

indirectly, more than one (1) percent of the outstanding shares of common stock of Marquette Cement Manufacturing Company, or to any purchaser who is not approved in advance by the Federal Trade Commission.

*It is further ordered,* That for a period of ten (10) years respondent shall cease and desist from acquiring, directly or indirectly, without the prior approval of the Federal Trade Commission, the whole or any part of the share capital or other assets of any corporation engaged in the sale of ready-mixed concrete or concrete products within respondent's present or future marketing area for portland cement or which purchased in excess of 10,000 barrels of portland cement in any of the five (5) years preceding the merger.

*It is further ordered,* That Marquette Cement Manufacturing Company shall, within sixty (60) days from the date this order becomes final and every ninety (90) days thereafter until divestiture is fully effected, submit to the Commission a detailed written report of its actions, plans, and progress in complying with the provisions of this order and fulfilling its objectives. All reports shall include, among other things that will be from time to time required, a summary of all contracts and negotiations with potential purchasers of the stock and/or assets to be divested under this order, the identity of all such potential purchasers, and copies of all written communications to and from such potential purchasers.

Commissioner MacIntyre did not participate.

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IN THE MATTER OF

MARCUS BROTHERS TEXTILE CORPORATION, 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-1477. Complaint, Jan. 8, 1969—Decision, Jan. 8, 1969*

Consent order requiring a New York City converter of greige textile fabrics to cease misbranding its textile fiber products, misrepresenting that it has mills and factories, and failing to maintain required records.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Marcus Brothers Textile Corporation, a corporation, and Samuel A. Marcus, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and 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 Marcus Brothers Textile Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

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

Respondents are converters of greige textile fabrics for the women's wear manufacturing trade, with their office and principal place of business located at 1450 Broadway, New York, New York.

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

PAR. 3. Certain of said textile fiber products were misbranded by respondents in that they were not stamped, tagged, labeled or otherwise identified to show each element of information

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

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

- (a) to disclose the true generic name of the fibers present; and
- (b) to disclose the name of the country where textile fiber products imported by them were processed or manufactured.

PAR. 4. Certain of said textile fiber products were misbranded in violation of the Textile Fiber Products Identification Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in that fiber trademarks were used in conjunction with required information on labels affixed to such fiber products, without the generic name of the fiber being set out in immediate conjunction therewith and in type or lettering of equal size and conspicuousness, in violation of Rule 17(a) of the aforesaid Rules and Regulations.

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

PAR. 6. The acts and practices of respondents as set forth above were, and are, in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices, in commerce, under the Federal Trade Commission Act.

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

PAR. 8. In the course and conduct of their business, the aforesaid respondents, on certain of their gummed fabric labels attached to fabrics sold by them, used the term "Marbro Mills,"

thus stating or implying that respondents operate a mill or factory in which fabrics sold by them are manufactured.

PAR. 9. In truth and in fact, respondents do not own, operate, or control any mill or factory where the aforesaid fabrics or other products sold by them are manufactured, but are engaged solely in business as converters of greige textile fabrics for the women's wear manufacturing trade.

PAR. 10. There is a preference on the part of many members of the trade to buy products directly from mills or factories, in the belief that by so doing, certain advantages accrue to them, including lower prices.

PAR. 11. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of products of the same general kind as that sold by respondents.

PAR. 12. 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 purchasers into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of said respondents' products by reason of said erroneous and mistaken belief.

PAR. 13. The aforesaid acts and practices of respondents, as herein alleged in Paragraphs Eight through Twelve 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 and unfair and deceptive acts and practices in commerce in violation of Section 5 (a) (1) of the Federal Trade Commission Act.

#### DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the 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 ad-

mission 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 and having duly considered the comment filed thereafter pursuant to § 2.34 (b) of its Rules, 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 Marcus Brothers Textile Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 1450 Broadway, New York, New York.

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

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

#### ORDER

*It is ordered,* That respondents Marcus Brothers Textile Corporation, a corporation, and its officers, and Samuel A. Marcus, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, manufacture for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after

shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding such products by:

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

2. Using a fiber trademark in conjunction with the required information on labels affixed to said textile fiber products without the generic name of the fiber appearing on said labels in immediate conjunction therewith and in type or lettering of equal size and conspicuousness.

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

*It is further ordered,* That respondents Marcus Brothers Textile Corporation, a corporation, and its officers, and Samuel A. Marcus, 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 advertising, offering for sale, sale or distribution of textile fabrics or other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Directly or indirectly using the word "Mills", or any other word or term of similar import or meaning in or as a part of respondents' corporate or trade name, or representing in any other manner that respondents perform the functions of a mill or otherwise manufacture textile fabrics or other products sold by them unless and until respondents own or operate, or directly and absolutely control the mill, factory or manufacturing plant wherein said textile fabrics or other products are manufactured.

2. Misrepresenting in any manner that respondents have

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mills, factories or manufacturing plants where their products are manufactured.

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

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IN THE MATTER OF

MARLO FURNITURE CO. TRADING AS MARLO'S FURNITURE  
WORLD, ET AL.

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

*Docket 8745. Complaint, Sept. 27, 1967—Decision, Jan. 16, 1969*

Order terminating a proceeding which charged a Washington, D.C., furniture and home furnishing store with using deceptive selling 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 Marlo Furniture Company, a corporation, trading as Marlo's Furniture World, and Louis Glickfield, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Marlo Furniture Company, trading as Marlo's Furniture World, 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 901 7th Street, NW., in the city of Washington, District of Columbia.

Respondent Louis Glickfield is an officer of the corporate respondent. He formulates, directs and controls the acts and prac-

tices of the corporate respondent, including the acts and practices hereinafter set forth. His 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 furniture, home furnishings, and other merchandise at retail to members of the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said merchandise, when sold, to be shipped from their place of business in the District of Columbia to purchasers thereof located in various States of the United States and in the District of Columbia, and 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 business, and for the purpose of inducing the purchase of their merchandise, respondents have made numerous statements in display advertisements inserted in newspapers with respect to variously designated sale events wherein a varying number of items were depicted, described and offered for sale.

Typical and illustrative of such statements are those made in connection with certain of respondents' sales events during which, among other items, identical 84" modern style sofas were depicted, described, and offered for sale, as follows:

<i>Publication</i>	<i>Date</i>	<i>Designation of event</i>	<i>Statement</i>
The Washington Post	Jan. 6, 1966	REMNANT SALE	(depiction) . . . All Remnants are reduced for immediate quick sale . . . NOW \$98.
The Washington Post	Jan. 17, 1966	\$100 DAY SALE	(depiction) . . . NOW \$100.
The Washington Post	Jan. 26, 1966	\$50 & \$100 DAY SALE	(depiction) . . . Fantastic price reduction . . . NOW \$100.
The Washington Post	Feb. 14, 1966	\$100 DAY SALE	(depiction) . . . Fantastic Price Reduction . . . NOW \$100.
The Washington Daily News	Mar. 29, 1966	9-HOUR CLEAR- ANCE SALE	(depiction) . . . NOW \$97.

PAR. 5. By and through the statements in their advertisements, as set out in Paragraph Four hereof, and others similar thereto but not specifically referred to herein, respondents represented, directly or indirectly, that each such advertised event was a sale in which all of the items depicted, described or offered therein, including the aforesaid sofas, were reduced substantially in price for the special reason designated therein.

PAR. 6. In truth and in fact, respondents' advertised events, as referred to in Paragraphs Four and Five above, were not sales in which all of the items depicted, described or offered therein, including the aforesaid sofas, were reduced substantially in price for the special reason designated therein. To the contrary, respondents' regular method of conducting business includes, among other practices, constant and repeated representations that their regularly advertised offers, however designated, are special sales events, as aforesaid.

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

PAR. 7. Typical and illustrative of other statements made by respondents in the course and conduct of their business, are those set forth in various classified advertisement columns of newspapers, including the following:

In "The Washington Post," issue of November 3, 1965:

FURN.—moved to Calif. Single girl has a modern apt. full of furniture. Cost \$627, sacrifice for \$268 if responsible party is interested in entire apt. I take back 2-year note. Call Mrs. Dillon, 638-4049.

In "The Washington Post," issue of November 13, 1965:

FURNITURE—I have 3 Rooms of Quality Used Furniture . . . orig. cost over \$500. Will take \$120 for everything. To make arrangements, call Miss Coleman, 638-5042 until 6:00 P.M.

PAR. 8. By and through the statements in their advertisements, as set out in Paragraph Seven above, and others similar thereto but not specifically referred to herein, respondents represented, directly or indirectly, that such were offers by private individuals attempting to dispose of personal belongings at prices substantially below the prices paid therefor by the advertiser.

PAR. 9. In truth and in fact, respondents' advertisements, as referred to in Paragraphs Seven and Eight above, were not offers by private individuals to dispose of personal belongings, or at prices substantially below the prices paid therefor by respondents. To the contrary, they were offers by respondents who

are operators of a commercial establishment for profit. Such offers were made pursuant to respondents' regular method of doing business, involving among other practices, constant and repeated representations that advertised furniture is being offered for sale by private individuals.

Therefore, the statements and representations set forth or referred to in Paragraphs Seven and Eight hereof, were and are, false, misleading and deceptive.

PAR. 10. Typical and illustrative of other statements made by respondents in the course and conduct of their business, are those set forth in display advertisements inserted in newspapers describing their products, including the following:

In "The Evening Star" issue of May 7, 1966:

. . . no-mar protected Extension Table, rich Walnut finish. . . .  
Master Bedroom Suite, Nutmeg Maple Finish . . . .

By means of the aforesaid statements, and others similar thereto but not set forth specifically herein, respondents misrepresented the components and/or construction of such products by failing to disclose that in truth and in fact:

a. Products described as "no-mar protected" and by other similar statements describing protective or resistant characteristics or qualities, had exposed surfaces composed of plastic or other materials not possessing natural wood growth structure.

b. The term "rich walnut finish," "nutmeg maple finish," and other similar statements containing the name of a wood, were used to describe the grain design, color, stain, or other simulated finish of products, the exposed surfaces of which were composed of something other than the wood named.

Therefore, the statements and representations of respondents, by failing to disclose such material facts, as aforesaid, were and are false, misleading and deceptive.

PAR. 11. In the course and conduct of their business as aforesaid, respondents offer to extend credit to prospective purchasers of their merchandise. In a substantial number of instances, they require the deposit of a portion of the purchase price as down payment, and defer delivery pending their approval of the credit application. The purchase agreement signed by application. The purchase agreement signed by applicants for credit contains the following statement "\* \* \* No verbal changes will be accepted. No cancellations accepted on this order. Deposits are not refundable \* \* \* ."

In a substantial number of instances, after the purchaser has signed a purchase agreement, respondents have rejected the purchaser's credit application, or have failed to perform according to the agreement by failing to deliver within the agreed upon time or by substituting different merchandise from that which was ordered. In such cases, respondents have refused to refund the purchaser's deposit; instead they have offered the purchaser a credit allowance equal to the amount of the deposit.

In some instances, despite the statement in the agreement that deposits are not refundable, respondents' salesmen have orally represented to prospective purchasers that deposits were refundable. In a substantial number of instances where respondents' salesmen made such representations, respondents nevertheless refused to refund the deposit and instead offered the purchaser a credit allowance.

