you have not only obtained a set of the finest stainless steel cooking utensils to be offered directly to the American homemaker, you have also taken an important step toward assuring your family better health * * *. Cooking the VACUMATIC way can be helpful in retaining the greatest possible percentage of essential nutrients in foods and therefore provide better and more healthful food for your family.

Under the heading "EATING FOR HEALTH" the cookbooks also state (RXs 5F, 50L):

* * * Natural vitamins and minerals as found in food, are far superior to those taken in pill form. Natural vitamins and minerals, however, are often lost or destroyed by the use of high heat or cooking in too much water. The real secret to a healthful diet, therefore, is to include a variety of foods in your daily menus and to cook the VACUMATIC way.

In their "flip charts" respondents state:

Vapor seal cooking for more nutritious * * * healthful eating * * *. Scientifically designed for happy, healthful, economical living. (CX 7D.)

* * * * * * *

Good health begins in the kitchen—it makes sense to provide good tools. (CX 7E, see also CX 7G, 7H.)

* * * * * * *

These are not ordinary pots and pans, but scientifically designed utensils to prepare your meal in the healthiest most economical method known to science. (CX 8N.)

* * * * * * *

Lets add it all up—Vacumatic cooking will . . .
1. * * *
2. * * *
3. * * *
4. * * *
5. Help you prepare foods that look better, taste better and are better. You'll have better family health through proper food preparation. (CX 30T.)

In their brochures and other selling aids, respondents state:

Covers precision fit into utensil rims forming a vapor seal that retains all the subtle flavors, all the healthful vitamins and minerals so often lost by other cooking methods. (CXs 9, 11, 22.)

* * * * * * *

Tempting food flavors, natural food colors and health giving food nutrients are retained with Vacumatic cooking. (CX 38.)

* * * * * * *

* * * Because of the method of cooking used with this cookware, the greatest possible percentage of essential nutrients in food are retained. Therefore, better and more healthful food will be in store for your family. (CX 74.)

3. *Evidence Relating to Validity of Claim*

Respondents in their proposed findings and brief at page 65 state:

Respondents Vollrath and Rickmeier have conceded that certain of the Vollrath sales aids do indirectly suggest or represent that Vollrath cookware, or the methods of cooking which Vollrath has recommended, may improve the health of a user or prevent disease, and that respondents cannot prove that these representations or statements are true for any substantial number of people.

Dr. Krehl, director of the Clinical Research Center and professor of medicine, University of Iowa, and an eminently qualified expert in biochemistry and nutrition (Tr. 624–628) testified (Tr. 644–45):

Q. Based upon your studies and your medical knowledge, would you consider the use of Vollrath utensils or the use of the waterless or vacumatic cooking methods to be the most healthful way to prepare foods?
A. No.

Dr. Krehl was also asked what significance, if any, from the standpoint of health, he attached to the differences in nutrient retention under various methods of cooking as reflected on the chart (CX 7H) and on Table 3 (RX 49G). Dr. Krehl stated (Tr. 632–633):

In a practical consideration of the overall diet, these differences would make relatively little difference.
HEARING EXAMINER JACKSON: Little difference in what way?
THE WITNESS: Little difference with respect to supplying adequate quantities of the nutrient in question.

Complaint counsel further questioned Dr. Krehl as follows:

Q. I asked you if related to the health of the individual the figures shown on this page, would they, in your opinion, reflect any substantial difference of retention in regard to a person's health?

A. No. (Tr. 633.)

Later on, in response to a question by the hearing examiner, seeking clarification of this answer, Dr. Krehl stated (Tr. 662–63):

First of all, let's just look at these figures themselves in the straightforward context. This is a scientific investigation on methodologies of cooking a certain group of foodstuffs which show differences and these differences are, I would say, probably of some significance as figures, but, now, let's take a look at the whole spectrum of nutrition.

When we look at this study, we are only looking at nutrition with blinders on, only one important group of foodstuffs in nutrition, vegetables, which supply the smallest segment of the most important nutrients in our diet. In other words, we have to look at other foods for the balance; these would be the animal proteins, milk, meat, cheese, eggs. We would have to look at fresh food, fresh vegetables. As a matter of fact, one could have an extremely well-balanced diet and totally avoid cooking foods completely. But we do not recommend this for normal, practical uses.

Therefore, while these losses, as far as methodology of cooking, are of significance, their significance in terms of what they contribute not [sic] (to) overall nutritional intake of nutrients with an adverse or beneficial influence on health, are of not demonstrable significance. So, you have to look at it both in the context in which they—in which these studies were done and again in the whole structure. When you do this, I believe these problems are relatively straightforward. No one would deny the fact that waterless cooking is probably a better way than these other two methods. These data support this concept.

But when you turn around and say that this is going to contribute a valuable measure to your continued good health, that presents a number of problems. This, then, I believe, is making the statements which are not conforming with facts.

Respondents' expert witness on nutrition, Dr. Robert Eugene Olsen, also an eminently qualified biochemist and nutritionist, who is presently a professor of biochemistry and an associate professor of medicine at St. Louis University of Medicine, St. Louis, Mo., similarly was questioned concerning the significance of the retention of nutrients under various methods of cooking. Specifically, Dr. Olsen's attention was directed to the difference in various nutrients retained in certain vegetables cooked by the Vollrath and standard methods as reflected in respondents' test report, Table 33 (RX 1–hhh), Table 34 (RX 1–iii), Table 35 (RX 1–jjj), and Table 36 (RX 1–kkk) and he testified as follows (Tr. 1208–1209):

Hearing examiner JACKSON: So, under the Vollrath method of cooking if he had a helping of cabbage a day he would get 20 milligrams of Vitamin C from the cabbage?

The WITNESS: Right.

Hearing examiner JACKSON: That day?

The WITNESS: Right.

Hearing examiner JACKSON: Now, under the standard method of cooking let's take column B (RX 1–kkk) approximately 2.79, and if we took six times that.

The WITNESS: That is about 17 milligrams.

Hearing examiner JACKSON: About 17 milligrams a day.

The WITNESS: That is a barely significant difference.

Hearing examiner JACKSON: Well, I just want to get the figures out here. Well, so, we have a difference from a helping of cabbage served to an adult at one meal of roughly three milligrams difference.

The WITNESS: Right.

Hearing examiner JACKSON: Now under both helpings he gets less than the normal requirement of 30; one gives him 20 and the other gives him 27 or rather 17.

The WITNESS: Right.

Hearing examiner JACKSON: So, he is still shy of thirty, in one case by ten and the other method by 13?

The WITNESS: That is correct.

Hearing examiner JACKSON: And we assume, doctor, and I am just carrying this one step further that he would eat something else during that day except a helping of cabbage and isn't it possible that what he would eat would contain Vitamin C?

The WITNESS: Yes, possible.

With respect to niacin, the figures (RX 1–jjj) show that under the Vollrath method one would get in an ounce of green beans 42% of his daily requirements, and under the standard method 35% of his daily requirements (Tr. 1212–1214).

Respondent's counsel then asked:

Q. Well, what can you say about the significance of that difference?
A. That is a barely significant difference. (Tr. 1214.)

It is also interesting to note that in the case of cooking green beans the Vollrath method, only 0.18 milligrams of ascorbic acid (Vitamin C) was retained while cooking by the standard method 0.22 milligrams was retained (see Table 35, RX 1–jjj).

Based upon the clear and convincing testimony of Dr. Krehl and the not contradictory testimony of Dr. Olsen, the hearing examiner finds that respondents' representation that the use of their utensils and methods of cooking will result in better health is false, misleading and deceptive and should be prohibited.

G. *Sales Agents of Its Dealers and Distributors Are Members of Its Advertising Department Representation*

1. *The Allegation*

The sales agents and representatives of respondents' dealers and distributors are members of respondents' advertising department, and that said persons are conducting an advertising campaign on behalf of respondents and in regard to respondents' products. (Complaint Par. Six (7).)

2. *Actual Representation Made*

Respondents in their sales manuals (CXs 31, 42) instruct cookware salesmen on techniques that they may employ in the sale of Vollrath cookware. These suggestions either directly or by implication urge sales agents and representatives of respondents' dealers and distributors to represent that they are members of respondents' advertising department and that they are conducting an advertising campaign on behalf of respondents in regard to respondents' products. Among and typical of the statements contained in such sales manuals is the following:

When she replies, tell her, or tell him that you are doing some advertising work for your company and that it is your job to deliver advertising gifts to managers of apartment houses in this area. . . . When the card has been completed say, "Since I am with the Advertising Department of my company, it is my job to give these cards to various classifications of people such as nurses, professional business girls, teachers, and young married couples where both are working". (CXs 31M, 42Q.)

3. *Evidence Relating to Validity of Claim*

Respondents, in their proposed findings and brief at pages 63–64, state:

Respondents admit that cookware salesmen are not part of its advertising department or conducting an advertising campaign on behalf of respondents. While it is true that the sales manual does not specifically suggest that the salesman hold himself out as a member of *Vollrath's* advertising department, rather it is suggested that he state he is a member of the dealer's advertising department, the effect of the latter is substantially the same as that of the former. The Commission has carried its burden of proving the proof of the allegations of PARAGRAPH SIX 7. and SEVEN 7.

