acts and practices in the following particulars: the prices of $3.98 and $2.98 charged for the colored enlargements are not special or reduced prices but are the regular and usual prices charged for the merchandise. The enlargements are not hand painted but the color is applied by an air brush and while the receipt or certificate so states, it is not delivered or shown to the customer until all or a part of the purchase price has been paid and the receipt or certificate provides that the order cannot be countermanded. Frequently, the enlargements are greatly inferior in quality to those exhibited as samples, and customers' photographs used for making the enlargements are in some instances returned in a damaged condition.

Respondents, by failing to disclose that the enlargements are of a convex shape, prior to the sale thereof and collection of a part or all the purchase price, lead purchasers into the erroneous belief that such enlargements are the usual and conventional type of enlarged photographs, that is, having a flat surface and suitable for framing in an ordinary frame, and the failure to disclose such fact constitutes an unfair and deceptive act and practice. The enlargements are not baked into the frame but are merely placed in the frame in the conventional manner. The glass provided with the frames is not of special construction but is common glass in a convex shape and may be easily broken. In case a frame is ordered the completed frame enlargement is usually delivered within a reasonable time but when a frame is not ordered, respondents unreasonably delay the delivery of the colored enlargement far beyond the time delivery has been promised and in many instances refuse or delay delivery until pressure is brought to bear by Better Business Bureaus and in other ways.

In truth and in fact, while the public is led to believe through the statements and representations made by respondents and their agents, that respondents are engaged in selling hand-painted enlargements, the entire selling scheme and plan is designed and put into operation for the sole purpose of selling frames and glasses therefor, in which transactions respondents make a handsome profit, rather than the sale of enlargements which sales result in an actual financial loss to respondents.

PAR. 5. Respondent, William E. Moore, by the use of the word "art" as a part of the trade name Imperial Art Co. and both respondents William E. Moore and Harry J. Rickert by the use of the word "art" as a part of the trade name Rickert Art Co. in connection with their said businesses, thereby represented that said respondents owned, operated, or controlled art studios in which photographic experts and artists were employed and that the enlargements sold by them were made and colored in said studios. In truth and in fact, the respondents or either of them did not and do not own, operate, or control a

studio of any kind and did not and do not employ experts or artists of any nature but on the contrary their colored enlargements are and were purchased on a contract basis from others.

PAR. 6. The use by the respondents of the plan, acts, practices, methods, and representations in connection with the offering for sale and sale of their said products in commerce, as aforesaid, including the failure to reveal essential and important facts in connection therewith, has had and now has the tendency and capacity to and does mislead and deceive the purchasing public concerning the actual character and purpose of the original offer, including the identity of the actual product respondents propose to sell and concerning the quality, value, and usual selling price of said enlargements and unfairly place purchasers in the position where they are required to purchase frames and glasses from respondents in case they wish to have the enlargements framed, which is usually the case. The aforesaid acts and practices have led and do lead purchasers erroneously to believe that the representations so made and used by the respondents and the implications arising therefrom were true and cause and have caused a substantial number of the purchasing public to purchase substantial quantities of said products.

The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Complaint dismissed by the following order:

This matter having come on to be heard by the Commission upon the motion filed on April 4, 1950, by counsel supporting the complaint, requesting that the complaint herein be dismissed, which motion has been certified to the Commission by the trial examiner in this proceeding with the recommendation that it be granted; and

It appearing to the Commission from said motion, affidavit attached thereto, and the record herein that the respondents discontinued and abandoned the business in connection with which the alleged unlawful acts and practices were engaged in, prior to the issuance of the complaint herein, with no apparent intention of again engaging in such business; and that there is insufficient public interest to warrant a continuation of this proceeding:

It is ordered, That the complaint herein be, and the same hereby is, dismissed.

Before *Mr. Webster Ballinger*, trial examiner.

Mr. Clark Nichols for the Commission.

Mr. Maurice B. Wechsler, of Pittsburgh, Pa., for William E. Moore.

BIBB MANUFACTURING CO. ET AL. Complaint, March 3, 1949. Order, January 8, 1951. (Docket 5644.)

CHARGE: Combining and conspiring between and among themselves and others to hinder, frustrate, suppress, restrain, and eliminate competition in the manufacture and sale of twine products in commerce, as below set out.

COMPLAINT: Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the parties named in the caption hereof and more particularly described and referred to hereinafter as respondents, have violated the provisions of section 5 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 as follows:

PARAGRAPH 1. The charges as hereinafter set forth are to the effect that the respondents named and described herein have combined and conspired to lessen and eliminate competition and to restrain trade and commerce, as commerce is defined in the Federal Trade Commission Act, in the sale of twine, hop twine, sash, cordage, and rope, hereinafter referred to as twine products; that said respondents accomplished the combination and conspiracy through agreements, understandings, and concerted action among themselves and with others; and that each respondent named herein has used and uses trade restraining and unfair methods and practices in furtherance of, and to make more effective, the objectives of the combination and conspiracy as alleged.

PAR. 2. The following is a description of the corporate respondents, including their respective corporate status and principal office and place of business:

(1) Bibb Manufacturing Co., a Georgia corporation, Main and Water Streets, Macon, Ga.; (2) California Cotton Mills Co., a California corporation, 1091 Kennedy Street, Oakland, Calif.; (3) A. A. Shuford Mills Co., a North Carolina corporation, East Hickory, N. C.; (4) Granite Falls Manufacturing Co., a North Carolina corporation, Granite Falls, N. C.; (5) Highland Cordage Co., a North Carolina corporation, East Hickory, N. C.; (6) Granite Cordage Co., a North Carolina corporation, Granite Falls, N. C.; (7) Hickory Spinning Co., a North Carolina corporation, West Hickory, N. C. [Respondent corporations herein identified as numbers (3) to (7) inclusive, and respondent Shuford Mills, Inc., all operate under the trade name Shuford Mills and will hereinafter be referred to collectively as Shuford Mills]; (8) Yakima Hardware Co., State of incorporation unknown; 230 South First, Yakima, Wash., wholesaler and retailer; (9) Schermerhorn Bros. Co., a Nebraska corporation, 211 West Wacker Drive, Chicago, Ill., mill agents; (10) Schermerhorn Bros. Co., an Illinois cor-

poration, 211 West Wacker Drive, Chicago, Ill., mill agents; (11) Ames, Harris & Neville Co., an Oregon corporation, 1506 Northwest Hoyt, Portland, Oreg., jobbers and wholesalers; (12) Blake, Moffitt & Towne, a California corporation, 599 Eighth, San Francisco, Calif., jobbers and wholesalers; (13) Oakdale Cotton Mills, a North Carolina corporation, Jamestown, N. C.; (14) Cleveland Mill & Power Co., a North Carolina corporation, Lawndale, N. C.; (15) January & Wood Co., a Kentucky corporation, Maysville, Ky.; (16) Puritan Cordage Mills, Inc., a Kentucky corporation, 1205 Washington Street, Louisville, Ky.; (17) Rockford Manufacturing Co., a Tennessee corporation, Rockford, Tenn.; (18) Rocky Mount Mills, a North Carolina corporation, Rocky Mount, N. C.; (19) Orange Cotton Mills, a South Carolina corporation, Orangeburg, S. C.; (20) Callaway Mills, a Georgia corporation, La Grange, Ga.; (21) Silver Lake Co., a Georgia corporation, 3200 Duncan, Chattahoochee, Ga.; (22) Whittier Mills Co., a Georgia corporation, 3200 Duncan, Chattahoochee, Ga.; (23) Southern Mills Corp., a Delaware corporation, Oxford, Ala.; (24) Mount Vernon-Woodberry Mills, Inc., a Maryland corporation, Trust Building, Baltimore, Md.; (25) Wm. E. Hooper & Sons Co., a Pennsylvania corporation, 1319–23 Cherry Street, Philadelphia, Pa.; (26) Houston Cotton Mills Co., a Texas corporation, 8100 Washington Avenue, Houston, Tex.; (27) Linen Thread Co., Inc., a New York corporation, 60 East Forty-second Street, New York, N. Y.; (28) Dan River Mills, Inc., a Virginia corporation, Danville, Va.; (29) Samson Cordage Works, a Massachusetts corporation, 89 Broad Street, Boston, Mass.; (30) J. P. Stevens & Co., Inc., a Delaware corporation, 350 Fifth Avenue, New York, N. Y.; (31) Turner-Halsey Co., a New York corporation, 40 Worth Street, New York, N. Y., all manufacturers, except Nos. 8 to 12, incusive, whose capacities are separately and respectively hereinabove specified; and (32) the Carded Yarn Association, Inc., a North Carolina corporation, Johnston Building, Charlotte, N. C., hereinafter referred to as respondent association; and (33) the Cotton-Textile Institute, Inc., a New York corporation, 271 Church Street, New York, N. Y., hereinafter referred to as respondent Institute, their officers and directors, and the executive committees of the Carded Yarn Association, Inc., and the Cotton-Textile Institute, Inc. The respondents hereinabove identified as Nos. (3) to (7), inclusive, now operate under the corporate control and direction of Shuford Mills, Inc., a North Carolina corporation, with office and principal place of business at Hickory, N. C. Said Shuford Mills, Inc., is hereby designated and made a party respondent in this proceeding.

The following are individual respondents: (34) Carl E. Nelson and (35) Mrs. Alice G. Brown, a partnership, trading as Clifford W. Brown Co., 117 Front Street, Salem, Oreg., distributor for respondent

California Cotton Mills Co.; (36) Arthur J. Toupin, an individual, trading as Toupin Hardware Co., Moxee City, Wash., agent for respondent Bibb Manufacturing co.; (37) Bascom B. Blackwelder, an individual, care of Quaker Meadow Mills, Inc., Hildebran, N. C., who was formerly president of respondent corporations A. A. Shuford Mills Co., Granite Falls Manufacturing Co., Highland Cordage Co., and Granite Cordage Co.; (38) Arthur J. Cooley, vice president and general manager of Schermerhorn Bros. Co., 113 King Street, Seattle, Wash.; (39) R. C. Frost, manager of Schermerhorn Bros. Co., 24 First Avenue SW., Portland, Oreg.; (40) Edward Hase, sales manager, Schermerhorn Bros. Co., 100 Howard Street, San Francisco, Calif.; (41) William C. Hood, representative of California Cotton Mills Co., Pacific Terminal Building, Seattle, Wash.; (42) Burton A. Olsen, general manager and vice president of California Cotton Mills Co., 1091 Kennedy Street, Oakland, Calif.; (43) E. Owen Fitzsimons, president and treasurer, the Carded Yarn Association, Inc., Johnston Building, Charlotte, N. C.; (44) Paul B. Halstead, secretary-treasurer, the Cotton Textile Institute, Inc., 271 Church Street, New York, N. Y.

PAR. 3. All of the aforesaid respondents, with the exception of respondent association, respondent institute and individual respondents, E. Owen Fitzsimons, and Paul B. Halstead in the course and conduct of their business, have regularly sold and shipped and do now sell and ship their twine products to purchasers at points in the several States of the United States, and in the District of Columbia, other than the State of origin of the shipment, in a regular current and flow of commerce, as commerce is defined in the Federal Trade Commission Act.

Because of the adoption and use of methods, practices, and policies hereinafter described, active and substantial competition between respondents and between respondents and others engaged in the manufacturing and selling of twine products has been lessened or eliminated.

Respondent association, respondent institute, and individual respondents, E. Owen Fitzsimons and Paul B. Halstead, and the executive committees of said association and institute, though not engaged in commerce, are now and have been for many years engaged in cooperating as coconspirators with the respondents named herein in carrying out the unlawful acts in commerce as hereinafter alleged.

The terms "twine," "hop twine," "sash," "cordage," and "rope" fairly describe the general classification of commodities manufactured by respondent manufacturers. However, all respondent manufacturers do not manufacture all kinds of commodities in each of the above classifications. Where similarity of product is absent, common interest between manufacturers is minimized. However, where there is and has been similarity of products and hence common interest

among any of the respondents, the cooperative activities herein alleged have transpired and accomplished the results sought by said respondents.

PAR. 4. Respondents have unlawfully combined and conspired and are now parties to an unlawful combination and conspiracy between and among themselves and others to hinder, frustrate, suppress, restrain, and eliminate competition in the manufacture, sale, and distribution of twine products in commerce.

Among the acts, methods, practices, and policies engaged in by the respondents pursuant to and in furtherance of the combination and conspiracy hereinabove alleged are the following:

1. Respondents have agreed to fix and maintain and have fixed and maintained prices at which twine products have been and are sold and offered for sale.

2. Respondents have agreed to eliminate and have eliminated certain trade discounts in connection with their sale of twine products.

3. Respondents have agreed to eliminate and have eliminated certain weights and grades of their various products as a part of and in furtherance of their price-fixing policies and practices.

4. Respondent manufacturers have agreed to reduce, and in pursuance thereof did reduce, the number of hours and shifts for work in their respective plants, for the purpose and with the effect of curtailing production in furtherance of a program of concerted action to create scarcity of their products so as to further facilitate their practice of fixing, raising, and stabilizing prices for twine products.

5. Respondents agreed to adopt and in pursuance thereof did adopt certain arbitrary freight charges on shipments of twine products as a further step in perfecting their price-fixing policies and practices.

6. Respondents agreed upon and adopted uniform terms and conditions of sale for use in connection with their sale of twine products.

7. Respondent manufacturers entered an agreement and in pursuance of said agreement required their respective agents and distributors to sell the twine products manufactured by respondent manufacturers, at prices fixed collusively by respondent manufacturers, in order to accomplish their price-fixing and practices.

8. Respondent manufacturers and individual respondents have used and are now using respondent association and respondent institute and the executive committees and other committees of said association and said institute as instruments or vehicles for their joint and cooperative acts and practices and to make more effective the conspiracy herein alleged.

9. Respondents, by agreement and understanding, have adopted and used, and now use, a price-leadership plan whereby generally, depending upon the location of the market, either Bibb Manufacturing

Co., Shuford Mills, or California Cotton Mills Co., among the dominant manufacturers of twine products, lead in the announcement and publication of price changes for twine products. Pursuant thereto, such prices and price changes as announced by any one or more of said respondent manufacturers, and imparted by them to other respondents, have been and are adopted and followed by other respondents.

10. Respondent manufacturers have concurrently adopted, maintained, and used uniform differentials, descriptions, and specifications for twine products for pricing purposes, and have concurrently fixed, established, and maintained substantially standard differentials in prices between products of uniformly varying descriptions and specifications.

11. While each and all respondents named as parties within this complaint have engaged in practices and performed acts heretofore alleged in furtherance of the conspiracy to fix and maintain prices, the following respondents—Bibb Manufacturing Co.; California Cotton Mills Co.; Shuford Mills; Schermerhorn Bros. Co., a Nebraska corporation; Schermerhorn Bros. Co., an Illinois corporation; Yakima Hardware Co.; Ames, Harris & Neville Co.; Blake, Moffitt & Towne; Arthur J. Toupin; Carl E. Nelson; Mrs. Alice G. Brown; William C. Hood; Arthur J. Cooley; R. C. Frost; Burton A. Olsen; and Edward Hase—pursuant to and in furtherance of the combination and conspiracy hereinbefore alleged, have committed additional acts as alleged in this subparagraph 11 of paragraph 4, as follows:

(*a*) They agreed upon and fixed trade-restraining prices for hop twine sold to hop growers which were located principally in the States of Oregon and Washington.

(*b*) They agreed to reduce and did reduce the prices for hop twine to unreasonably low levels for a brief period of time with the intent and for the purpose of destroying competition and eliminating a competitor.

PAR. 5. The inherent effects of the adoption and use by respondents of the practices and activities in their sale of twine products, as hereinabove alleged, are that:

1. They eliminate price competition and restrain trade between respondents.

2. They result in substantially identical prices, discounts, terms, and conditions of sale, freight charges, and standards of products among respondents.

3. They result in unlawful resale price maintenance and restrain trade among respondent manufacturers' purchasers.

4. They result in an unreasonable hardship and burden being placed upon the purchasing public by depriving the public of the right and opportunity to purchase twine products from one respondent at prices

competitive to, at variance with, and lower than the prices of other respondents.

5. In the sale of hop twine, the unlawful and collusive course of conduct pursued by the respondents named in subparagraph 11 of paragraph 4 accomplished the elimination of a competitor, and deprived purchasers of hop twine of the right and opportunity to purchase said commodity from the competitor that was eliminated at such prices as were set by him independently and without respect to the arbitrary prices that were agreed upon and used by said respondents.

PAR. 6. The combination, conspiracy, agreements, and understandings of the respondents and the acts, practices, pricing methods, devices, and policies alleged herein are unfair and to the prejudice of the public; deprive the public of the benefit of competition; have dangerous tendencies and capacities to unlawfully restrain commerce in the said products; have actually hindered, frustrated, suppressed, and eliminated competition in said products in commerce, and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act.

Commissioner Ferguson not participating.

Complaint dismissed without prejudice by the following order:

This matter coming on to be heard by the Commission upon its own motion; and

It appearing that the complaint originating the proceeding charges the respondents named therein with having unlawfully combined and conspired between and among themselves, and with others, to hinder, frustrate, suppress, restrain, and eliminate competition in the manufacture and in the sale and distribution of twine products in commerce; and

It further appearing from the record and from the Commission's investigational files that the allegations of the complaint purporting to set forth the acts and practices of the respondents, and particularly to describe the classifications of commodities manufactured by the respondent manufacturers, are inaccurate in certain respects; and

The Commission being of the opinion that the subject matter of the proceeding may be disposed of more satisfactorily and more expeditiously by a dismissal of the present complaint and a restatement of the Commission's charges against the respondents in two separate complaints:

It is ordered, That the complaint in this proceeding be, and it hereby is, dismissed, without prejudice, however, to the right of the Commission to issue new complaints stating its charges against all or any of the respondents and to take such further or other action against such respondents as to the Commission may seem proper.

Mr. L. E. Creel, Jr., *Mr. Leslie S. Miller* and *Mr. J. Wallace Adair* for the Commission.

Jones, Jones & Sparks, of Macon, Ga., for Bibb Manufacturing Co.

Pillsbury, Madison & Sutro, of Washington, D. C., for California Cotton Mills Co., Alice G. Brown and William C. Hood.

Mr. Young M. Smith, of Hickory, N. C., for A. A. Shuford Mills Co., Granite Falls Manufacturing Co., Highland Cordage Co., Granite Cordage Co., Hickory Spinning Co., and Shuford Mills, Inc.

Brown & Hawkins, of Yakima, Wash., for Yakima Hardware Co.

Litsinger, Gatenbey & Spuller, of Chicago, Ill., for Schermerhorn Bros Co., of Nebraska, and Schermerhorn Bros. Co., of Illinois.

Heller, Ehrman, White & McAuliffe, of San Francisco, Calif., for Ames, Harris & Neville Co.

Cushing, Cullinan, Trowbridge, Duniway & Gorill, of San Francisco, Calif., for Blake, Moffit & Towne.

Brooks, McLendon, Brim & Holderness, of Greensboro, N. C., for Oakdale Cotton Mills.

Pierce & Blakeney, of Charlotte, N. C., for Cleveland Mill & Power Co.

Mr. William D. Cochran, of Maysville, Ky., for January & Wood Co.

Mr. David W. Richmond, of Washington, D. C., and *Mr. John Marshall, Jr.*, of Louisville, Ky., for Puritan Cordage Mills, Inc.

Kramer, McNabb & Greenwood, of Knoxville, Tenn., for Rockford Manufacturing Co.

Battle, Winslow & Merrell, of Rocky Mount, N. C., for Rocky Mount Mills.

Mr. Thomas B. Bryant, Jr., of Orangeburg, S. C., for Orange Cotton Mills.

Mr. Charles W. Allen and *Mr. Stokes Walton*, of La Grange, Ga., for Callaway Mills.

Weekes & Candler, of Decatur, Ga., for Silver Lake Co. and Whittier Mills Co.

Knox, Jones, Woolf & Merrill, of Anniston, Ala., for Southern Mills Corp.

Venable, Baetjer & Howard, of Baltimore, Md., for Mount Vernon-Woodberry Mills, Inc. and Turner-Halsey Co.

Edmonds, Obermayer & Rebmann, of Philadelphia, Pa., for Wm. E. Hooper & Sons Co.

Vance & Wagner, of Houston, Tex., for Houston Cotton Mills Co.

Kirlin, Campbell, Hickox & Keating, of Washington, D. C. and New York City, for Linen Thread Co., Inc.

Mead & Talbott, of Danville, Va., for Dan River Mills, Inc.

Herrick, Smith. Donald, Farley & Ketchum, of Boston, Mass., for Samson Cordage Works.

Gardner, Morrison & Rogers, of Washington, D. C., for J. P. Stevens & Co., Inc.

Tillett, Campbell, Craighill & Rendleman, of Charlotte, N. C., for the Carded Yarn Association, Inc., and E. Owen Fitzsimons.

Dorr, Hammond, Hand & Dawson, of New York City, for the Cotton-Textile Institute, Inc., and Paul B. Halstead.

LaBerge & Lyon and *Mr. Richard L. Kohls*, of Yakima, Wash., for Arthur J. Toupin.

Mr. Barrie Blackwelder, Jr., of Hickory, N. C., for Bascom B. Blackwelder.

King, Wood Miller & Anderson, of Portland, Oreg., for R. C. Frost.

HENRY CLAY GARRETT TRADING AS TRADERS SALES & LUCKY CHICKS. Complaint, October 18, 1948. Order, January 26, 1951. (Docket 5594.)