PAR. 12. By failing to disclose both orally and in writing that deposits were not refundable, or by orally misrepresenting that deposits were refundable, respondents have led purchasers to believe that deposits would be refunded if the credit applications were rejected or if respondents failed to perform according to the terms of the agreement. Therefore, respondents' failure to disclose orally as well as in writing that deposits are not refundable in such cases is false, misleading and deceptive and constitutes an unfair or deceptive act or practice.

PAR. 13. In the course and conduct of their business as aforesaid, respondents have failed to disclose to purchasers that, at respondents' option, conditional sales contracts, promissory notes, or other instrument of indebtedness executed by such purchasers in connection with their credit purchase agreements may be, and in a substantial number of instances have been, discounted, negotiated or assigned to a finance company or other third party to whom the purchaser is thereby indebted.

Therefore, respondents' failure to disclose such material fact, as aforesaid, was and is false, misleading and deceptive, and constituted, and now constitutes an unfair or deceptive act or practice.

PAR. 14. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of furniture, home furnishings and other merchandise of the same general kind and nature as that sold by respondents.

PAR. 15. The use by respondents of the aforesaid false, mislead-

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

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

*Mr. Sheldon Feldman* and *Mr. William E. Barr* supporting the complaint.

*Mr. Jacob A. Stein* and *Mr. Glenn A. Mitchell* for respondents.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

JULY 5, 1968

PRELIMINARY STATEMENT

On September 27, 1967, the Commission issued its complaint in this matter charging the respondents with violating Section 5 of the Federal Trade Commission Act by engaging in unfair methods of competition and unfair and deceptive acts in commerce. Specifically, the complaint can be described as involving five separate charges: (1) deceptive or fictitious pricing (Complaint, pars. 4-6); (2) deceptive classified ads (Complaint, pars. 7-9); (3) misrepresentation of the finish or composition of products (Complaint, par. 10); (4) misrepresentations concerning deposits (Complaint, pars. 11-12); and (5) failure to disclose that conditional sales contracts may be negotiated to lending institutions (Complaint, par. 13).

On October 13, 1967, counsel for the respondents filed a motion for a more definite statement. An answer in opposition was filed on October 25, 1967. The hearing examiner held a prehearing conference on October 30, 1967, at which time respondents were assured that full discovery would be permitted so as to obviate the need of a bill of particulars (Tr. 3-6). Subsequently, the hearing examiner entered an order dated October 31, 1967,

denying respondents' motion, but assured respondents that "complete discovery would be permitted before the commencement of hearings."

On November 6, 1967, respondents' answer was filed generally denying the allegations of the complaint. More particularly, respondents denied that the Commission "has reason to believe" that certain provisions of the Act were violated (Ans. par. 1). Further, that respondent Louis Glickfield did not direct the corporate respondents or the acts and practices set forth in the complaint (Ans. par. 3).

Prehearing conferences led to the clarification of many of the issues raised in the complaint and resulted in certain agreed procedures that facilitated and disposition of this matter. On November 15, 1967, the hearing examiner issued an order requiring both parties to give notification of documents and witnesses whose testimony was to be offered in evidence and the categorical purpose thereof.

Prior to the commencement of the hearings, complaint counsel took advantage of the Commission's Rules as they relate to discovery. On December 1, 1967, complaint counsel filed a request for admission of facts. Some of these requested admissions concerned advertisements published by the respondents. These were admitted. Others sought admission of conclusions of fact charged in the complaint. These were denied (see Respondents' Ans. dated Dec. 11 and 27, 1967). On December 18, 1967, complaint counsel filed a "Request for Admission of Genuineness of Documents and Supplemental Requests for Admission of Facts." Briefly, this request covered additional advertisements of the respondents and also sought an admission that respondents falsely represented that the advertised price was a sales price. Respondents filed an answer on January 15, 1968, objecting to the request on the grounds that complaint counsel were investigatively "fishing" for information in order to prepare their pre-trial submission as directed by the hearing examiner. At a prehearing conference held on January 23, 1968, the hearing examiner ordered respondents to answer specifically the supplemental request of complaint counsel. Thereafter, respondents admitted the authenticity and genuineness of the documents marked Commission's Exhibits 1 A-B through 72, denied certain material facts involved in this proceeding, and reserved the right to object to the introduction of certain documents in evidence on various grounds.

On January 15, 1968, complaint counsel filed a motion for an

extension of time in which to prepare its trial brief as ordered by the hearing examiner on November 15, 1967. The hearing examiner entered an order on January 16, 1968, giving complaint counsel until February 6, 1968, to file a brief allocating the evidence, furnishing a list of witnesses, and a description of documents.

Thereafter, complaint counsel sought further discovery by filing an application for an "order requiring access" under date of February 2, 1968, four days before their trial brief was due. In their application complaint counsel admit that "the staff did not seek the records" necessary to prove their case. They further stated that since they "had no way of knowing whether respondents would seek to confess and avoid, or deny the allegations concerning pricing" this order for access became necessary. Respondents filed a motion to quash the order on February 12, 1968, because it was believed that this constituted a comprehensive post-complaint investigation.

Complaint counsel filed the "Allocation of Evidence in Support of the Complaint" on February 15, 1968. Under the heading "B. Regular Selling Prices of Products Advertised" (p. 4), complaint counsel state that this issue will be proved after access is obtained to the records of respondents as ordered by the hearing examiner on February 2, 1968.

Thereafter, complaint counsel, on February 16, 1968, filed their third request for admissions seeking the genuineness of documents, including correspondence between respondents' counsel and an attorney investigator of the Commission (CX 4-8). On February 20, 1968, respondents objected to this third request and questioned the propriety of Commission counsel placing in evidence letters from counsel that were sent with a view to effecting an informal nonadjudicatory settlement of this matter. Respondents filed a motion to exclude on February 20, 1968, again pointing out that litigants are entitled to settle without having their overtures used as evidence (p. 2). On the same date, counsel for respondents filed an answer to this request contending that the request does not relate to relevant documents as required under Section 3.31 of the Commission Rules.

On February 27, 1968, the hearing examiner denied respondents' motion to quash the order of access. Respondents filed an appeal with the Commission which was subsequently denied (Order Denying Motion to Dismiss and Appeal from Hearing Examiner's Order, March 28, 1968 [73 F.T.C. 1250]).

Hearings for the receipt of complaint counsel's case-in-chief were held in Washington, D.C., on March 18, 1968, through April 5, 1968, at which time complaint counsel rested their case (Tr. 850). Defense hearings commenced on April 8, 1968, and ended on April 10, 1968. On April 10, 1968, the hearing examiner ordered the record closed for the receipt of evidence and directed that proposed findings of fact and conclusions of law be filed by May 27, 1968, and replies thereto by June 3, 1968 (Tr. 996).

The hearing examiner has carefully considered the proposed findings of fact and conclusions supplemented by briefs and reply briefs of complaint counsel and counsel for respondents. Such proposed findings and conclusions if not herein adopted, either in the form proposed or in substance, are rejected as not supported by the record or as involving immaterial matters.

#### FINDINGS OF FACT

1. Respondent Marlo Furniture Company, trading as Marlo's Furniture World, 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 901 7th Street, NW., in the city of Washington, District of Columbia.<sup>1</sup>

2. Respondent Louis Glickfield is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices set forth in the complaint. His address is the same as that of the corporate respondent.<sup>2</sup>

3. Respondents are now and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of furniture, home furnishings, and other merchandise at retail to members of the public.<sup>3</sup>

4. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said merchandise, when sold, to be shipped from their place of business in the District of Columbia to purchasers thereof located in various states of the United States and in the District of Columbia, and maintain, and have maintained, a substantial

<sup>1</sup> Admitted, see Answer to Par. 1 of Complaint.

<sup>2</sup> Admissions 1 and 2; CXs 82-83; Tr. 212-62, 281-85, 415-18, 475-76, 888-903.

<sup>3</sup> Admitted, see Answer to Par. 2 of Complaint.

course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.<sup>4</sup>

5. In the course and conduct of their business, and for the purpose of inducing the purchase of their merchandise, respondents have made numerous statements in display advertisements inserted in newspapers with respect to variously designated sale events wherein a varying number of items were depicted, described and offered for sale.<sup>5</sup>

6. Illustrative of respondents' statements in newspaper advertisements are those made in connection with certain of respondents' sales events during which, among other items, identical 84-inch modern style sofas were depicted, described, and offered for sale, as follows:<sup>6</sup>

<i>Publication</i>	<i>Date</i>	<i>Designation of event</i>	<i>Statement</i>
The Washington Post	Jan. 6, 1966	REMNANT SALE	(depiction) . . . All Remnants are reduced for immediate quick sale . . . NOW \$98.
The Washington Post	Jan. 17, 1966	\$100 DAY SALE	(depiction) . . . NOW \$100.
The Washington Post	Jan. 26, 1966	\$50 & \$100 DAY SALE	(depiction) . . . Fantastic price reduction . . . NOW \$100.
The Washington Post	Feb. 14, 1966	\$100 DAY SALE	(depiction) . . . Fantastic Price Reduction . . . NOW \$100.
The Washington Post	Mar. 29, 1966	9-HOUR CLEAR- ANCE SALE	(depiction) . . . NOW \$97.

7. By and through the statements in their advertisements as set out in Paragraph 6 hereof, and others similar thereto, respondents represented, directly or indirectly, that each such advertised event was a sale in which all of the items depicted, described or offered therein, including the aforesaid sofas, were reduced substantially in price for the special reason designated therein.<sup>7</sup>

8. As averred by complaint counsel, at pages 17-22 of their Proposed Findings, the following prices, which respondents re-

<sup>4</sup> Tr. 272-74; see also Answer to Par. 3 of Complaint.

<sup>5</sup> Admissions 7, 11, 14-18, 22; CXs 57, 66, 69-A, 70, 82-85, 87.

<sup>6</sup> Admissions 8-17, 23, 25, 27; CXs 6, 56, 63-64, 66, 69-A, 72, 82-85, 87; Tr. 462-64.

<sup>7</sup> Admissions 2-18; CXs 82-85, 87; Tr. 241-255, 422-39, 445-460.

presented as "sale" prices, are the only prices of record before the examiner from which he may determine the prices at which the products listed were sold:<sup>8</sup>

## 84-inch modern style sofa:

January 6, 1966	\$98	April 17, 1966	100
January 7, 1966	98	April 22, 1966	96
January 17, 1966	100	April 23, 1966	96
January 18, 1966	100	April 24, 1966	96
January 26, 1966	100	May 7, 1966	100
January 27, 1966	100	May 8, 1966	100
February 14, 1966	100	May 9, 1966	100
February 15, 1966	100	July 30, 1966	97
February 20, 1966	94	July 31, 1966	97
February 21, 1966	94	August 1, 1966	97
March 29, 1966	97	August 12, 1966	100
March 30, 1966	97	August 13, 1966	100
April 15, 1966	100	October 31, 1966	100
April 16, 1966	100	November 1, 1966	100

## Italian provincial sofa:

March 14, 1966	168	July 30, 1966	168
March 15, 1966	168	July 31, 1966	168
April 2, 1966	168	August 1, 1966	168
April 3, 1966	168	August 8, 1966	168
April 26, 1966	168	August 9, 1966	168
April 27, 1966	168	August 10, 1966	168
April 28, 1966	168		

## French provincial sofa:

January 6, 1966	97	March 29, 1966	97
January 7, 1966	97	March 30, 1966	97
January 17, 1966	100	April 15, 1966	100
January 18, 1966	100	April 16, 1966	100
January 26, 1966	100	April 17, 1966	100
January 27, 1966	100	April 22, 1966	112
February 14, 1966	100	April 23, 1966	112
February 15, 1966	100	April 24, 1966	112
February 20, 1966	96	May 7, 1966	100
February 21, 1966	96	May 8, 1966	100
March 5, 1966	98	May 9, 1966	100
March 6, 1966	98		

## Three-piece Danish sofa:

January 17, 1966	100	February 15, 1966	100
January 18, 1966	100	March 14, 1966	97
January 26, 1966	100	March 15, 1966	97
January 27, 1966	100	April 2, 1966	96
February 14, 1966	100	April 3, 1966	96

<sup>8</sup> *Id.*, see also footnotes re findings 5, 6, 7 and 9.