As set forth in finding No. 12, *supra*, the hearing examiner found that "it is clear from the testimony of several of the salesmen called to testify that Vollrath distributors and salesmen make use of the sales aid material made available to them by Vollrath." In finding No. 11, the hearing examiner found that some dealers sell Vollrath cookware

stamped with the Vollrath name, while others use their own trade name. Use of the suggested language in the manuals such as "my company" by salesmen of dealers who use the Vollrath label would clearly imply that the "company" referred to was Vollrath.

Accordingly, the hearing examiner finds respondents suggest to the sales agents and representatives of their dealers and distributors that they make the representation or from circumstances create the impression that such persons are members of respondents' advertising department and are conducting an advertising campaign on behalf of respondents and in regard to respondents' products. The hearing examiner further finds that this representation is false, misleading and deceptive and should be prohibited.

17. 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 and deceive 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.

18. Respondents, in furnishing and supplying to their dealers and distributors and to the agents and representatives thereof, who sell their stainless steel cookware products to the public, various types of advertising literature, including but not limited to, sales manuals, flip charts, leaflets, cookbooks and brochures, containing false and misleading advertising representations, have furnished to said dealers, distributors and their employees, as aforesaid, the means and instrumentalities by or through which the public may be mislead and deceived as to the efficacy of respondents' cookware and cooking methods.

19. Mr. Boardman, manager of respondents' cookware division, testified that RXs 6, 7, 8, 10, 11, 13, 14, 15, 18, 22, 23, 24, 27, 28, 29, 30, 32, 34, 36, 38 are not in current use and are obsolete waiting revision and reprinting pending the outcome of this hearing (Tr. 976). Mr. Boardman also testified that the following exhibits were either out of print or obsolete and were not being currently offered by Vollrath to its dealers and distributors: CXs 4A, 5, 6, 7, 8, 9, 10, 11, 12, 14, 20, 22, 30, 31, 37, 41, 42, 43, 45 (Tr. 977–982).

For clarification the hearing examiner asked the following question (Tr. 978):

Hearing examiner JACKSON: The Examiner would like to clarify something. When you use the word "obsolete," that's no longer used by whom? Who are you referring to when you say that?

The WITNESS: It's no longer offered by us.

After having testified that CX 6, the training film, was no longer made available by respondents to dealers and distributors (Tr. 978), Mr. Boardman, on cross-examination admitted that on September 1, 1966, a form letter (CXs 73A and 73B) went out on Vollrath Company stationery over his signature addressed to competitive distributors (Tr. 1011).

The letter bears the heading:

"Why Sell Cookware Made By Other Manufacturers When Vollrath Offers So Much More."

The obvious purpose of this letter was to woo dealers and distributors handling its competitors' products so that they would shift over to the Vollrath Vacumatic line (Tr. 1016).

As one of the arguments set forth in his letter, Boardman wrote:

5. Vollrath has created new and exciting recruiting tools to meet the demands of today's recruiting needs. Ask to see our exciting *full color sound film.* (CX 73A.)

The burden of proof in order to establish the defense of discontinuance is on the respondents. The defense in general must establish first that the practice has stopped, and second, assurance that it will not be resumed.

On the first point, the hearing examiner finds that despite Mr. Boardman's testimony that the selling aids in question are obsolete and "no longer offered by us," such is not the fact. The hearing examiner also finds that even if this were true, respondents' dealers and distributors who have purchased these selling aids would and are continuing to use them. In order, therefore, for any remedy to be effective, respondents' selling aids now in the hands of its franchised dealers, distributors and their agents or salesmen, must be taken out of circulation by the repurchase thereof by respondents or other appropriate action by them. Accordingly, until this is done, there will be no assurance that the practices will not continue indefinitely. Consequently, until and unless an order in this matter issues, the hearing examiner finds that there is no assurance: 1) that respondents will not continue to print and circulate some or all of the misleading and deceptive selling aids and 2) that respondents' dealers and distributors and their agents or salesmen will not continue to use those selling aids in their hands in the sale of respondents' products to the public.

CONCLUSIONS

1. The aforesaid acts and practices of respondents, as herein found, were and are, all to the prejudice and injury of the public and of

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

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

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

Based upon his findings and conclusions, the hearing examiner deems the following order appropriate.

ORDER

It is ordered, That respondents The Vollrath Company, a corporation, and its officers, and Carl H. Rickmeier, Jr., 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 offering for sale, sale or distribution of stainless steel cookware or any other cooking utensils of substantially similar composition, design, construction or purpose, 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:

a. When their cooking utensils are covered with the lids supplied therefor, a vapor "seal" or "lock" is formed or that no vapor loss occurs during the cooking of food in said utensils.

b. Less food is required to satisfy hunger when prepared in respondents' cookware.

c. The use of respondents' cooking utensils and/or the "waterless" or "Vacumatic" methods of cooking will prevent any illness or disease.

d. The use of respondents' cookware will enable users to realize the following savings:

(1) Substantial savings on food.

(2) Savings in time spent in the kitchen in connection with the cooking of food in the amount of one and one half hours daily or representing that any substantial amount of time is so saved.

e. Use of respondents' cookware with or without the "waterless" or "Vacumatic" methods of cooking is the most healthful way to prepare food.

f. The sales agents and representatives of respondents' dealers and distributors are members of respondents' advertising department; that such persons are conducting an advertising campaign; or that such persons are other than salesmen whose purpose is to sell respondents' cookware products.

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

3. Supplying to or placing in the hands of any distributor, dealer or salesman brochures, sales manuals, charts, pamphlets, or any other advertising material which are displayed, or may be displayed, to the purchasing public which contain any of the false or misleading representations prohibited in Paragraphs 1 and 2 hereof.

It is further ordered, That the aforesaid respondents shall take all steps necessary and appropriate to repossess or otherwise remove and destroy all brochures, sales manuals, flip-charts, pamphlets, or any other advertising material which are displayed, or may be displayed, to the purchasing public which contain any of the false or misleading representations prohibited in Paragraphs 1 and 2 hereof, and which are in the hands of any distributor, dealer or salesman of respondents' products; and in the event any such distributor, dealer or salesman refuses to, or does not, cooperate fully with respondents in this regard, respondents shall in that event cease to furnish and supply such distributor, dealer or salesman their products for resale to the public until such time as he does so cooperate.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to respondent Walter J. Kohler in his individual capacity.

Opinion of the Commission

APRIL 24, 1968

By Dixon, *Commissioner:*

This case is before the Commission upon cross-appeals from the hearing examiner's initial decision.

The complaint charges respondent corporation and two of its officers, individually and as officers, with unfair and deceptive practices in their sale of stainless steel cooking utensils, in violation of Section 5 of the Federal Trade Commission Act. The hearing examiner found that certain of the charges were sustained by the evidence and that others were not. We will first consider respondents' appeal from two prohibitions of the examiner's order and from certain of his findings of fact.

We begin by pointing out that respondents have not taken issue with the examiner's findings concerning the background of the corporation, its cookware business, its method of selling and other general information. In summary, the examiner found that The Vollrath Company was founded in 1874 as a manufacturer of enamelware for home use and that it began production of stainless steel cookware in 1946. It now has nine separate divisions and in addition to cookware, is engaged in the manufacture of equipment for hospitals, restaurants, cafeterias and food vending, a line of mixing bowls and gift items sold in retail stores and equipment used in medical research. It also engaged in government contract work and operates a stainless steel foundry.

Vollrath does not sell its cooking utensils directly to the consuming public but sells these products to franchised distributors and to independent sales representatives. It furnishes various types of promotional material to these dealers, including sales manuals, charts, leaflets, cookbooks and brochures. Respondents have admitted that they may be held responsible for the representations in these promotional materials.

The first issue presented in respondents' appeal arises from the charge that they have represented that:

> When their cooking utensils are covered, for cooking, with the lids supplied therewith a vapor "seal" or "lock" is formed, and as a result no vapor loss occurs during the cooking of food in said utensils.

The examiner's order prohibits such representations. It is respondents' contention that the examiner erred in finding that they have made these claims for their cookware and hence this prohibition is not warranted.

As respondents point out, to understand this issue it is necessary to consider the cooking procedures which they recommend for use with their utensils. As charged in the complaint, two cooking procedures are involved, the waterless method and the "Vacumatic" method. Under the waterless method, the only water used is that which clings to the vegetables after they are cleaned for cooking. The user is instructed to place the vegetable, with clinging surface water, in the utensil, cover with the lid and place on a burner at medium heat for three to five minutes. When the cover feels uncomfortably hot when touched with the palm of the hand, the burner is turned to low heat. The cooking process continues for specified periods of time for different vegetables as set out in a timetable in respondents' waterless cookbook.

In 1964, Vollrath began advocating the use of the "Vacumatic" method of cooking. Under this method, the user is instructed to place three ounces of water in the pan with the vegetable, cover with the lid, bring the water to a boil and allow vapor to escape from around the cover for three to five minutes. The burner is then turned off and the pan is allowed to stand for fifteen to twenty minutes before removing the cover. The same utensil was sold for use with either the waterless or "Vacumatic" methods of cooking. Later, Vollrath added a vent to the cover of its utensils. This vent, which could be opened and closed by the user, made it easier to time the period that steam is permitted to escape before the burner is turned off for "Vacumatic" cooking. However, the utensils with the vented cover can be used for waterless cooking.