CHARGE: Misbranding or mislabeling as to an individual being a United States record of performance breeder and an operator of a poultry-breeding plant or hatchery, under the supervision of an official for the agency supervising the national poultry improvement plan administered by the Bureau of Animal Industry, United States Department of Agriculture in cooperation with the official State agency in charge of the plan in the State of Minnesota; in connection with the sale of baby chicks.

COMPLAINT: Pursuant to 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 Henry Clay Garrett, trading as Traders Sales & Lucky Chicks, hereinafter referred to as respondent, has violated the provisions of the 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, Henry Clay Garrett, is an individual trading as Traders Sales & Lucky Chicks with his office and principal place of business located at Rochester, Minn. His address is Post Office Box 622, Rochester, Minn.

PAR. 2. Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of baby chicks in commerce, said baby chicks being purchased by him from various hatcheries located in the State of Minnesota. Respondent causes said baby chicks when sold to him to be transported from various locations in the State of Minnesota to purchasers thereof located in various other States of the United States.

Respondent maintains and at all times mentioned herein has maintained a course of trade in said baby chicks in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of his business, the respondent is now and has been at all times herein referred to in substantial competition with other individuals, firms, partnerships, and corporations also engaged in the sale and distribution in commerce of baby chicks.

PAR. 4. In the course and conduct of his aforesaid business hereinabove described, the respondent, in the course of shipping baby chicks from various points in the State of Minnesota to purchasers located in other States of the United States, has caused certain labels to be affixed to said shipments, copies of such labels being as follows:

From: ROCHESTER, MINNESOTA
BABY CHICKS
H. C. GARRETT

* Produced as provided by law, under official supervision of Minnesota Poultry Improvement Board in the breeding stages, and the Minnesota Live Stock Sanitary Board in the pullorum control. *

For:

Cooperating in THE NATIONAL POULTRY IMPROVEMENT PLAN administered by the official agencies, U. S. Dept. of Agriculture.

*Asterisks indicate a symbol bearing the words "U. S. PULLORUM TESTED N. P. I. P." and a symbol bearing the words "U. S. APPROVED N. P. I. P.," also bearing a pictorial representation of the baby chick.

Special Handling

(Picture of two baby chicks)

From: H. C. Garrett, Rochester, Minn.

To: _____

No. CHICKS _____ BREED _____ HATCHED _____*

STR RUN _____ SEX _____ ACCURACY GUARANTEED _____%

U. S. APPROVED and U. S. PULLORUM TESTED
For dependable results

CONTENTS: Merchandise 4th Cl.
NOTICE: If not deliverable immediately wire shipper collect.

*Indicates stamp with words "PILLSBURY'S BEST FEEDS."

PAR. 5. By the use of the statements and representations contained on said labels hereinabove set forth, respondent represented that he is a United States record of performance breeder and operates a poultry-breeding plant or hatchery, under the supervision of an official for the agency supervising the national poultry improvement plan administered by the Bureau of Animal Industry, United States Department of Agriculture in cooperation with the official State agency in charge of the plan in the State of Minnesota.

PAR. 6. The foregoing acts and practices, statements, and representations are false and misleading. In truth and in fact, respondent is not a United States record of performance breeder and does not operate a hatchery under the supervision of an official for the agency supervising the national poultry improvement plan administered by the Bureau of Animal Industry, United States Department of Agriculture, in cooperation with the official State agency in charge of said plan in the State of Minnesota.

PAR. 7. The use by the respondent of the foregoing false and misleading statements has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations, and claims are true and by reason of such erroneous and mistaken beliefs so engendered, cause, and has caused, a substantial portion of the purchasing public to purchase substantial quantities of respondent's baby chicks. As a result of respondent's said acts and practices, trade has been unfairly diverted to respondent from his competitors, engaged in the sale in commerce, between and among the various States of the United States and in the District of Columbia, of baby chicks, who do not misrepresent their baby chicks. In consequence thereof, injury has been done by respondent to competition in commerce in such products among and between the various States of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts and practices of respondent as herein alleged were all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Record closed without prejudice by the following order:

This matter coming before the Commission upon the motion of counsel supporting the complaint to dismiss the complaint herein without prejudice and upon the record, and the Commission having duly considered the matter and being now fully advised in the premises;

It is orderd, That the case growing out of the complaint herein be and the same hereby is closed without prejudice to the right of the

Commission to reopen the same and resume trial thereof in accordance with its regular procedure.

Mr. Jesse D. Kash for the Commission.

EVER-LASTING PRODUCTS CO., ET AL. Complaint, April 5, 1948. Order, February 8, 1951. (Docket 5533.)

Charge: Advertising falsely or misleadingly and furnishing means and instrumentalities of misrepresentation and deception as to attributes and qualities of respondents' product, through representing pictorially and otherwise in trade publications that respondents' products will last forever and will assure perpetual protection against the deteriorating elements of time; in connection with the manufacture and sale of caskets.

COMPLAINT: [1] 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 Ever-Lasting Products Co., a corporation, and A. R. Christian and Nancy Kelly, individually and as officers of the aforesaid corporation, herein 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 Ever-Lasting Products Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with offices and principal place of business at 847 North Troy Street, Chicago, Ill.

Respondents A. R. Christian and Nancy Kelly are officers of the aforesaid corporation and have their principal office at the above stated address.

Said respondents are now and for more than 1 year last past have been engaged in manufacturing and selling caskets.

The respondents have caused and now cause their said caskets, when sold by them, to be transported from their aforesaid place of business in the State of Illinois to the purchasers thereof located in various States of the United States and into the District of Columbia. The respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said caskets in commerce

[1] The Commission on October 27, 1949, issued an order granting motion to amend complaint, as follows:

This matter coming on before the Commission upon motion of counsel supporting the complaint to amend the complaint herein by adding as a party respondent Ever-Lasting Products, Inc., a corporation, without the issuance and service of a formal amended complaint or notice with reference thereto, and it appearing to the Commission that counsel for respondent has assented to said motion, and the Commission having duly considered the matter and the record, and being now fully advised in the premises;

It is ordered, That the motion to amend the complaint by adding as a party respondent Ever-Lasting Products, Inc., a corporation, be, and the same hereby is, granted.

among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their aforesaid business, the respondents advertise their said caskets in the "American Funeral Director" and the "Casket and Sunnyside," monthly trade publications that circulate throughout the United States. Respondents aforesaid advertisements featured their trade-mark which consists of a shield bearing the words "Ever-Lasting" and the outline of a pyramid in the background and, in conjunction therewith, pictorial representations of several outstanding creations of nature such as the Mountain of the Holy Cross, unusual rock formations, Mount Hood, Niagara Falls, the Grand Canyon, and a Sphinx and Pyramid, all of which were referred to in said advertisements as Ever-Lasting. In some instances, the terms "enduring" and "perpetual" are also used in said references.

PAR. 3. In immediate conjunction with the aforesaid picturizations appear comparative statements with reference to respondents' caskets such as the following:

The stoic magnificence of the Sphinx stands today, after thousands of years, the symbol of enduring resistance to the ravages of time. * * * There is no better comparison for the enduring protection that is to be found in Ever-Lasting Caskets.

No creation by mankind can ever remotely compete with the magnificence of Grand Canyon. * * * Here is a monument by nature to her own timeless endurance. * * * The same quality of timeless endurance is an important feature in Ever-Lasting Caskets.

Aside from a significance of design, the white snow insignia on the Mountain of the Holy Cross is of interest because of its Ever-Lasting symbolism. * * * Of interest to funeral directors are the enduring qualities of Ever-Lasting Caskets.

Thousands of years are of little importance to rock formations such as these found in Colorado. * * * Of significance to funeral directors are the enduring qualities of Ever-Lasting Caskets.

King of waterfalls is the gigantic Niagara, one of the outstanding wonders of the Western hemisphere. An Ever-Lasting source of power and beauty, this spectacular hydro-phenomenon is as ageless and enduring as the rocks on which it pounds its tons of water. Ever-Lasting Caskets are ageless and enduring, too, in the protection they offer against the elements of time.

No creation of mankind can ever remotely compete with the magnificence of Grand Canyon. * * * Here is a monument by nature to her own timeless endurance. The same quality of timeless endurance is an important feature in Ever-Lasting Caskets. Ever-Lasting precision manufactured from fine materials assures the ultimate in perpetual protection against the deteriorating elements of time.

PAR. 4. Through the use of the aforesaid statements and picturizations, the respondents have represented and now represent that their caskets will last forever and will assure perpetual protection against the deteriorating elements of time. Said statements and claims with

reference to respondent's caskets are false and misleading, and the use by respondents of the pictorial representations, in the manner aforesaid, has the capacity and tendency to mislead and deceive purchasers and prospective purchasers of respondents' caskets. In truth and in fact, said caskets are not ever-lasting and they will not assure perpetual protection against the deteriorating elements of time.

PAR. 5. The use by the respondents of the foregoing false, misleading, and deceptive statements and representations with respect to their said caskets, in the manner aforesaid, has had, and now has, the capacity and tendency to mislead and deceive purchasers and prospective purchasers of said caskets with reference to the attributes and qualities of said caskets and, as a result thereof, to cause such purchasers and prospective purchasers to purchase respondents' said caskets in the erroneous belief that said statements and representations are true. By said acts and practices, respondents also placed in the hands of funeral directors and other purchasers of the aforesaid caskets for resale, a means and instrumentality whereby they may mislead and deceive the purchasing public as to the qualities and characteristics of said caskets.

PAR. 6. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair or deceptive acts or practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Amended complaint dismissed without prejudice by the following order:

This proceeding having come on for final consideration by the Commission upon the amended complaint, respondents' answer thereto, testimony and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, recommended decision of the trial examiner, and brief of counsel supporting the complaint, no brief having been filed by respondents and oral argument not having been requested; and

It appearing to the Commission that the amended complaint herein charges respondents with the use of false and misleading statements in advertising in connection with the offering for sale, sale, and distribution of burial caskets by representing that the said caskets will last forever and will assure perpetual protection; and

It further appearing from the record herein that the complained of false representations did not cause the purchase of respondents' caskets by any of the members of the public ultimately buying the said caskets, said caskets having been sold by respondents in an unfinished condition to jobbers only, which jobbers finished the caskets and affixed thereto their own names and labels, thus keeping the ultimate buyer from identifying the casket as having been manufactured by the respondents; and

It further appearing from the record that the complained of false representations were made in trade publications which were circulated to members of the trade only and that said representations were discontinued more than a year prior to the issuance of the complaint herein; and

The Commission having no reason to believe that the complained of representations will be resumed, and it being of the opinion that in the circumstances the public interest does not require further corrective action in this matter at this time:

It is ordered, That the amended complaint be, and it hereby is, dismissed without prejudice to the right of the Commission to institute a new proceeding or to take such further or other action at any time in the future with respect to the subject matter of said complaint as may be warranted by the then existing circumstances.

Before *Mr. Webster Ballinger* and *Mr. Randolph Preston*, trial examiners.

Mr. DeWitt T. Puckett and *Mr. Russell T. Porter* for the Commission.

Giachini, Cerza & Ley, of Chicago, Ill., for respondents.

ANETSBERGER BROS., INC. ET AL. Complaint, November 1, 1949. Order, March 5, 1951. (Docket 5707.)

Charge: Advertising falsely or misleadingly as to qualities, properties or results of product; in connection with the sale of an article of equipment for restaurants and hotels for use in frying various foods designated as "Anets Filter-Fryer."

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 Anetsberger Bros., Inc., a corporation, and Frank Anetsberger, Andrew M. Bornhofen, and Leroy Schlickenmaier, individually and as officers of said corporation, and Ben Silver, individually and as director 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, Anetsberger Bros., Inc., is an Illinois corporation with its principal place of business located at 180 West Anets Drive, Northbrook, Ill. Respondents Frank Anetsberger, Andrew M. Bornhofen, Leroy Schlickenmaier, and Ben Silver are the president, vice-president, secretary, and a director, respectively, of said corporation. The address of said individual respondents is the same as that of the corporate respondent. As such officers and director, said individuals formulate, direct, and control the acts and practices of the corporate respondent.

PAR. 2. Said respondents are now, and for several years last past have been, engaged in the sale and distribution of an article of equipment for restaurants and hotels for use in frying various foods designated by them as "Anets Filter-Fryer." Respondents cause, and have caused, said product, when sold, to be transported from their place of business in the State of Illinois to purchasers thereof located in various other States of the United States and at all times mentioned herein have maintained and now maintain a course of trade in said products in commerce, among and between the various States of the United States. Respondents' volume of business in said product in such commerce is, and has been, substantial.

PAR. 3. In the course and conduct of their business, and for the purpose of inducing the sale of said product in commerce, respondents have made certain statements and representations with respect to the usefulness and functions of said product, by means of advertisements inserted in trade journals, periodicals, and catalogs. Among and typical of the statements and representations appearing in said advertisements are the following:

Anets Filter-Fryer.
Filter as you Fry Fryer.
Anets New Streamline CGS 11" Filter Fryer.
The Anets Filter Fryer is the only fryer equipped with the patented (Pat. No. 2061533) lift-out crumb tray that lets you filter the fat even during the frying period.

PAR. 4. Through the use of the statements and representations hereinbefore set forth, and others similar thereto not specifically set out herein, respondents represented that their said product acts as a filter; that is, that by its filtering action all crumbs, wastes, and impurities are removed from the hot grease in which food is fried and that it restores the grease to its original purity, all during the cooking process.

PAR. 5. The use by the respondents of the word "Filter" as a part of the trade name "Anets Filter-Fryer" in and of itself serves as a representation that said product is a filter and operates and performs the functions as set out in paragraph 4.

PAR. 6. The said representations are false, misleading, and deceptive. In truth and in fact, said product does not operate as a filter as such operation is hereinabove described, its only utility being that of a sieve or strainer which holds within itself particles of food or other materials too large to go through the interstices of the screen. It will not purify or have any other effect upon the hot grease.

PAR. 7. The use of the aforesaid false, misleading, and deceptive statements and representations including the word "Filter" as a part of the trade name for said product has had and now has the tendency and capacity to mislead and deceive the purchasing public into the erroneous and mistaken belief that such statements and representa-

tions were and are true and into the purchase of respondents' said product because of such erroneous and mistaken belief.

PAR. 8. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Complaint dismissed without prejudice by the following order:

This proceeding coming on to be heard by the Commission upon the complaint of the Commission, the respondents' answer thereto, testimony, and other evidence in support of and in opposition to the allegations of the complaint introduced before a trial examiner of the Commission theretofore duly designated by it, and the trial examiner's initial decision, which decision was vacated and set aside by the Commission upon an appeal therefrom prosecuted by counsel in support of the complaint and opposed by the respondents; and

It appearing to the Commission that the allegations of the complaint have not been sustained by the greater weight of the evidence in the record; and

The Commission, for this reason, being of the opinion that the complaint should be dismissed without prejudice:

It is ordered, That the complaint herein be, and it hereby is, dismissed, without prejudice, however, to the right of the Commission to institute another proceeding or to take such further or other action against the respondents at any time in the future as may be warranted by the then existing circumstances.

Before *Mr. Webster Ballinger*, trial examiner.

Mr. Clark Nichols for the Commission.

Sheridan, Davis & Cargill, of Chicago, Ill., for respondents.

ROBERT SALAZAR DOING BUSINESS AS LOS ANGELES PHARMACAL CO. AND HIDALGO PHARMACY. Complaint, July 16, 1943. Order, April 5, 1951. (Docket 5006.)

Charge: Advertising falsely or misleadingly as to qualities, properties, or results of products and neglecting, unfairly or deceptively, to make material disclosure as to safety of product; in connection with the sale of certain medicinal preparations designated as "Pulmotol," "Femovita," "Renatone Pills" sometimes referred to as "Runaton" and "Stomavita."

COMPLAINT: Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Robert Salazar, an individual trading and doing business as Los Angeles Pharmacal Co. and Hidalgo Pharmacy, hereinafter referred to as the respondent, has violated the provisions of said act and it appearing to the Commission that a proceeding by it in respect thereof

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

PARAGRAPH 1. Respondent Robert Salazar is an individual trading and doing business as Los Angeles Pharmacal Co. and Hidalgo Pharmacy with his principal office and place of business located at 204 North Main Street, Los Angeles, Calif.

PAR. 2. Respondent is now and for some time last past has been engaged in the sale and distribution of certain medicinal preparations designated as "Pulmotol,' "Femovita," "Renatone Pills" sometimes referred to as "Runaton" and "Stomvita.' Respondent causes and has caused said preparations when sold to be transported from his place of business in the State of California to purchasers thereof located in various other States of the United States.

Respondent maintains and at all times mentioned herein has maintained a course of trade in said preparations in commerce between and among the various States of the United States.

PAR. 3. Respondent, in the course and conduct of his aforesaid business has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning his said medicinal preparations designated "Pulmotol," "Femovita," "Renatone Pills" or "Runaton" and "Stomavita" by the United States mails and by various means in commerce, as "commerce" is defined by the Federal Trade Commission Act, and respondent has also disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning his said preparations by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said preparations in commerce, as "commerce" is defined by the Federal Trade Commission Act.

Among, and typical of, the false, misleading and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails, by advertisements inserted in newspapers and periodicals and by radio continuities with respect to the preparations "Pulmotol," "Femovita," and "Renatone Pills" or "Runaton," all in the Spanish language, of which the following are English translations.

Statements and representations with respect to "Pulmotol":

If you notice a danger detrimental to your health, it is logical that you find some manner of avoiding it. It is also logical that when you feel weak you will want to feel better again. You can do so with PULMOTOL. PULMOTOL, at invigorating the organism, puts a strong barrier against the maladies of the chest. PULMOTOL is sold at all drug stores.

If winter is a terrible adversary for all the organisms, PULMOTOL is a defense against the winter because with PULMOTOL the organism fortifies itself

and it combats all the effects of the respiratory system that causes all the colds. Avoid from today on the illness that comes with winter, drink PULMOTOL.

The tonic PULMOTOL has become famous because it combats the bronchial effects and fortifies the nervous system. If you are weak and wish to avoid the troubles of the illness that winter brings us, drink the tonic PULMOTOL immediately. We are sure that if you do this you will never forget the benefits of the results of this famous composition.

Statements and representations with respect to "Femovita":

A growing number of women use by preference the vegetable compound Femovita because every day the feminine sex becomes more convinced that Femovita is composed of fluid extracts of herbs and roots of well-known medicinal value for over 50 years. The excellence of this preparation rests on the great help and relief that can be obtained by women under those circumstances in which medical science prescribes its fine ingredients.

Nervousness and musclar pains and other ailments common in women due to their irregularities in the functions of their sex, can be helped with the Vegetal composition FEMOVITA.

There are many tragedies in the life of a woman, but none comparable to the tragedy of aging prematurely and losing natural, youthful charm due to ailments beyond control. Control your feminine organisms and health. Take Femovita, the tonic for women, an admirable vegetable compound with sure results.

Statements and representations with respect to "Renatone Pills" or "Runaton":

Many persons use daily as a diuretic, combination Runaton pills, for kidney trouble, washing out all acidity, Runaton sells at all best drug stores.

Many people who suffer with kidney trouble may need a stimulant to increase the flow of the urine. This is the result you will obtain from Runaton Pills. Runaton is composed of various medical ingredients that have been proven and prescribed by a number of doctors for more than 50 years. Try them today. Buy them at your drug store.

The kidneys are very delicate filters which take from the blood all impurities. Be sure to keep your kidneys healthy and clean by taking Renatone Pills. So you may avoid ailments such as rheumatism, lumbago, arthritis, nervousness, skin eruptions and some others that may arise from impurities in your blood due to faulty kidneys.

PAR. 4. Through the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, all of which purport to be descriptive of the therapeutic properties of respondent's preparations "Pulmotol," "Femovita" and "Renatone Pills" or "Runaton," respondent represents, directly and by implication, that "Pulmotol" is a competent and effective treatment for a weakened bodily condition, is a preventive of colds and bronchial infections, fortifies the nervous system and acts as a general tonic for the system. That the preparation "Femovita" constitutes a competent and effective treatment for diseases and conditions common to women. That the preparation "Renatone Pills" or "Runaton" is an effective diuretic, will wash out all acids from the kidneys and is a competent and effective treatment for kidney trouble.

PAR. 5. The foregoing statements and representations contained in respondent's advertisements are grossly exaggerated, false, and misleading. In truth and in fact, the preparation "Pulmotol" is not a competent and effective treatment for a weakened bodily condition. Its use will not prevent colds or bronchial infections and it has no value in the treatment of or in fortifying against the disturbances of the nervous system. It is not a general tonic and will afford no significant tonic effect to the system. The preparation "Femovita" is not a competent and effective treatment for diseases and conditions common to women and has no significant therapeutic value in the treatment of any of such diseases or conditions. The preparation "Renatone Pills" or "Runaton" is not an effective diuretic. It will not wash out all or any significant portion of acids from the kidneys and is not a competent and effective treatment for kidney trouble.

PAR. 6. The respondent herein, in the manner set out in paragraph 3 hereof, disseminates or causes the dissemination of advertising matter with respect to his preparation "Stomavita" wherein it is represented that said preparation is effective in relieving constipation and its symptoms. These advertisements constitute false advertisements and the advertisements hereinabove set out with respect to the preparation "Renatone Pills" or "Runaton" constitute false advertisements for the reason that they fail to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the preparations to which the advertisements relate, under the conditions prescribed in said advertisements, or under such conditions as are customary or usual. In truth and in fact, said preparations are irritant laxatives and the use thereof may be dangerous in the case of persons suffering from abdominal pains, stomachache, cramps, nausea, vomiting, or other symptoms of appendicitis.

PAR. 7. The use by the respondent of the foregoing false, deceptive and misleading statements and representations in respect to his said preparations has had, and now has, the tendency and capacity to, and does, mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and to induce a substantial portion of the purchasing public, because of such mistaken and erroneous belief, to purchase respondent's preparations.