April 15, 1966 .....	100	April 27, 1966 .....	96
April 16, 1966 .....	100	April 28, 1966 .....	96
April 17, 1966 .....	100	May 7, 1966 .....	100
April 23, 1966 .....	98	May 8, 1966 .....	100
April 24, 1966 .....	98	May 9, 1966 .....	100
April 25, 1966 .....	98	October 31, 1966 .....	100
April 26, 1966 .....	96	November 1, 1966 .....	100
<b>Early American sofa:</b>			
January 6, 1966 .....	97	April 15, 1966 .....	100
January 7, 1966 .....	97	April 16, 1966 .....	100
January 17, 1966 .....	100	April 17, 1966 .....	100
January 18, 1966 .....	100	April 18, 1966 .....	100
January 26, 1966 .....	100	April 26, 1966 .....	98
January 27, 1966 .....	100	April 27, 1966 .....	98
February 14, 1966 .....	100	April 28, 1966 .....	98
February 15, 1966 .....	100	May 7, 1966 .....	100
February 20, 1966 .....	94	May 8, 1966 .....	100
February 21, 1966 .....	94	May 9, 1966 .....	100
March 30, 1966 .....	98	October 31, 1966 .....	100
April 2, 1966 .....	98	November 1, 1966 .....	100
<b>School master's desk.</b>			
January 26, 1966 .....	50	April 23, 1966 .....	48
January 27, 1966 .....	50	April 24, 1966 .....	48
February 20, 1966 .....	46	April 25, 1966 .....	47
February 21, 1966 .....	46	May 7, 1966 .....	50
February 28, 1966 .....	47	May 8, 1966 .....	50
March 1, 1966 .....	47	May 9, 1966 .....	50
April 22, 1966 .....	48		

9. The foregoing evidence, which is based on advertised sales exclusively and devoid of nonsale regular-price comparisons or a continuous daily pattern of materially identical prices, fails to establish that respondents' advertised events—referred to in Paragraphs 5, 6, 7 and 8 hereof— were not sales or not substantial reductions of the items depicted in such advertising.<sup>9</sup>

10. There is no evidence of record that any product of respondents sold at a higher price than that which respondents represented to be a sale price except as represented by respondents in their sales advertising (see pages 17-22 of complaint counsel's Proposed Findings). The pattern evidenced merely reflects that in a normal 25 business-day month, including Saturdays, sales were advertised one to six days per month. There is no evidence as to prices the remaining 19 to 24 business days per month. The absence of required prima facie proof does not

<sup>9</sup> CXs 6, 50, 61, 64, 66-73, 87; Tr. 237, 241-55, 422-39, 445-60, 746.

impose upon respondents the need of going forward with the evidence. Furthermore, regardless of respondents' failure to produce, or grant access to, sales vouchers, the price pattern evidenced by complaint counsel's proof insufficiently establishes a basis for inferring that the unproduced vouchers would be unfavorable in the sense of supporting complaint counsel's prima facie case of sales price deception, which is unestablished.\* Additionally, complaint counsel have waived their right to appropriate relief as to the desired sales vouchers on resting their case without reservation.<sup>10</sup>

11. Typical and illustrative of other statements made by respondents in the course and conduct of their business, are those set forth in various classified advertisement columns of newspapers, including the following:<sup>11</sup>

In "The Washington Post," issue of November 3, 1965:

FURN.—moved to Calif. Single girl has a modern apt. full of furniture. Cost \$627, sacrifice for \$268 if responsible party is interested in entire apt. I take back 2-year note. Call Mrs. Dillon, 638-4049.

In "The Washington Post," issue of November 13, 1965:

FURNITURE—I have 3 Rooms of Quality Used Furniture . . . orig. cost over \$500. Will take \$120 for everything. To make arrangements, call Miss Coleman, 638-5042 until 6:00 P.M.

12. By and through the statements in their advertisements, as set forth in the Eleventh Finding, and others similar thereto, respondents represented, directly or indirectly, that such were offers by private individuals attempting to dispose of personal belongings at prices substantially below the prices paid therefor by the advertiser.<sup>12</sup>

13. In truth and in fact, respondents' advertisements, as referred to in the Eleventh and Twelfth Findings, were not offers by private individuals to dispose of personal belongings, presumably at prices substantially below the prices paid therefor by such private individuals. To the contrary, they were offers by respondents who are operators of a commercial establishment for profit. Such offers were made pursuant to respondents' regular method of doing business, involving among other practices, con-

\*Complaint counsel appear to recognize the concept that an unfavorable inference may only be drawn if a prima facie case is established (see p. 30 of complaint counsel's Proposed Findings).

<sup>10</sup> Id.

<sup>11</sup> Admissions 20, 21; CXs 1-A, 2, 3, 82-83, 85, 87; Tr. 298-301.

<sup>12</sup> See Tr. 298-308.

stant and repeated representations that advertised furniture is being offered for sale by private individuals.<sup>13</sup>

14. Typical and illustrative of other statements made by respondents in the course and conduct of their business, are those set forth in display advertisements inserted in newspapers describing their products, including the following:<sup>14</sup>

In "The Evening Star," issue of May 7, 1966:

. . . no-mar protected Extension Table, rich Walnut finish. . . .  
Master Bedroom Suite, Nutmeg Maple Finish. . . .

15. By means of the aforesaid statements, and others similar thereto, respondents misrepresented the components and/or construction of their furniture by failing to disclose that in truth and in fact:

a. Products described as "no-mar protected" and by other similar statements describing protective or resistant characteristics or qualities, had exposed surfaces composed of plastic or other materials not possessing natural wood growth structure.

b. The term "rich walnut finish," "nutmeg maple finish," and other similar statements containing the name of a wood, were used to describe the grain design, color, stain, or other simulated finish of products, the exposed surfaces of which were composed of something other than the wood named.<sup>15</sup>

<sup>13</sup> Tr. 172-73, 297, 309-16, 320-23, 480-83, 557-58, 822-25.

<sup>14</sup> Admission 22; CXs 6, 50-64, 66-73, 82-83.

<sup>15</sup> The Commission's "Trade Practice Rules for the Household Furniture Industry," promulgated Dec. 18, 1963, of which the examiner takes official notice provide in part:

"RULE 2—WOOD AND WOOD IMITATIONS.

"In connection with the sale of furniture having exposed parts or surfaces which are wood, or which are not wood but have the appearance of wood, members of the industry shall not use any direct or indirect representation or sales method which is:

"(1) False. Examples would include:

(a) Describing as 'maple', furniture which is constructed of birch wood;

(b) Use of the term 'solid mahogany' or the word 'mahogany' unqualifiedly to describe a mahogany veneered table;

"(3) Likely to deceive by failure to adequately disclose facts concerning the composition . . . or of simulated finishes of wood or wood imitations. Examples would include failure to disclose when an item of furniture or part thereof:

(a) Has an exposed surface of plastic . . . or other material not possessing a natural wood growth structure but has the appearance of being wood . . .

(b) Which is wood finished by means of decalcomania, printing or other process so as to have the appearance of a different kind of wood which it resembles . . ."

"RULE 3—DECEPTIVE USE OF WOOD NAMES.

"Industry members shall not use any direct or indirect representation concerning the identity of the wood in items of furniture which is false or which is likely to mislead purchasers as to the actual wood composition of furniture."

Subsequently, on March 21, 1966, the Commission published its interpretation of Rule 2(3)(b) and the first paragraph of Rule 3 of the "Trade Practice Rules for the Household Furniture Industry", which states in part:

". . . when a wood name is used in advertising or labeling to describe the grain design

16. In the course and conduct of their business, respondents offer to extend credit to prospective purchasers of their merchandise. In some instances they require the deposit of a portion of the purchase price as down payment, and defer delivery pending their approval of the credit application. The purchase agreement signed by applicants for credit contains the following statement: "\* \* \* No verbal changes will be accepted. No cancellations accepted on this order. Deposits are not refundable \* \* \* ." <sup>16</sup>

17. In a substantial number of instances after the purchaser has signed the purchase agreement respondents have rejected the purchaser's credit application or have failed to perform according to the agreement by failing to deliver within the agreed-upon time or by substituting different merchandise from that which was ordered. In some instances respondents have unreasonably delayed and refused to refund the purchaser's deposit upon the purchaser's request. Instead, they have offered the purchaser a credit allowance equal to the amount of the deposit.

In other instances, despite the statement in the agreement that deposits are not refundable, respondents' salesmen have orally represented to prospective purchasers that deposits were refundable. Where respondents' salesmen made such representations respondents nevertheless refused to refund the deposit and instead offered the purchaser a credit allowance.

By failing to adequately disclose, either orally or in writing, with reasonable clarity so that a purchaser is realistically on notice that deposits were not refundable, as reflected obscurely in certain purchase agreements, or by orally misrepresenting that deposits were refundable, respondents have led purchasers to believe that deposits would be refunded if the credit applications were rejected or if respondents failed to perform according to the terms of the agreement.<sup>17</sup>

18. In the course and conduct of their business, respondents have failed to disclose adequately to purchasers the material

and/or color of a stain finish or other type of simulated finish which has been applied to a surface composed of something other than solid wood of the type named, it must be made clear that the wood name used is merely descriptive of the grain design and/or color or other simulated finish.

"Under this interpretation, unqualified phrases such as 'walnut finish' will not satisfy this requirement. But statements such as 'walnut grained plastic top', 'walnut color', 'walnut stain', 'maple stained finish', 'mahogany finish on gum' and 'walnut finished hardwoods' (or 'softwoods', as the case may be) will satisfy this requirement if such statements are factually correct and appear in contexts which are otherwise nondeceptive."

<sup>16</sup> CXs 25, 29-48, 77, 89, 82-83, 84, 92; Tr. 54-55, 57, 267, 272, 285-86, 401-21, 871-73.

<sup>17</sup> Tr. 234, 413-18, 476-79, 495-96, 629-86, 691-708, 753-73, 775-85, 821-39, 841-45, 919, 976-86.

fact that, at respondents' option, conditional sales contracts, promissory notes, or other instruments of indebtedness executed by such purchasers in connection with their credit purchase agreements may be, and, in a substantial number of instances have been, discounted, negotiated or assigned to a finance company or other third party to whom the purchaser is thereafter indebted.

A clearly apparent and unobscure disclosure, reflective of the possibility of negotiation or assignment of such instruments to third parties, is material to a customer since such an assignment or negotiation does not place the customer in a position of being able to question or refute the need for payment in the event of the nonperformance of the seller in making delivery contrary to the purchase agreement.<sup>18</sup>

19. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition in commerce with corporations, firms and individuals in the sale of furniture, home furnishings, and other merchandise of the same general kind and nature as that sold by respondents.