Vollrath utensils are constructed so that the cover sits on a ledge, leaving a groove between part of this ledge and the cover inside the utensil. The alleged purpose of this construction is that when the burner is turned to low heat in the waterless method and when the burner is turned off in the "Vacumatic" method, steam striking the cover will condense and roll down the inside of the cover into the groove so that the edge of the cover is submerged in water which forms a seal, preventing further vapor loss.

The significance of preventing a loss of vapor relates to the so-called "efficient" method of cooking. As found by the examiner, this method requires cooking vegetables in a minimal amount of water to prevent loss of water-soluble nutrients. In order to cook with a minimal amount of water, it is necessary to retain the vapor in the utensil.

Turning to respondents' argument, it is their contention that a complete reading of their sales literature discloses that they have not represented that by use of their cookware and recommended cooking techniques no vapor is lost during the cooking process. They contend that their literature makes it clear that in the waterless method, vapor *can* escape, and that vapor *does* escape in the "Vacumatic" process.

This record contains numerous brochures used by respondents in promoting the use of Vollrath utensils for waterless cooking. Typical of the claims found in these brochures is that set forth in CX 21, cited by the examiner, which states that:

> The scientifically designed Vapor Seal rim of pan and cover fit together to seal moisture in (see cut-away view). You cook with *less heat, less water* because no vapor escapes . . . (emphasis in original).

Clearly, this is the representation with which respondents are charged in the complaint. Since, by respondents' own admissions,

vapor can escape, the above-quoted representation is misleading. In substance, however, it is respondents' position that any deception involved in the vapor seal claim for waterless cooking is cured by the disclosure that vapor loss can occur due to excessive heat. We do not agree. In the first place, there is no such disclosure in any of the waterless cooking brochures.[1] More importantly, even when such disclosure is made, it is not fully informative. As we have stated, under the waterless method, the user is instructed to perform the major portion of the cooking process on low heat. However, a Vollrath official conceded that because of the difficulty in controlling heat, the water used in this method may boil out. In fact, the official testified that this is one of the reasons Vollrath began advocating the "Vacumatic" method. Since it may be beyond the ability of the user to maintain the required heat, it is our opinion that any reference to a vapor seal resulting in the prevention of vapor loss in literature promoting Vollrath utensils for waterless cooking should be prohibited.

In this connection, it is to be noted that, while respondents began advocating "Vacumatic" cooking in 1964, they have continued to make waterless literature available (CX 21). This is for the reason that some Vollrath dealers continue to recommend waterless cooking (tr. 720).

Considering next the literature used by respondents in promoting their utensils for "Vacumatic" cooking, we find such claims as:

> DEEP VAPOR SEAL.
> Covers fit snugly in a deep, wide recess in pans to form a moisture seal that permits Vacumatic Cooking. (CX 51.)

Again, this is the representation challenged in the complaint. However, in every piece of respondents' literature in this record in which "Vacumatic" cooking is recommended, this cooking process is fully described. Specifically, the user is instructed to allow vapor to escape from the vent or around the lid for 3 to 5 minutes before the heat is turned off. It is at this point that a seal is allegedly formed preventing the loss of vapor.

The hearing examiner, in sustaining this charge, relies in part on the fact that under the "Vacumatic" method, vapor is permitted to escape in the first part of the process. Additionally, he concluded that tests performed by respondents' expert witness, Dr. Blair, affirmed the allegation that no vapor seal is formed.

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[1] This disclosure appears only in the Vollrath waterless cookbook and in instructions to salesmen for an oral presentation in connection with the use of a "flip chart" for waterless cooking.

Dr. Blair, who is a professor of mechanical engineering, conducted tests of a Vollrath utensil "in relation to its ability to form and maintain a seal between the inner volume and the ambient atmosphere" (RX 59a). As described by the examiner, Dr. Blair used one of respondents' utensils containing three ounces of water, the amount recommended for "Vacumatic" cooking. He conducted two tests, one using a solid lid and another using a lid with a vent. He placed the utensil over a Bunsen burner and when he observed vapor escaping either from around the solid lid or through the vent, he reduced the heat until an equilibrium was maintained, that is, no more vapor escaped. Dr. Blair testified that at this point "it (a seal) is formed by the condensate from the vapor and lies in a groove, a configuration built in the pan itself" (tr. 1137). He further testified that "this sealing is clearly evidenced since no external vapors and no loss of water was observed" (tr. 1146). He further established that there was no water loss by weighing the pan before and after the seal was established.

It appears that the examiner did not believe that Dr. Blair's testimony and tests support respondents' contentions for the reason that it took about 45 minutes to adjust the flame in order to achieve an equilibrium. However, it is obvious from Dr. Blair's testimony that he spent the 45 minutes in making small downward adjustments in the heat in order to obtain an *exact* equilibrium. This is explained in his testimony that after he first cut down the flame, he "watched if it began to vent a little bit and I cut the heat down a little bit. I reached a temperature at which no more external vapor or breaking loose of the steam occurred" (tr. 1151). As argued by respondents, the period of time to achieve an equilibrium is not material to Dr. Blair's conclusion that a seal is formed. It is apparent from his testimony that the seal could have been achieved immediately after the water boiled by removing the heat completely.

Although the examiner mentions the fact that Dr. Blair used a Bunsen burner instead of a kitchen stove, he apparently placed no reliance thereon in rejecting the tests since, on the record, he agreed with this witness that the amount of heat and how it is applied to the pan does not affect the tests. Also, the examiner makes reference to the fact that no vegetables were used in the tests. However, in answer to a specific question on this point, Dr. Blair testified that adding vegetables would have no effect on the test results other than possibly taking longer to boil the water. Finally, the examiner seems to place some reliance on the fact that Dr. Blair characterized the seal as a

"water seal" rather than a "vapor seal." Obviously, water is the sealing agent. However, it is vapor which is sealed within the pan after heat is removed and we do not believe that there is a likelihood that the public will be misled by this distinction.

Contrary to the examiner's conclusion, we find that the testimony and tests of respondents' expert witness establish that a seal preventing vapor loss is formed in Vollrath utensils using the "Vacumatic" cooking process. This seal does not exist for the entire cooking period since the instructions for the "Vacumatic" process direct the user to allow vapor to escape for a period of three to five minutes before the heat is turned off. Accordingly, the use of the claims "vapor seal" and "no vapor loss" with reference to the entire "Vacumatic" process is misleading. However, the major portion of the cooking time occurs after the heat is turned off and the seal is formed in the "Vacumatic" process. Under these circumstances, we do not believe that the vapor seal representations challenged in the complaint would have a capacity to deceive the public when such representations are expressly limited to the period of cooking time during which the heat is turned off in the "Vacumatic" cooking process. The hearing examiner's order will be so modified.

As a second issue on this appeal, respondents contend that the paragraph in the examiner's order which prohibits them from misrepresenting the construction, efficacy or any other feature of their cookware, is too broad. It is their contention that there are no findings of fact which support this prohibition and that the other specific prohibitions are sufficient to cover the charges. We find no substance in this argument. It is well settled that the Commission has wide discretion in its choice of a remedy which it deems necessary to prevent the future use of practices which it has found to be unlawful.[2] The examiner has found that respondents have misrepresented their cookware in a number of respects, which findings are fully supported in this record. The court in the *Niresk* case, *supra*, has stated that Commission orders "may prohibit not only the future use of the precise practice found to have existed in the past, but also, the future use of related and similar practices." It is our opinion that the prohibition objected to by respondents is fully warranted by the facts of this case. Accordingly, respondents' appeal on this issue is denied.

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[2] *Niresk Industries, Inc.* v. *Federal Trade Commission*, 278 F.2d 337 (7th Cir), *cert. denied*, 364 U.S. 883 (1960); *Federal Trade Commission* v. *Ruberoid Co.*, 343 U.S. 470 (1952); *Federal Trade Commission* v. *National Lead Co.*, 352 U.S. 419 (1957); *Federal Trade Commission* v. *Colgate-Palmolive Co.*, 380 U.S. 374 (1965).

The examiner found that respondents have not discontinued the challenged advertising. As a final issue, respondents contend that the evidence does not support this finding. It is apparently respondents' position that the examiner based this finding solely on a conclusion that, despite testimony to the contrary, one exhibit (CX 6), a training film, is still being offered. We think it quite clear, however, that the examiner based his finding on the entire record and that the question of whether or not CX 6 has been discontinued is not controlling.

As we have previously found, respondents are continuing to disseminate literature advertising the use of their utensils for waterless cooking. In their proposed findings before the examiner, respondents concede that while certain challenged exhibits have been discontinued and will not be reissued, these sales aids have been replaced by others which in most material respects are the same and contain the same general representations. Moreover, the testimony of the Vollrath representative establishes that the alleged discontinuance of certain promotional material did not occur until after the investigation was initiated. Under these circumstances, we find no error in the examiner's ruling. In fact, respondents appear to concede the propriety of this ruling in the concession in their appeal that the setting aside of this finding would not require modification of the examiner's order. Essentially, therefore, as we interpret respondents' appeal, the narrow issue is whether the examiner erred in rejecting the testimony of a Vollrath official that CX 6 had been discontinued.