PAR. 8. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and constitute unfair and deceptive acts and practices within the meaning of the Federal Trade Commission Act.

Record closed without prejudice by the following order:

This proceeding came on for final consideration by the Commission upon the complaint, respondent's answer thereto, testimony and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, the trial examiner's recommended decision and exceptions thereto by counsel supporting the complaint, and brief of counsel supporting the complaint (no brief having been filed by respondent and oral argument not having been requested).

The record herein shows that on September 16, 1941, the respondent entered into an agreement with the Commission to cease and desist from making certain representations in connection with the sale of certain medical preparations. Respondent in 1942 violated the said agreement in certain respects, whereupon the Commission on July 16, 1943, issued its complaint herein alleging that respondent had disseminated false advertisements in commerce in violation of the Federal Trade Commission Act.

The record shows that respondent in 1942 falsely represented that its preparation, Pulmotol, prevents chest colds and bronchial infections and acts as a tonic and stimulant, that its preparation, Femovita, constitutes a competent and effective treatment for ailments and conditions common to women, and that its preparation, Runaton, constitutes a competent and effective treatment for kidney troubles and will clean out accumulations of acid from the kidneys. In fact, Pulmotol has no beneficial effect except as a mild expectorant, Femovita does not constitute a competent and effective treatment for ailments and conditions common to women, and Runaton has no beneficial effect upon the kidneys and will not clean out accumulations of acid from the kidneys.

The facts of record show that respondent has long since abandoned the practice of disseminating advertisements containing the said false representations and has at all times made a good faith attempt to conform its representations to the agreement to cease and desist.

The Commission, therefore, being of the opinion that in these circumstances the public interest does not require a continuation of this proceeding at this time:

It is ordered, That the case growing out of the complaint herein be, and it hereby is, closed, without prejudice, however, to the right of the Commission to reopen the same or to take such further or other action against the respondent at any time in the future as may be warranted by the then existing circumstances.

Before *Mr. Everett F. Haycraft*, trial examiner.

Mr. Randolph W. Branch and *Mr. R. P. Bellinger* for the Commission.

Mr. Kenneth E. Grant and *Mr. Richard A. Perkins*, of Los Angeles, Calif., for respondent.

POPULAR PRICED DRESS MANUFACTURERS GROUP, INC., DRESS RETURNS CONTROL BUREAU, INC., AND THEIR RESPECTIVE OFFICERS, DIRECTORS, AND MEMBERS. Complaint, May 1, 1939. Order, April 13, 1951. (Docket 3778.)

Charge: Agreeing, combining, and conspiring to hinder and suppress competition between and among manufacturers of respondents' products in the interstate sale and distribution thereof to retailers, and to create a monopoly in such manufacure and sale through compelling and coercing members to confine their sales to such retailers as conform to the rules promulgated by respondent dress manufacturers group for the government of its members; and through other coercive acts and practices, including the compelling of its members to agree upon uniform terms of sale and discounts and to abide by other rules and regulations, under penalty, with the result of prejudicing and hindering manufacturers of women's and misses' dresses from selling their merchandise in interstate commerce to retailers therein who, but for the existence of such agreements, etc., would purchase said products, and with other results as specified in the complaint as follows:

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 Popular Priced Dress Manufacturers Group, Inc., Dress Returns Control Bureau, Inc., and their respective officers, directors, and members, hereinafter referred to as respondents, have violated the provisions of the 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, Popular Priced Dress Manufacturers Group, Inc., is an association of members organized and existing as a corporation under the laws of the State of New York, with its principal office and place of business located at 1440 Broadway in the city of New York in said State. The membership of said respondent, Popular Priced Dress Manufacturers Group, Inc., is composed of individuals, partnerships, and corporations who are located in the city of New York, N. Y., and who are engaged in the manufacture and sale in interstate commerce of women's and misses' dresses which sell at wholesale in the price range of less than $5.

Respondent, Dress Returns Control Bureau, Inc., is an association of members organized and existing as a corporation under the laws of the State of New York with its principal office and place of business located at 1440 Broadway in the city of New York in said State. The membership of said respondent, Dress Returns Control Bureau, is composed of individuals, partnerships, and corporations who are located in the city of New York, N. Y., and who are engaged in the

manufacture and sale in interstate commerce of women's and misses' dresses which sell at wholesale in the price range of less than $5.

Since January 13, 1938, respondent, Dress Returns Control Bureau, Inc., has functioned as a branch of, and has maintained joint offices with respondent, Popular Priced Dress Manufacturers Group, Inc. Membership in respondent, Popular Priced Dress Manufacturers Group, Inc., results automatically in membership in respondent, Dress Returns Control Bureau, Inc., and since January 13, 1938, the membership of both of said respondents has been identical.

Each of said corporate respondents was organized for the ostensible purpose of establishing fair trade practices among its members, to foster and promote better relations between its members and allied branches of the dress industry and to promote the general welfare, progress, and development of the popular-priced dress industry. Said respondents, Popular Priced Dress Manufacturers Group, Inc., and Dress Returns Control Bureau, Inc., are hereinafter for convenience referred to as "respondent associations."

PAR. 2. The names and addresses of the officers of said respondent, Popular Priced Dress Manufacturers Group, Inc., who, in their individual capacities and as such officers of said respondent, are named as respondents herein, are: Ben B. Hirsch, president, 501 Seventh Avenue, New York, N. Y.; Saul Lieber, vice president, 463 Seventh Avenue, New York, N. Y.; H. William Avrutine, second vice president, 463 Seventh Avenue, New York, N. Y.; Barnett B. Joseph, secretary, 224 West Thirty-fifth Street, New York, N. Y.; Albert Greene, treasurer, 237 West Thirty-fifth Street, New York, N. Y.; and Louis Rubin, executive director, 1440 Broadway, New York, N. Y.

The names and addresses of the officers of said respondent, Dress Returns Control Bureau, Inc., who, in their individual capacities and as such officers of said respondent, are named as respondents herein, are as follows: Morris Posner, president, 1440 Broadway, New York City; Harry Sterngold, secretary, 1440 Broadway, New York City; Albert Greene, treasurer, 1440 Broadway, New York City; and Louis Rubin, executive director, 1440 Broadway, New York City.

PAR. 3. The following named individuals are or have been members of the Board of Directors of said respondent, Popular Priced Dress Manufacturers Group, Inc., and of said respondent, Dress Returns Control Bureau, Inc., and are named as respondents herein in their individual capacities and in their capacities as members of the Board of Directors of said respondents, Popular Priced Dress Manufacturers Group, Inc., and Dress Returns Control Bureau, Inc.: George Edelstein, 1950 Andrews Avenue, Bronx, N. Y.; Al Green, 1400 Ocean Avenue, Brooklyn, N. Y.; Sam Altman, 300 Central Park, West, New York City; Moe S. Newman, 1419 Shakespeare Avenue,

Bronx, N. Y.; Harry Cohen, 1445 Saint Johns Place, Brooklyn, N .Y.; Edward Cohen, 91–10 Seventy-seventh Boulevard, Queens, L. I.; David Goldberg, 20 West Eighty-sixth Street, New York City; Jimmie Cohen, 605 West One hundred and seventieth Street, New York City; Elliott Kahn, 300 Riverside Drive, New York City; Louis Lipshitz, 510 West One hundred and twelfth Street, New York City; Samuel Wexler, 125 West Twelfth Street, New York City; Julius Goldberg, 25 Central Park, West, New York City; Samuel Abrams, 2121 Westbury Court, Brooklyn, N. Y.; William Aronson, 67 Hanson Place, Brooklyn, N. Y.; Sam Gordon, 246 East Fifty-first Street, New York City; Harry H. Greenberg, 1580 East Seventeenth Street, Brooklyn, N. Y.; Dave Harmarkz, 1329 College Avenue, Bronx, N. Y.; Sam Javer, 237 West Thirty-fifth Street, New York City; Sidney Blauner, 710 West End Avenue, New York City; Ben Ross, 145 West Ninety-sixth Street, New York City; Murray Schneidman, 2136 Crotona Parkway, Bronx, N. Y.; Max Rothstein, 656 West One hundred and seventy-first Street, New York City; Ben B. Hirsch, 501 Seventh Avenue, New York City; Saul Lieber, 463 Seventh Avenue, New York City; Benjamin Green, 1558 Clifford Place, Bronx, N. Y.; George Prince, 2675 Grand Concourse, Bronx, N. Y.; Fred Pomerantz, 40 West Eighty-sixth Street, New York City; Maurice Ribner, 300 Central Park, West, New York City; Louis Rosen, 240 West Thirty-fifth Street, New York City; Mike Reiter, 150–82 Eighty-seventh Avenue, Jamaica, L. I.; Meyer Pusar, 2840 West Thirty-sixth Street, Brooklyn, N. Y.; Henry A. Trussel, 1057 New McNeil Avenue, Lawrence, L. I.; Jack Wasserman, 336 West End Avenue, New York City; Al Wienberg, 300 Central Park, West, New York City; and S. J. Weiss, 135 Eastern Parkway, Brooklyn, N. Y.

The said officers and directors of respondents Popular Priced Dress Manufacturers Group, Inc., and Dress Returns Control Bureau, Inc., named in paragraphs 2 and 3 hereof, are hereinafter for convenience referred to as "individual respondents."

PAR. 4. The membership of said respondent, Popular Priced Dress Manufacturers Group, Inc., and of said respondent, Dress Returns Control Bureau, Inc., constitute a class so numerous and changing as to make it impractical to specifically name them all as respondents herein. The following concerns, all located in the city of New York within the State of New York, among others, are members of said respondents, Popular Priced Dress Manufacturers Group, Inc., and Dress Returns Control Bureau, Inc., are fairly representative of the whole membership of said respondents and are named as respondents herein independently and severally and as members of said respondents, Popular Priced Dress Manufacturers Group, Inc., and Dress Returns Control Bureau, Inc., and as representatives of all members of said respondents, Popular Priced Dress Manufacturers Group, Inc.,

and Dress Returns Control Bureau, Inc., as a class, including those not herein specifically named who are also made respondents herein; A & B Dress Co., Inc., 463 Seventh Avenue; Alpine Dance Frocks, Inc., 491 Seventh Avenue; Bernstein & Blatter, Inc., 1359 Broadway; Chatham Dress Co., Inc., 306 West Thirty-eighth Street; Max Cohen, 463 Seventh Avenue; Cohen & Klausner, Inc., 501 Seventh Avenue; Dunbar Frocks, Inc., 148 West Thirty-seventh Street; Excellent Dresses, Inc., 501 Seventh Avenue; Fo-Mar Dress Corp., 501 Seventh Avenue; Sam Gordon, Inc., 501 Seventh Avenue; Halperin Frocks, Inc., 254 West Thirty-fifth Street; Integrity Dresses, Inc., 501 Seventh Avenue; Jomax Frocks, Inc., 501 Seventh Avenue; Lombardi Frocks, Inc., 134 West Thirty-seventh Street; Melba Dress Co., Inc., 501 Seventh Avenue; Noxall Waist & Dress Co., Inc., 463 Seventh Avenue; Plymouth Frocks, Inc., 237 West Thirty-fifth Street; L. Rosen Dress Co., Inc., 240 West Thirty-fifth Street; Smart Maid Dresses, Inc., 253 West Thirty-fifth Street; Trussel Dress Co., Inc., 501 Seventh Avenue; Venus Dress Corp., 213 West Thirty-fifth street; and Winfred Dress, Inc., 1375 Broadway. Said respondents are hereinafter for convenience referred to as "respondent members."

PAR. 5. The aforesaid members of said respondent associations, consisting of approximately 215 individuals, copartnerships, and corporations, are located in the city of New York in the State of New York. Most of said members are engaged in the manufacture and sale of women's and misses' dresses which sell in the wholesale price range of less than $5. Said members cause said products when so sold to be transported from their respective places of business in the city of New York, N. Y., to the purchasers thereof located at various points in the several States of the United States other than the State of New York and in the District of Columbia, and there has been, and now is, a constant course of trade and commerce in said products between the members of said respondent associations and retail dealers in said products located throughout the several States of the United States and in the District of Columbia. Except for the acts and practices engaged in by the respondent members of respondent associations as hereinafter set forth, said respondent members would be in free, open, and active competition with each other in the sale and distribution of their respective products in commerce between and among the several States of the United States and in the District of Columbia. At all times mentioned herein said respondent members have been in competition with other corporations, partnerships, and individuals likewise engaged in the manufacture and sale of women's and misses' dresses in said commerce.

PAR. 6. Respondent members of respondent associations, acting in cooperation with each other and through and in cooperation with said respondent associations and their officers and directors, and each of

them, on or about January 13, 1938, entered into an understanding, agreement, combination, and conspiracy among themselves and with and through said respondent associations and said individual respondents to hinder and suppress competition between and among manufacturers of women's and misses' dresses in the interstate sale and distribution of their said products to retail dealers therein; and also to restrain interstate trade in said products; and also to create a monopoly in the manufacture and interstate sale of said products in the said members of said respondents, Popular Priced Dress Manufacturers Group, Inc., and Dress Returns Control Bureau, Inc. Pursuant to said understanding, agreement, combination and conspiracy, said respondents have respectively and cooperatively performed, and are now so performing the following acts and practices, to wit:

(*a*) Said respondent, Popular Price Dress Manufacturers Group, Inc., has coerced and compelled, and now coerces and compels, its members to confine the sales of their merchandise to such retail dealers in women's and misses' dresses as conform to, and abide by, the rules promulgated by said respondent for the government of its members under penalty of fine or suspension for failure so to do;

(*b*) Said respondent, Dress Returns Control Bureau, Inc., has coerced and compelled, and now coerces and compels, retail dealers of women's and misses' dresses to refrain from returning garments to manufacturers thereof except in accordance with regulations promulgated by said respondent under penalty of being blacklisted and boycotted by the members of said respondent, Popular Priced Dress Manufacturers Group, Inc., as more particularly described in subparagraph (*c*);

(*c*) Said respondents, Popular Priced Dress Manufacturers Group, Inc., and Dress Returns Control Bureau, Inc., have employed and now employ, investigators to investigate the return by retailers of all ladies' dresses to the manufacturers thereof and to ascertain whether or not said returns are in accordance with the rules and regulations promulgated by said respondents, Popular Priced Dress Manufacturers Group, Inc., and Dress Returns Control Bureau, Inc. Where retailers refuse to keep and pay for dresses received by them from the manufacturers thereof and return the same to said manufacturers in violation of the rules and regulations promulgated by said Popular Priced Dress Manufacturers Group, Inc., and Dress Returns Control Bureau, Inc., said respondent, Dress Returns Control Bureau, Inc., thereupon places the name of such noncooperating retail dealer on a blacklist and circulates said blacklist among the members of said respondent, Popular Priced Dress Manufacturers, Inc., who thereupon and thereafter refuse to sell ladies' and misses' dresses designed and manufactured by them to such noncooperating

retail dealers; and since the date of its organization said respondent, Dress Returns Control Bureau, Inc., has blacklisted, and said members of said respondents, Popular Priced Dress Manufacturers Group, Inc., and Dress Returns Control Bureau, Inc., have refused to sell their products to retail dealers located throughout the several States of the United States.

(*d*) Said respondent, Popular Priced Dress Manufacturers Group, Inc., has coerced and compelled, and now coerces and compels, its members to agree upon uniform terms of sale and discounts and to abide by its other rules and regulations, all under penalty of being required to pay to said respondent, Popular Priced Dress Manufacturers Group, Inc., fines in a substantial amount of money and of being expelled from membership in said respondent, Popular Priced Dress Manufacturers Group, Inc.

PAR. 7. The result of the said understanding, agreement, combination and conspiracy, and the acts and practices performed thereunder by said respondents, as hereinabove set forth, has been, and now is (*a*) to prevent and hinder manufacturers of women's and misses' dresses from selling their merchandise in interstate commerce to retail dealers in such garments who, but for the existence of said agreement, combination, or conspiracy, would purchase said products; (*b*) to prevent retail dealers in women's and misses' dresses from purchasing their requirements of said products in interstate commerce from the manufacturers thereof; (*c*) to force many retail dealers to discontinue the sale of said products because of their inability to maintain a supply thereof at reasonable prices; (*d*) to substantially increase the price of women's and misses' dresses to the manufacturers, retail dealers and to the consuming public; and (*e*) to place in the hands of the respondents, Popular Priced Dress Manufacturers Group, Inc., and Dress Returns Control Bureau, Inc., control over the business practices of the manufacturers and distributors of women's and misses' dresses and the power to exclude from this industry those manufacturers and distributors who do not conform to the rules and regulations established by said respondents, Popular Priced Dress Manufacturers Group, Inc., and Dress Returns Control Bureau, Inc., and thus to tend to create a monopoly in the members of said respondents, Popular Priced Dress Manufacturers Group, Inc., and Dress Returns Control Bureau, Inc.

PAR. 8. The foregoing alleged acts and practices of the said respondents have been, and still are, to the prejudice of the buying public generally and the customers and competitors of the members of said respondent associations in particular, and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act.

Complaint dismissed without prejudice by the following order:

This matter coming on for consideration and it appearing that the record in this proceeding contains a stipulation entered into on October 10, 1947, between Everette MacIntyre, then Assistant Chief Trial Counsel of the Federal Trade Commission, and counsel for certain of the respondents, which stipulation provides, among other things, that service of any order to cease and desist in this proceeding will not be made until the Commission has entered its order disposing of the proceeding, entitled, *In the Matter of National Coat & Suit Industry Recovery Board et al.*, docket No. 4596; and

The Commission having on December 1, 1950, entered its order in docket No. 4596 dismissing, for the reasons stated therein, the complaint in that proceeding without prejudice to the right of the Commission to conduct a further investigation into respondents' business practices and to take such further action in the future as may be deemed warranted by the then existing circumstances, which order also recites that the action of the Commission does not constitute an adjudication of the issues involved;[1] and

There having been no adjudication of the issues of that proceeding on the merits as contemplated by the respondents in this proceeding who were parties to the stipulation of October 10, 1947, and it further appearing in this proceeding that the acts and practices referred to in the complaint issuing on May 1, 1939, occurred more than 12 years ago under economic conditions differing materially from those now prevailing; and

The Commission being of the opinion that the public interest will be best served by dismissal of the complaint in this proceeding, it being understood, however, that such action does not constitute an adjudication of the issues involved or prejudice the right of the Commission to conduct a further investigation into respondents' business practices and to take such further action as the Commission may consider warranted as a result of such investigation, or otherwise:

Accordingly, it is ordered, That the complaint in this proceeding be, and it hereby is, dismissed without prejudice to the right of the Commission to take such further action against the respondents at any time in the future as may be warranted by the then existing circumstances.

Before *Mr. William L. Pack*, trial examiner.

Mr. George W. Williams for the Commission.

Hartman, Sheridan & Tekulsky and *Phillips, Nizer, Benjamin & Krim*, of New York City, for Popular Priced Dress Manufacturers Group, Inc., Dress Returns Control Bureau, Inc., and various officers, directors, and members thereof.

[1] 47 F. T. C., p. 1552.

Mr. Benjamin Greenspan, of New York City, for the Estate of Saul Lieber and Noxall Waist & Dress Co., Inc.

Mr. Harry Lyons, of New York City, for Jimmie Cohen.

Mr. Marcus Katz, of New York City, for Max Rothstein.

ASSOCIATED FUR COAT & TRIMMING MANUFACTURERS, INC., ET AL. Complaint, September 10, 1940. Findings as to the facts and order to cease and desist, December 1, 1950.[1] Order vacating findings as to the facts and order to cease and desist, and dismissing complaint without prejudice, April 13, 1951.

Charge: Agreeing, combining, and conspiring to hinder and suppress competition in the sale and distribution of fur coats, other fur garments, and fur trimmings through arranging for and carrying into effect a system of uniform discounts, refusing to sell or deliver on memorandum or on consignment, and certain other practices, with the result that customers and users were forced to buy and receive said products on uniform, arbitrary and fixed terms, and deprived, to their detriment, of free and normal competition among members in the course of interstate commerce; as set forth in said complaint as follows:

COMPLAINT: Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that the individuals, firms, and corporations named and referred to in the caption or title hereof, and more fully described hereinafter and referred to as respondents, and the other members of said respondent Associated Fur Coat and Trimming Manufacturers, Inc., of which the named respondent members are representative, have violated the provisions of the 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, Associated Fur Coat and Trimming Manufacturers, Inc., hereinafter referred to as "Association," is a membership corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York with its office at 224 West Thirtieth Street, New York, N. Y. It was organized in 1911, or thereabouts, and is composed of a membership of approximately 700 corporations, partnerships, firms, and individuals, including the named respondent members, all of whom are engaged in the manufacture of fur coats, other fur garments and fur trimmings. Said respondent Association was formed with the purpose and effect of creating a clearing house and agency for obtaining the joint cooperation of its members, who, through respondent Association have, and still do, engage in the combination hereinafter alleged.

[1] Not published. See footnote, 47 F. T. C. 671.

PAR. 2. Respondents Julius Green, Benjamin Morsoff, Julius B. Gross, Sol Rosenberg, Alexander Abrams, and Louis Fenster are president, first vice president, second vice president, third vice president, secretary, and treasurer, respectively, individually and as officers of said Association.

PAR. 3. Alexander Abrams and Alexander Winkler, respondents, are copartners trading as Alexander Abrams & Winkler, with their principal office and place of business at 214 West Twenty-ninth Street, New York City.

Harry Fuchs, Manuel Fuchs, and Joseph Deutsch, respondents, are copartners trading as Harry Fuchs & Deutsch, with their principal office and place of business at 345 Seventh Avenue, New York City.