#### CONCLUSIONS

1. The use by respondents of statements and representations relative to the advertised sales events, enumerated in Findings 5 through 9 hereof, do not constitute unfair or deceptive acts or practices having the capacity and tendency to mislead members of the purchasing public since it is unestablished by the evidence that the reduced prices advertised are not, in fact, reductions or sales prices. (See Findings 9-10 setting forth rationale.)

2. The use of respondents of the aforesaid false, misleading and deceptive statements, representations and practices and unfair or deceptive acts or practices, enumerated in Findings 11 through 18, has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief, and by reason of said unfair and deceptive acts or practices.

3. The aforesaid acts and practices of respondents, as herein

<sup>18</sup> CXs 29, 32-34, 37, 40, 43, 46; RXs 34-36; Tr. 13-14, 267-71, 285-87, 421, 591-97, 607-10, 709, 714, 744, 788, 790, 795, 871, 983-85.

alleged, enumerated in Findings 11 through 18, 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. Accordingly,

## ORDER

*It is ordered,* That respondents Marlo Furniture Company, a corporation, trading as Marlo's Furniture World, or under any other name or names, and its officers, and Louis Glickfield, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of furniture, home furnishings, or other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Setting forth the names: "Mrs. Dillon," "Miss Coleman," or the name of any other real or fictitious person or persons, in any advertisement which does not also set forth respondents' identity as the offerer or seller of such products in immediate conjunction therewith; or representing by any other means, directly or indirectly, that an advertisement of respondents constitutes an offer to sell personal goods by a private individual, or that the advertiser is other than a commercial establishment operating for profit.

2. Using the term "no-mar protected," or representing by any other means that such products have protective or resistant characteristics or qualities, where the exposed surfaces or such products are composed of plastic or other materials not possessing natural wood growth structure, unless such composition is clearly and conspicuously disclosed in close conjunction therewith.

3. Using the term "rich walnut finish," "nutmeg maple finish," or any other terms or descriptions containing the name of wood, to describe a surface composed of something other than wood of the type named, without clearly and conspicuously disclosing in close conjunction therewith that said wood name is merely descriptive of the grain design, color, stain or other simulated finish.

4. Misrepresenting, by means of oral statements or any other means, directly or indirectly, that down payments or deposits made on credit purchase contracts or agreements, or on applications for credit, will be refunded in the event of cancellation of any such contract.

5. Failing to adequately disclose the unavailability of refunds of deposits or down payments on a purchase or on an agreement to purchase where respondents:

(a) Refuse to extend credit for a portion of the purchase price;

(b) Fail to deliver the merchandise within the time agreed upon;

(c) Fail to deliver the ordered merchandise without unauthorized substitutions; or

(d) Fail to perform for any other reason.

6. Failing to orally disclose prior to the time of sale, and in writing on any conditional sales contract, promissory note or other instrument of indebtedness executed by a purchaser, and with such conspicuousness and clarity as is likely to be observed and read by such purchaser, that:

Any such instrument, at respondents' option and without notice to the purchaser, may be discounted, negotiated or assigned to a finance company or other third party to which the purchaser will thereafter be indebted and against which the purchaser's claims or defenses may not be available; and

*It is further ordered,* That the allegations of the complaint numbered Four through Six, and referred to in Findings Five through Ten hereof, are herein and hereby dismissed.

#### DISSENTING OPINION

JANUARY 16, 1969

BY MACINTYRE, *Commissioner*:

I dissent from the Commission's action terminating this proceeding without an order to cease and desist. The nature of the practices involved should have convinced the majority that it should do no less than issue an order surely preventing their resumption in the future. The hearing examiner in his initial decision filed herein on July 5, 1968, concluded that there should be an order to cease and desist covering at least some of the practices alleged illegal by the complaint. One of these was respondents' deceptive advertising of furniture as special offers

by unfortunate individuals in the classified section of Washington, D.C., newspapers as follows:

FURN.—moved to Calif. Single girl has a modern apt. full of furniture. Cost \$627, sacrifice for \$268 if responsible party is interested in entire apt. I take back 2-year note. Call Mrs. Dillon, 638-4049.

and

FURNITURE—I have 3 Rooms of Quality Used Furniture . . . orig. cost over \$500. Will take \$120 for everything. To make arrangements, call Miss Coleman, 638-5042 until 6:00 P.M. (See Initial Decision, Finding Eleven.)

The hearing examiner not only found that this advertising was typical and illustrative of other statements made by respondents in the course and conduct of their business, but also noted that his findings were based on admissions of respondents to that effect. This is undisputed by the majority.

The examiner's decision to enter an order including provisions specifically aimed at these practices which can only be described as willfully misleading and indeed verging on fraud, was inescapable in the light of this record. Nevertheless, the Commission has elected to terminate this case on the basis of an assurance of voluntary compliance. This constitutes a misuse of the Commission's informal procedures. Section 2.21 of the Commission's Rules of Practice specifically states that a proceeding is to be terminated on this basis only on a determination that the public interest will be fully safeguarded through such informal administrative action after consideration of the nature and gravity of the alleged violation as well as the prior record and good faith of the parties. Clearly here the Commission has failed to abide by the rule. Had it given proper weight to the nature and gravity of the offenses documented by this record, in my view it would not have agreed to a termination of this proceeding on an informal basis. Ironically, this action is contemporaneous with this agency's Consumer Protection Hearings. Indeed, I consider this action a sad commentary on those Consumer Hearings.

More disturbing, however, are the long range implications of this dismissal in the context of other actions taken by the Commission in the past few years. Informal procedures, to be sure, have their place among the law enforcement measures open to the Commission. They may appropriately be utilized when the violation is neither serious nor willful and before the Commission has expended substantial funds in investigating the matter and subsequent trial of the case. Once substantial Government funds

have been expended, the public is entitled to the maximum of protection afforded—namely, an order to cease and desist rather than a promise which is patently unenforceable. Moreover, the Federal Trade Commission Act, the Commission's basic statute, provides that when a violation of the law has been documented on an adjudicative record, a cease and desist order is to be entered. The failure to employ the enforcement procedures specified by the statute in cases of this nature and in other instances is symptomatic of a trend indicating a steady erosion of the Commission's adjudicative processes provided by Congress.

#### ORDER TERMINATING PROCEEDING

The hearing examiner filed his initial decision in this matter on July 5, 1968, and, on October 30, 1968, the Commission heard oral argument on the cross-appeals of respondents and counsel supporting the complaint.

Subsequent to the oral argument, counsel for respondents forwarded a letter to each of the Commissioners in which he referred to the fact that during the course of this proceeding he had tendered an assurance of voluntary compliance. He again requested that this proceeding be terminated on the basis of such assurance.

On January 3, 1969, respondents submitted the assurance of voluntary compliance contained in the appendix of this order. Therein, respondents assure the Commission that in the future they will cease and desist from engaging in all of the practices alleged in the complaint. Also, respondents agree to submit compliance reports every six months for three years, and guarantee access to the records of respondent corporation during that period.

In view of these circumstances, the Commission does not believe it to be necessary to proceed further in this matter. The proceeding will be reopened, however, if and when it should appear that respondents are not in full compliance with the assurance of voluntary compliance. Accordingly,

*It is ordered,* That this proceeding be, and it hereby is, terminated.

Commissioner MacIntyre dissented and filed a statement.

Complaint

75 F.T.C.

IN THE MATTER OF

## MINK RANCH DISTRIBUTORS, INC., ET AL.

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

*Docket C-1478. Complaint, Jan. 17, 1969—Decision, Jan. 17, 1969*

Consent order requiring a Philadelphia, Pa., retail furrier to cease falsely advertising, deceptively invoicing and using bait tactics in the sale of its fur products.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Mink Ranch Distributors, Inc., a corporation, and Bernard Kirschner and Seymour Himmel, 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, 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:

PAR. 1. Respondent Mink Ranch Distributors, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania. Respondents Bernard Kirschner and Seymour Himmel 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 retailers of fur products with their office and principal place of business located at 1211 Chestnut Street, Philadelphia, Pennsylvania.

PAR. 2. Respondents are now and for some time last past have been engaged in the introduction into commerce, and in the sale, advertising, and offering for sale in commerce, and in the transportation and distribution in commerce, of fur products; and have sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of furs which have been shipped and received in commerce, as

the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were falsely and deceptively invoiced by the respondents in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated under such Act.

Among such falsely and deceptively invoiced fur products but not limited thereto, were fur products covered by invoices which failed to show the true animal name of the fur used in such fur product.

PAR. 4. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in the following respects.

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

(b) Required item numbers were not set forth on invoices, in violation of Rule 40 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 issues of the Philadelphia Daily News, a newspaper published in the city of Philadelphia, State of Pennsylvania and having a wide circulation in Pennsylvania and other States of the United States.

By means of the aforesaid advertisements and other advertisements of similar import and meaning not specifically referred to herein, respondents falsely and deceptively advertised fur products, in violation of Section 5(a)(5) of the Fur Products Labeling Act by representing, directly or by implication, through such statements as "Because we are able to buy DIRECT from Mink Ranches and sell DIRECT to you, most middleman profits have been eliminated \* \* \* and you save \$ \$ \$" that all the products marketed at retail by the respondents are purchased by them directly from mink ranches, middleman profits are thereby eli-

minated, and therefore, purchasers of respondents' fur products are afforded savings on such fur products not obtainable in the usual retail channels of trade.

In truth and in fact, respondents purchase their said products from sources other than mink ranches, namely manufacturers and wholesalers of fur products. Respondents do not purchase directly from mink ranches the products marketed at retail by them, middleman profits are not eliminated, and savings are not thereby afforded to purchasers of such products as represented.

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 that said advertisements represented, directly or by implication, that fur products were guaranteed without disclosing the nature and extent of the guarantee and the manner and form in which the guarantee would perform thereunder, in violation of Section 5(a)(5) of the Fur Products Labeling Act.

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 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 inasmuch as 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. 8. The aforesaid acts and practices of respondents, as alleged above, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

PAR. 9. In the course and conduct of their business, and for the purpose of inducing the purchase of their fur products, the respondents have picturized certain fur products and made statements and representations with respect thereto in advertisements inserted in the aforementioned newspaper. Typical and illustrative, but not limited thereto, are the following statements and representations:

Mink stole yours today for the incredibly low price of \$165—your choice of three lovely colors . . . Pastel, Ranch or Silverblue—call BA 9-4900 for a

free "Fur Fashion show" in your home now! Dial BA 9-4900 to see these Mink skins right in your own living room without cost or obligation.

PAR. 10. By and through the use of the aforesaid statements and representations, and other statements and representations of similar import and meaning, not specifically referred to herein the respondents represented directly or by implication that they were making a bona fide offer to sell the advertised fur products at the prices specified in the advertisements.

PAR. 11. In truth and in fact the respondents' offers were not bona fide offers to sell the said fur products at advertised prices, but were made for the purpose of obtaining leads and information as to persons interested in the purchase of the fur products. After obtaining leads through responses to such advertisements and calling upon such persons, the respondents, their salesmen and representatives made no effort to sell the advertised fur products at the advertised price, but, instead, did not possess the advertised fur products at the time of the call and disparaged the advertised fur products in such a manner as to discourage their purchase and attempted to, and did, sell much higher priced fur products.

PAR. 12. In the course and conduct of their business, respondents used the name of the corporate respondent "Mink Ranch Distributors, Inc.," in advertisements inserted in the aforementioned newspaper and on invoices issued to purchasers of their fur products.