Respondents contend that the training film (CX 6), entitled "Tomorrow's Cookware Today," had been replaced by another film entitled "Tomorrow's Cooking Today" and that it was this new film which was offered to dealers in a letter dated September 1, 1966, over the signature of this official. It was on the basis of this letter that the examiner rejected the official's testimony. We find, however, that *both* films are offered in Vollrath's sales aids order form (RX 29) which was in use at that time (Tr. 979). Accordingly, respondents' appeal on this issue is denied.

Appeal of Counsel Supporting the Complaint

Paragraph Six 2. of the complaint alleges that respondents have represented that:

> Food cooked in their cookware by means of the "waterless" or "Vacumatic" cooking methods retains substantially more of the vitamin and mineral content than food cooked in other types of cookware regardless of the method of cooking used.

The examiner ruled that the evidence fails to sustain this allegation.

Complaint counsel first advances the argument that the examiner misconstrued this charge. He contends that, contrary to the examiner's holding, the complaint does not allege that respondents have represented that their cookware is the *only* cookware, and/or that respondents' methods are the *only* methods, by which one can maximize the retention of nutrients. We find no substance in this argument. We think it clear that respondents are charged with representing that their cookware and methods of cooking are superior to *all* others in nutrient retention, and this broad scope of the charge is emphasized by the language "regardless of the method of cooking used." In fact, elsewhere in his brief complaint counsel concedes this meaning in contending that respondents' nutrient claims are unqualified and thus susceptible of the interpretation that "only" respondents' cookware and methods are capable of superior retention.

The examiner concluded that only three of the claims relied upon by complaint counsel are couched in the language of comparison with all other cookware. He properly ruled that since these three claims relate only to the manufacture and construction of Vollrath cookware, they have no relevance to the alleged nutrient retention representations. As to the other claims, the examiner concluded that respondents are representing only that the waterless and "Vacumatic" processes are efficient methods of cooking, that these methods of cooking will result in the retention of more nutrients than the old-fashioned method of peeling, boiling in substantial quantities of water and draining vegetables, and will retain a maximum amount of nutrients.

The examiner further found that the most efficient method of cooking vegetables, to retain the maximum amount of nutrients, requires a minimal amount of water, a pan with a tight-fitting lid, placing of the vegetable in rapidly boiling water and cooking for a short time. It is undisputed that this efficiency in cooking can be achieved through the use of other than Vollrath utensils.However, it is also established in this record that this method of cooking results in the retention of more nutrients than the method of peeling, boiling in large quantities of water and draining.

Complaint counsel's next contention on this issue is that the examiner was too restrictive in considering respondents' claims, that he should have viewed these claims in the overall context of respondents' advertising. That an examiner need not confine himself to the literal meaning of the words used in a particular claim is now well settled.[3] How-

[3] *Carter Products, Inc.* v. *Federal Trade Commission,* 323 F. 2d 523 (5th Cir. 1963); *Aronberg* v. *Federal Trade Commission,* 132 F. 2d 165 (7th Cir. 1942).

ever, we have carefully reviewed each piece of respondents' promotional material in this record in its entirety and we agree with the examiner.

Complaint counsel points in particular to those representations in respondents' literature wherein superior nutrient retention is claimed over "old-fashioned" and "improper" cooking methods. It is complaint counsel's position that considering this claim in connection with respondents' claimed superiority in construction of their cookware and their representation that the "Vacumatic" process is a new method of cooking, the necessary implication is that *all* other cookware and cooking methods are "old-fashioned" or "improper." The short answer to this argument is that it suffers the very infirmity with which complaint counsel charges the examiner. It does not take into consideration the overall context of the advertising. In each piece of literature in this record in which respondents make a comparison to old-fashioned and improper cooking methods, these methods are prominently described as the peeling, boiling, and draining of vegetables. Obviously, the implication suggested by complaint counsel is not justified.

In summary, we find that in each instance in which respondents have made reference to nutrient retention in their literature, the claims have been so qualified as not to constitute a comparison with all other cookware and methods of cooking. We hold, therefore, that the charge in Paragraph Six 2. of the complaint has not been sustained and complaint counsel's appeal on this issue is denied.

Complaint counsel has next appealed from the examiner's ruling that the evidence does not support the charge that respondents have falsely represented that the use of their cooking utensils will enable users to realize substantial savings on fuel.

Complaint counsel introduced reports of tests conducted by an expert witness, Mrs. McComber, comparing the results obtained by cooking food in Vollrath utensils by Vollrath methods with food cooked by a "standard" method. However, the examiner found that Mrs. McComber did not measure fuel consumption and this finding is not disputed. He further found that no other evidence in support of this allegation was placed in the record.

Mrs. McComber did measure the time required for cooking various items by the Vollrath methods and by the "standard" method. Her test reports show that it took somewhat longer to cook certain items by respondents' methods than by the "standard" method. Further, she testified that certain items prepared by the waterless and "Vacumatic" methods were undercooked. From this, complaint counsel argues that it necessarily follows that more fuel is required for respondents'

methods. This argument ignores the testimony of Mrs. McComber that the amount of heat applied during the tests was not constant (tr. 516). Her report shows that for most of the cooking time by the waterless method, "the heat was reduced to the lowest possible flame which would burn steadily" (CX 58–B). In the "Vacumatic" method, the heat was turned off after the initial boiling. It is obvious from the test report that considerably more heat was required for the "standard" method. Under these circumstances, we find that the cooking time in Mrs. McComber's tests cannot be equated with fuel consumption, and complaint counsel's argument is therefore rejected.

Complaint counsel has also appealed from the hearing examiner's dismissal of the complaint as to one respondent, Walter J. Kohler, in his individual capacity.

Mr. Kohler is president and chairman of the Board of Directors of respondent corporation. The examiner found that this individual's responsibility for the practices in question was put squarely in issue by respondents' answer. He ruled that since no evidence was adduced in support of this allegation and in view of the size of respondent corporation and the fact that the challenged practices involve only one of its nine divisions, holding Mr. Kohler in his individual capacity was not warranted.

Complaint counsel takes exception to the examiner's holding that this charge of individual liability was put in issue by the statement in the answer that respondents "Admit the allegations contained in Paragraph One of the Commission's complaint; except that they deny that the corporate respondent engaged in, or that the individual respondents directed, certain of the acts and practices alleged in the Commission's complaint." Paragraph One alleges, in part, that the individual respondents "formulate, direct and control" the challenged practices. Complaint counsel takes the position that since the answer does not deny that these individuals formulate and control the practices, this much of the allegation is admitted and therefore proof is not required. We think this is too technical an interpretation of the answer. Obviously, the examiner construed the answer as a general denial of individual responsibility. Moreover, nowhere during the course of the hearings nor in his proposed findings to the examiner does complaint counsel take this position. In this regard, it is important to note that complaint counsel did call the other individual respondent to the stand and adduced testimony establishing his individual responsibility. Under the circumstances, we think the answer must be interpreted as putting in issue the responsibility of respondent Kohler and

in the absence of supporting evidence, the allegation as to him must be dismissed.

As a final issue, complaint counsel would amend the examiner's order by adding a paragraph which would require respondents to cease furnishing their products to dealers who refuse to comply with the other prohibitions of the order. The examiner's order requires respondents to take all necessary steps to repossess or otherwise remove from their dealers all sales literature containing representations prohibited by the order. We think this requirement of the examiner's order is all that is necessary under the facts of this case. For this reason, the further requirement of the examiner's order that respondents refuse to deal with dealers who do not cooperate in eliminating literature containing the prohibited claims, must be stricken. However, we will add a prohibition to the order to require that all present and future sellers of respondent corporation's cookware be advised of the claims which we have found to be illegal.

Subsequent to the oral argument in this matter, complaint counsel filed a motion requesting certain corrections in the transcript thereof. This motion is unopposed and it is obvious from the context that the corrections are warranted. Accordingly, these corrections will be made.

On the basis of the foregoing, respondents' appeal is granted in part and denied in part, and the appeal of counsel supporting the complaint is denied. To the extent that the findings of the hearing examiner are deficient, they are modified to conform to the factual findings set forth in this opinion. An appropriate order will be entered.

Commissioner Nicholson did not participate for the reason oral argument was heard prior to his appointment to the Commission.

Final Order

This matter having been heard by the Commission upon cross-appeals from the hearing examiner's initial decision; and

The Commission having determined, for the reasons stated in the accompanying opinion, that respondents' appeal should be granted in part and denied in part and that the appeal of counsel supporting the complaint should be denied; and

The Commission having further determined that the initial decision should be modified to conform to the views expressed in the accompanying opinion:

It is ordered, That the initial decision be modified by striking the last two paragraphs of finding number 16 A. 3 beginning on page 742 and ending on page 743 and substituting the following:

Respondents' expert witness, Dr. Blair, Professor of Mechanical Engineering, Illinois Institute of Technology, Chicago, Illinois, conducted laboratory experiments with Vollrath utensils. His tests were properly conducted and establish that after the heat is turned off in the "Vacumatic" cooking process, a seal is formed around the inside of the cover and no further vapor loss occurs.

Since vapor does escape for a period of three to five minutes while the heat is on in the "Vacumatic" cooking process, the use of the claims "vapor seal" and "no vapor escape" in describing this process is deceptive. However, it is found that these claims can be truthfully and nondeceptively used if expressly limited to the period of cooking time during which the heat is turned off in the "Vacumatic" process.