Abe Grauer and Herman Herskowitz, respondents are copartners trading as Grauer & Herskowitz with their principal office and place of business at 357 Seventh Avenue, New York City.

Max Kotuck, Elias Chavin, and Samuel Mednick, respondents, are copartners trading as Kotuck, Mednick & Chavin, with their principal office and place of business at 236 West Thirtieth Street, New York City.

Louis Rose, Benjamin Pack and Howard M. Pack, respondents, are copartners trading as Rose & Pack with their principal office and place of business at 305 Seventh Avenue, New York City.

Jonas Weinig and Alexander Weinig, respondents, are copartners trading as J. Weinig & Son, with their principal office and place of business at 333 Seventh Avenue, New York City.

Barney Wollman and Herman Wollman, respondents, are copartners trading as B. Wollman & Bro. with their principal office and place of business at 352 Seventh Avenue, New York City.

Anna Walzer and Charles Walzer, respondents, are copartners trading as A. Walzer & Son, with their principal office and place of business at 330 Seventh Avenue, New York City.

Arnheimer, Inc., respondent, is a corporation organized, existing, and doing business under the laws of the State of New York with its principal office and place of business at 347 Seventh Avenue, New York City.

Geo. J. Baruch, Inc., respondent, is a corporation organized, existing, and doing business under the laws of the State of New York, with its principal office and place of business at 150 West Thirtieth Street, New York City.

I. & A. Berger, Inc., respondent, is a corporation organized, existing, and doing business under the laws of the State of New York with its principal office and place of business at 150 West Thirtieth Street, New York City.

S. & H. Berger, Inc., respondent is a corporation organized, existing, and doing business under the laws of the State of New York,

with its principal office and place of business at 333 Seventh Avenue, New York City.

Brand & Brody, Inc., respondent, is a corporation organized, existing, and doing business under the laws of the State of New York with its principal office and place of business at 150 West Thirtieth Street, New York City.

J. DeLeo & Co., Inc., respondent, is a corporation organized, existing, and doing business under the laws of the State of New York, with its principal office and place of business at 130 West Thirtieth Street, New York City.

Feinberg & Freeman, respondent, is a corporation organized, existing, and doing business under the laws of the State of New York, with its principal office and place of business at 333 Seventh Avenue, New York City.

Julius Green Fur Company, Inc., respondent, is a corporation organized, existing, and doing business under the laws of the State of New York, with its principal office and place of business at 330 Seventh Avenue, New York City.

Harry & Jack Grossman, Inc., respondent, is a corporation organized, existing, and doing business under the laws of the State of New York, with its principal office and place of business at 345 Seventh Avenue, New York City.

Ben Kahn, Inc., respondent, is a corporation organized, existing, and doing business under the laws of the State of New York, with its principal office and place of business at 20 West Fifty-seventh Street, New York City.

M. M. Loinger Company, Inc., respondent, is a corporation organized, existing, and doing business under the laws of the State of New York, with its principal office and place of business at 352 Seventh Avenue, New York City.

Lenkowsky Bros. Furs, Inc., respondent, is a corporation organized, existing, and doing business under the laws of the State of New York, with its principal office and place of business at 330 Seventh Avenue, New York City.

Chauncey I. Rice, Inc., respondent, is a corporation organized, existing, and doing business under the laws of the State of New York, with its principal office and place of business at 330 Seventh Avenue, New York City.

Schwartz & Bluestein, Inc., respondent, is a corporation organized, existing, and doing business under the laws of the State of New York, with its principal office and place of business at 345 Seventh Avenue, New York City.

Louis Stein & Son, Inc., respondent, is a corporation organized, existing, and doing business under the laws of the State of New

York, with its principal office and place of business at 350 Seventh Avenue, New York City.

Lou White, Inc., respondent, is a corporation organized, existing, and doing business under the laws of the State of New York, with its principal office and place of business at 150 West Thirtieth Street, New York City.

Zimmerman & Scher, Inc., respondent, is a corporation organized, existing, and doing business under the laws of the State of New York, with its principal office and place of business at 150 West Thirtieth Street, New York City.

All of the above-named respondents are, and have been for some time, members of respondent Association.

As the membership of respondent Association is so large, and is changing from time to time, and cannot be joined as parties respondent in this proceeding without manifest inconvenience and delay, prejudicial to the public interest, respondent members are, therefore, made parties respondent hereto, individually, and as representatives of each and every member of respondent Association.

PAR. 4. The members of respondent Association are now, and have been, during the time hereinafter mentioned, engaged in the sale and distribution in the regular course of trade of said products in commerce between and among the various States of the United States and in the District of Columbia. Pursuant to such sales, and as a part thereof, said members have regularly shipped, and do ship, and cause to be delivered, their said products to customers located at various points in the several States of the United States other than the State in which said members' places of business are located, and in the District of Columbia, and there is now and has been for more than 3 years last past a constant current of trade and commerce in said products between and among the several States of the United States and in the District of Columbia.

PAR. 5. The members of respondent Association, in the course and conduct of their respective businesses, as hereinbefore described, but for the combination and conspiracy as to matters and things hereinafter set forth, would be naturally and normally in competition with each other and/or with other corporations, partnerships, firms, and individuals, also engaged in the business of manufacturing fur coats, other fur garments and fur trimming, and in the sale and delivery thereof, to customers located throughout the several States of the United States and in the District of Columbia.

The volume of trade and commerce done by the members of respondent Association constitutes an important part of the trade and commerce between and among the United States in fur coats and other fur garments and trimmings particularly in the vicinity of New York City.

PAR. 6. Respondent Association and the members thereof, during the last 3 years, and to the date of the complaint, have entered into and carried out an agreement, combination, and conspiracy among themselves and with each other, to hinder and suppress competition in the sale and distribution of said products between and among the various States of the United States, other than the State of origin, and in the District of Columbia, and to create a monopoly in the manufacture and sale of said products in the United States and in the District of Columbia. Respondent Association and the members thereof, pursuant to said agreement, combination and conspiracy, and in furtherance thereof, have collectively and cooperatively done and performed, and still do and perform the following acts and practices, to wit:

(*a*) Arranged for and carried into effect a system of uniform discounts in connection with the sale or other disposition of their said products;

(*b*) Members of respondents Association refuse to sell or deliver their said products on memorandum or on consignment;

(*c*) Members of respondent Association refuse to accept the return of said products sold and delivered on memorandum or on consignment, except in accordance with uniform, specific, and definite arrangements agreed upon by and between them;

(*d*) Enforced adherence to said discounts, terms and conditions and other practices by means of fines, suspensions, and expulsions by the respondent Association.

PAR. 7. As a result of said agreement, combination, and conspiracy and the acts and practices performed thereunder and pursuant thereto, by said respondents Association, the members thereof, the customers and users of said products, in order to obtain them from the members of respondent Association, have been, and are now, forced and compelled to buy and receive the same on said uniform, arbitrary, definite, and fixed terms, and have been, and are now, deprived, to their detriment, of free and normal competition between and among said members in the course of interstate commerce.

PAR. 8. The acts and practices of the respondents and the other members of respondent Association, as herein alleged, are all to the prejudice of the public, and have a dangerous tendency to injure, hinder, and prevent, and have actually injured, hindered, and prevented, competition, in the respects above referred to, between and among said members in the sale of their said products in commerce, within the intent and meaning of the Federal Trade Commission Act; have a dangerous tendency to create in respondents a monopoly in said product in said commerce; have unreasonably restrained such commerce in their said products and constitute unfair methods of com-

petition in commerce within the intent and meaning of the Federal Trade Commission Act.

Said findings and cease and desist order were vacated and the complaint dismissed without prejudice by the following order:

This matter coming on to be heard by the Commission upon the respondents' petition for an order vacating the findings as to the facts and order to cease and desist issued in this proceeding on December 1, 1950, and dismissing the complaint herein, and the answer to such petition filed by Everette MacIntyre, Chief, Division of Investigation and Litigation, of the Commission's Bureau of Antimonopoly; and

It appearing to the Commission that on May 4, 1948, a stipulation was entered into by and between counsel for the respondents and counsel in support of the complaint, which stipulation provided, among other things, that no order to cease and desist prohibiting the principal trade practices involved in this proceeding should be served upon the respondents "unless and until the Commission has entered an order disposing of allegations concerning similar practices" set forth in the complaint in the matter of National Coat and Suit Industry Recovery Board, et al., docket No. 4596; and

It further appearing from the respondents' petition and from the memorandum in support thereof that said stipulation was entered into upon the understanding that the Commission would withhold its decision on the merits of the issues in this proceeding until such time as the merits of the like or similar issues in docket No. 4596 were disposed of; and

It further appearing that the Commission, on December 1, 1950, issued an order dismissing the complaint in docket No. 4596 without prejudice to the right of the Commission to take such further action against the respondents therein as may be warranted by future circumstances, thus disposing of the complaint in said docket No. 4596 without a decision on the merits of the issues therein; and

The Commission being of the opinion that because of the understanding upon which the stipulation herein was executed, the disposition of the complaint in docket No. 4596 without a decision on the merits of the issues therein necessitates a reconsideration of the disposition of this proceeding; and

The Commission being of the further opinion that because of the fact that the complaint originating this proceeding was issued September 10, 1940, and that the acts and practices alleged to have been in violation of the Federal Trade Commission Act all occurred more than 10 years ago under economic conditions differing materially from those now prevailing, the public interest will be better served by a dismissal of the complaint than by a continuation of the proceeding, it being understood, however, that this action does not constitute an adjudication of any of the issues involved or prejudice the right of

the Commission to conduct a further investigation into the respondents' business practices and to take such further action as the Commission may consider warranted as a result of such investigation, or otherwise:

It is ordered, That the findings as to the facts and order to cease and desist issued in this proceeding on December 1, 1950, be, and they hereby are, vacated and set aside.

It is further ordered, That the complaint herein be, and it hereby is, dismissed without prejudice to the right of the Commission to take such further action against the respondents at any time in the future as may be warranted by the then existing circumstances.

Before *Mr. Frank Hier*, trial examiner.

Mr. George W. Williams and *Mr. George M. Martin* for the Commission.

Mr. Manfred H. Benedek, of New York City, for respondents.

MILLINERY STABILIZATION COMMISSION, INC., ET AL. Complaint, September 26, 1941. Order denying appeal of counsel in support of complaint from ruling of trial examiner, and dismissing complaint without prejudice, April 13, 1951. (Docket 4597.)

Charge: Agreeing, combining, and conspiring to hinder and suppress competition in the interstate sale and distribution of millinery in the United States, and to promote a monopoly therein and control and regulate said industry, through seeking to compel every millinery manufacturer in the New York Trade Area to become a member of respondent Stabilization Commission, or to maintain himself in good standing therewith, under penalty of being deprived of the right or opportunity to purchase equipment and materials, employ union help, find selling agents, etc., and through imposing upon all factors in said industry, rules and regulations and requirements designed to bring about various restraints; and through a variety of other practices; on the part of said respondent Stabilization Commission, nine corporate trade associations, three unincorporated labor unions, and the officers of the several organizations, individually and as representatives of the organizations' members; all as in detail set out in the complaint as follows:

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 each and all of the parties named in the caption hereof and hereinafter more particularly described, designated, and referred to as respondents, have violated the provisions of the 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 Millinery Stabilization Commission, Inc., is a membership corporation organized and existing under and by virtue of the laws of the State of New York, and having its office and principal place of business located at 1450 Broadway, in the city of New York, in said State. The following named individuals of 1450 Broadway, in the city of New York, are officers of said respondent corporation and as such are designated as respondents herein:

Max Meyer	Chairman.
Paul F. Brissenden	Commissioner.
Mrs. Richard J. Bernhard	Commissioner.
Joseph Lipshie	Auditor.

The membership of said corporation is made up of some four hundred manufacturers of women's headwear, most of whom are likewise members of respondent Eastern Women's Headwear Association, Inc., or the National Association of Ladies' Hatters, Inc., hereinafter referred to. At one time the membership of respondent Millinery Stabilization Commission, Inc., also included certain manufacturers of blocks and dies used in the manufacture of women's headwear, who were members of respondents Hat Block and Die Makers Association, Inc., and Wood Hat Block Manufacturers Association, Inc., hereinafter referred to.

The said respondent Millinery Stabilization Commission, Inc., was organized in 1936 for the ostensible purpose of establishing and effectuating certain so-called fair trade practices, not only among its members, but among all persons, firms, and corporations engaged in the importation, manufacture or sale of raw materials, supplies or equipment used in the manufacture of millinery; millinery manufacturers, importers, distributors, and jobbers; manufacturers' sales representatives; resident buyers, and retailers.

PAR. 2. Respondent Eastern Women's Headwear Association, Inc., is a membership corporation organized and existing under and by virtue of the laws of the State of New York, and having its office and principal place of business at 1440 Broadway in the city of New York, in said State.

The following individuals are or have been the officers of said Eastern Women's Headwear Association, Inc., and as such are designated as respondents herein:

Walter K. Marks	President.
Jack Newman	Second vice president.
George Lesser	Third vice president.
David Steinberg	Fourth vice president.
Sam Grubard	Treasurer.
David Rubenstein	Secretary.
Louis N. Margolin	Executive director.

The membership of said respondent corporation is made up of some 325 manufacturers of women's headwear. From time to time the

membership of said Eastern Women's Headwear Association, Inc., is changed by the addition and withdrawal of members, so that all the members of said Association at any given point of time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make it impractical to name them all as individual respondents herein. Wherefore, the officers hereinbefore named as respondents as such officers are also made respondents as representing all members of said Association, including those members not herein specifically named.

PAR. 3. Respondent National Association of Ladies Hatters, Inc., is a membership corporation organized and existing under and by virtue of the laws of the State of New York and having its office and principal place of business located at 452 Fifth Avenue in the city of New York, in said State. The following individuals are or have been the officers of said National Association of Ladies Hatters, Inc., and as such are designated as respondents herein:

G. Howard Hodge	Vice president.
Nathan J. Garfunkel	Vice president
Theodore Walther	Treasurer.
Samuel D. Seideman	Secretary.

The membership of said respondent corporation is made up of approximately 60 manufacturers of women's headwear. From time to time the membership of said National Association of Ladies Hatters, Inc., changes by the addition and withdrawal of members so that all of the members of said Association at any given point of time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make it impractical to name them all as individual respondents herein. Wherefore, the officers hereinbefore named as respondents as such officers are also made respondents as representing all the members of said Association, including those members not herein specifically named.

PAR. 4. Respondent Millinery Manufacturers of New Jersey, Inc., is a membership corporation, organized and existing under and by virtue of the laws of the State of New Jersey and having its office and principal place of business located at 245 Fourth Street, Passaic, N. J.

The following named individuals are or have been the officers of said Millinery Manufacturers of New Jersey, Inc., and as such are designated as respondents herein:

Harry A. Baum	President.
Al. Hoffman	First vice president.
Harold Ruben	Second vice president.
Rupert Musyl	Treasurer.
Alexander Grossman	Executive secretary.

The membership of said respondent corporation is made up of approximately 25 manufacturers of women's headwear. From time to time the membership of said Millinery Manufacturers of New Jersey, Inc., is changed by the addition and withdrawal of members so that all the members of said corporation at any given point of time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make it impractical to name them all as individual respondents herein. Wherefore, the officers hereinabove named as respondents as such officers, are also made respondents as representing all members of said corporation, including those members not herein specifically named.

PAR. 5. The aforesaid members of said Eastern Women's Headwear Association, Inc., National Association of Ladies Hatters, Inc., and Millinery Manufacturers of New Jersey, Inc., consist of approximately 410 individual copartnerships and corporations located principally in the city of New York and in the States of New York and New Jersey. Said members individually are engaged in the business of designing and manufacturing women's hats and in the sale of said hats to distributors, jobbers, and retail dealers, many of whom are located in States other than the States of New York and New Jersey, causing said products, when so sold, to be transported from their respective places of manufacture across State lines to the purchasers thereof, and there has been and now is a continuous current of interstate trade and commerce in said products between respondent members of said membership corporations and jobbers, distributors, and retail dealers in said millinery located throughout the several States of the United States.

PAR. 6. In the course and conduct of their said respective businesses, respondent members in the said Eastern Women's Headwear Association, Inc., National Association of Ladies Hatters, Inc., and Millinery Manufacturers of New Jersey, Inc., except for the matters and things hereinafter set forth, would be naturally and normally in competition with each other, and are in competition with other individual copartnerships and corporations also engaged in the manufacture of women's hats and in the interstate sale of said products to jobbers, distributors, and retail dealers. Said respondent members above referred to, together with some 150 other manufacturers located in or near New York City, produce approximately two-thirds of the total production of the millinery industry in the United States. The said hats designed, manufactured, and sold by the members of the corporations above mentioned are in such demand by the trade and public that the retail dealers of ladies' hats attempting to offer a full line of ladies' millinery to the public are required to stock and handle at least some of the lines of said manufacturers.

PAR. 7. Respondent United Hatters, Cap and Millinery Workers International Union is an unincorporated labor union of millinery workers, affiliated with the American Federation of Labor and having its office and principal place of business located at 245 Fifth Avenue, New York, N. Y. The following named individuals are or have been officers of said respondent and as such are designated as respondents herein:

Max Zaritsky	President.
Michael F. Green	Secretary-Treasurer.

The membership of said United Hatters, Cap and Millinery Workers International Union is made up of various local unions of millinery workers engaged in the manufacture of ladies' hats in various parts of the United States.

PAR. 8. Respondent Local No. 24 of United Hatters, Cap and Millinery Workers International Union is a local labor union of millinery workers, having its office and principal place of business located at 31 West 37th Street, New York, N. Y. The following individuals are or have been officers of such local union and as such officers are designated as respondent herein:

Nathaniel Spector	Manager.
Abraham Mendelowitz	Assistant manager.
Alexander Rose	Secretary and treasurer.

The membership of said Local No. 24 of said International Union is made up of workers engaged in the manufacture of ladies' hats as well as other kinds of headwear. From time to time the membership of said Local No. 24 of said International Union is changed by the addition and withdrawal of members so that all the members of said Union at any given time cannot be specifically named as respondents herein without inconvenience and delay and also said respondent membership constitutes a class so numerous as to make it impractical to name them all as individual respondents herein, wherefore, the officers hereinabove named as respondents as such officers are also made respondents as representing all members of said Union, including those members not herein specifically named.

PAR. 9. Respondent Local No. 42 of United Hatters, Cap and Millinery Workers International Union is a local labor union of millinery workers, having its office and principal place of business located at 31 West Thirty-seventh Street, New York, N. Y. The following individuals are or have been officers of such local union and as such officers are designated as respondents herein:

Max Goldman	Business manager.
Mac Gross	Treasurer.

The membership of said Local No. 42 of said International Union is made up of workers engaged in the manufacture of ladies' hats as

well as other kinds of headwear. From time to time the membership of said Local No. 42 of said International Union is changed by the addition and withdrawal of members so that all the members of said Union at any given time cannot be specifically named as respondents herein without inconvenience and delay and also said respondent membership constitutes a class so numerous as to make it impractical to name them all as individual respondents herein, wherefore, the officers hereinabove named as respondents as such officers are also made respondents as representing all members of said Union, including those members not herein specifically named.

PAR. 10. Respondents named in the three preceding paragraphs, being the United Hatters, Cap and Millinery Workers International Union and Locals Nos. 24 and 42 of said Union, and their officers and members are and have been engaged in certain unfair practices and methods hereinafter described, which directly affect and restrain competition in interstate commerce in headwear among the other respondents named herein and among said respondents and their competitors not named herein as respondents.

PAR. 11. Respondent Ribbon, Silk and Velvet Association, Inc., is a membership corporation organized and existing under and by virtue of the laws of the State of New York and having its office and principal place of business located at 1440 Broadway, in the city of New York in said State. The following individuals are or have been the officers of said Ribbon, Silk and Velvet Association, Inc., and as such are designated as respondents herein:

Sigmund Klein	President.
Erwin E. Weber	First vice president.
Edward E. Ziskind	Second vice president.
Andrew J. Edgar	Treasurer.
David Hirsch	Executive secretary.

The membership of said respondent corporation is made up of importers, manufacturers, and suppliers of raw materials, supplies, or equipment used in the manufacture of millinery. From time to time the membership of said Ribbon, Silk and Velvet Association, Inc., is changed by the addition and withdrawal of members so that all of the members of said Association at any given time cannot be named as respondents herein without inconvenience and delay and also said respondent members constitute a class so numerous as to make it impractical to name them all as respondents herein. Wherefore, the respondents hereinbefore named as respondents as such officers are also made respondents as representing all the members of said Association, including those members not herein specifically named.

PAR. 12. Respondent Hat Block and Die Makers Association, Inc., is a membership corporation organized and existing under and by

virtue of the laws of the State of New York and having its office and principal place of business located at 1440 Broadway in the city of New York in said State. The following individuals are or have been the officers of said Hat Block and Die Makers Association, Inc., and as such are designated as respondents herein:

Irving Samis	President.
Jack Cuming	Vice president.
Eugene Pohlman	Treasurer.
Louis Mehlman	Executive secretary.
David Hirsch	Executive chairman.

The membership of said respondent corporation is made up of manufacturers and suppliers of blocks and dies used for the manufacture of millinery. From time to time the membership of said Ribbon, Silk and Velvet Association, Inc., is changed by the addition and withdrawal of members so that all of the members of said Association at any given time cannot be named as respondents herein without inconvenience and delay and also said respondent members constitute a class so numerous as to make it impractical to name them all as respondents herein. Wherefore, the respondents hereinbefore named as respondents as such officers are also made respondents as representing all the members of said Association, including those members not herein specifically named.