PAR. 13. By and through the use of the said corporate name, Mink Ranch Distributors, Inc., respondents represented, directly or by implication, that they are distributors of mink fur products procured directly from mink ranches. In truth and in fact, respondents do not procure their mink products from mink ranches but procure their fur products in the usual channels of trade from sources other than mink ranches, namely, manufacturers and wholesalers of fur products.

PAR. 14. In the conduct of their business at all times mentioned herein, the respondents have been in substantial competition in commerce, with corporations and individuals in the sale of fur products of the same general kind and nature as those sold by the respondents.

PAR. 15. The use by the 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 mis-

taken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 16. The aforesaid acts and practices of respondents as set forth in Paragraphs Nine through Fifteen were and are false, misleading and deceptive and all to the prejudice and injury of the public and of the respondents' competitors, and constituted, and now constitute unfair methods of competition 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 Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Fur Products Labeling Act; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record and having duly considered the comment filed thereafter pursuant to § 2.34(b) of its Rules, 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 Mink Ranch Distributors, Inc., is a corporation

organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 1211 Chestnut Street, Philadelphia, Pennsylvania.

Respondents Bernard Kirschner and Seymour Himmel 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 Mink Ranch Distributors, Inc., a corporation, and its officers, and Bernard Kirschner, and Seymour Himmel, 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 sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Falsely or deceptively invoicing any fur product by:

1. Failing to furnish an invoice, as the term "invoice" is defined in the Fur Products Labeling Act, showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of Section 5 (b) (1) of the Fur Products Labeling Act.

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

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

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. Represents, directly or by implication, through such words and phrases as "Because we are able to buy DIRECT from Mink Ranches and sell DIRECT to you, most middleman profits have been eliminated \* \* \* and you save \$ \$ \$" or words or phrases of similar import and meaning or in any other manner that the products marketed at retail by the respondents are purchased by them directly from mink ranches.

2. Misrepresents in any manner that middleman profits are eliminated from the sale of such product.

3. Falsely or deceptively represents that savings are afforded to the purchaser of any such fur product or misrepresents in any manner the amount of savings afforded to the purchaser of such fur product.

4. Represents, directly or by implication, that such fur product is guaranteed unless all the terms and conditions of the guarantee, including its nature and extent, the name and address of the guarantor and the manner and form in which the guarantor will perform thereunder are clearly and conspicuously disclosed in immediate conjunction therewith.

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

*It is further ordered,* That respondents Mink Ranch Distributors, Inc., a corporation, and its officers, and Bernard Kirschner and Seymour Himmel, individually and as officers of the said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of fur products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Advertising or offering any products for sale for the purpose of obtaining leads or prospects for the sale of different products, unless the respondents maintain an adequate

and readily available stock of the products advertised and offered for sale.

2. Disparaging in any manner or refusing to sell any product advertised.

3. Using any advertising, sales plan or procedure involving the use of false, deceptive or misleading statements or representations which are designed to obtain leads or prospects for the sale of other merchandise.

4. Representing, directly or indirectly, that any products are offered for sale when such offer is not a bona fide offer to sell said products:

5. Using the corporate name "Mink Ranch Distributors, Inc."; or representing, through the use of any other name or names, corporate or otherwise, or in any other manner, that respondents are distributors of mink products procured directly from mink ranches.

6. Misrepresenting in any manner that respondents are engaged in the manufacture of fur products or the sale of fur products at wholesale.

*It is further ordered,* That respondent corporation shall forthwith distribute a copy of this 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.

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IN THE MATTER OF

WESTERN STAR BEEF, INC., ET AL.

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

*Docket C-1479. Complaint, Jan. 21, 1969—Decision, Jan. 21, 1969*

Consent order requiring three affiliated meat retailers in Massachusetts to cease using bait advertising, misrepresenting the price, quantity and quality of their products, and the terms and requirements of their installment payment contracts.

Complaint

75 F.T.C.

## 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 Western Star Beef, Inc., a corporation, and Great Western Beef Provisioners, Inc., a corporation, and Western Star Beef of Worcester, Inc., a corporation, and James J. Kintigos and James J. Weldon, Jr., individually and as officers of said corporations, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Western Star Beef, Inc., is a corporation duly organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its principal office and place of business located at 2136 Main Street, in the city of Tewksbury, Commonwealth of Massachusetts.

Respondent Great Western Beef Provisioners, Inc., is a corporation duly organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its principal office and place of business located at 2136 Main Street, Tewksbury, Massachusetts.

Respondent Western Star Beef of Worcester, Inc., is a corporation duly organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its principal office and place of business located at 276 Boston Turnpike, Route 9, Shrewsbury, Massachusetts.

Respondents James J. Kintigos and James J. Weldon, Jr., are officers of the corporate respondents. They formulate, direct and control the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. Their address is 2136 Main Street, Tewksbury, Massachusetts.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of beef and other meat products which come within the classification of food as the term "food" is defined in the Federal Trade Commission Act, to members of the purchasing public.

PAR. 3. In the course and conduct of their business, respondents have disseminated and do now disseminate certain advertisements by the United States mails and by various means in commerce as "commerce" is defined in the Federal Trade Commission Act,

including advertisements in daily newspapers of general circulation, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of food, as the term "food" is defined in the Federal Trade Commission Act; and have disseminated and caused the dissemination of advertisements by various means, including those aforesaid, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of food in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Typical of the statements appearing in the advertisements disseminated as aforesaid are the following:

BEEF (picture of a lean steak)  
 U.S.D.A. inspected  
 BEEF HALVES  
 ONLY 39¢ lb.  
 AVG. 350 lbs. & up.

\* \* \* \* \*  
 U.S.D.A. PRIME BEEF HALVES  
 "THIS IS THE FINEST"  
 45¢ lb.

\* \* \* \* \*  
 NO MONEY DOWN  
 105 DAYS NO INTEREST or carrying charge  
 OR TAKE UP TO  
 12 MONTHS TO PAY

\* \* \* \* \*  
 HARVEST SALE BEEF  
 U.S.D.A. PRIME BEEF HALVES  
 ONLY 45¢ lb.  
 THE FINEST.

\* \* \* \* \*  
 U.S.D.A. CHOICE  
 BEEF HALVES  
 ONLY 45¢  
 TENDER DELICIOUS  
 350 lb. Avg.

\* \* \* \* \*  
 IF YOU'RE GUNNING FOR BEAR . . . YOU  
 DON'T WANT A MOUSE!  
 IF YOU'RE HUNTING FOR BEEF,  
 YOU DON'T WANT COW!  
 U.S.D.A. CHOICE  
 TENDER DELICIOUS  
 EXTRA LEAN

## Complaint

75 F.T.C.

BEEF HALVES  
 41¢ lb.  
 350 lbs. and up  
 U.S.D.A. PRIME  
 BEEF HALVES  
 THIS IS THE FINEST  
 45¢ lb.  
 USE OUR BUDGET  
 ACCOUNT  
 105 Days No Interest  
 Or Carrying Charges.  
 Or take up to 12  
 Months to Pay.

\* \* \* \* \*

HERE  
 WE CHOP BEEF PRICES  
 U.S.D.A. PRIME  
 EXTRA LEAN  
 BEEF HALVES  
 THE FINEST  
 350 lbs. Avg.  
 47¢ lb.  
 U.S.D.A. CHOICE  
 EXTRA LEAN  
 BEEF HALVES  
 TENDER DELICIOUS  
 350 lbs. Avg.  
 45¢ lb.

\* \* \* \* \*

WESTERN STAR BEEF STAMPEDE  
 U.S.D.A.  
 EXTRA LEAN  
 CHOICE  
 BEEF HALVES . . .  
 \$5.63 PER WEEK  
 EXAMPLE  
 350 LBS. FOR  
 SIX FULL MONTHS  
 45¢ per LB.  
 (picture of thick, lean, T-bone steak)  
 U.S.D.A.  
 EXTRA LEAN  
 PRIME  
 BEEF HALVES . . .  
 \$6.33 PER WEEK  
 EXAMPLE  
 350 LBS. FOR  
 SIX FULL MONTHS  
 47¢ per LB.

\* \* \* \* \*

WE SPECIALIZE IN  
*BEEF* ONLY (picture of two lean steaks)  
 The finest you can buy . . .  
 At a price everyone  
 can afford . . .  
 U.S.D.A. CHOICE DELICIOUS LEAN  
 BEEF HALVES  
 Example: 350 lbs. at 43¢ for 9 months . . .

PAR. 5. Through use of the aforesaid advertisements and others not specifically set out herein respondents have represented, directly and by implication that:

(1) Offers set forth therein are bona fide offers to sell U.S.D.A. Choice and U.S.D.A. Prime beef halves at the advertised price per pound, and that a beef half so advertised includes the hind quarter of the beef carcass, and all cuts of meat available therefrom.

(2) The advertised prices are the total prices per pound for the meat offered.

(3) Purchasers may arrange to make deferred payments for their purchases directly to the respondent, and no interest and/or carrying charges will be made on any such deferred payment obligation.

PAR. 6. In truth and in fact:

(1) The offers set forth in said advertisements, and other offers not set forth in detail herein, were not, and are not, bona fide offers to sell beef halves which include the hind quarter of the beef carcass at the advertised price, but, to the contrary, were, and are, made to induce prospective purchasers to visit respondents' stores and places of business for the purpose of purchasing such products. When prospective purchasers in response to said advertisements attempt to purchase a beef half containing the hind quarter of a beef carcass and/or the cuts of beef available therefrom at the advertised prices salesmen of respondents inform them that the advertised prices for "beef halves" apply only to the two fore quarters of a beef carcass, and to the cuts available therefrom; and such salesmen make no effort to sell such beef fore quarters but, in fact, disparage them in a manner calculated to discourage the purchase thereof, and attempt to and frequently do, sell much higher priced meats.

(2) The advertised prices are not the total prices per pound for the meat offered; to the contrary, purchasers of the advertised

meat are required to pay an additional charge for the cutting and wrapping of said meat.

(3) Purchasers learn, often after purchase, that payments on their installment contracts including interest and/or carrying charges must be made to the finance company with whom such contract are placed by respondents for collection.

PAR. 7. Respondents by their advertisements disseminated as aforesaid have represented, and now represent, directly, by implication, and by failure to disclose the average weight loss in the meat purchased due to cutting, dressing and trimming, that the beef halves advertised will weigh approximately 350 pounds or more when cut and trimmed, and/or that other meat purchases when ready for home freezer storage will equal or approximate their total purchase weight.

Said representations were, and are, contrary to the fact as the said "beef halves" and other beef carcass sections are sold by the pound at their carcass or uncut weight; the cutting, trimming and removing of fat, bone and waste materials greatly reduces the total weight, and a meat order when cut, trimmed and ready for home freezer storage is not equal to, nor does it approximate the total weight of said meat at the time of purchase.

Therefore, the advertisements referred to in Paragraphs Four and Seven were, and are, misleading in material respects and constituted and now constitute "false advertisements" as that term is defined in the Federal Trade Commission Act, and the representations referred to in Paragraphs Five and Seven are false, misleading and deceptive.

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

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, including the dissemination by respondents of false advertisements as aforesaid, were, and are, all to the prejudice and injury of the public and constituted, and now constitute, unfair and deceptive acts and practices in commerce in violation of Sections 5 and 12 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 having thereupon placed such agreement on the public record and having duly considered the comment filed thereafter pursuant to § 2.34(b) of its Rules, 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 Western Star Beef, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its principal office and place of business located at 2136 Main Street, in the city of Tewksbury, Commonwealth of Massachusetts.