As to the waterless method, the record establishes that because of the difficulty of controlling low heat recommended for cooking by this method, the use of the claims "vapor seal" and "no vapor escape" is almost invariably misleading. Accordingly, the use of these and similar claims in describing and referring to the waterless cooking method, must be prohibited.

It is further ordered, That the following order to cease and desist be substituted for the order in the initial decision:

ORDER

It is ordered, That respondents, The Vollrath Company, a corporation, and its officers, and Carl H. Rickmeier, Jr., 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 offering for sale, sale or distribution of stainless steel cookware or any other cooking utensils of substantially similar composition, design, construction or purpose, 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:

a. When their cooking utensils are covered with the lids supplied therefor, a vapor "seal" or "lock" is formed or that no vapor loss occurs during the cooking of food in said utensils, except that such representations may be used when expressly limited to that portion of the cooking time after the heat is turned off in the "Vacumatic" cooking method.

b. Less food is required to satisfy hunger when prepared in respondents' cookware.

c. The use of respondents' cooking utensils and/or the "waterless" or "Vacumatic" methods of cooking will prevent any illness or disease.

d. The use of respondents' cookware will enable users to realize the following savings:

(1) Substantial savings on food.

(2) Savings in time spent in the kitchen in connection with the cooking of food in the amount of one and one half hours daily or representing that any substantial amount of time is so saved.

e. Use of respondents' cookware with or without the "waterless" or "Vacumatic" methods of cooking is the most healthful way to prepare food.

f. The sales agents and representatives of respondents' dealers and distributors are members of respondents' advertising department; that such persons are conducting an advertising campaign; or that such persons are other than salesmen whose purpose is to sell respondents' cookware products.

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

3. Supplying to or placing in the hands of any distributor, dealer or salesman brochures, sales manuals, charts, pamphlets, or any other advertising material which are displayed, or may be displayed, to the purchasing public which contain any of the false or misleading representations prohibited in Paragraphs 1 and 2 hereof.

4. Failing to deliver a copy of this order to cease and desist to all present and future salesmen and dealers engaged in the sale of respondents' cooking utensils, and failing to secure from such salesmen or dealers a signed statement acknowledging receipt of said order.

It is further ordered, That the aforesaid respondents shall take all steps necessary and appropriate to repossess or otherwise remove and destroy all brochures, sales manuals, flip-charts, pamphlets, or any other advertising material which are displayed, or may be displayed, to the purchasing public which contain any of the false or misleading representations prohibited in Paragraphs 1 and 2 hereof, and which are in the hands of any distributor, dealer or salesman of respondents' products.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to respondent Walter J. Kohler in his individual capacity.

It is further ordered, That the hearing examiner's initial decision, as modified in this order and as supplemented by the findings and conclusions embodied in the accompanying opinion, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That respondents 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 provisions in the order set forth herein.

It is further ordered, That the motion of counsel supporting the complaint requesting certain corrections in the transcript of the oral argument before the Commission be, and it hereby is, granted.

Commissioner Nicholson not participating for the reason oral argument was heard prior to his appointment to the Commission.

IN THE MATTER OF

STERN-SLEGMAN-PRINS COMPANY ET AL.

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

Docket C-1325. Complaint, April 26, 1968—Decision, April 26, 1968

Consent order requiring a Kansas City, Mo., clothing manufacturer and retailer to cease misbranding and falsely advertising its fur, wool and textile fiber products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Fur Products Labeling 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 Stern-Slegman-Prins Company, a corporation, trading under its own name and as Norkay Woolens, and Robert M. Slegman, Ferdinand Stern, Saul Slegman and Steven C. Higinbotham, 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 Fur Products Labeling Act, the Wool Products Labeling Act of 1939 and the Textile Fiber Product 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 Stern-Slegman-Prins Company is a corporation organized, existing under and doing business under and by virtue of the laws of the State of Missouri. The aforesaid corporation trades under its own name and as Norkay Woolens.

Respondents Robert M. Slegman, Ferdinand Stern, Saul Slegman and Steven C. Higinbotham are officers of the corporate respondent. They formulate, direct and control the acts, practices and policies of the said corporate respondent including those hereinafter set forth.

Respondents are manufacturers and retailers of fur products, wool products and textile fiber products, with their office and principal place of business located at 3122 Gillham Plaza, Kansas City, Missouri.

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 transportation 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 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 such fur product.

2. To show the country of origin of the imported furs contained in such fur product.

PAR. 4. 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 that 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.

PAR. 5. 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 catalogs having a wide circulation in Missouri and in other States of the United States.

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

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

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

3. To show the country of origin of imported furs contained in any such fur product.

PAR. 6. 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 that the term "natural" was not used to describe fur products which were not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored, in violation of Rule 19(g) of the said Rules and Regulations.

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

PAR. 8. 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. 9. 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 wool products stamped, tagged, labeled, or otherwise identified by respondents as "Mohair Boucle," thereby representing that the said products were composed entirely of Mohair wool. In truth and in fact, said product contained substantially different fibers and amounts of fibers other than wool.

PAR. 10. Certain of said wool products were 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 per centum of the 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. 11. Certain of said wool products were misbranded in violation of the Wool Products Labeling Act of 1939 in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

1. The respective common generic names of fibers present in the wool products were not used in naming such fibers in required information on stamps, tags, labels or other means of identification affixed to such wool products, in violation of Rule 8 of the aforesaid Rules and Regulations.

2. The term mohair was set forth in lieu of the term wool on the stamps, tags, labels or other means of identification affixed to such wool products, without setting forth the percentage of mohair in the said wool products, in violation of Rule 19 of the aforesaid Rules and Regulations.

3. Samples, swatches or specimens of wool products used to promote or effect sales of such products in commerce, were not labeled or marked to show the information required under Section 4(a)(2) of the Wool Products Labeling Act of 1939 and Rules and Regulations promulgated thereunder, in violation of Rule 22 of the aforesaid Act and Rules and Regulations.

PAR. 12. The acts and practices of the respondents as set forth in Paragraphs Nine, Ten and Eleven above were, and are, in violation of the Wool Products Labeling Act of 1939 and 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.

PAR. 13. 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 products" are defined in the Textile Fiber Products Identification Act.

PAR. 14. 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 names or amounts of the constituent fibers contained therein.

Among such misbranded textile fiber products, but not limited thereto, were ladies' dresses advertised as "Silk Iridescent" thereby implying that the said fabric contained silk. In truth and in fact, such fabric contained substantially different fibers and amount of fibers other than silk.

PAR. 15. 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 misbranded textile fiber products, but not limited thereto, were swatches of fabric with labels which failed to disclose the true generic names of the fibers present.

PAR. 16. Certain of said textile fiber products were misbranded in violation of the Textile Fiber Products Identification Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

1. Fiber trademarks were placed on labels without the generic names of the fibers appearing in immediate conjunction therewith in violation of Rule 17(a) of the aforesaid Rules and Regulations.

2. Fiber trademarks were placed on labels without a full and complete fiber content disclosure the first time the fiber trademark appeared on the labels in violation of Rule 17(b) of the aforesaid Rules and Regulations.

3. The generic name of a fiber was used in nonrequired information on labels affixed to textile fiber products, in such a manner as to be false, deceptive, and misleading as to fiber content or to indicate, directly or indirectly, that such textile fiber products were composed totally or in part of such fiber when such was not the case, in violation of Rule 17(d) of the aforesaid Rules and Regulations.

4. Samples, swatches or specimens of textile fiber products used to promote or effect sales of such products in commerce were not labeled or marked to show the information required under Section 4(b) of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, in violation of Rule 21(a) of the aforesaid Rules and Regulations.

PAR. 17. Certain of said textile fiber products were falsely and deceptively advertised in that respondents in making disclosures or implications as to the fiber content of such textile fiber products in written advertisements, used to aid, promote and assist, directly or indirectly, in the sale or offering for sale of said products, failed to set forth the required information as to fiber content as specified in 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 the textile fiber products, but not limited thereto, were ladies' dresses which were falsely and deceptively advertised by means of catalogs distributed by the respondents throughout the United States in that the true generic names of the fibers present in such products were not set forth.

PAR. 18. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondents falsely and deceptively advertised textile fiber products in violation of the Textile Fiber Products Identification Act in that

said textile fiber products were not advertised in accordance with the Rules and Regulations in the following respects:

1. Fiber trademarks were used in advertising textile fiber products without a full disclosure of the fiber content information required by the said Act, and the Rules and Regulations thereunder, in at least one instance in said advertisements in violation of Rule 41(a) of the aforesaid Rules and Regulations.

2. Fiber trademarks were used in advertising textile fiber products containing more than one fiber and such fiber trademarks did not appear in the required fiber content information in immediate proximity and conjunction with the generic names of the fibers to which they related in plainly legible type or lettering of equal size and conspicuousness, in violation of Rule 41(b) of the aforesaid Rules and Regulations.

3. The generic name of a fiber was used in advertising textile fiber products, in such a manner as to be false, deceptive, and misleading as to fiber content and to indicate, directly or indirectly, that such textile fiber products were composed wholly or in part of such fiber when such was not the case, in violation of Rule 41(d) of the aforesaid Rules and Regulations.

PAR. 19. The acts and practices of the respondents as set forth in Paragraphs Fourteen, Fifteen, Sixteen, Seventeen and Eighteen above were, and are, in violation of the Textile Fiber Products Identification Act and the Rules and Regulations 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 Fur Products Labeling Act, the Wool Products Labeling Act of 1939 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 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 issuues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Stern-Slegman-Prins 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 3122 Gillham Plaza, Kansas City, Missouri. It trades under its own name and as Norkay Woolens.