PAR. 13. Respondent Wood Hat Block Manufacturers Association, Inc., is a membership corporation organized and existing under and by virtue of the laws of the State of New York and having its office and principal place of business located at 1440 Broadway in the city of New York in said State. The following individuals are or have been the officers of said Wood Hat Block Manufacturers Association, Inc., and as such are designated as respondents herein:

Jack Nyman	President.
Joseph Buxbaum	Vice president.
Morris Aaronson	Treasurer.
Louis Mehlman	Executive secretary.
David Hirsch	Executive chairman.

The membership of said respondent corporation is made up of manufacturers and suppliers of blocks and dies used for the manufacture of millinery. From time to time the membership of said Wood Hat Block Manufacturers Association, Inc., is changed by the addition and withdrawal of members so that all of the members of said Association at any given time cannot be named as respondents herein without inconvenience and delay and also said respondent members constitute a class so numerous as to make it impractical to name them all as respondents herein. Wherefore, the respondents hereinbefore named as respondents as such officers are also made re-

spondents as representing all the members of said Association, including those members not herein specifically named.

PAR. 14. Respondent New York Association of Wholesale Distributors of Ladies' and Children's Hats, Inc., is a membership corporation organized and existing under and by virtue of the laws of the State of New York and having its office and principal place of business located at 270 Broadway in the city of New York, in said State. The following individuals are or have been the officers of said New York Association of Wholesale Distributors of Ladies' and Children's Hats, Inc., and as such are designated as respondents herein:

Max Greenberg	President.
Paul Schuman	Vice president.
Ben Creiner	Secretary.
Isaac L. Sable	Treasurer.

The membership of said respondent corporation is made up of wholesale distributors and jobbers of ladies' and children's hats. From time to time the membership of said New York Association of Wholesale Distributors of Ladies' and Children's Hats, Inc., is changed by the addition and withdrawal of members so that all of the members of said Association at any given time cannot be named as respondents herein without inconvenience and delay and also said respondent members constitute a class so numerous as to make it impractical to name them all as respondents herein. Wherefore, the respondents hereinbefore named as respondents as such officers are also made respondents as representing all the members of said Association, including those members not herein specifically named.

PAR. 15. Respondent New York Buyers Association, Inc., is a membership corporation organized and existing under and by virtue of the laws of the State of New York and having its office and principal place of business located at 991 Sixth Avenue, in the city of New York in said State. The following individuals are or have been the officers of said New York Buyers Association, Inc., and as such are designated as respondents herein:

Arthur Mincer	President.
Everett Martin	Chairman of the board.
Joseph D. Barzilay	Vice president.
Leon Mittenthal	Treasurer.
Theodore Averbach	Secretary.

The membership of said respondent corporation is made up of buyers of millinery who are residents of New York City who purchase millinery for certain retail dealers located in various parts of the country whom such buyers represent as purchasing agents. From time to time the membership of said New York Buyers Association, Inc., is changed by the addition and withdrawal of members so that all of the members of said Association at any given time cannot be

named as respondents herein without inconvenience and delay and also said respondent members constitute a class so numerous as to make it impractical to name them all as respondents herein. Wherefore, the respondents hereinbefore named as respondents as such officers are also made respondents as representing all the members of said Association, including those members not herein specifically named.

PAR. 16. Respondent Millinery Manufacturers Representatives, Inc., is a membership corporation organized and existing under and by virtue of the laws of the State of New York and having its office and principal place of business located at 65 West Thirty-ninth Street in the city of New York in said State. The following individuals are or have been the officers of said Millinery Manufacturers Representatives, Inc., and as such are designated as respondents herein:

Archie Berman	President.
Harry Feuer	First vice president.
Benjamin Tuerk	Second vice president.
Sidney Loeb	Secretary and treasurer.

The membership of said respondent corporation is made up of sales representatives of various millinery manufacturers engaged in selling millinery as representatives of said manufacturers to the retail trade. From time to time the membership of said Millinery Manufacturers Representatives, Inc., is changed by the addition and withdrawal of members so that all of the members of said Association at any given time cannot be named as respondents herein without inconvenience and delay and also said respondent members constitute a class so numerous as to make it impractical to name them all as respondents herein. Wherefore, the respondents hereinbefore named as respondents as such officers are also made respondents as representing all the members of said Association, including those members not herein specifically named.

PAR. 17. The principal area in which millinery is manufactured in the United States is the area in and around New York City and Northern New Jersey. In this area herein referred to as the New York trade area, are located more than half of the millinery manufacturers of the country, producing a majority of the women's and children's hats marketed commercially in the United States. Factory-made millinery reaches the ultimate consumer through various channels of distribution, the most common of which are sales by the manufacturer direct to the retail dealer, often through the medium of the manufacturer's sales representative or the purchaser's resident agent. Many articles of millinery are also sold by manufacturers to wholesalers or jobbers, who in turn resell to retailers. Some retailers are chain organizations, owning or controlling a considerable number of stores, and some are syndicates leasing the millinery departments of large department stores dealing in many lines of merchandise.

PAR. 18. Respondent Millinery Stabilization Commission, Inc., was originally organized as a result of agreements, entered into in January 1936, between respondents Eastern Women's Headwear Association, Inc., and National Association of Ladies Hatters, Inc., and respondent Labor Unions. These agreements contemplated that said Stabilization Commission should be vested with power to formulate and enforce so-called fair trade practices in the millinery industry, and this power was included among the powers of said Stabilization Commission in its certificate of incorporation.

The bylaws of said Millinery Stabilization Commission, Inc., provide for an advisory board, exercising the usual power of a board of directors of a corporation, consisting of seven members selected by respondent Eastern Women's Headwear Association, one member selected by respondent National Association of Ladies Hatters, Inc., two members selected by respondent Millinery Manufacturers of New Jersey, Inc., and seven members selected by the Labor Unions named as respondents herein.

PAR. 19. The respondents hereinabove named and described, and each of them, under varying circumstances and degrees of cooperation and willingness and for differing periods of time, from about January 1936 to date, have entered into, acquiesced in, or observed various agreements and understandings to hinder and suppress competition in the interstate sale and distribution of millinery in the United States, and have joined in or participated in combinations and conspiracies to restrain such trade and to promote a monopoly therein among themselves. The primary purpose of such agreements, understandings, combinations, and conspiracies has been to control and regulate the millinery industry in the United States in the interest of the respondents. To further this objective, respondents have sought to compel every millinery manufacturer in the New York trade area to become a member of respondent Millinery Stabilization Commission, Inc., or to maintain himself in good standing with such commission, under penalty of being deprived of the right or opportunity of purchasing equipment and materials necessary for the manufacture of hats, of employing Union help, of finding selling agents willing to sell his products, or of finding jobbers, retailers, or their representatives willing to purchase his line of merchandise. In furtherance of such objectives respondent Millinery Stabilization Commission, Inc., and respondent manufacturers have imposed or attempted to impose upon all factors in the millinery industry, including one another, and including suppliers of raw materials, blocks and dies, independent manufacturers, jobbers, wholesalers, selling agents, resident buyers and retailers, rules, regulations, and requirements hereinafter more particularly described, which were designed to bring about and which brought about various restraints and partial restraints

upon the freedom of competitive action of many of such factors, and which hindered and suppressed competition in many of its phases in said millinery industry. The nature, scope, purposes, results, and effect of such agreements and conspiracies, together with the means used to effectuate the same, are hereinafter more particularly set forth.

PAR. 20. Pursuant to the said agreements and conspiracies, on or about July 8, 1937, respondent Millinery Stabilization Commission, Inc., with the aid and cooperation of many of the other respondents, adopted, promulgated, and effectuated certain so-called trade practice provisions and rules and regulations, among which were the following:

TRADE PRACTICE PROVISION I

It shall be unfair competition to sell merchandise except in accordance with the following uniform conditions of sale, and they shall be incorporated in each contract of sale by each member:

SECTION 1. Merchandise shall be shipped only f. o. b. city or area of manufacture.

SEC. 2. No advertising allowance shall be made either directly or indirectly except for advertising in which the name or trade mark of the manufacturer is prominently displayed.

SEC. 3. A reasonable charge in addition to the ordinary selling price must be made for furnishing or attaching labels, tags, or special linings which bear the customer's name, trade mark, factory number, or identification mark.

SEC. 4. Orders shall not be subject to cancellation and cancellation shall not be accepted until after the specified delivery date. When no delivery date is specified, they shall not be subject to cancellation until 2 weeks from date of order.

SEC. 5. No goods shall be sold on open order subject to consignment or approval or by any other method which has the effect of selling on consignment or memorandum or guaranteeing retail turn-over.

SEC. 7. No millinery manufacturer shall sell merchandise through a commission resident buyer, unless the commission resident buyer either (1) displays written authorization from the retailer for the specific order placed before the merchandise is placed in work, or (2) has on file with the Millinery Stabilization Commission, Inc., a standing written authorization to buy merchandise for said retailer.

SEC. 9. No return merchandise shall be accepted for credit except that merchandise not in accordance with purchaser's specifications expressed in the order or having defective workmanship or material shall be subject to return within five days of receipt by the purchaser.

SEC. 10. Terms of sale shall not include any discount in excess of 7 percent, 10 days, E. O. M., except that merchandise shipped on and after the 25th of the month may be dated as the first of the following

month. Anticipation shall not be allowed at a rate less than 6 percent per annum.

SEC. 11. All disputes shall be submitted to arbitration under the procedure of the Millinery Stabilization Commission, Inc.

TRADE PRACTICE PROVISION VI

It shall be unfair competition to manufacture, sell, ship, or deliver merchandise unless it bears a consumer's protection label under the existing authorization from the Millinery Stabilization Commission, Inc. No such label shall be attached except in accordance with said authorization and the label rules and regulations of the Commission.

TRADE PRACTICE PROVISION VII

SECTION 1. It shall be an unfair trade practice for any member of the millinery manufacturing industry either to loan or sell blocks or dies to anyone other than the original seller to him.

SEC. 2. It shall be an unfair trade practice for the millinery manufacturing industry to give out duplicates of blocks or dies other than to the block and die manufacturers who manufactured or sold the original to said millinery manufacturers.

RULES AND REGULATIONS APPLYING TO MILLINERY MANUFACTURERS

1. Each and every millinery manufacturer shall confine purchases of blocks, dies, parts thereof or other equipment used in connection therewith to those manufacturers of said equipment who are registered and in good standing with the Millinery Stabilization Commission, Inc.

2. Each and every manufacturer shall compute the cost of each item in his line before putting it in work by means of the uniform cost accounting system recommended by the Millinery Stabilization Commission, Inc.

3. No consumers' protection labels shall be attached to so-called ashcan or second-hand made-over hats.

4. No so-called sales merchandise shall be offered, manufactured or delivered in any season before a reasonable date fixed for that season by the Millinery Stabilization Commission.

BLOCK AND DIE DIVISION RULE AND REGULATION NO. 1

Each and every block and die manufacturer shall confine sales of blocks, dies, parts thereof or other equipment used in connection therewith to those manufacturers of millinery who are registered and in good standing with the Millinery Stabilization Commission, Inc.

On or about March 2, 1938, the above rules and regulations applying to millinery manufacturers Nos. 1 and 4 and the above block and

die division rule and regulation No. 1 were eliminated from the above so-called trade practice provisions.

On or about February 27, 1939, the above so-called provision I, section 3 was amended as of March 10, 1939, to read as follows:

No labels, tags, or special linings which bear the customer's name, trade mark, factory number, or identification mark shall be attached to hats unless they are furnished to manufacturer by the customer at the customer's expense.

PAR. 21. Respondent Millinery Stabilization Commission, Inc., respondent manufacturers and respondent labor unions have since about 1936 conspired together and entered into various agreements whereby said manufacturers covenanted that they were affiliated with respondent Millinery Stabilization Commission, Inc., and that each article of millinery manufactured by them would bear the so-called Consumers' Protection Label issued by said Stabilization Commission. In said agreements respondent labor unions covenanted that they would not permit their members to work on any millinery which was not to bear and which did not bear, when completed, such so-called Consumers' Protection Label. Pursuant to such agreements and such conspiracy, respondent manufacturers and respondent labor unions have coerced and compelled reclacitrant members of respondent Millinery Stabilization Commission, Inc.; and of respondents Eastern Women's Headwear Association, Inc.; National Association of Ladies Hatters, Inc.; and Millinery Manufacturers of New Jersey, Inc.; together with numerous independent millinery manufacturers not affiliated with or members of said respondent associations last above mentioned, to purchase said labels from respondent Millinery Stabilization Commission, Inc., and to attach them to all hats manufactured and sold by said manufacturers. Respondent Millinery Stabilization Commission, Inc., pursued a policy of coercing manufacturers into agreeing to comply with the so-called fair trade practices rules hereinabove described before it would sell such labels to such manufacturers. In the event of a failure on the part of a manufacturer to purchase and attach such labels to his product, either because of a denial of the opportunity to purchase such labels on account of a refusal on his part to conform to the Stabilization Commission's program for the government of the millinery industry or because of his refusal to purchase such labels, respondent labor unions by agreements and understandings with the Stabilization Commission proceeded by means of strikes, walkouts or stoppages of work, or threats of strikes, walkouts or stoppages of work, engaged in by the members of respondent labor unions, to compel all manufacturers employing said members to procure the labels issued by such Stabilization Commission and to place them upon all articles of millinery manufactured by them.

By the means above outlined, respondent Millinery Stabilization Commission, Inc., has exacted payments from millinery manufacturers amounting to approximately $115,000 per annum and has imposed upon such manufacturers an additional expense of $200,000 per year or more, representing the cost of attaching said labels to the hats manufactured for sale and distribution by such manufacturers.

PAR. 22. To effectuate said conspiracy and agreements and to attain the ends thereof, said respondent Millinery Stabilization Commission, Inc., respondent manufacturers and respondent labor unions, acting concertedly or in groups with the active or passive cooperation or consent of the other respondent, have done the following things, among others:

(1) Adopted, effectuated and enforced the so-called trade practice provisions, and rules and regulations set forth in paragraph 21 above;

(2) Set up an enforcement body known as an advisory board, composed of seven members selected by respondent Eastern Women's Headwear Association, Inc., one member selected by respondent National Association of Ladies Hatters, Inc., two members selected by respondent Millinery Manufacturers of New Jersey, Inc., and seven members selected by respondent labor unions;

(3) Coerced millinery manufacturers into signing agreements to observe the bylaws, trade practice provisions, and rules and regulations (adopted or to be adopted) of respondent Millinery Stabilization Commission, Inc.;

(4) Coerced millinery manufacturers into agreeing to pay "as dues" charges set by said Stabilization Commission for so-called "Consumers' Protection Labels" and into agreeing to attach such labels to all hats manufactured and distributed by them;

(5) Coerced millinery manufacturers into agreeing to submit and submitting to investigations, examinations, and audits of their books, records, merchandise, premises, and practices by said Stabilization Commission to enable it to ascertain whether its so-called trade practice rules were being complied with;

(6) Coerced millinery manufacturers into agreeing that they would abide by all decisions of said Stabilization Commission in all matters in which it claims jurisdiction;

(7) Coerced millinery manufacturers into agreeing with the respondent labor unions that workers would not be permitted to work on hats which did not bear the so-called "Consumers' Protection Label" attached "under the then existing authorization from the Millinery Stabilization Commission, Inc.";

(8) Held meetings and discussed means and methods of compelling recalcitrant manufacturers to purchase and attach said labels to hats produced by them;

(9) By letters and oral statements, demanded by various millinery manufacturers that they purchase and use said labels and threatened reprisal in the form of strikes, walkouts and work stoppages if said demands were not met and complied with;

(10) Respondent Millinery Stabilization Commission, Inc., adopted and effectuated the following resolution: "*Resolved*, That beginning Monday morning, May 4, 1936, no hats shall be shipped by any manufacturer that do not have attached thereto a Consumers' Protection Label, and that the union shall notify its shop chairman to that effect. In association shops should the manufacturer refuse to use such labels, such manufacturer shall be cited to the Impartial Board within 24 hours for violation of the agreement. In the independent shops such manufacturer shall be given 24 hours in which to attach such labels and, in the event of his refusal to do so within 24 hours, the union will instruct its workers not to continue working in such shop";

(11) Respondent Millinery Stabilization Commission, Inc., summoned various millinery manufacturers to appear at so-called hearings and imposed fines on such manufacturers for a failure to purchase and attach said labels to hats manufactured and sold by them and for a failure to abide by certain of the Stabilization Commission's so-called fair trade practice rules;

(12) Respondent labor unions threatened various millinery manufacturers with strikes, walkouts, and stoppages of work, called such strikes, walkouts, and stoppages of work, and by such means compelled said manufacturers to subscribe to and observe respondent Millinery Stabilization Commission's so-called trade practice rules and buy such so-called "Consumers' Protection Labels" and attach them to their products;

(13) Said respondents compelled millinery manufacturers to pay varying amounts to respondent Millinery Stabilization Commission, Inc., to cover or adjust purported or claimed "shortages" in the number of said labels purchased by such manufacturers;

(14) Respondent Millinery Stabilization Commission, Inc., and respondents Hat Block and Die Makers Association, Inc., and Wood Hat Block Manufacturers Association, Inc., entered into an agreement, under the terms of which respondent block and die manufacturers agreed that they would not sell blocks or dies to any millinery manufacturer who was not registered and in good standing with respondent Millinery Stabilization Commission, Inc. In said agreement respondent block and die manufacturers also agreed that they would abide by all the rules and regulations adopted by respondent Millinery Stabilization Commission, Inc., and that they would abide by all decisions of said commission with reference to all matters pertaining to the functions thereof;

(15) Respondent Millinery Stabilization Commission, Inc., coerced and compelled respondent Ribbon, Silk and Velvet Association, Inc., and its members, into agreeing that they would not sell their merchandise, directly or indirectly, to millinery jobbers, retail syndicates or commission salesmen, nor to any customer in the metropolitan area of New York and New Jersey, except to millinery manufacturers registered and in good standing with the Millinery Stabilization Commission, and that they would not accept assignments of accounts receivable or guaranties of indebtedness from any of their customers;

(16) Respondent Millinery Stabilization Commission, Inc., sent letters to and called meetings of millinery body manufacturers, importers, and suppliers and proposed and demanded that, and attempted to induce them to agree that, they would not sell millinery bodies or supplies to any millinery manufacturer who was not registered and in good standing with said Millinery Stabilization Commission and that they would not sell such merchandise to jobbers, retail syndicates or commission salesmen.

(17) Respondent Millinery Stabilization Commission, Inc., and respondent labor unions coerced millinery jobbers and wholesalers, including respondents New York Association of Wholesale Distributors of Ladies' and Children's Hats, Inc., and its members, into agreeing that they would not engage in the business of contracting with others for the manufacture of millinery, and that they would not purchase such merchandise in any case unless the same bore the so-called consumers protection label.

(18) Respondent Millinery Stabilization Commission, Inc., coerced commission agents selling millinery for manufacturers, including respondents Millinery Manufacturers Representatives, Inc., and its members, into agreeing that they would not engage in the contracting business, that all hats handled within the New York trade area should bear the so-called consumers protection label, and that all millinery should be sold on the basis of said so-called Trade Practice rules of said respondent commission.

(19) Respondent Millinery Stabilization Commission, Inc., coerced resident buyers of millinery, including respondent New York Buyers Association and its members, into agreeing that all orders for hats placed by them should incorporate and include a provision that such hats should bear the so-called consumer protection label, and a stipulation that the transaction was to conform to the conditions of sale theretofore promulgated by said respondent commission.

(20) Respondent Millinery Stabilization Commission, Inc., has sought to and attempted, in some cases successfully, to impose upon retailers purchasing millinery from respondent manufacturers, and upon organizations of retailers, recognition of and adherence to the

so-called trade practice rules and the requirement that all hats bought and sold by such retailers shall bear the so-called consumer protection label, and published and circulated lists of those retailers refusing to subscribe to and observe such rules and requirement.

(21) Respondents, during the period herein mentioned, have done and performed many other acts and things to carry out the purposes of and to further the objects of said agreements and understandings, to enforce and effectuate the same, and to impose the requirements thereof generally upon those engaged in the manufacture, sale, and distribution of millinery.

PAR. 23. The capacity, tendency, and effect of the aforesaid agreements, conspiracies, policies, practices, and acts and things, done and performed by respondents in pursuance thereof are and have been:

(1) To tend to monopolize in respondent manufacturers the business of manufacturing and of selling and distributing millinery in the New York trade area, and from that area to the country at large.

(2) To tend to monopolize in respondent manufacturers the opportunity to purchase and secure raw materials and skilled labor for the manufacture of millinery in said trade area.

(3) To fix and maintain discounts and various terms and conditions attending the sale of millinery to buyers in all parts of the country.

(4) To unreasonably lessen, suppress, and restrain competition in the sale and distribution of millinery throughout the United States and in the District of Columbia, and to deprive wholesalers, jobbers, selling agents, resident buyers, retailers, and the purchasing public of the advantages in price, terms, and conditions of sale, service, and other consideration which they would receive, have, and enjoy under conditions of normal and unobstructed and free and fair competition in said trade and industry, and to otherwise operate as a restraint upon, obstruction to and detriment to the freedom of fair and legitimate competition in such trade and industry.

(5) To suppress, discriminate against, and eliminate contractors and small manufacturers who are or have been engaged in, or desire to engage in, the manufacture and sale of millinery.

(6) To burden, hamper, and interfere with the normal and natural flow of trade and commerce in millinery from, into and through the various States of the United States and the District of Columbia.