Respondent Great Western Beef Provisioners, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its principal office and place of business located at 2136 Main Street, Tewksbury, Massachusetts.

Respondent Western Star Beef of Worcester, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its principal office and place of business located at 276 Boston Turnpike, Route 9, Shrewsbury, Massachusetts.

Respondents James J. Kintigos and James J. Weldon, Jr., are officers of said corporations. Their address is 2136 Main Street, Tewksbury, Massachusetts.

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 Western Star Beef, Inc., a corporation, Great Western Beef Provisioners, Inc., a corporation, and Western Star Beef of Worcester, Inc., a corporation, and their officers, and James J. Kintigos and James J. Weldon, Jr., individually and as officers of said corporations, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of beef or any other food product, do forthwith cease and desist from:

1. Disseminating, or causing the dissemination of any advertisement by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which represents, directly or by implication:

(a) That any products are offered for sale when the purpose of such representation is not to sell the offered products, but to obtain prospects for the sale of other products at higher prices.

(b) That any product is offered for sale when such offer is not a bona fide offer to sell such product.

2. Disseminating or causing the dissemination of any advertisement by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which fails to clearly and conspicuously disclose:

(a) That under respondents' sale policy, meat advertised as "beef halves" will be sold only as two fore quarters of a beef carcass; that such sections of beef are subject to much waste by way of fat and bone, and contain the least desirable cuts of beef.

(b) Charges for cutting, trimming, wrapping or for any other service or process performed by respondents which are not included in the advertised prices, and which are required to be paid by the purchaser.

(c) That interest and/or carrying charges will be included in the installment payments if an account is not paid within either 105 days, or any other specified

period of time, said time period to appear in purchasers' installment contracts.

(d) That beef halves and other untrimmed meats are sold subject to weight loss due to cutting, dressing and trimming.

(e) That the price charged for such meat is based on the weight thereof before cutting, dressing and trimming occurs.

(f) The average percentage of weight loss of such meat due to cutting, dressing and trimming, or, in the alternative, the range of percentages, minimum to maximum, of weight lost due to cutting, dressing, and trimming.

3. Disseminating, or causing the dissemination of any advertisement by means of United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which misrepresents in any manner the price, quantity, or quality of any such products, or the terms, conditions and requirements of installment payment contracts executed by purchasers thereof.

4. Disseminating, or causing to be disseminated by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly the purchase of any meat or other food product in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the representations prohibited in Paragraph 1 of this order, which fails to comply with the affirmative requirements of Paragraph 2 or which contains any of the misrepresentations prohibited in Paragraph 3 hereof.

5. Discouraging the purchase of, or disparaging in any manner, any meat or other food products which are advertised or offered for sale in advertisements, disseminated or caused to be disseminated by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act.

6. Failing to deliver a copy of this order to cease and desist to all operating divisions of the corporate respondents and to all officers, managers and salesmen, both present and future, and to any other person now engaged or who becomes engaged in the sale of meat or other food products as respondents' agent, representative, or employee; and to secure a

signed statement from each of said persons acknowledging receipt of a copy thereof.

*It is further ordered,* That respondents Western Star Beef, Inc., a corporation, Great Western Beef Provisioners, Inc., a corporation, Western Star Beef of Worcester, Inc., a corporation and, their officers, and James J. Kintigos and James J. Weldon, Jr., individually and as officers of said corporations, and respondents' agents, representatives, and employees; directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of meat or other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to disclose orally at the time of sale and in writing on any conditional sales contract, promissory note or other instrument executed by the purchaser, with such conspicuousness and clarity as is likely to be read and observed by the purchaser that:

(a) Such conditional sales contract, promissory note or other instrument may, at the option of the seller and without notice to the purchaser, be negotiated or assigned to a finance company or other third party;

(b) If such negotiation or assignment is effected, the purchaser will then owe the amount due under the contract to the finance company or third party and may have to pay this amount in full whether or not he has claims against the seller under the contract for defects in the merchandise, nondelivery or the like.

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

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IN THE MATTER OF

GEM FURS, INC., ET AL.

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

*Docket C-1480. Complaint, Jan. 21, 1969—Decision, Jan. 21, 1969*

Consent order requiring a New York City manufacturing furrier to cease misbranding, falsely invoicing, and deceptively guaranteeing its fur products.

## COMPLAINT

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

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

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

Respondents are manufacturers of fur products with their office and principal place of business located at 333 Seventh Avenue, New York, New York.

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

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

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

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

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

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

PAR. 7. Respondents furnished false guaranties that certain of their fur products were not misbranded, falsely invoiced or falsely advertised when respondents in furnishing such guaranties had reason to believe that fur products so falsely guaranteed would be introduced, sold, transported or distributed in commerce, in violation of Section 10(b) of the Fur Products Labeling Act.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

#### DECISION AND ORDER

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

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

mission 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 Gem Furs, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 333 Seventh Avenue, city of New York, State of New York.

Respondent Henry Kreidman is an officer of said corporation and his address is the same as that of said corporation.

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

#### ORDER

*It is ordered,* That respondents Gem Furs, Inc., a corporation, and its officers, and Henry Kreidman, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

## A. Misbranding fur products by:

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

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

## B. Falsely or deceptively invoicing fur products by:

1. Failing to furnish invoices, as the term "invoice" is defined in the Fur Products Labeling Act, showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

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

*It is further ordered,* That respondent Gem Furs, Inc., a corporation, and its officers, and Henry Kreidman, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from furnishing a false guaranty that any fur product is not misbranded, falsely invoiced or falsely advertised when the respondents have reason to believe that such fur product may be introduced, sold, transported, or distributed in commerce.

*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 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

ALBERT A. LEDFORD TRADING AS  
LEDFORD CHENILLE COMPANYCONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION AND THE FLAMMABLE FABRICS ACTS*Docket C-1481. Complaint, Jan. 21, 1969—Decision, Jan. 21, 1969*

Consent order requiring a Dalton, Ga., manufacturer of chenille bedspreads, bath sets, robes and rugs to cease marketing dangerously flammable products.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Albert A. Ledford, an individual trading as Ledford Chenille Company, hereinafter referred to as respondent, has violated the provisions of said Acts and the Rules and Regulations promulgated under the Flammable Fabrics Act, as amended, 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 Albert A. Ledford is an individual trading as Ledford Chenille Company. He is engaged in the manufacture of chenille bedspreads, bath sets, and robes and rugs. The business address of the respondent is 607 East Waugh Street, Dalton, Georgia.

PAR. 2. Respondent is now and for some time last past has been engaged in the manufacture for sale, the sale and offering for sale, in commerce, and has introduced, delivered for introduction, transported and caused to be transported in commerce, and has sold or delivered after sale or shipment in commerce, products, as "commerce" and "product" are defined in the Flammable Fabrics Act, as amended, which products failed to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the Flammable Fabrics Act, as amended.

Among such products mentioned hereinabove were chenille robes.

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

#### DECISION AND ORDER

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

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by 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 thereafter considered the matter and having determined that it had reason to believe that the respondent has 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 Albert A. Ledford is an individual trading as Ledford Chenille Company, with his office and principal place of business located at 607 East Waugh Street, Dalton, Georgia.

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

## ORDER

*It is ordered,* That the respondent Albert A. Ledford, individually, and trading as Ledford Chenille Company, or under any other name, and respondent's representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from manufacturing for sale, selling, offering for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported in commerce, or selling or delivering after sale or shipment in commerce, any product, as "commerce" and "product" are defined in the Flammable Fabrics Act, as amended, which fails to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the aforesaid Act.

*It is further ordered,* That respondent herein shall, within ten (10) days after service upon him of this Order, file with the Commission an interim special report in writing setting forth the respondent's intention as to compliance with this Order. This interim special report shall also advise the Commission fully and specifically concerning the identity of the product which gave rise to the complaint, (1) the amount of such product in inventory, (2) any action taken to notify customers of the flammability of such product and the results thereof and (3) any disposition of such product since July 11, 1968. Such report shall further inform the Commission whether respondent has in inventory any fabric, product or related material having a plain surface and made of silk, rayon or cotton or combinations thereof in a weight of two ounces or less per square yard or fabric with a raised fiber surface made of cotton or rayon or combinations thereof. Respondent will submit samples of any such fabric, product or related material with this report. Samples of the fabric, product or related material shall be of no less than one square yard of material.

*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 of his compliance with this order.

Complaint

75 F.T.C.

IN THE MATTER OF

## IMPERIAL CARPETS COMPANY, ET AL.

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

*Docket 8766. Complaint, Aug. 6, 1968—Decision, Jan. 24, 1969*

Final order requiring a Kansas City, Mo., retail carpet distributor to cease using deceptive pricing and quality claims and other misrepresentations to sell its merchandise, and misbranding 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 Imperial Carpets Company, a corporation, and Edward D. Grube, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts, and the Rules and Regulations promulgated under the 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. Imperial Carpets Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business located at 3915 Main Street in the city of Kansas City, State of Missouri.

Respondent Edward D. Grube is an individual and an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of carpeting at retail 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 products, when sold, to be shipped from their place of business in the State of Missouri to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their products, the respondents, together with their salesmen and representatives, have made and are now making numerous statements and representations to prospective purchasers.

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

1. That the carpeting which is offered to the prospective customer is heavy duty, high quality carpeting used only in commercial installations.

2. That the carpeting offered for sale is not available in retail stores.

3. That respondents are commercial carpeting specialists or wholesalers.

4. Respondents' carpeting is similar to carpeting previously sold only to commercial establishments, such as hotels, theaters, restaurants, hospitals, bowling alleys or other businesses.

5. Respondents' carpeting is being offered for sale at special reduced prices and that savings are thereby afforded purchasers from respondents' regular selling prices.

6. Homes of prospective purchasers have been specially selected as model homes for the installation of the respondents' carpeting; and, as a result of allowing their homes to be used as models, purchasers will be granted reduced prices.

7. That respondents' offer to sell said carpeting on the terms and conditions therein stated is limited in point of time.

8. Respondents' products are unconditionally guaranteed for a period of 15 years.

9. Respondents manufacture the products which they sell.

10. Respondents install the products which they sell.

PAR. 5. In truth and in fact:

1. The carpeting which respondents sell is not heavy duty, high quality commercial carpeting, but is carpeting which is usually and customarily sold for domestic use in the home.

2. The carpeting sold by respondents is available in retail stores.

3. Respondents are not commercial carpeting specialists or wholesalers, but are primarily retailers of carpeting to domestic users.

4. Carpeting similar to respondents' carpeting was not previously sold only to commercial establishments such as hotels, theaters, restaurants, hospitals, bowling alleys or businesses; but, on the contrary, respondents' products are similar to carpeting normally sold for residential purposes.

5. Respondents' carpeting is not being offered for sale at a special or reduced price, and savings are not granted respondents' customers because of a reduction of respondents' regular selling price. In fact, respondents do not have a regular selling price, but the price at which respondents' carpeting is sold varies from customer to customer depending upon the resistance of the prospective customer.

6. Homes of prospective purchasers are not specially selected as model homes for the installation of respondents' products; after installation such homes are not used for demonstration or advertising purposes by respondents; and purchasers as a result of allowing their homes to be used as models are not granted reduced prices.