Respondents Robert M. Slegman, Ferdinand Stern, Saul Slegman and Steven C. Higinbotham 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 Stern-Slegman-Prins Company, a corporation, trading under its own name or as Norkay Woolens, or any other name or names, and its officers, and Robert M. Slegman, Ferdinand Stern, Saul Slegman and Steven C. Higinbotham, 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, 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 term "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. 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.

B. 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 such 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 "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 such fur product which is not pointed, bleached, dyed, tip-dyed or otherwise artificially colored.

It is further ordered, That respondents Stern-Slegman-Prins Company, a corporation, trading under its own name or as Norkay Woolens, or any other name or names, and its officers, and Robert M. Slegman, Ferdinand Stern, Saul Slegman and Steven C. Higinbotham, 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 manufacture for introduction into commerce, the 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 wool 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.

3. Failing to set forth the respective common generic name of fibers in naming such fibers in the required information on stamps, tags, labels, or other means of identification attached to wool products.

4. Using the term "mohair" in lieu of the term "wool" on stamps, tags, labels, or other means of identification affixed to wool products, without setting forth the percentage of mohair contained in such wool products.

5. Failing to affix labels showing in words and figures plainly legible all the information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939, to samples, swatches or specimens of wool products used to promote or effect the sale of such wool products.

It is further ordered, That respondents Stern-Slegman-Prins Company, a corporation, trading under its own name or as Norkay Woolens, or under any other name or names, and its officers, and Robert M. Slegman, Ferdinand Stern, Saul Slegman and Steven C. Higinbotham, 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, 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 any textile fiber product by:

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

2. Falsely or deceptively stamping, tagging, labeling, invoicing, advertising, or otherwise identifying such product by representing, either directly or by implication, through the use of the terms "Silk Iridescent," or any other terms, that any fibers are present in the said textile fiber product when such is not the case.

3. Failing to affix a label to such a textile fiber product showing each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

4. Using a fiber trademark on a label affixed to such a textile fiber product without the generic name of the fiber appearing on the said label.

5. Using a generic name or fiber trademark on any such label whether required or nonrequired, without making a full and complete fiber content disclosure in accordance with the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder the first time such generic name or fiber trademark appears on the label.

6. Using a generic name of a fiber or a fiber trademark on a label affixed to any such textile fiber product in such a manner as to be false, deceptive or misleading as to fiber content or to indicate, directly or indirectly, that such textile fiber product is composed wholly or in part of such fiber when such is not the case.

7. Failing to affix labels to samples, swatches or specimens of textile fiber products used to promote or effect the sale of such textile fiber products showing in words and figures plainly legible all the information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

B. Falsely or deceptively advertising any textile fiber product by:

1. Making any representation, by disclosure or by implication, as to the 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 same advertisement, except that the percentages of the fibers present in a textile fiber product need not be stated.

2. Using a fiber trademark in advertising such textile fiber product without a full disclosure of the required content information in at least one instance in said advertisement.

3. Using a fiber trademark in advertising such textile fiber product containing more than one fiber without such fiber trademark appearing on the required fiber content information in immediate proximity and conjunction with the generic name of the fiber in plainly legible type or lettering of equal size and conspicuousness.

4. Using a generic name or fiber trademark of a fiber in advertising such textile fiber product in such a manner as to be false, deceptive, or misleading as to fiber content or to indicate, directly or indirectly, that such textile fiber product is composed wholly or in part of such fiber when such is not the case.

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

ROBERT'S DISCOUNT CENTER ET AL.

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

Docket C-1326. Complaint, April 30, 1968—Decision, April 30, 1968

Consent order requiring a Washington, D.C., discount merchandiser to cease advertising and selling used cameras and radios as new and misrepresenting the guarantees on such merchandise.

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 Robert's Discount Center, a partnership, and Joseph Chabbot and Robert D. Cohen, individually and as copartners trading and doing business as Robert's Discount Center, 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 Robert's Discount Center is a partnership comprised of the following named individuals who formulate, direct and control the acts and practices hereinafter set forth. The principal office and place of business of said partnership is located at 1114 F Street, NW., in the city of Washington, District of Columbia.

Respondents Joseph Chabbot and Robert D. Cohen are individuals and copartners trading and doing business as Robert's Discount Center with their principal office and place of business located at the above-stated address.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of cameras, radios and other articles of merchandise to the public.

PAR. 3. In the course and conduct of their business, as aforesaid, respondents now cause, and for some time last past have caused, their said merchandise to be sold to purchasers thereof located within the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of certain of their cameras and radios, respondents or their salesmen have represented, and are now representing, directly or by implication, that:

1. Certain cameras and radios offered for sale by respondents are new.

2. Certain cameras and radios are unconditionally guaranteed for a specified period of time.

PAR. 5. In truth and in fact:

1. Some of the cameras and radios offered for sale by respondents are not new. They have been accepted in trade, repaired, reconditioned, or otherwise used. Such cameras and radios, when represented as new, or in the absence of a disclosure that they are used, are understood and accepted by the public as being new.

2. Respondents' cameras and radios are not unconditionally guaranteed for the period of time specified. Such guarantees as they give are subject to conditions and limitations which are not disclosed to the purchaser, and in some instances respondents do not in fact fulfill all of their requirements and obligations under such guarantees.

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

PAR. 6. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and are now, in substantial competition, in commerce, with corporations, firms and individuals in the sale and distribution of cameras, radios and other merchandise of the same general kind and nature as those sold by respondents.

PAR. 7. 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' merchandise by reason of said erroneous and mistaken belief.

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

DECISION AND ORDER

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by 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 Act, 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 Robert's Discount Center is a partnership organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its office and principal place of business located at 1114 F Street, NW., Washington, D.C.

Respondents Joseph Chabbot and Robert D. Cohen are individuals and copartners of 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 Robert's Discount Center, a partnership, and Joseph Chabbot and Robert D. Cohen, individually and as copartners, trading and doing business as Robert's Discount Center or under any other name or names, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of cameras, radios, or other articles of merchandise, 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 used merchandise is new.

2. Advertising, offering for sale or selling any article of merchandise which has been used or which contains parts or materials which have been used, unless there is clear and conspicuous disclosure of such fact, in all advertising and promotional matter, on the article by tag, sticker or similar device, and on the sales instrument or receipt given to the purchaser at the time of the sale.

3. Representing, directly or by implication, that any article of merchandise is 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 in writing to the purchaser at or before the time of sale.

4. Failing to perform fully and with reasonable promptness all of their requirements and obligations under the terms of the guarantee as represented.

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

CHARIOT TEXTILES CORP. ET AL.

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

Docket C-1327. Complaint, April 30, 1968—Decision, April 30, 1968

Consent order requiring a New York City importer of fabrics 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 Chariot Textiles Corp., a corporation, and Charles Rosengarten and Elliot Rosengarten, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Chariot Textiles Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Individual respondents Charles Rosengarten and Elliot Rosengarten are officers of said corporation. They formulate, direct and control the acts, practices and policies of said corporation, including the acts and practices hereinafter referred to.

Respondents are importers of wool products (fabrics) and converters of piece goods. Their office and principal place of business is located at 505 Eighth Avenue, New York, New York.

PAR. 2. Respondents now, and for some time last past, have 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 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 wool products, namely fabrics, stamped, tagged, labeled, or otherwise identified as containing 75 percent reprocessed wool, 15 percent fur fibers, 10 percent nylon, whereas in truth and in fact, such fabrics contained substantially different amounts and types of fibers than were set forth on the labels affixed thereto.

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

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Textiles and Furs proposed to present to the Commission for its consideration and which,

if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by 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 Chariot Textiles Corp. 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 505 Eighth Avenue, New York, New York.

Respondents Charles Rosengarten and Elliot Rosengarten 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 Chariot Textiles Corp., a corporation, and its officers, and Charles Rosengarten and Elliot Rosengarten, 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 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 respondent corporation shall forthwith distribute a copy of the Order to each of its operating divisions.

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

HANCOCK TEXTILE COMPANY, 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-1328. Complaint, May 1, 1968—Decision, May 1, 1968

Consent order requiring four chain pieces goods outlets located in Alabama, Mississippi, and Texas, to cease falsely advertising and misbranding their 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 Hancock Textile Company, Inc., a corporation, Hancock Fabric Outlet, a corporation, Hancock Fabric Outlet, Inc., a corporation, and Hancock Textile Outlet, a corporation, and Lawrence D. Hancock and Robert E. Tedford, individually and as officers of said corporations, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Textile Fiber Products Identification Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Hancock Textile Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Mississippi, with its principal office and place of business located at Highway 6 West, Tupelo, Mississippi.

Respondent Hancock Fabric Outlet is a corporation organized, existing and doing business under and by virtue of the laws of the State of Mississippi, with its principal office and place of business located at Highway 6 West, Tupelo, Mississippi.

Respondent Hancock Fabric Outlet, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Alabama, with its principal office and place of business located at 850 Government Street, Mobile, Alabama.

Respondent Hancock Textile Outlet 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 6240 Bissonet Street, Houston, Texas.