PAR. 24. The acts and practices of said respondents, as herein alleged, are all to the prejudice of the public; have a dangerous tendency to hinder and prevent, and have actually hindered and prevented competition in price, terms of sale and services, between and among said respondents, between and among other millinery manufacturers and distributors, and between the latter and the respondents, in the sale of their said products in commerce within the intent and mean-

ing of the Federal Trade Commission Act; and placed in said respondents power to control and enhance prices of their said products; have a dangerous tendency to create in respondents a monopoly in said products in such commerce; have unreasonably restrained such commerce in their said products, and 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.

The order denying appeal of counsel in support of complaint from ruling of trial examiner and dismissing complaint without prejudice follows:

This matter is before the Commission for its consideration of an appeal filed by counsel in support of the complaint from a ruling of the trial examiner granting in part and denying in part the respondents' motion for dismissal of the complaint. An appeal from the same ruling was filed on behalf of the respondents also, but in view of the disposition of the case hereinafter made no decision of that appeal or of the questions raised therein is required.

In granting in part the respondents' motion for dismissal, the trial examiner held, in substance, (1) that the complaint fails to allege facts sufficient to bring the respondent associations and their respective members within the Commission's jurisdiction, and (2) that the attempt to make the members of the several associations and labor unions parties respondent by naming the officers of said associations and unions as representatives of the members is insufficient in law. The trial examiner therefore dismissed the complaint, without prejudice, however, to a continuation of the proceeding in the event the complaint should be amended in the respects mentioned.

The complaint herein names as parties respondent Millinery Stabilization Commission, Inc., a membership corporation, nine corporate trade associations, three unincorporated labor unions, and the officers of the several organizations, individually and as representatives of the organizations' members. None of the business concerns which is a member of any of the organizations was otherwise named and none was served with process. Also, there is no allegation that any of the associations or labor unions was organized to carry on business for profit or that any of them is engaged in interstate commerce. Additionally, the complaint contains no allegation that any of the officers named as a representative of the membership of his organization is himself either a member of the organization of which he is an officer or that he is engaged in any kind of business in commerce.

In the absence of a showing that the Millinery Stabilization Commission, Inc., and the other respondent associations were organized to carry on business, either for their own profit or for the profit of their members, such associations are not themselves subject to the

Commission's jurisdiction. Any corrective action against these organizations necessarily must be accomplished by reaching their respective members; and the members of the organizations obviously are not before the Commission. The complaint on its face shows not only that the officers named as representatives of the association members are not of the same general class as the unnamed members, but also that such named officers do not have the same general interests as the members and that they do not in fact represent the members.

The Commission's jurisdiction over the parties referred to not having been shown, the trial examiner's ruling on this point was correct. Accordingly, it is ordered that the appeal from the aforesaid ruling filed by counsel in support of the complaint be, and it hereby is, denied.

The Commission does not agree, however, that this proceeding should be continued even under an amended complaint. This complaint was issued September 26, 1941, and the acts and practices alleged to have been in violation of the Federal Trade Commission Act all occurred more than 10 years ago under economic conditions differing materially from those now prevailing. Whether or not such acts and practices have been continued is, of course, not shown, and in the circumstances the Commission feels that the public interest will be better served by a dismissal of the proceeding than by a continuation thereof even under an amended complaint, it being understood, however, that this action does not constitute an adjudication of any of the issues involved (other than those specifically ruled on herein) or prejudice the right of the Commission to conduct a further investigation into the respondents' business practices and to take such further action as the Commission may consider warranted as a result of such investigation, or otherwise.

It is therefore further ordered, That the complaint herein be, and it hereby is, dismissed without prejudice to the right of the Commission to take such further action against the respondents at any time in the future as may be warranted by the then existing circumstances.

Before *Mr. Everett F. Haycraft*, trial examiner.

Mr. George W. Williams, *Mr. George M. Martin* and *Mr. Rufus E. Wilson* for the Commission.

Giddings, *Keating & Reid*, of New York City, for Millinery Stabilization Commission, Inc., National Association of Ladies Hatters, Inc., Millinery Manufacturers of New Jersey, Inc., Hat Block and Die Makers Association, Inc., Wood Hat Block Manufacturers Association, Inc., and their respective officers and members, and along with—

Liebowitz & Schuman, of New York City, for New York Association of Wholesale Distributors of Ladies' and Children's Hats, Inc., and its officers and members;

Mr. Lewis Dworsky, of New York City, for Millinery Manufacturers Representatives, Inc., and its officers and members.

Lopin & Jacobson, of New York City, for Eastern Women's Headwear Association, Inc., and its officers and members.

Mr. Charles H. Green, of New York City, for United Hatters, Cap and Millinery Workers International Union, Local No. 24 of United Hatters, Cap and Millinery Workers International Union, Local No. 42 of the United Hatters, Cap and Millinery Workers International Union, and their respective officers and members.

Lamb & Lerch, of New York City, for Ribbon, Silk and Velvet Association, Inc., and its officers and members.

Mr. Irving I. Friedman, of New York City, for New York Buyers Association, Inc., and its officers and members.

NATIONAL ASSOCIATION OF BLOUSE MANUFACTURERS, INC., ET AL. Complaint, October 23, 1943. Order, April 13, 1951. (Docket 5068.)

Charge: Entering into, acquiescing in, or observing agreements or understandings to hinder and suppress competition in the interstate sale and distribution of clothing and merchandise such as blouses, blousettes, waists, gilets, vestees, and tunic blouses, and joining or participating in combinations and conspiracies to restrain such trade and promote monopoly therein, with the primary object of controlling and regulating all the manufacture and distribution of such products, through imposing on manufacturers, jobbers, and other rules, regulations, and requirements designed to bring about various restraints upon the freedom of competitive action of many such factors, and through various other undertakings, acts, and practices directed to furthering respondents' objects and purposes, including the fixing and maintaining of various coercive and other practices directed toward the accomplishment of such objectives; on the part of respondent National Association of Blouse Manufacturers, respondent Greater Blouse, Skirt and Neckwear Contractors Association, Inc., and respondent union, and on the part of various individuals and concerns as officers, members, etc., of aforesaid respondent organizations; as set forth in detail in the complaint in said matter as follows:

COMPLAINT: Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the parties named in the caption hereof, and hereinafter more particularly described, designated, and referred to as respondents, together with those of whom they are representative, 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 National Association of Blouse Manufacturers, Inc., hereinafter referred to as respondent Manufacturers Association, 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 225 West Thirty-fourth Street, New York, N. Y.

The following named individuals are officers of said respondent Manufacturers Association and as such as designated as respondents herein: Abraham Rosenthal, president; Sidney Heller, first vice president; William Schneider, second vice president; Emil Adelaar, secretary; and Benjamin H. Lerner, executive director. Said respondents discharge the usual functions of the officers of a corporation.

The following named individuals are members of the Board of Directors of said respondents Manufacturers Association and as such are designated as respondents herein: Emil Adelaar, Lou Brecher, Morris Cederbaum, Nathan Cumsky, Marcus Helitzer, Alfred Kolodny, Leo Levy, Samuel Mitchell, Sam Nadler, Vincent Sica, Herman Steinfeld, and Albert Weiner. Said Board of Directors is the governing body of said Association.

PAR. 2. The membership of the respondent Manufacturers Association is made up of various corporations, partnerships, and individuals engaged in the manufacture, sale, and distribution of clothing and merchandise such as blouses, blousettes, waists, gilets, vestees, and tunic blouses.

Among the members of said Manufacturer Association are the following:

Respondent Opera Dress and Blouse, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York and having its office and principal place of business located at 525 Seventh Avenue, New York, N. Y.

Respondent Sidney Heller Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York and having its office and principal place of business located at 525 Seventh Avenue, New York, N. Y.

William Schneider, trading as Vanity Blouse and Sportswear, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York and having its office and principal place of business located at 525 Seventh Avenue, New York, N. Y.

Respondent Adelaar Bros., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York and having its office and principal place of business located at 525 Seventh Avenue, New York, N. Y.

Respondent Venida Blouse Corp., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York and having its office and principal place of business located at 525 Seventh Avenue, New York, N. Y.

Respondent Morris Cederbaum, trading as Abalene Blouse and Sportswear, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York and having its office and principal place of business located at 525 Seventh Avenue, New York, N. Y.

Respondent Helitzer Brothers & Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York and having its office and principal place of business located at 525 Seventh Avenue, New York, N. Y.

Respondent Blousecraft Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York and having its office and principal place of business located at 1372 Broadway, New York, N. Y.

Respondent Mitchell & Weber, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York and having its office and principal place of business located at 1372 Broadway, New York, N. Y.

Respondent National Blouse Corp., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York and having its office and principal place of business located at 1372 Broadway, New York, N. Y.

Respondent Sica Bros., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York and having its office and principal place of business located at 141 West Thirty-sixth Street, New York, N. Y.

Respondent Steinfeld Blouse and Sportswear, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York and having its office and principal place of business located at 525 Seventh Avenue, New York, N. Y.

Respondent Crysler Products Corp. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York and having its office and principal place of business located at 19 West Thirty-fourth Street, New York, N. Y.

Respondent New York Mfg. Corp., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York and having its office and principal place of business located at 1372 Broadway, New York, N. Y.

Respondent Sports Guild, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York and having its office and principal place of business located at 550 Seventh Avenue, New York, N. Y.

Respondent Society Sportswear, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York and having its office and principal place of business located at 1359 Broadway, New York, N. Y.

Respondent Tuxedo Blouse Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York and having its office and principal place of business located at 132 West Thirty-sixth Street, New York, N. Y.

Respondent Variety Blouse & Sportswear, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York and having its office and principal place of business located at 142 West Thirty-sixth Street, New York, N. Y.

The membership of said respondent Manufacturers Association changes from time to time by the addition and withdrawal of members so that all the members of said organization at any given time cannot be specifically named as respondents herein without considerable inconvenience and delay; also said respondent members number approximately 100 and constitute a class so numerous as to make it impracticable to name them all individually as respondents herein. The members hereinabove named as respondents are made respondents as being fairly representative of the entire membership of said respondent Association.

PAR. 3. Respondent Greater Blouse, Skirt & Neckwear Contractors Association, Inc., hereinafter referred to as respondent Contractors Association, is a corporation having its principal office and place of business located at 225 West Thirty-fourth Street, New York, N. Y.

The following named individuals are officers and members of the board of directors of said Association and as such are designated as respondents herein: Joseph Aigen, president; Charles Bader, M. Finkelstein, and William Monticelli, vice presidents; Jack Levine, secretary; and Abraham Ormut, treasurer.

Said Contractors Association is composed of persons, firms, and corporations engaged in the making of the articles described in paragraph 1 hereof from materials supplied by the members of the Manufacturers Association.

PAR. 4. Respondent Blouse and Waist Makers Union, Local 25, hereinafter referred to as respondent Union, is an unincorporated Union of workers in the garment industry, having its principal office and place of business located at 134 West Thirty-second Street, New York, N. Y.

The following named individuals are officers and members of the executive committee of said respondent Union and as such are designated as respondents herein: Charles Kreindler, manager, and Carrie Franco, chairman; Bertha Bookspoon, Lee Bashoff, Josephine Conti, Betty Epstein, Winifred Gittens, Betty Kramer, Irene Lazare, Esther Lehman, Mae Monachelli, Edna Haynes, Matilda Pinsker, Minnie Rubenstein, Ethel Siegel, Alex Sosne, and William Podnos, members of the executive committee.

The membership of said respondent Union changes from time to time by the addition and withdrawal of members so that all the members of said Union at any given time cannot be specifically named as respondents herein without considerable inconvenience and delay; also said respondent members constitute a class so numerous as to make it impracticable to name them all individually as respondents herein; therefore, the officers and members of the executive committee, hereinabove named as respondents as such officers and members of the executive committee, are also made respondents as members being fairly representative of the entire membership of said respondent Union.

PAR. 5. Respondent members of said respondent Manufacturers Association, named as respondents in paragraph 2 hereof, sometimes hereinafter referred to as manufacturing respondents, together with the unnamed members, are individually engaged in the manufacture, sale, and distribution of the garments and merchandise described in paragraph 1 hereof, with their several shops, plants, and facilities located principally in the city of New York, State of New York.

Most of said manufacturing respondents cause their said merchandise, when sold, to be transported from the State wherein it is manufactured across State lines into or through other States to purchasers located in the several States of the United States. Many of said manufacturing respondents import into the State in which their establishments are located from other States, cloth, fabrics, and materials of various kinds used in the manufacture of said merchandise.

There has been and now is a continuous current of interstate trade and commerce in said raw materials between the sellers thereof and the said manufacturing respondents and in said clothing between said manufacturing respondents and the purchasers of said merchandise located as aforesaid.

Said manufacturing respondents are in competition with one another in the manufacture, sale and distribution of said described merchandise, except insofar as their said competition has been hindered, lessened, and restrained, or potential competition among them forestalled by the practices and methods hereinafter set forth. There are other corporations, partnerships, firms, and individuals engaged in the manufacture, sale, and distribution of such clothing in various localities and trade areas of the United States in competition with one another, and with one or more of said manufacturing respondents, except insofar as such competition has been hindered, lessened, and restrained, or potential competition among them forestalled, by the use by said manufacturing respondents and other respondents of the practices and policies hereinafter described.

PAR. 6. The respondents named in paragraphs 3 and 4 hereof, have been and are engaged in certain unfair acts, practices, and methods

hereinafter described, which hinder, lessen, and restrain competition in interstate commerce in said merchandise among the other respondents, and among such other respondents and their competitors not designated as respondents herein.

These respondents have been and are concertedly cooperating with said respondent Manufacturers Association and aiding and assisting it in effectuating the purposes for which it was organized and for which it has been conducted, as hereinafter stated.

PAR. 7. The volume of business done by the manufacturing respondents belonging to or affiliated with respondent Manufacturers Association constitutes approximately 90 percent of the trade in such merchandise in the city of New York, which is by far the largest trading area in the country. The manufacturing respondents enjoy, dominate, and control the policies, practices, terms, and conditions upon which this class of merchandise has been and is manufactured and marketed in said area.

PAR. 8. Respondent Manufacturers Association was organized in 1933 and has adopted and effectuated various bylaws. The governing body of said respondent Association is the board of directors, which governing body adopts such bylaws and rules and regulations and takes whatever steps are necessary to effectuate the purposes of said respondent Association. It is provided in the certificate of incorporation, among other things, that the purposes and objects of the formation thereof are to bring together and associate in one cohesive union persons, firms, and corporations engaged in the blouse and allied industries and to establish uniform trade practices and to promulgate uniform trade rules and regulations.

PAR. 9. Since the organization of respondent Manufacturers Association, the respondents hereinabove named and described, and each of them, under varying circumstances and degrees of cooperation and willingness have for different periods of time entered into, acquiesced in, or observed various agreements or understandings to hinder and suppress competition in the interstate sale and distribution of the merchandise hereinabove referred to in the United States and in the District of Columbia, and have joined in or participated in combinations and conspiracies to restrain such trade and to promote a monopoly therein among themselves. The primary object of such agreements, understandings, combinations, and conspiracies has been to control and regulate all the manufacture and distribution of said products in the United States, in the interests of respondents. In furtherance of such objectives said respondent Manufacturers Association, aided and assisted by the other respondents, has imposed or attempted to impose on the manufacturers engaged in said industry, including one another and including independent manufacturers, jobbers, and others, rules, regulations, and requirements hereinafter

more particularly described, which were designed to bring about and which brought about various restraints and partial restraints upon the freedom of competitive action of many of such factors and which hindered and suppressed competition in many of its phases in said industry. The nature, scope, purposes, results, and effects of such agreements and conspiracies, together with the means used to effectuate the same, are more particularly hereinafter set forth.

PAR. 10. Pursuant to the said agreements and conspiracies respondent Manufacturers Association, with the aid and cooperation of the other respondents, adopted, promulgated, and effectuated and enforced certain so-called uniform standards of fair commercial practice, among which are the following:

SECTION 1. *Terms.*—It shall be unfair trade practices to sell merchandise at a cash discount in excess of eight percent (8%) ten (10) days E. O. M. (end of month) except that merchandise shipped after the twenty-fifth (25) day of any month may be dated as of the first (1st) day of the following month. Anticipation shall not be allowed at a rate in excess of six percent (6%) per annum.

SEC. 2. *Unjust returns.*—No member of the industries shall accept for credit returned merchandise except for defects in manufacture, delay in delivery, errors in shipment, or failure to conform to specifications. No returned merchandise shall be accepted for credit if returned after five (5) days from date of receipt by customer except on account of failure to conform with specifications or on account of defects in manufacture not discoverable by reasonable inspection. No member of the industry shall accept for credit any returned merchandise which is not accompanied by a written statement containing the reasons for such return.

SEC. 3. *Consignments.*—Merchandise must not be sold on consignment or memorandum under any circumstances whatsoever.

SEC. 4. *Collect telegrams.*—Accepting charges for telegrams or long distance telephone messages from customers with reference to purchase or sale of goods.

SEC. 5. *Selling at retail.*—No members of the Blouse and Skirt Manufacturing Industries normally selling to the trade for resale, may sell merchandise to anyone except to wholesale or retail distributors. This shall not prevent, however, bona fide sales by members to their own employees of merchandise which is for the personal use of such employees, or to retail buyers at not less than the regular wholesale prices, provided the buyers are employed in the department in which the merchandise of the member of the industry is usually sold.

SEC. 10. *Advertising subsidies.*—No member of the Association shall pay, or cause to be paid, directly or indirectly, for advertising

that a retailer may utilize in connection with the sale of the merchandise of such member.

PAR. 11. In order to further effectuate their objects and purposes the respondents have agreed to, and have—

1. Fixed or maintained certain price levels for the various products mentioned in paragraph 1 and have established or maintained prices for each price level, and at times have changed the prices for one or more of said price levels;

2. Required that there should be no submission of samples for group buying or for comparative purposes to any retailer;

3. Required that there should be no encroachment insofar as values or prices are concerned of any price level group on any other such group, and that stability in the market should be maintained as to the manufacturer, retailer, and consumer price levels;

4. Required that there should be a curtailment of production in order to obtain the prices desired by the industry.

PAR. 12. In order to further effectuate their objects and purposes, respondent Manufacturers Association and the respondent Union, have entered into collective undertakings and therein, among other things, agreed to create and establish a stabilization board with power and authority to make rules and regulations with the same force and effect as if they were a part of said collective agreement, and such board was actually created and established and has actually functioned in the above industry to aid and assist in effectuating the various agreements, understandings, and conspiracies herein set forth.

PAR. 13. The respondent Manufacturers Association entered into a collective agreement with the respondent Greater Blouse, Skirt and Neckwear Contractors Association, Inc., by the terms of which it was agreed that the members of respondent Manufacturers Association would pay, and the members of respondent Contractors Association would accept, not less than certain specified prices for the making of blouses and other articles of clothing from materials furnished by the manufacturers, thereby collectively fixing uniform costs for the making of such garments to the manufacturers.

PAR. 14. To further effectuate said conspiracies, agreements, and understandings, and to attain the ends thereof, said respondent Associations and the members thereof and respondent Union, acting concertedly and cooperatively have done the following things, among others:

1. Coerced manufacturers into becoming members of respondent Manufacturers Association.

2. Adopted, effectuated, and enforced the above-mentioned so-called uniform standards of fair commercial practice and pricing policies.

3. Set up committees, groups, and officials to enforce the terms and

provisions of said respondents' said program and agreements, and to discipline and penalize violators thereof.

4. Coerced respondent manufacturers into agreeing to submit, and submitting, to investigations, examinations, and audits of their books, records, merchandise, premises, and practices by representatives of said respondent Manufacturers Association and said respondent Union to enable them to ascertain whether said practices and policies were being observed and complied with.

5. Pursued a policy of investigating all complaints and information received relating to alleged violations of the requirements of respondents' said program and standards of fair commercial practices; of coercing such alleged violators into conforming to said practices and policies; of publishing the names of recalcitrant members, or others, engaged in the industry, who failed or refused to submit to such coercion; or otherwise complying with said requirements; of summoning such alleged violators to hearings before respondent Manufacturers Association, and of penalizing them by levying fines and assessments upon them, and by other means.

6. Pursued a policy of investigating business disputes between respondent manufacturer members and also between said manufacturer members and retail customers; of investigating the business methods and conduct of particular retailers; and of compiling and publishing lists of retailers whose methods or conduct was considered to be unsatisfactory or inconsistent with the requirements of respondents' said so-called standards of fair commercial practices.

7. Placed unreasonable restrictions around the business relationships between respondent manufacturer members and contractors and subcontractors, and, in some instances, prevented contractual relations among them, as hereinabove set forth.

PAR. 15. Respondents during the period herein mentioned have done and performed other acts and things to carry out the purposes of and to further the objects of said agreements and understandings, to enforce and effectuate the same, and to impose the requirements thereof generally on those engaged in the manufacture, sale, and distribution of said merchandise in the United States.

PAR. 16. The capacity, tendency, and effect of the aforesaid agreements and conspiracies and the policies, practices, and the acts and things done and performed by respondents in pursuance thereof are and have been:

1. To tend to monopolize in said respondent manufacturers the business of manufacturing, selling, and distributing the above-described merchandise in the area in the United States in which they operate.

2. To tend to monopolize in respondent manufacturers the opportunity to secure skilled labor for the manufacture of such garments.

3. To establish, fix, or maintain prices, discounts, and various terms and conditions attending the sale of such merchandise.

4. To unreasonably lessen, suppress, and restrain competition in the sale of said merchandise, and to deprive wholesalers, jobbers, selling agents, resident buyers, retailers, and the purchasing public of the advantage of prices, terms, and conditions of sale, service, and other considerations which they would receive and enjoy under conditions of normal and unobstructed and free and fair competition in said trade and industry, and to otherwise operate as a restraint upon, obstruction to, and detriment to the freedom of fair and legitimate competition in such trade and industry.