7. Said sales at the alleged reduced prices are not limited to certain days or certain periods of time.

8. Respondents' products are not unconditionally guaranteed for a period of 15 years. Such guarantee as may be provided is subject to numerous terms, conditions and limitations, and fails to set forth the nature and extent of the guarantee, the identity of the guarantor and the manner in which the guarantor would perform thereunder.

9. Respondents do not manufacture the products sold by them, but on the contrary, purchase their products from wholesalers or manufacturers.

10. Respondents rely upon the services of other companies or subcontractors for the installation of their products.

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 now are, in substantial competition, in commerce, with corporations, firms and individuals in the sale of products of the same general kind and nature as that 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' products by reason of said erroneous and mistaken belief.

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

PAR. 9. 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 cause 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. 10. Certain of said textile fiber products sold by means of samples, swatches or specimens, namely floor coverings, and unaccompanied by an invoice or other paper showing the information required to appear on the label, were misbranded by the respondents in that there was not on or affixed to said textile fiber products any stamp, tag or other means of identification showing the required information in violation of Section 4(b) of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated under such Act.

PAR. 11. 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 that samples, swatches or specimens of textile fiber products subject to the aforesaid Act, which were used to promote or effect sales of such textile

fiber products, were not labeled to show their respective fiber content and other information required by 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. 12. 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 and deceptive acts and practices, in commerce, and unfair methods of competition in commerce, under the Federal Trade Commission Act.

*Mr. Bernard Rowitz* supporting the complaint.

No appearance for respondents.

INITIAL DECISION BY ELDON P. SCHRUP, HEARING EXAMINER

NOVEMBER 13, 1968

STATEMENT OF PROCEEDINGS

The Federal Trade Commission on August 6, 1968, issued its complaint charging the respondents with violating the Textile Fiber Products Identification Act and the Federal Trade Commission Act. The notice of the complaint set the hearing date for September 24, 1968, at the Federal Trade Commission Offices, The 1101 Building, 11th Street and Pennsylvania Avenue, NW., Washington, D.C.

Section 3.12(a) of the Federal Trade Commission's Rules of Practice for Adjudicative Proceedings allows a respondent thirty (30) days after service of the complaint within which to file answer thereto. Service of the complaint herein was not accomplished in sufficient time to meet such allowance and on September 19, 1968, by order of the hearing examiner the hearing date set in the complaint was cancelled, subject to being reset at a date to be determined.

Complaint counsel under date of November 4, 1968, has now moved for a default against respondents for failure to file answer as provided for in Section 3.12(c) of the aforesaid Rules. Said motion states that personal service of the complaint was made upon Edward D. Grube, individually and as an officer of the corporate respondent on September 13, 1968, at 6120 Oak Street, Kansas City, Missouri, 64113, as attested thereto by an affidavit

of Richard H. Harper, an attorney of the Federal Trade Commission assigned to and stationed at the Kansas City Office of the Federal Trade Commission. The original of said affidavit is stated to be on file in the Office of the Secretary of the Federal Trade Commission.

Said motion further states that a check at said date with the Office of the Secretary of the Commission and with the Assistant Secretary for Legal and Public Records of the Commission reveals that no answer to the complaint nor any other communication has been received from the aforesaid respondents. Complaint counsel's motion is therefore hereby granted.

Section 3.12(c) *Default* states that failure of the respondent to file an answer within the time provided shall be deemed to constitute a waiver of his right to appear and contest the allegations of the complaint and to authorize the hearing examiner, without further notice to the respondent, to find the facts to be as alleged in the complaint and to enter an initial decision containing such findings, appropriate conclusions, and order.

#### FINDINGS OF FACT

1. Imperial Carpets Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business located at 3915 Main Street in the city of Kansas City, State of Missouri.

Respondent Edward D. Grube is an individual and an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of carpeting at retail to the public.

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

4. In the course and conduct of their aforesaid business, and

Initial Decision

75 F.T.C.

for the purpose of inducing the purchase of their products, the respondents, together with their salesmen and representatives, have made and are now making numerous statements and representations to prospective purchasers.

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

1. That the carpeting which is offered to the prospective customer is heavy duty, high quality carpeting used only in commercial installations.

2. That the carpeting offered for sale is not available in retail stores.

3. That respondents are commercial carpeting specialists or wholesalers.

4. Respondents' carpeting is similar to carpeting previously sold only to commercial establishments, such as hotels, theaters, restaurants, hospitals, bowling alleys or other businesses.

5. Respondents' carpeting is being offered for sale at special reduced prices and that savings are thereby afforded purchasers from respondents' regular selling prices.

6. Homes of prospective purchasers have been specially selected as model homes for the installation of the respondents' carpeting; and, as a result of allowing their homes to be used as models, purchasers will be granted reduced prices.

7. That respondents' offer to sell said carpeting on the terms and conditions therein stated is limited in point of time.

8. Respondents' products are unconditionally guaranteed for a period of 15 years.

9. Respondents manufacture the products which they sell.

10. Respondents install the products which they sell.

5. In truth and in fact:

1. The carpeting which respondents sell is not heavy duty, high quality commercial carpeting, but is carpeting which is usually and customarily sold for domestic use in the home.

2. The carpeting sold by respondents is available in retail stores.

3. Respondents are not commercial carpeting specialists or wholesalers, but are primarily retailers of carpeting to domestic users.

4. Carpeting similar to respondents' carpeting was not previously sold only to commercial establishments such as hotels,

theaters, restaurants, hospitals, bowling alleys or businesses; but, on the contrary, respondents' products are similar to carpeting normally sold for residential purposes.

5. Respondents' carpeting is not being offered for sale at a special or reduced price, and savings are not granted respondents' customers because of a reduction of respondents' regular selling price. In fact, respondents do not have a regular selling price, but the price at which respondents' carpeting is sold varies from customer to customer depending upon the resistance of the prospective customer.

6. Homes of prospective purchasers are not specially selected as model homes for the installation of respondents' products; after installation such homes are not used for demonstration or advertising purposes by respondents; and purchasers as a result of allowing their homes to be used as models are not granted reduced prices.

7. Said sales at the alleged reduced prices are not limited to certain days or certain periods of time.

8. Respondents' products are not unconditionally guaranteed for a period of 15 years. Such guarantee as may be provided is subject to numerous terms, conditions and limitations, and fails to set forth the nature and extent of the guarantee, the identity of the guarantor and the manner in which the guarantor would perform thereunder.

9. Respondents do not manufacture the products sold by them, but on the contrary, purchase their products from wholesalers or manufacturers.

10. Respondents rely upon the services of other companies or subcontractors for the installation of their products.

Therefore, the statements and representations as set forth in Finding 5 hereof were, and are, false, misleading and deceptive.

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

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' products by reason of said erroneous and mistaken belief.

8. The aforesaid acts and practices of respondents, as hereinbefore found, 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.

9. 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 cause 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.

10. Certain of said textile fiber products sold by means of samples, swatches or specimens, namely floor coverings, and unaccompanied by an invoice or other paper showing the information required to appear on the label, were misbranded by the respondents in that there was not on or affixed to said textile fiber products any stamp, tag or other means of identification showing the required information in violation of Section 4(b) of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated under such Act.

11. 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 that samples, swatches or specimens of textile fiber products subject to the aforesaid Act, which were used to promote or effect sales of such textile fiber products, were not labeled to show their respective fiber content and other information required by 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.

12. The acts and practices of respondents, as set forth in Find-

ings 9 through 11 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 and deceptive acts and practices, in commerce, and unfair methods of competition in commerce, under the Federal Trade Commission Act.

#### CONCLUSIONS

1. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and over the respondents.
2. The complaint herein states a cause of action and the proceeding is in the public interest.
3. Based on the findings of fact and violations of the Textile Fiber Products Identification Act and the Federal Trade Commission Act hereinbefore set forth, the following order should be and hereby is issued.

#### ORDER

*It is ordered,* That respondents Imperial Carpets Company, a corporation, and its officers, and Edward D. Grube, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of carpeting or floor coverings or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

- (1) Respondents' carpeting is a heavy duty or commercial grade carpeting; or misrepresenting, in any manner, the grade or quality of respondents' products.
- (2) Respondents' carpeting is not available in retail stores.
- (3) Respondents are commercial carpeting specialists or wholesalers.
- (4) Respondents' principal business is selling heavy duty, high quality carpeting to commercial establishments.
- (5) Respondents' carpeting is similar to carpeting previously sold only to commercial establishments.
- (6) The price of respondents' products is a special or reduced price unless such price constitutes a significant reduction from any established selling price at which such products have been sold in substantial quantities by respondents in the recent regular course of their business; or

misrepresenting, in any manner, the savings available to purchasers or prospective purchasers of respondents' products.

(7) The home of any of respondents' customers or prospective customers has been selected to be used or will be used as a model home, or otherwise, for advertising purposes; or that a reduced price or commission is given by respondents to purchasers in return for permitting the premises, in which respondents' products are to be installed to be used for model homes or demonstration purposes.

(8) Any offer of sale of respondents' products is limited in time or in any manner: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that any represented limitation or restriction was actually imposed and in good faith adhered to.

(9) Respondents' products are guaranteed, unless the nature and extent of the guarantee, the identity of the guarantor and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

(10) Respondents manufacture or install the products they sell; or misrepresenting, in any manner, the nature or character of the respondents' business operations or the manufacturer or source of respondents' products.

*It is further ordered,* That respondents Imperial Carpets Company, a corporation, and its officers, and Edward D. Grube, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, sale, advertising or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States of any textile fiber product; or in connection with the sale, offering or 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 Prod-

ucts Identification Act, do forthwith cease and desist from misbranding textile fiber products by:

1. Failing to affix a label to each such product showing a clear and conspicuous manner each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

2. 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.

*It is further ordered,* That respondents deliver a copy of this order to cease and desist to all present and future salesmen or other persons engaged in the sale of respondents' products or services, and secure from such salesmen or other persons a signed statement acknowledging receipt of said order.

#### FINAL ORDER

The initial decision in this case having been filed November 13, 1968; and

The Commission by order of December 27, 1968, having stayed the effective date of the initial decision of the hearing examiner for the reason that proof of service thereof upon the respondents had not been received by the Commission; and

The Commission having now received the sworn affidavit of its attorney Richard Harper dated December 26, 1968, attesting to the fact that he effected personal service of the initial decision upon respondents on December 23, 1968; and

No appeal from the initial decision of the hearing examiner having been filed, and the Commission having determined that the case should not be placed on its own docket for review and that pursuant to Section 3.51 of the Commission's Rules of Practice (effective July 1, 1967), the initial decision should be adopted and issued as the decision of the Commission;

*It is ordered,* That the initial decision of the hearing examiner shall, on the 24th day of January, 1969, become the decision of the Commission.

*It is further ordered,* That Imperial Carpets Company, a corporation, and Edward D. Grube, individually and as an officer of said corporation, shall, within sixty (60) days after service

of this order upon them, file with the Commission a report in writing, signed by such respondents setting forth in detail the manner and form of their compliance with the order to cease and desist.

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IN THE MATTER OF

H. R. RIEGER COMPANY, INC., ET AL.

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

*Docket C-1482. Complaint, Jan. 27, 1969—Decision, Jan. 27, 1969*

Consent order requiring a Frazer, Pa., seller of custom built residential houses to cease using bait tactics, misrepresenting unfinished houses as complete, making deceptive guarantees, and neglecting to disclose all terms and conditions to owners of unimproved lots.