Individual respondents Lawrence D. Hancock and Robert E. Tedford are officers of each of the foregoing corporate respondents. The office and principal place of business of these individual respondents is Highway 6 West, Tupelo, Mississippi.

The individual respondents operate a chain of 20 retail piece goods outlets including the corporate respondents named above and they are responsible for the acts, practices and policies of said piece goods outlets. Although each of the 20 retail piece goods outlets is separately incorporaated within the State in which they do business, they are operated as a chain with headquarters at Highway 6 West, Tupelo, Mississippi from which emanates much of the advertising for the individual units.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the introduction, delivery for introduction, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, and in the importation into the United States, of textile fiber products; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, textile fiber products, which have been advertised or offered for sale, in commerce; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products; as the terms "commerce" and "textile fiber product" are defined in the Textile 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 textile fiber products which were falsely and deceptively advertised in the "Daily Journal" a newspaper published in Tupelo, Mississippi, the "Mobile Press Register" a newspaper published in Mobile, Alabama and the "Houston Chronicle" a newspaper published in Houston, Texas. These newspapers have interstate circulation, and certain of said advertisements contained such terms as "linen type weave," "linen type," "candy linen" and "print linens" which represented directly or by implication that such products were composed of linen fibers when such was not the case.

PAR. 4. Certain of such textile fiber 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(b) of the Textile Fiber Products Identification Act, and in the manner and form prescribed by the Rules and Regulations promulgated under said Act.

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

1. To disclose the true generic names of the fibers present; and

2. To disclose the true percentage of such fibers; and

3. To disclose 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 said Act, with respect to such product.

Also among such misbranded textile fiber products were remnants which were not labeled or otherwise identified as to fiber content.

PAR. 5. Certain of said textile fiber products were misbranded in violation of the Textile Fiber Products Identification Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Fiber trademarks appeared on labels without the generic names of the fibers appearing on such labels, in violation of Rule 17(a) of the aforesaid Rules and Regulations.

(b) Generic names and fiber trademarks were used on labels without a full and complete fiber content disclosure appearing on such labels, in violation of Rule 17(b) of the aforesaid Rules and Regulations.

PAR. 6. Certain of said textile fiber products were falsely and deceptively advertised in that respondents in making disclosures or implications as to the fiber content of such textile fiber products in written advertisements used to aid, promote and assist, directly or indirectly, in the sale or offering for sale of said products failed to set forth the required information as to fiber content as specified by Section 4(c) of the Textile Fiber Products Identification Act and in the manner and form prescribed by the Rules and Regulations promulgated under said Act.

Among the aforesaid advertisements, but not limited thereto, were advertisements of respondents which appeared in issues of the "Daily Journal," the "Mobile Press Register," and "The Houston Post," newspapers having interstate circulation, in which textile fabrics were advertised with such fiber implying terms as corduroy, dacron, antique satin, and broadcloth among others but not limited thereto without the true generic names of the fibers in such articles being set forth.

PAR. 7. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondents falsely and deceptively advertised textile fiber products in violation of the Textile Fiber Products Identification Act in that said textile fiber products were not advertised in accordance with the Rules and Regulations thereunder in the following respects:

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

(b) Fiber trademarks were used in advertising textile fiber products, containing more than one fiber, other than permissive ornamentation, and such fiber content trademarks did not appear in the required fiber content information in immediate proximity and conjunction with the generic name of the fiber in plainly legible type or lettering of equal size and conspicuousness, in violation of Rule 41(b) of the aforesaid Rules and Regulations.

PAR. 8. 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 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 Hancock Textile Company, 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 Highway 6 West, Tupelo, Mississippi.

Respondent Hancock Fabric Outlet 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 Highway 6 West, Tupelo, Mississippi.

Respondent Hancock Fabric Outlet, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Alabama, with its office and principal place of business located at 850 Government Street, Mobile, Alabama.

Respondent Hancock Textile Outlet is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 6240 Bissonet Street, Houston, Texas.

Respondents Lawrence D. Hancock and Robert E. Tedford are officers of said corporations and their address is Highway 6 West, Tupelo, Mississippi.

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 Hancock Textile Company, Inc., a corporation, and its officers, Hancock Fabric Outlet, a corporation, and its officers, Hancock Fabric Outlet, Inc., a corporation, and its officers, Hancock Textile Outlet, a corporation, and its officers, and Lawrence D. Hancock and Robert E. Tedford, 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, sale, advertising, or offering for sale 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. Falsely or deceptively stamping, tagging, labeling, invoicing, advertising or otherwise identifying such products by representing either, directly or by implication, through the use of such terms as "candy linen," "print linen," and

"linen type weaves" or any other terms, that any fibers are present in a textile fiber product when such is not the case.

3. Failing to affix labels to such textile fiber products 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.

4. Using a fiber trademark on labels affixed to such textile fiber products without the generic name of the fiber appearing on such label.

5. Using a generic name or fiber trademark on any label, whether required or non-required, without making a full and complete fiber content disclosure in accordance with the Act and the Rules and Regulations thereunder the first time such generic name or fiber trademark appears on the label.

B. Falsely and deceptively advertising textile fiber products by:

1. Making any representations, directly or by implication, as to the 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, or 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, in the manner and form required except that the percentages of the fibers present in the textile fiber product need not be stated.

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

3. Using a fiber trademark in advertising textile fiber products, containing more than one fiber without such fiber trademark appearing in the required fiber content information in immediate proximity and conjunction with the generic name of the fiber in plainly legible type or lettering of equal size and conspicuousness.

It is further ordered, That the respondent corporations shall forthwith distribute a copy of this Order to each of their operating divisions.

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.

Complaint

IN THE MATTER OF

JACK SOKOLOFF TRADING AS A & A TRAVEL BUREAU

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

Docket C-1329. Complaint, May 2, 1968—Decision, May 2, 1968

Consent order requiring an operator of a travel agency with offices in Washington, D.C., and Baltimore, Md., to cease misrepresenting that its services are free, using the names of well-known resort hotels without authorization, misrepresenting that accommodations are available, failing to make prompt refund of deposits, and engaging in other deceptive practices.

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 Jack Sokoloff, trading as A & A Travel Bureau, 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 Jack Sokoloff is the sole proprietor of a travel agency with locations at 1029 Vermont Avenue, NW., in the city of Washington, District of Columbia, and at 2 East Lombard Street in the city of Baltimore, Maryland. In the course of his business respondent Jack Sokoloff also uses the names Mr. Stein, Mr. Sullivan and Mr. Wilson.

Respondent does business under the names A & A Travel Bureau; A & A Tours; Jewish Students Tour Association; Jewish Travel Club for Single People; Lecture Bureau of Baltimore; New York Theater Ticket Service; Israel Travel Center; Jewish Travel Center; Jewish Travel Club; and Jewish Couples Travel Club. Respondent also lists his travel agency in The Washington and Baltimore Classified Telephone Directories under the following names each identified as a division of A & A Travel Bureau: Bermuda Travel Reservations; California Hotel Reservations Service; Catskill Hotel Reservations; Concord Hotel Reservation Service; Free Hotel & Motel Reservations Service; Grossinger Reservation Service; Hotel Reservation Service; Las Vegas Hotel Reservations; Manhattan Hotels Reservations; New York Theatre Service; Pocono Mountains Reservation Service; San

Francisco Hotel & Motel Reservation Service; Mexico Travel Reservations; Millionaire's Travel Service; Sports Tours; Student Tours; Teen Tours; San Juan Hotel and Motel Reservation Service; Taft Hotel of New Haven Reservations; Texas Hotel Reservations; Virgin Islands Hotel Reservation Service; Williamsburg Reservations; A & A Hotel and Motel Reservation Service; Alaska Travel Reservation; Atlantic City Hotel & Motel Reservations Service; Bachelor & Bachelor Girl Travel Service; Catskill Hotel Reservation and Bus Service; Florida Travel Reservations; Honeymoon Reservation Service; Miami Beach Hotel and Motel Reservations; New York Hotel & Motel Reservation Service; Ocean City Hotel & Motel Reservation Service; Puerto Rico Travel Reservations; Travel-on-a-Budget-Plan; Canada Travel and Hotel Reservations; European Travel Reservation Service; Hawaii Travel Reservations; and Japan Travel Reservations.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising and offering of his services to the public in connection with, but not limited to, obtaining reservations for accommodations in hotels, motels and inns, arranging transportation facilities, and obtaining tickets for attractions such as, but not limited to, theater performances and sporting events.

PAR. 3. In the course and conduct of his business, respondent transmits letters, reservation confirmations, forms, checks and various commercial documents through the United States mails from his place of business in Maryland to hotels, motels, inns, ticket brokers and customers in various other States of the United States and in the District of Columbia, and receives letters, checks, money orders and other documents from customers located in various other States of the United States and in the District of Columbia. Respondent now and for some time last past has advertised in the classified telephone directories for the District of Columbia and Baltimore, Maryland metropolitan areas and also maintains a business address and answering service in the District of Columbia. Accordingly, respondent is engaged 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 inducing the public to utilize his services in obtaining hotel and theatre ticket reservations, respondent has made various statements in advertisements with respect to his travel agency services, typical of which are those inserted in the classified telephone directories for Baltimore, Maryland and Washington, D.C., under the headings "Travel Agents" and "Hotel Reservations—Out of Town."