5. To burden, hamper, and interfere with the normal and natural flow of trade and commerce in said merchandise from, into, and through the various States of the United States and in the District of Columbia.

PAR. 17. The acts and practices of said respondents, as herein alleged, are all to the prejudice of the public; have a dangerous tendency to hinder and prevent, and have actually hindered and prevented competition between and among said manufacturers in the sale of their said products in commerce within the intent and meaning of the Federal Trade Commission Act; and placed in the member respondents' power to control and enhance prices and other terms and conditions in connection with the manufacture and sale of their said products; have a dangerous tendency to create in respondents a monopoly in said products in such commerce; have unreasonably restrained such commerce in their said products, and 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.

Complaint dismissed without prejudice by the following order:

This matter coming on for consideration and it appearing that the substitute answer admitting all the allegations of fact set forth in the complaint except as stated in such answer filed by certain of the respondents on March 21, 1947, has been submitted on the condition that service in this proceeding of any order to cease and desist prohibiting certain of the practices which are alleged in the complaint to be unlawful shall not be made unless and until the Commission has entered its order disposing of similar charges forming the basis of the proceeding then pending before it, entitled, *In the Matter of National Coat & Suit Industry Recovery Board et al.*, docket No. 4596; and

The Commission having on December 1, 1950, entered its order in docket No. 4596 dismissing, for the reasons stated therein, the complaint in that proceeding without prejudice to the right of the Commission to conduct a further investigation into respondents' business

practices and to take such further action in the future as may be deemed warranted by the then existing circumstances, which order recites also that the action of the Commission does not constitute an adjudication of the issues involved;[1] and

There having been no adjudication of the issues of that proceeding on the merits as contemplated by the respondents in this proceeding who are parties to the substitute answer previously referred to, and it further appearing in this proceeding that the acts and practices referred to in the complaint issuing on October 23, 1943, occurred more than 12 years ago under economic conditions differing materially from those now prevailing; and

The Commission being of the opinion that the public interest will be best served by dismissal of the complaint in this proceeding, it being understood, however, that such action does not constitute an adjudication of the issues involved or prejudice the right of the Commission to conduct a further investigation into respondents' business practices and to take such further action as the Commission may consider warranted as a result of such investigation, or otherwise:

Accordingly, it is ordered, That the complaint in this proceeding be, and it hereby is, dismissed without prejudice to the right of the Commission to take such further action against the respondents at any time in the future as may be warranted by the then existing circumstances.

Before *Mr. Webster Ballinger*, trial examiner.

Mr. George W. Williams and *Mr. George M. Martin* for the Commission.

Klein & Weinberger, of New York City, for National Association of Blouse Manufacturers, Inc., its officers, board of directors, and various corporate respondents as representative members of said Association.

Mr. George J. Beldock, of New York City, also represented Samuel Mitchell and Mitchell & Weber, Inc.

Adler & Schwartz, of New York City, for Greater Blouse, Skirt & Neckwear Contractors Association, Inc., and its officers, board of directors, and representative members of said Association.

Mr. Elias Lieberman, of New York City, for Blouse and Waist Makers Union, Local 25, its officers, executive committee, and representative members of said Union.

BELTRACTION CO. AND HARVEY C. DEVEREUX. Complaint, October 24, 1949. Order, May 8, 1951. (Docket 5705.)

CHARGE: Advertising falsely or misleadingly and misbranding or mislabeling as to qualities, properties or results and composition of

[1] See p. 1552.

products; in connection with the sale of two industrial belt dressings designated as "Beltraction" and "Pulmore".

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 Beltraction Co., a corporation, and Harvey C. Devereux, 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, herein issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Beltraction Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware. Respondent Harvey C. Devereux is president of the corporate respondent. The individual respondent formulates, directs and controls the policies, acts and practices of the corporate respondent. The office and principal place of business of both corporate respondent and individual respondent is located at 1813 Winona Street, Chicago 40, Ill.

PAR. 2. Respondents are now and have been for several years last past, engaged in the business of offering for sale, sale and distribution of two industrial belt dressings designated as "Beltraction" and "Pulmore," for use on canvas, leather, rubber and fabric belting.

The formula for each of said products is as follows:

Ingredient	Beltraction	Pulmore
	Gallons	*Gallons*
Alcohol	274	289
Resin	246	231
Neatsfoot oil	74	74
Balsam (pine derivative)	5	5
Total	599	599

PAR. 3. The respondents caused and have caused the aforesaid products, when sold, to be transported from their aforesaid place of business to purchasers thereof at their respective points of location in various States of the United States and in the District of Columbia.

The respondents maintain and at all times mentioned herein have maintained a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their said business and for the purpose of inducing the purchase of their said belt dressings, said respondents have made and now make, by means of circulars and folders and upon the labels on the containers of said products, many statements and representations concerning the nature and quality of their

said belt dressings and the results that may be expected from the use thereof. Among and typical of such statements and representations are the following:

Representations with respect to Beltraction:

It cleans, softens and preserves belts * * *.
Beltraction is guaranteed of uniform quality and contains no harmful ingredients.
It contains nothing that is harmful to leather, rubber or canvas.

Representations with respect to Pulmore:

Pulmore is guaranteed uniform quality and contains no harmful ingredients.
Prolongs life of belts.
If it is used regularly, it will preserve and prolong the life of belts. * * *.

PAR. 5. Through the use of the statements above set forth and others of the same import not specifically set out herein, respondents represented that the use of said products will soften, preserve and prolong the life of belts and that said products contain nothing harmful to leather, canvas, or rubber belts.

PAR. 6. The foregoing statements and representations are false, misleading, and deceptive. In truth and in fact said products will not preserve or prolong the life of belts. While they may initially soften belts, they tend to stiffen them on aging. Said products contain ingredients which are harmful to leather, canvas, and rubber belts.

PAR. 7. The use by respondents of the foregoing false, deceptive and misleading statements and representations with respect to their said products has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations and claims are true, and causes and has caused a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' said products.

PAR. 8. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to rule XXII of the Commission's Rules of Practice, the attached initial decision of the trial examiner shall, on May 8, 1951, become the decision of the Commission.

ORDER DISMISSING COMPLAINT

Initial Decision by William L. Pack, trial examiner: This matter is before the trial examiner for final consideration upon the complaint of the Commission, the answer of respondents, testimony and other

evidence introduced in support of and in opposition to the complaint, proposed findings and conclusions submitted by counsel, and oral argument of counsel.

Respondents who are located in Chicago, Ill., are engaged in the manufacture and interstate sale of a product designated by them as Beltraction, the product being designed for use as a dressing or treatment for belts which drive machinery and convey materials in manufacturing plants and other industrial establishments. The identical product is also sold by respondents to a much lesser extent under the name Pulmore, the latter name being used chiefly in connection with sales of the product to farmers for use on farm machinery belts.

The principal ingredients of the product are rosin, neatsfoot oil, and alcohol. The purpose of the rosin is to reduce slippage of the belt on the pulley and thereby increase traction. The purpose of the neatsfoot oil is to soften the belt (make it more pliable and flexible) and otherwise act as a preservative. The purpose of the alcohol is to act as a carrier or penetrant for the rosin and oil also to assist in cleaning the belt.

The product is intended for use only on belts which are in actual use. Under the directions for use supplied by respondents, a few drops of the product are sprinkled on the underside of the belt, that is, the side which comes in contact with the pulley, and the process is repeated at intervals of a few minutes until that side of the belt is covered with a thin film or coating of the product. Further applications are made from time to time as needed.

Respondents' advertising is confined to leaflets and circulars which are distributed among prospective purchasers by salesmen and through the mail, and to statements appearing upon the cans in which the product is packaged. In this advertising material respondents have represented that the product will preserve and prolong the life of leather belts, that it softens the belt, and that it contains nothing which is harmful to belts. The complaint challenges these representations, charging that they are false and misleading. Specifically, the complaint alleges: "In truth and in fact said products will not preserve or prolong the life of belts. While they may initially soften belts, they tend to stiffen them on aging. Said products contain ingredients which are harmful to leather * * * belts."

While respondents' advertising and the complaint referred to canvas and rubber belts as well as leather belts, there is no evidence in the record with respect to canvas belts. The only evidence with respect to rubber belts was introduced by respondents and is favorable to respondents' position. The only issues which remain are with respect to leather belts.

The Government's case rests upon the results of certain tests of respondents' product made by the National Bureau of Standards and

upon the testimony of two of the Bureau's experts, one being the employee who made the tests and the other being the chief of the leather section of the Bureau, who is the immediate superior of the employee making the tests. The Bureau's report on the tests indicates that the use of the product will increase slightly the tensile strength of belts and that it will very greatly reduce slippage, giving the belt some 10 to 18 times more traction, but that it will make belts stiffer on aging, that is, reduce their flexibility. The probative value of the tests is materially weakened by reason of the fact that the laboratory notes or original data made while the tests were in progress and upon which the Bureau's conclusions were based were not available at the hearing for examination by respondents' counsel and possible use in the cross-examination of the expert who made the tests. It appears that the notes were borrowed by another employee of the Bureau and in some way were lost.

In addition to these tests there is testimony from the Chief of the Bureau's Leather Section that it is his opinion, based upon his general knowledge and experience, that respondents' product will stiffen belts on aging and that the product is harmful to belts. As his basis for the latter conclusion, the witness stated that rosin is an oxygen carrier and that it therefore causes oxidation and consequent deterioration of the leather. The alcohol in the product, according to the witness, accelerates this action in that it tends to dissolve the tanning materials in the leather, causing them to migrate to the surface where they are more easily oxidized.

Respondents introduced in evidence the results of certain tests of their product made by three independent testing laboratories and the testimony of the four experts who made the tests. These tests, like the Government's tests, indicate that the product will greatly reduce slippage and will to some extent increase the tensile strength of leather belting, and they also indicate that the product will make belts softer, that is, more pliable or more flexible. While the probative value of the tests was unquestionably weakened to some extent as a result of testimony given in rebuttal by experts of the Bureau of Standards, who criticized the technique and procedure used in some of the tests, the tests, in the examiner's opinion, are still of substantial value. In this connection, it should be stated that the criticisms of the Government's experts were to some extent satisfactorily answered by respondents' experts when they were subsequently recalled as witnesses.

Respondents' experts were of the opinion that the product will preserve or prolong the life of belts, that it will soften belts, and that it contains nothing harmful to belts. One of the experts, who appears to have attained an outstanding position in the field of leather chemistry, disagreed with the Government's expert with respect to the effect of rosin on leather. While he recognizes that in its dry, powdered

state rosin may tend to stiffen, oxidize, and deteriorate leather, he is of the opinion that this is not true when rosin is combined with a suitable oil as in the present case. This opinion is based not only upon his general knowledge and research but upon long experience in the handling, tanning, and preserving of leather. While rosin is not as widely used in the leather industry now as formerly, it still is used to a considerable extent.

This same expert disagrees with the Government's expert as to the effect of the alcohol in respondents' product. In his opinion the alcohol could not have any substantial tendency to dissolve the tanning materials in the leather and cause them to migrate to the surface, because alcohol evaporates very rapidly, particularly when it is subjected to the motion and heat of a moving belt. Unquestionably the alcohol in respondents' product does evaporate after the product is applied to the belt; the only issue between the experts is as to the rate of the evaporation.

In addition to their tests and expert testimony respondents introduced in evidence testimony from some 42 users of the product. Eleven of these users appeared and testified at the hearings and the testimony of the remaining 31 was stipulated into the record. The users were maintenance engineers, shop superintendents, etc., from 42 different business establishments in Chicago, the establishments including many different kinds of plants, such as meat packing plants, steel mills, laundries, textile mills, woodworking mills, optical plants and glue factories. The various plants use many belts both for driving machinery and conveying materials, and the belts are used under a wide variety of conditions, such as unusual heat, moisture, dust, etc. The testimony of these witnesses, based upon their own use and observation of respondents' product in their respective plants for period ranging from five to ten years, is to the effect that they have observed that the product decreases slippage, cleans and softens the belt, and makes belts last longer, and that the witnesses have observed no deterioration or harm to the belts from the use of the product.

All of the experts, both for the Government and for respondents, who were questioned about the matter agree that slippage is one of the principal causes of belt deterioration. The primary reason for this appears to be that slippage generates heat, and heat, in turn, accelerates oxidation of the materials composing the belt. It is undisputed that respondents' product greatly reduces slippage. The reasonable conclusion would therefore appear to be that the product does preserve or prolong the life of belts. In this connection, it should also be noted that both the Government's tests and respondents' tests indicate that the product will to some extent increase the tensile strength of belts.

The issue of injury or harm to the belt would appear to be closely related to that involving the prolonging of the life of the belt. If, as appears to the fact, respondents' product does prolong the life of the belt, it is difficult to see how it can reasonably be said that the product causes harm to the belt. Assuming that the rosin and alcohol in the product may tend to cause oxidation, there is nothing in the record to indicate that such harmful effects approach in extent or degree the undisputed and very substantial benefit resulting from the reduction in slippage. It seems to the examiner that it is the over-all effect or end result from the use of the product which must be looked to.

Somewhat the same situation would appear to be presented with respect to the issue as to whether the product will soften belts. Assuming that the rosin in the product will tend to stiffen belts on aging, the product also contains neat's-foot oil, which has long been in almost universal use for the purpose of keeping leather soft and pliable. As to which of the two ingredients would prevail the record does not afford a conclusive answer, but the testimony of the users would indicate that the softening properties of the neat's-foot oil will more than offset the stiffening properties of the rosin. In considering this phase as well as the other phases of the case, it must be remembered that respondents' product is designed and sold for use only on belts which are in actual use and that repeated applications of the product to the belt are made from time to time.

It is axiomatic that the burden of proof in the proceeding is upon the Government, and the examiner being of the opinion that the charges in the complaint are not supported by the greater weight of the evidence.

It is ordered, That the complaint be, and it hereby is, dismissed.

Before *Mr. William L. Pack*, trial examiner.

Mr. B. G. Wilson for the Commission.

Mr. Ralph J. Gutgsell, of Chicago, Ill., for respondents.

FRED S. HIRSCH AND WILLIAM W. HIRSCH trading as INNERCLEAN MANUFACTURING CO. AND W. C. JEFFRIES CO. Complaint, September 28, 1942. Order, May 11, 1951. (Docket 4839.)

CHARGE: Advertising falsely or misleadingly as to qualities, properties or results, safety, scientific or relevant facts, and comparative merits of product, neglecting, unfairly or deceptively, to make material disclosure as to safety of product, and using misleading product name; in connection with the sale of a preparation designated "Innerclean Intestinal Laxative" sometimes designated "Innerclean Herbal Laxative".

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 Fred S.

Hirsch and William W. Hirsch, individuals, trading and doing business under the style and firm name of Innerclean Manufacturing Co., and Wilbur C. Jeffries, an individual, doing business under the style and firm name of W. C. Jeffries Co., 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. Respondents Fred S. Hirsch and William W. Hirsch are individuals trading and doing business as copartners under the style and firm name of Innerclean Manufacturing Co., with their principal office and place of business located at 846–848 East Sixth Street, Los Angeles, Calif.

PAR. 2. These respondents are engaged in the sale and distribution of a preparation designated "Innerclean Intestinal Laxative" sometimes designated "Innerclean Herbal Laxative," in commerce among and between the various States of the United States and of the District of Columbia.

These respondents cause their aforesaid preparation when sold to be transported from their place of business in the State of California to the purchasers thereof located in various other States of the United States and in the District of Columbia.

These respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent Wilbur C. Jeffries is an individual engaged in the advertising business under the style and firm name of W. C. Jeffries Company with his principal office and place of business located at 165 North La Brea Avenue, Los Angeles, Calif. This respondent is engaged in formulating, preparing, writing, editing, selling and placing advertising copy as well as advising his clients on advertising matters.

This respondent is the advertising representative of respondents Fred S. Hirsch and William W. Hirsch and as such formulates, prepares, writes, edits and places all advertising copy used by the respondents Fred S. Hirsch and William W. Hirsch, trading as Innerclean Manufacturing Co., in the sale and distribution of their aforesaid preparation, designated as aforesaid, in commerce among and between the various States of the United States and of the District of Columbia.

PAR. 4. These respondents act in conjunction and cooperation with one another in the performance of the acts and practices hereinafter alleged.

PAR. 5. In furtherance of the sale and distribution of the aforesaid preparation, "Innerclean Intestinal Laxative," these respondents have

disseminated, and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning the aforesaid preparation "Innerclean Intestinal Laxative" by the United States mails and by various means in commerce as commerce is defined in the Federal Trade Commission Act; and these respondents have also disseminated, and are now disseminating and have caused, are now causing the dissemination of, false advertisements concerning the said preparation as aforesaid, by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of "Innerclean Intestinal Laxative" in commerce as commerce is defined in the Federal Trade Commission Act.

Among and typical of the false, misleading and deceptive statements and representations, contained in said false advertisements, disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, newspapers, radio, circulars, form letters, pamphlets and other advertising media, as aforesaid, are the following:

7 REASONS WHY
Thousands prefer
INNERCLEAN INTESTINAL LAXATIVE

1. Aids in stimulating sluggish intestinal muscles.
2. Helps rid intestines of accumulated waste.
3. Made only of herbs in their natural state.
4. Pleasant and easy to take.
5. No fuss, no brewing, no bother.
6. Gentle in action, when taken in small doses.
7. Economical . . . a 50¢ package lasts months.

At all leading druggists, or write for

FREE GENEROUS TRIAL SUPPLY
Innerclean Co. Dept. 666
Los Angeles, California.

INNERCLEAN
Intestinal Laxative.

(Picture)

ACID INDIGESTION
MADE ME MISERABLE—
UNTIL I LEARNED
ABOUT HERBS FOR
IRREGULARITY.

When simple intestinal sluggishness is making you suffer from offensive bad breath, bloating, acid indigestion, coated tongue, loginess—relieve your distress with INNERCLEAN HERBAL LAXATIVE. * * *

Are you being poisoned
by CONSTIPATION?
(Picture)

If your system is weakened by the toxic effects of constipation, start taking Innerclean Intestinal Laxative at once. Thanks to this amazing blend of natural herbs you may now enjoy blessed relief without resorting to harsh cathartics. * * *

Intestinal

INNERCLEAN

Laxative

ARE YOU POISONED BY CONSTIPATION?

If your system is weakened by the toxic effects of constipation, do not look for relief from ordinary habit-forming laxative. Do as thousands are now doing, take Innerclean Intestinal Laxative to free the bowels from poisons. * * *

Perfected by Prof. Arnold Ehrit, Innerclean is a scientifically proportioned blend of Nature's herbs in their natural state. It is so different so certain in effect that you'll bless the day you learned of it.

Innerclean Herbal Laxative relieves constipation without making you depend on it. * * *

Innerclean Co.
346 E. Sixth St.
Los Angeles.

"Honestly I feel as if I'm being POISONED by constipation."

"TAKE INNERCLEAN HERBAL LAXATIVE TONIGHT YOU'LL FEEL DIFFERENT TOMORROW".

Innerclean is a most unusual laxative—a pleasant-tasting compound of eight herbs in their natural state. It is gentle, sure and thorough, yet free from distressing after-effects and is not habit-forming * * *.

"I scolded the children needlessly before I learned about HERBS for irregularity."

When occasional constipation makes you cranky and irritable don't wait a day—try INNERCLEAN HERBAL LAXATIVE.

ASK YOURSELF THIS QUESTION

"Am I being poisoned by constipation?"

Most people in this age of refined foods and sedentary living are subject to constipation. Absorption of poison from undigested, decomposing food and uneliminated waste matter in the digestive tract sometimes causes many human ailments. Those who bathe frequently would be shocked if they were aware of their intestinal uncleanliness. This uneliminated filth sometimes produces poisons which weaken the body; foods fail to nourish and sour stomach, heartburn, headache, colic and cramps due to gas, etc., are often traceable to poisons generated from uneliminated waste matter. REMOVE THE CAUSE, AND FREE YOURSELF OF THESE AILMENTS.

BEWARE OF CONSTIPATION

Many so-called physics used for constipation aggravate the very condition they are meant to correct. Usually they are drug extracts whose action is violently stimulating and with repeated use, they become less and less effective.

INNERCLEAN INTESTINAL LAXATIVE
IS DIFFERENT.

The great value of Innerclean is that the impurities clinging to the intestinal walls become loosened gradually and started on the road to elimination.

PAR. 6. Through the use of the statements and representations hereinabove set forth and others of similar import not specifically set out herein, all of which purport to be descriptive of the therapeutic prop-

erties of the preparation "Innerclean-Intestinal Laxative," sold and distributed by respondents Fred E. Hirsch and William W. Hirsch, as aforesaid, respondents represent, directly and by implication, that "Innerclean Intestinal Laxative" is a cure and remedy and constitutes a competent and adequate treatment for constipation, acid indigestion, bad breath, coated tongue, logginess, crankiness, irritability, weak system, sour stomach, heartburn, headache, colic and cramps due to gas, etc.; that it will aid in stimulating sluggish intestinal muscles and provide pep; that it will free the bowels from poisons and remove toxic impurities; that it is safe to use, non-habit forming and free from distressing after effects; that it is different, unusual and a blend of natural herbs constituting it an ideal laxative.

Respondents further represent, in the manner and method aforesaid, that acid indigestion, bad breath, bloating, coated tongue, logginess, crankiness, irritability, weak system, sour stomach, heartburn, headache , colic and cramps due to gas, are symptoms of constipation and that the existence of one or more of such symptoms indicates that constipation in the basic cause of such disorders and conditions; that constipation produces poisons in the system whose toxic effect poisons and weakens the system; that impurities cling to the walls of the intestinal tract and that "Innerclean Intestinal Laxative" will gradually loosen such impurities and start them on the road to elimination.