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 H. R. Rieger Company, Inc., a corporation, and Harry R. Rieger, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent H. R. Rieger Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 380 Lancaster Pike, in the town of Frazer, State of Pennsylvania.

Respondent Harry R. Rieger is an officer of the corporate respondent. He formulates directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale, con-

struction and distribution of custom built residential houses to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of Pennsylvania to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their products, respondents have made numerous statements and representations in newspaper advertisements and in the oral representations made by their representatives, agents or employees with respect to the nature of their offer, the terms and conditions of sale, financing requirements, degree of completion, and other characteristics of their products.

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

LOT OWNERS!  
WE'VE BUILT HOMES  
FOR OVER 40 YEARS

You'll Be  
Satisfied, Too!

EACH ONE  
CARRIED A  
GUARANTEE

Complete ready to move in!	The Manor NO MONEY DOWN!	from \$89 per mo.
RANCHERS—SPLITS—TWO FROM \$9990 TO \$20,000—50 PLANS & STYLES	LOT OWNERS Ranchers—Splits—Two Story \$9990 to \$20,000	
The Down Easter Complete on Your Lot		\$74 Monthly No Down Payment!

PAR. 5. By and through the use of the aforesaid pictures, statements and representations, and others of similar import and meaning, but not specifically set out herein, separately and in connection with oral statements and representations by their representatives, agents and employees to customers and prospective customers, respondents represent, and have represented, directly or by implication, that:

1. The offer set forth in such advertisements is a genuine and bona fide offer to sell houses of the kind illustrated and described at the prices and on the terms and conditions therein stated.

2. Houses of the kind illustrated and described are offered for sale at the advertised monthly payments.

3. A complete, custom-built house of the kind illustrated and described is offered for sale at the prices stated.

4. Respondents offer a house of the kind illustrated and described and respondents' other houses at the prices and on the terms and conditions stated to the owner of an unimproved lot or parcel of real estate upon which said house is to be built.

5. Respondents' houses are unconditionally guaranteed for a period of one year.

PAR. 6. In truth and in fact:

1. Said offer is not a genuine or bona fide offer to sell houses of the kind illustrated and described in said advertisements and at the prices and on the terms and conditions stated.

Said offer is made for the purpose of obtaining leads as to persons interested in the purchase of respondents' products. After obtaining such leads, respondents' representatives negotiate with such purchasers in the offices or places of business of respondents, and at such times and places make no effort to sell the illustrated houses at the prices and on the terms and conditions stated but induce such purchasers to purchase their houses at additional cost for the extra items and features.

2. Houses of the kind illustrated and described are not offered for sale at the advertised monthly payments. Said monthly payments are available only for and in connection with the purchase of certain models of homes which sell at a substantially lower price than the house illustrated in said advertisements.

3. A complete, custom-built house of the kind illustrated and described is not offered for sale at the prices stated. The illustrated and described house which is offered for sale does not include all of the various items normally included in a complete home, such as interior painting. Such items are obtained at extra cost to the purchaser thereof, which fact respondents fail to reveal.

4. Respondents do not offer a house of the kind illustrated and described and respondents' other houses at the prices and on the terms and conditions stated to the owner of an unimproved lot or parcel of real estate upon which the houses are to be built. Respondents require that said lot or real estate parcel be im-

proved in certain respects or otherwise meet certain requirements imposed by respondents before it can be used to meet respondents' requirements for purchasing and financing said houses.

5. Respondents' houses are not unconditionally guaranteed for a period of one year. Such guarantee is subject to numerous terms, conditions and limitations and fails to set forth the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder.

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

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

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

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal 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 H. R. Rieger Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 380 Lancaster Pike, Frazer, Pennsylvania.

Respondent Harry R. Rieger is an officer of said corporation and his address is the same as that of said corporation.

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

#### ORDER

*It is ordered,* That respondents H. R. Rieger Company, Inc., a corporation, and its officers, and Harry R. Rieger, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution or construction of houses, or other structures, or products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

2. Making representations purporting to offer houses or

other products for sale when the purpose of the representation is not to sell the offered house or other product but to obtain leads or prospects for the sale of other houses or other products.

3. Representing, directly or by implication, that any houses or other products are offered for sale when such offer is not a bona fide offer to sell such houses or other products.

4. Representing, directly or by implication, that houses or other products are offered for sale for certain prices or on stated terms: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that such house or other product may be purchased at the represented price, terms or conditions.

5. Illustrating or describing a higher priced home in conjunction with the price of a lower priced home.

6. Failing to quote and to disclose in advertising and promotional material the price of an illustrated or described home with equal size and conspicuousness as the price quoted for any other home.

7. Representing, directly or by implication, that respondents' houses are complete, or finished to any degree of completeness: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the house is completed or finished to the extent or degree represented.

8. Quoting prices, terms or conditions in advertising which does not include all of the features of the house or other products illustrated or described.

9. Representing, directly or by implication, that respondents' offers are made available to owners of lots or parcels of real estate without clearly and conspicuously revealing any requirements, conditions or limitations applicable to said property such as but not limited to, value, location, size or improvements.

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

11. Failing to deliver a copy of this order to cease and

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desist to all present and future salesmen or other persons engaged in the sale of respondents' products or services, and failing to secure from each such salesman or other person a signed statement acknowledging receipt of said order.

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

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

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IN THE MATTER OF

JESSE S. HALPERIN, ET AL.

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

*Docket C-1433. Complaint, Jan. 27, 1969—Decision, Jan. 27, 1969*

Consent order requiring three former officials of a Gastonia, N.C., sweater manufacturing mill to cease misbranding the fiber content of goods and furnishing false guaranties.

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 Jesse S. Halperin, Jack Altman and Felix Gabel, individually and as former officers

of Reliable Mills, Inc., 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. Respondents Jesse S. Halperin, Jack Altman and Felix Gabel, are former officers of Reliable Mills, Inc., a corporation. They formulated, directed and controlled the acts, practices and policies of said corporation which was and is engaged in business in Gastonia, North Carolina. The address of Jesse S. Halperin is 801 Imperial Drive, Gastonia, North Carolina. The address of Jack Altman is 309 Belle-Meade Boulevard, Nashville, Tennessee. The address of Felix Gabel is 3712 Benham Avenue, Nashville, Tennessee.

Respondents were and are engaged in the manufacturing of wool products.

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

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

Among such misbranded wool products, but not limited thereto, were certain wool products, namely sweaters, stamped, tagged, labeled, or otherwise identified as containing "100% alpaca," whereas in truth and in fact, said wool products contained substantially different amounts of woolen fibers than represented and also contained other fibers than represented.

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

Among such misbranded wool products, but not limited thereto, were certain wool products, namely sweaters, with labels on or affixed thereto, which failed to disclose the percentage of the total fiber weight of the wool products, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (1) wool; (2) reprocessed wool; (3) reused wool; (4) each fiber other than wool, when said percentage by weight of such fiber was 5 per centum or more; and (5) the aggregate of all other fibers.

PAR. 5. Respondents furnished false guaranties under Section 9(b) of the Wool Products Labeling Act of 1939 with respect to certain of their wool products by falsely representing in writing on invoices that the products covered by said invoices were labeled in accordance with the requirements of said Act, when respondents had reason to believe that the wool products so falsely guaranteed would be introduced, sold, transported, or distributed in commerce, in violation of Section 9(b) of said Act.

PAR. 6. Certain of said wool products were further misbranded by respondents in violation of the Wool Products Labeling Act of 1939, in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder, in that the term "alpaca" was used in lieu of the word "wool" in setting forth the required fiber content information on labels affixed to wool products when certain of the fibers so described were not entitled to such designation, in violation of Rule 18 of the Rules and Regulations under the Wool Products Labeling Act of 1939.

PAR. 7. 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.

PAR. 8. In the course and conduct of their business, respondents have caused their said products, when sold, to be shipped from their former place of business in the State of North Carolina to purchasers located in various other States of the United States and maintained a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 9. Respondents in the course and conduct of their business, as aforesaid, have made statements on invoices and shipping

memoranda to their customers misrepresenting the fiber content of their said products.

Among such misrepresentations, but not limited thereto, were statements representing the fiber content thereof as "100% alpaca" whereas, in truth and in fact, the products contained substantially different fibers and amounts of fibers than represented.

PAR. 10. The acts and practices set out in Paragraph Nine have had and now have the tendency and capacity to mislead and deceive the purchasers of said products as to the true content thereof and were and are all to the prejudice and injury of the public and constituted, and now constitute, unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

#### DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by 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. Respondents Jesse S. Halperin, Jack Altman and Felix Gabel are former officers of Reliable Mills, Inc., a corporation engaged in business in Gastonia, North Carolina. The address of Jesse S. Halperin is 801 Imperial Drive, Gastonia, North Carolina. The address of Jack Altman is 309 Belle-Meade Boulevard, Nashville, Tennessee. The address of Felix Gabel is 3712 Benham Avenue, Nashville, Tennessee.

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 Jesse S. Halperin, Jack Altman and Felix Gabel, individually and as former officers of Reliable Mills, Inc., a corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or the manufacture for introduction, into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

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

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

3. Using the term "alpaca" in lieu of the word "wool" in setting forth the required information on labels affixed to wool products unless the fibers described as "alpaca" are entitled to such designation and are present in the said wool product in at least the amount stated.

*It is further ordered,* That respondents Jesse S. Halperin, Jack Altman and Felix Gabel, individually and as former officers of Reliable Mills, Inc., a corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from furnishing a false guaranty that any wool product is not misbranded, when the respondents have reason to believe that such

wool product may be introduced, sold, transported or distributed in commerce.

*It is further ordered,* That respondents Jesse S. Halperin, Jack Altman and Felix Gabel, individually and as former officers of Reliable Mills, Inc., a 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 sweaters or any other textile products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the character or amount of constituent fibers contained in sweaters or any other textile products on invoices or shipping memoranda applicable thereto or in any other manner.

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

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IN THE MATTER OF

LOURIE'S, INC., ET AL.

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

*Docket C-1484. Complaint, Jan. 29, 1969—Decision, Jan. 29, 1969*

Consent order requiring a Columbia, S.C., retailer of ladies' and men's ready to wear clothing to cease misbranding, falsely advertising and invoicing its fur products, removing required labels, and failing to maintain required records.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Lourie's, Inc., a corporation, and Abraham M. Lourie, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to

the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Lourie's, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of South Carolina.

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

Respondents are retailers of ladies' and men's ready to wear and related accessories with their office and principal place of business located at 1601 Main Street, Columbia, South Carolina.

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

PAR. 3. Respondents have removed and have caused and participated in the removal of, prior to the time fur products subject to the provisions of the Fur Products Labeling Act were sold and delivered to the ultimate consumer, labels required by the Fur Products Labeling Act to be affixed to such products, in violation of Section 3(d) of said Act.

PAR. 4. Certain of said fur products were misbranded in violation of Section 4(1) of the Fur Products Labeling Act in that they were falsely and deceptively labeled or otherwise falsely and deceptively identified in that labels affixed to such fur products, contained representations, either directly or by implication, that the prices of such fur products were reduced from respondents' former prices and the amount of such purported reductions constituted savings to purchasers of respondents' fur products.

In truth and in fact, the alleged former prices were fictitious in that they were not actual, bona fide prices at which respondents offered the products to the public on a regular basis for a reasonably substantial period of time in the recent regular course of business and the said fur products were not reduced