Tpyical and illustrative of the aforesaid statements under the heading "Travel Agents" are the following:

24 HOUR PHONE SERVICE	347 1251 FOR DEPENDABLE RESERVATIONS	TRAVEL VACATIONS WEEKENDS HONEYMOONS CONVENTIONS N.Y. THEATRE TICKETS... TRANSPORTATION
OUR SERVICES ARE FREE	BONDED AGENT 20 YEARS BUSINESS EXPERIENCE	A & A TRAVEL BUREAU

Typical and illustrative of the statements under the heading "Hotel Reservations—Out of Town" are the following:

A & A TRAVEL BUREAU SERVICE
FREE—XXXTRA SERVICE
IMMEDIATE CONFIRMATION
ALL HOTELS—MOTELS
NY THEATRE TICKETS
STUDENTS & FAMILY RATES
WEEKEND PACKAGE DEALS
24 HOUR TELEPHONE SERVICE

* * * * * * *

Concord Hotel Reservation Service—Div. of A & A Travel Bureau, Immediate Confirmation—24 Hour Telephone.

* * * * * * *

Grossinger Reservation Service—Division of A & A Travel Bureau.

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Free Hotel & Motel Reservation Service—Division of A & A Travel Bureau.

* * * * * * *

Holiday Hotel & Motel Reservations—2 E Lombard—LE 9-7110.

* * * * * * *

Quality Hotel and Motel Reservations—2 E Lombard—LE 9-7110.

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

1. Customers are not charged when they avail themselves of respondent's services as a travel agent.

2. Respondent will provide immediate confirmation of reservations requested by his customers.

3. Respondent's services as a travel agent extend to any and all hotels and motels.

4. The Concord, Kiamesha Lake, New York; Grossinger Hotel and Country Club, Grossinger, New York; The Holiday Inns of America motel chain; and the Quality Courts motel chain have designated respondent as their authorized area representative or agent.

PAR. 6. In truth and in fact:

1. Customers are charged when they avail themselves of respondent's services as travel agent.

2. Respondent frequently cannot or will not obtain immediate confirmation of reservations requested by his customers.

3. Respondent's services as a travel agent do not extend to any and all hotels and motels.

4. The Concord, Kiamesha Lake, New York; Grossinger Hotel and Country Club, Grossinger, New York; The Holiday Inns of America motel chain; and the Quality Courts motel chain have not designated respondent as their authorized area representative or agent.

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

PAR. 7. In the further course and conduct of his business as aforesaid, respondent has engaged in the following unfair and deceptive acts and practices:

1. On some occasions when customers contact respondent and request reservations at a specific hotel or motel, respondent represents that he will contact the desired lodging and he requests an advance deposit. After receiving their advance deposits, respondent informs his customers that no accommodations are available at the hotel or motel specified by them, and respondent attempts to induce his customers to accept accommodations elsewhere. In truth and fact, in numerous instances respondent failed to contact the hotel or motel requested by the customers. In reliance upon the aforesaid misrepresentation, respondent's customers failed to obtain the accommodations they desired when in fact such accommodations were available.

2. On other occasions customers contact respondent and request reservations at a specific hotel or motel. In some instances, after receiving their advance deposits, respondent makes no contact whatsoever with the specified hotel or motel. In other instances when respondent does contact the hotel or motel, he is informed that the desired accommodations are not available. Subsequently, respondent contacts his customers and represents that the desired reservations have in fact been obtained. In truth and in fact, no such reservations were obtained.

In numerous instances respondent's customers learn of the unavailability of their accommodations for the first time when they arrive at their destination and are informed by the lodging's personnel that respondent never contacted them, or that he had contacted them and had been informed that the requested accommodations were unavailable.

3. On some occasions respondent is contacted by customers requesting hotel reservations for a specified date or dates. After receiving the requested advance deposit respondent informs the customer that he will be contacted by respondent and informed as to the results of respondent's inquiry. In some instances, respondent either delays in attempting to obtain such reservations or fails altogether to attempt to obtain the requested reservations. Consequently, relying upon the understanding that respondent will either obtain the reservations requested or will give the customer timely notification that such reservations are unavailable, respondent's customers suffer great inconvenience and pecuniary or other loss.

4. Under the circumstances described in subparagraphs 1 through 3 hereof, when respondent's customers have requested or demanded refunds of their deposit money, respondent has either failed to make any refund at all, or when deposits have been refunded they have been unreasonably delayed and deductions have been taken by respondent for "expense" not in fact incurred.

5. Respondent has in some instances requested and received from his customers prepayment for accommodations which the customer understands to be the same as the rates charged by the hotel or motel for the specific accommodations requested. In truth and in fact, the amounts of such prepayments are in excess of the rates actually charged by the hotel or motel for such accommodations.

6. When the respondent obtains reservations for a customer at a hotel or motel there is an understanding between the respondent and the hotel or motel that any money collected by the respondent from the customer as prepayment or advance deposit will be immediately forwarded to the hotel or motel with a deduction for the amount of respondent's commission. In several instances respondent has either failed to forward such money or has unreasonably delayed in forwarding it to hotels or motels which have accommodated a customer under such an understanding. On other occasions, hotels or motels, which have not received such money by the time the customer has arrived to claim his reservation, have refused to give the customer credit for such payments and have required that the customer pay the same amount again to the hotel or motel.

PAR. 8. 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 rendering of travel agency services of the same general kind and nature as those rendered by respondent.

PAR. 9. 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 public into the erroneous and mistaken belief that said representations were and are true and into the substantial use of respondent's services by reason of said erroneous and mistaken belief.

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

DECISION AND ORDER

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

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

The Commission having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of 30 days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, 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 Jack Sokoloff is the sole proprietor of a travel agency with locations at 1029 Vermont Avenue, NW., in the city of Wash-

ington, District of Columbia, and at 2 East Lombard Street, in the city of Baltimore, Maryland. In the course of his business respondent Jack Sokoloff also uses the names Mr. Stein, Mr. Sullivan and Mr. Wilson.

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 Jack Sokoloff, an individual, trading as A & A Travel Bureau 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, offering, rendering, sale or distribution of any 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:

(a) That customers are not charged when they avail themselves of respondent's services, or that respondent's services are free: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondent to establish that none of his customers are charged for his services, and no deduction from his customers' deposit money has been made for expenses incurred by him.

(b) That respondent will provide immediate confirmation of reservations requested by his customers: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondent to establish that he does in every instance give his customers immediate confirmation of their reservations.

(c) That respondent's services as a travel agent extend to any and all hotels and motels.

(d) Through the use of classified telephone directory listings, such as "Concord Hotel Reservations Service," "Grossinger Reservations Service," "Holiday Hotel and Motel Reservations" and "Quality Hotel and Motel Reservations," or in any other manner, that respondent is the authorized area representative or agent for the Concord, Kiamesha Lake, New York; Grossinger Hotel and Country Club, Grossinger, New York; The Holiday Inns of America motel chain; or the Quality Courts motel chain; or misrepresenting, in any manner, his agency relationships, or affiliations or his business status.

2. Using the name of any place of accommodation or entertainment in any advertisement, listing or directory unless respondent first obtains written authorization to do so from such place of accommodation or entertainment and such authority has not been subsequently revoked.

3. Representing directly or by implication that no accommodations are available when respondent has not contacted the place of accommodation to ascertain whether accommodations are available; or misrepresenting in any manner the availability of requested accommodations, transportation facilities, tickets for any event, or any other requested service.

4. Misrepresenting, in any manner, that reservations or any other requested services have been obtained by respondent; or misrepresenting any other details or aspects of services requested of respondent.

5. Failing, after accepting a customer's request, to make a bona fide and timely attempt to arrange, furnish or obtain requested reservations or any other requested service.

6. Failing to promptly inform respondent's customers that reservations requested by them are not available when respondent has ascertained such information.

7. Failing to promptly refund in full any prepayment or advance deposit remitted by a customer when respondent fails to arrange, furnish or obtain requested services.

8. Requesting or accepting from his customers any amount of money as prepayment or advance deposit for a reservation or other requested service when such amount is in excess of the rate or price charged by the particular establishment furnishing the reservation or other service, unless respondent discloses to the customer at the outset that the amount requested or received is in excess of the rate charged by such establishment.

9. Failing to immediately forward to the establishment furnishing the requested reservations or other service all funds, exclusive of agreed upon commissions, received from a customer as prepayment or advanced deposit for such reservations or other services: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for the respondent to establish that in any instance wherein such funds are not immediately forwarded to the establishment such was in accordance with an arrangement or agreement previously made with such establishment.

10. Failing to forward compensation owing to an establishment, furnishing reservations or services, when due.

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

GIMBEL'S UPHOLSTERING CO., INC., ET AL.

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

Docket C-1330. Complaint, May 3, 1968—Decision, May 3, 1968

Consent order requiring a Washington, D.C., upholstering and refinishing firm to cease deceptively guaranteeing its services and failing to disclose that its conditional sales contracts may be assigned to a finance company.

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 Gimbel's Upholstering Co., Inc., a corporation, and William Lessey and Thelma Lessey, 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 Gimbel's Upholstering Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its principal office and place of business located at 1534 7th Street, NW., Washington, D.C.

Respondents William Lessey and Thelma Lessey are individuals and are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their 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 advertising, offering for sale, sale and distribution of slip covers, draperies and furniture upholstering and refinishing services to the public.