Respondents further represent, in the manner and method aforesaid, that the preparation "Innerclean Intestinal Laxative" is superior to the various chemical or nonherbal laxative preparations or compounds sold on the market for self administration in that it is safer to take, it is not a harsh catharic, it is nonhabit forming, its repeated use will not lessen its effect or cause weakness and the relief afforded by it is much superior.

PAR. 7. The foregoing statements and representations, and others of similar import, not specifically set out herein, are grossly exaggerated, false and misleading.

The preparation "Innerclean Intestinal Laxative," sold and distributed by Fred S. Hirsch and William W. Hirsch, as aforesaid, is not a cure or remedy, nor does it constitute a competent and adequate treatment for constipation, acid indigestion, bad breath, coated tongue, logginess, crankiness, irritability, weak system, sour stomach, heartburn, headache, colic or cramps due to gas. It will not aid in stimulating sluggish intestinal muscles or provide pep. It will not free the bowels from poisons or remove toxic impurities. It is not safe to use. It is free from distressing after effects. It is not a different or an unusual or an amazing blend of natural herbs which constitute it the ideal laxative. It is habit forming.

The disorders and conditions such as acid indigestion, bad breath, bloating, coated tongue, logginess, crankiness, irritability, weak sys-

tem, sour stomach, heartburn, headache, colic and cramps due to gas, are not typical symptoms of constipation, and the existence of one or more of such disorders or conditions are not generally recognized as manifestations that constipation is the basic cause thereof.

Acid indigestion, logginess, irritability, weak system, sour stomach and heartburn are conditions or disorders that are not recognized by competent medical authority as bearing a causal relationship to constipation, and the preparation "Innerclean Intestinal Laxative" will have no generally recognized therapeutic effect in the treatment thereof.

The disorders such as colic and cramps due to gas may and often do accompany an attack of appendicitis, and the layman suffering from such conditions is not capable of determining whether such conditions are due to appendicitis. When such disorders accompany an attack of appendicitis, a laxative is not safe treatment therefor, and the use of the preparation "Innerclean Intestinal Laxative" under such circumstances may be dangerous.

When the disorders or conditions such as bad breath, bloating, coated tongue, headache, colic and cramps due to gas are due to causes other than constipation, the use of the preparation "Innerclean Intestinal Laxative" in the treatment thereof would have no therapeutic value. To the extent that constipation is the contributing factor to, or the basic cause of, such disorders or conditions, the preparation "Innerclean Intestinal Laxative" would have no generally accepted therapeutic value in the treatment thereof in excess of that furnished by an evacuation of the bowels.

The contents of the intestinal tract do not cling to the intestinal walls. It is normal for the intestinal tract to contain food and food residue in various stages of digestion and decomposition. The products produced by these changes are not poisons. Constipation does not poison or weaken the system and the use of "Innerclean Intestinal Laxative" will not loosen impurities from the intestinal walls and will not cleanse the intestinal tract.

The preparation "Innerclean Intestinal Laxative," sold and distributed by Fred S. Hirsch and William W. Hirsch, as aforesaid, is as harsh a cathartic and as habit forming as various chemical or nonherbal laxative preparations or compounds sold on the market for self administration. The repeated use of this preparation will lessen its effectiveness and result in weakness to the same extent as the repeated use of any laxative. This preparation is not superior in its action, nor is the relief afforded by its use superior, to that obtained by the use of chemical or nonherbal laxative preparations or compounds sold on the market for self administration.

PAR. 8. In addition to the false and misleading statements and representations hereinabove set forth, the respondents by the use of

the word "Innerclean" in the trade name "Innerclean Intestinal Laxative" have represented and are now representing that the preparation "Innerclean Intestinal Laxative" will cleanse the intestinal tract.

The preparation "Innerclean Intestinal Laxative" will not cleanse the intestinal tract.

PAR. 9. The advertisements disseminated by the respondents as aforesaid, constitute false advertisements for the further reason that they fail to reveal the facts material in the light of such representations, or material with respect to consequences which may result from the use of the aforesaid preparation, "Innerclean Intestinal Laxative," under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

The preparation "Innerclean Intestinal Laxative," sold and distributed by respondents, Fred S. Hirsch and William W. Hirsch, as aforesaid, is an irritant cathartic and is potentially dangerous when taken by one suffering from abdominal pains, stomach-ache, cramps, colic, nausea, vomiting, or other symptoms of appendicitis. The frequent or continued use of this preparation may result in dependence on a laxative.

PAR. 10. The use by said respondents of the foregoing false advertisements and deceptive and misleading statements and representations, and others of similar import, disseminated as aforesaid, has had and now has the tendency and capacity to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations and advertisements are true, and that the preparation "Innerclean Intestinal Laxative" sold and distributed by respondents Fred S. Hirsch and William W. Hirsch, as aforesaid, will accomplish the results claimed for it and that it is harmless and safe to use and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase the aforesaid preparation disseminated as aforesaid.

PAR. 11. The aforesaid acts and practices of the respondents as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

Complaint dismissed by the following order:

This proceeding having come before the Commission upon respondents' motion to dismiss and the answer of counsel supporting the complaint not opposing said motion; and

It appearing to the Commission that the complaint herein charges respondents with disseminating false and misleading advertising in connection with the offering for sale and sale of a preparation designated as "Innerclean Intestinal Laxative" or "Innerclean Herbal

Laxative," and that the complaint also charges that the use of the word "Innerclean" in connection with the trade name of the preparation is in and of itself false and misleading; and

It further appearing from the record herein that all of the alleged false and misleading advertising other than the use of the word "Innerclean" in the respondents' trade name was discontinued from 1 to 4 years prior to the issuance of the complaint herein over 8 years ago; and

It further appearing that the allegations of the complaint that the use of the word "Innerclean" in the trade name of respondents' preparation creates in the minds of the members of the purchasing public a belief that the use of such preparation will cleanse the intestinal tract other than to the extent ordinarily accomplished by the use of a laxative such as respondents' preparation have not been sustained by the weight of the evidence; and

The Commission having no reason to believe that the dissemination of the alleged false and misleading representations which has been discontinued by respondents will be resumed, and it being of the opinion that in the circumstances the public interest does not require further corrective action in this matter at this time:

It is ordered, That the complaint herein be, and it hereby is, dismissed.

Before *Mr. James A. Purcell* and *Mr. Clarence T. Sadler*, trial examiners.

Mr. John W. Carter, Jr., and *Mr. William L. Pencke* for the Commission.

Cosgrove, Cramer, Diether & Rindge, and *Mr. F. B. Yoakum, Jr.*, of Los Angeles, Calif., for respondents.

WOLF-RAIT, INC., HERMAN BERMAN, AND GERSON B. WOLF. Complaint, May 14, 1946. Order, May 17, 1951. (Docket 5438.)

CHARGE: Misbranding or mislabeling and neglecting, unfairly or deceptively, to make material disclosure as to composition of products, in violation of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939; in connection with the manufacture and sale of wool products, principally women's coats and suits, and of women's garments composed in whole or part of rayon.

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 Wolf-Rait, Inc., a corporation, Herman Berman, an individual and president of Wolf-Rait, Inc., and Gerson B. Wolf, an individual and secretary and treasurer of Wolf-Rait, 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. Wolf-Rait, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 142 West Thirty-sixth Street, New York, N. Y. Respondent Herman Berman is an individual and president of said corporate respondent Wolf-Rait, Inc. Respondent Gerson B. Wolf is an individual and secretary and treasurer of said corporate respondent. Each of said individual respondents also has his office and place of business at 142 West Thirty-sixth Street, New York, N. Y. Said individual respondents Herman Berman and Gerson B. Wolf control and direct the acts and practices of the corporate respondent and all of said respondents cooperated and participated in the performance of the acts and practices hereinafter alleged.

PAR. 2. Respondents are engaged in the introduction and manufacture for introduction into commerce, and in the sale, transportation and distribution of wool products, as such products are defined in the Wool Products Labeling Act of 1939, in commerce as "commerce" is defined in said Act, and in the Federal Trade Commission Act.

Respondents cause their said products, when sold, to be transported from their place of business in the State of New York to the purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondents maintain and at all times mentioned herein have maintained a substantial course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia. Many of said respondents' said products are composed in whole or in part of wool and many of reprocessed wool, or reused wool, as those terms are defined in the Wool Products Labeling Act of 1939, and such products are subject to the provisions of said act and the rules and regulations promulgated thereunder. Since July 15, 1941, respondents have violated the provisions of said act and said rules and regulations in the introduction and manufacture for introduction into commerce, and in the sale, transportation and distribution of said wool products in said commerce, by causing said wool products to be misbranded within the intent and meaning of said act and rules and regulations.

PAR. 3. Among the wool products introduced and manufactured for introduction into commerce and sold, transported and distributed in said commerce as aforesaid, were women's coats and suits. Exemplifying respondents' practice of violating said act and the rules and regulations promulgated thereunder is their misbranding of the aforesaid

products in violation of the provisions of said act and said rules and regulations by failing to affix to said products a stamp, tag, label, or other means of identification, or a substitute in lieu thereof, as provided by said act, showing: (*a*) the percentage of the total fiber weight of the wool products, exclusive of ornamentation not exceeding 5 percentum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber was 5 percentum or more, and (5) the aggregate of all other fibers; (*b*) the maximum percentage of the total weight of the wool product of nonfibrous loading, filling or adulterating matter; (*c*) the percentages in words and figures plainly legible by weight of the wool contents of such wool product where said wool product contains a fiber other than wool; (*d*) the name of the manufacturer of the wool product, or the manufacturer's registered identification number and the name of a seller or reseller of the product as provided for in the rules and regulations promulgated under such act, or the name of one or more persons subject to section 3 of said act with respect to such wool product.

PAR. 4. Among the products offered for sale and sold by the respondents in commerce as aforesaid are some which are composed wholly or in part of rayon.

Rayon is a chemically manufactured fiber which may be manufactured so as to simulate either silk or wool in texture and appearance. Garments manufactured from such rayon fibers have the appearance and feel of silk or wool garments and many members of the purchasing public are unable to distinguish between such rayon garments and garments manufactured from silk or wool. Consequently such rayon garments are readily accepted by some members of the purchasing public as silk or wool products.

PAR. 5. The respondents sell in commerce as aforesaid women's garments composed wholly or in part of rayon, which garments simulate in texture and appearance garments composed wholly or in part of silk, or wool. In making such sales in commerce respondents do not inform the purchasing public of the fact that the women's garments which resemble silk or wool in texture and appearance are made wholly or in part of rayon and not of silk or wool.

PAR. 6. Products manufactured from silk, the product of cocoon of the silk worm, and products made from pure or genuine wool, have for many years been held and are still held in great public esteem because of their outstanding qualities, and there has been for many years, and still is, a public demand for such products.

PAR. 7. The practices of respondents in offering for sale and selling such women's garments manufactured wholly or in part of rayon which resembles in texture and appearance garments manufactured from silk or wool in commerce as aforesaid without disclosing in words

familiar to the purchasing public the fact that said garments are composed wholly or in part of rayon, is misleading and deceptive, and many members of the purchasing public are thereby led to believe that said garments are composed wholly or in part of silk, or wool. The use by the respondents of the acts and practices as alleged in paragraph 5 hereof has had and now has the capacity and tendency to and does mislead and deceive purchasers and prospective purchasers as to the fiber content of their said products, and as a result of said deception substantial quantities of respondents' products are purchased in the belief that they are composed of silk, or wool.

PAR. 8. The aforesaid acts, practices and methods of the respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act, and were and are in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, the attached initial decision of the trial examiner shall, on May 17, 1951, become the decision of the Commission.

ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE

Initial Decision by James A. Purcell, trial examiner:

This proceeding came on to be considered by the above-named trial examiner theretofore duly designated by the Commission, upon the complaint of the Commission, the answer of respondents, testimony and other evidence in support of and in opposition to the allegations of the complaint, no proposed findings and conclusions having been presented by counsel, oral arguments not having been requested; and further upon consideration of a motion to dismiss the complaint on the several grounds therein set forth, filed herein on January 19, 1951, by the attorney in support of the complaint, concurred in by the attorneys representing the respondents.

The respondent, Wolf-Rait, Inc., ceased doing business as of July 1, 1946, although not formally dissolved by operation of law insofar as the record discloses. On the last-mentioned date a corporation, known as Carole Wren, Inc., was organized under the laws of the State of New York, and acquired and continued the business of respondent Wolf-Rait, Inc., at the same address, 142 West Thirty-sixth Street, N. Y.; respondent Gerson B. Wolf is president and principal stockholder of Carole Wren, Inc.; respondent Herman Berman has no official connection with the last-named corporation and severed his connection with Wolf-Rait, Inc., on July 1, 1946.

Prior to September, 1944, the above-named respondents had affixed to certain of their manufactured articles of wool, consisting of women's coats and suits, certain tags and labels not in accord with the requirements of the Wool Products Labeling Act of 1939, as well also of the rules and regulations promulgated thereunder. It further appeared that since September 1944, respondents (and for the purpose of this initial decision Carole Wren, Inc., as the successor to the business of Wolf-Rait, Inc., while not a named respondent, is adverted to because of the principal stock ownership thereof by respondent Gerson B. Wolf and of his executive capacity as president thereof), have uniformly made use of labels and tags, sewn to each manufactured article, and conforming to the provisions of said Wool Labeling Act and the rules and regulations issued by virtue thereof.

An investigation of Carole Wren, Inc., conducted at the instance of this Commission in January, 1950, failed to disclose that Carole Wren, Inc., or respondent Gerson B. Wolf, were, at that time, violating the provisions of the said act.

By reason of the foregoing it is the opinion of the trial examiner that no substantial public interest presently exists in the issues raised by the instant proceeding, wherefore:

It is ordered, That the complaint in this proceeding be, and the same hereby is, dismissed without prejudice to the right of the Commission to institute further proceedings should future facts warrant.

Before *Mr. James A. Purcell*, trial examiner.

Mr. J. W. Brookfield, Jr., *Mr. George M. Martin*, *Mr. DeWitt T. Puckett* and *Mr. Randolph W. Branch* for the Commission.

Conrad & Smith, of New York City, for respondents.

GAY TIME FROCK CO. OF SCRANTON, ET AL. Complaint, July 3, 1945. Findings and cease and desist order, June 22, 1950. 46 F. T. C. 952. Order vacating, setting aside, dismissing, etc., as to named respondents, May 24, 1951. (Docket 5350.)

CHARGE: Misbranding or mislabeling as to composition and source or origin of product, and neglecting, unfairly or deceptively, to make material disclosure as to composition of product; in connection with the sale of women's wearing apparel and other articles.

Order vacating and setting aside findings as to the facts, conclusion, order to cease and desist, and dismissing the complaint with respect to Gay Time Frock Co. of Scranton, Gay Time Frock Co., Leo Simon and Benjamin F. Rosner, follows:

Whereas the Federal Trade Commission has reconsidered its action in this proceeding with respect to the activities of the respondents, Gay Time Frock Co. of Scranton, Gay Time Frock Co., Leo Simon and Benjamin F. Rosner, and now specifically finds (1) that with the exception of certain mail-order business the said respondents' mer-

chandise comes to a complete rest at respondents' retail stores where it is offered for sale and sold without previous orders to the general public; that said merchandise, after it leaves said retail stores, is not destined for shipment to another State, or for delivery to retail purchasers whose needs are constant and readily anticipated and the offering for sale and sale thereof are not in interstate commerce; (2) that respondents' mail-order business was discontinued long prior to the issuance of the complaint herein and there is no reason to believe that it will be resumed; and (3) that the Commission has no jurisdiction over said respondents since their activities as prohibited in the order to cease and desist, issued herein on June 22, 1950, were not in connection with the offering for sale, or the selling of merchandise in commerce as "commerce" is defined by the Federal Trade Commission Act; and

Whereas the Commission having reconsidered the entire record herein and being now fully advised in the premises:

It is ordered, That the findings as to the facts, conclusions drawn therefrom, and the order to cease and desist issued June 22, 1950, covering the activities of the respondents Gay Time Frock Co. of Scranton, Gay Time Frock Co., Leo Simon and Benjiman F. Rosner, be and the same hereby are vacated and set aside, and the complaint issued July 3, 1945, against said respondents, be and the same hereby is dismissed with prejudice to the Federal Trade Commission.

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. DeWitt T. Puckett for the Commission.

Fein & Altersohn, of Chicago., Ill, for respondents.

NOTE.—The findings in the case as respects the four respondents as to which the findings, etc., were vacated by the above order, as above stated (but without disturbing the same as respects the findings and order with regard to violation of the Wool Products Labeling Act by respondents Selden and Lieberman) set forth that the two corporations concerned and the two individuals, officers, and directors thereof, engaged in the sale and distribution of women's wearing apparel and other articles through retail stores operated by them in Indiana, Illinois, Pennsylvania, and Virginia, sold "in commerce, as aforesaid garments composed wholly or in part of rayon, which garments simulate the texture and appearance of garments composed of natural fibers," without informing "the purchasing public of the fact that the garments which resemble natural-fiber garments in texture and appearance are made wholly or in part of rayon and not of natural fibers"; and the order to cease and desist required the respondents herein concerned, "in connection with the offering, sale and distribution of women's wearing apparel and other articles in commerce" to "cease and desist from advertising, offering for sale, or selling products composed in whole or in part of rayon without clearly disclosing such rayon content."

HOLEPROOF HOSIERY CO. Complaint, June 2, 1944. Order, May 25, 1951. (Docket 5169.)

CHARGE: Advertising falsely or misleadingly as to manufacture or preparation, comparative merits, qualities, properties or results, com-

position and unique nature or advantage of product; in connection with the sale of ladies hosiery.

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 Holeproof Hosiery Co., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Holeproof Hosiery Co., is a corporation organized and doing business under and by virtue of the laws of the State of Wisconsin, with its office and principal place of business at 404 West Fowler Street, Milwaukee, Wis.

PAR. 2. For more than 2 years last past, respondent has been engaged, and is now engaged, in the sale and distribution of ladies' hosiery to members of the public. In the course and conduct of said business, respondent has caused, and now causes, said hosiery, when sold, to be transported from its place of business in the State of Wisconsin, to numerous purchasers thereof located in various States of the United States and in the District of Columbia. Respondent, heretofore, and at all times mentioned herein, has maintained, and now maintains, a course of trade in said hosiery among and between the various States of the United States and in the District of Columbia. Among said purchasers from respondent are retailers who purchase said hosiery for resale to members of the public.

PAR. 3. In the course and conduct of said business, and for the purpose of inducing the purchase by members of the public of said hosiery, respondent, by means of advertisements in magazines, periodicals, and newspapers and by letters, circulars and other means, has made and makes various representations with respect to said hosiery. Said representations have been made by respondent in advertising mats furnished by it to retailers, who purchase said hosiery for resale, and such retailers have used and followed said mats in reproducing said representations in advertisements under their own names in magazines, newspapers, and circulars. Among and typical of the representations thus made are the following:

1. Luxuria Crepes in Holeproof Fine Stockings——

No need to sacrifice beauty to practicality! These flattering Holeproof Fine Stockings wear exceptionally well because the high crepe twist makes them stronger, more snag-resistant. 2 Thread Chiffon in Holeproof's exclusive "Recreation Colors."

2. Luxuria Crepes——

Fine Stockings made more beautiful by Holeproof's exclusive Beauty Lock process which seals tiny silk filaments into sleek strands . . . making hose

clearer, legs lovelier. Give these snag-resistant stockings care in washing and you'll get *extra wear* . . . because of the high crepe twist! 3 lengths in a flattering 3-thread chiffon.

3. Holeproof . . . Luxsheer Rayons——

Exclusive Beauty Lock process preserves first wear beauty! High twist—the secret of increased elasticity, resistance to snagging! Sheerer! Duller! Three lengths—each properly proportioned to exacting standards for perfect fit, supreme comfort, better wear.

4. Holeproof's exclusive finishing process, Beauty Lock, makes colors clearer, textures sheerer, preserves first wear beauty.

5. Be Carefree and forget the danger of ugly runs in NON-RUN Holeproof Chiffons——

*Go on your way serenely . . . blithely . . . in lovely Non-Run Chiffons by Holeproof. No worrisome, ugly leg runs to bother about . . . for the special lock-stitching method of knitting * prevents them! Sheer . . . flattering . . . lacy . . . ever so practical 3-thread Chiffons. In charming colors. * Pat. No. 1470490.

PAR. 4. Hosiery of the kind referred to by respondent in its advertisements as "Luxuria Crepes" and "Luxsheer Rayons," as set forth in subparagraphs 1 to 3, inclusive, of paragraph 3 aforesaid, which is made with a weave recognized as the conventional weave, is normally made on knitting machines of a more or less standard design out of strands of yarns made of silk, rayon, and other fibers which are first turned or twisted a number of times according to standardized practices, the greater the number of twists the higher the twist of the yarn is said to be, and which, either before being knitted or after the hosiery is made, are treated with chemicals for the purpose of attempting to make such hosiery less susceptible to certain types of damage and hosiery failures, and, also, to give it other desired effects.

Some hosiery of the kind referred to by respondent in its advertisements as "Non-Run" hosiery, as set forth in subparagraph 5 of paragraph 3 aforesaid, which is made in whole or in part with a weave recognizable by its web-like appearance, is made on knitting machines, with a certain type of stitch or weave for the purpose of attempting to make such hosiery less susceptible to certain types of damage and hosiery failures, and, also, to give it other desired effects.

When hosiery is being handled or worn during normal use, it may, and often will, come in contact with some jagged, barbed, or other rough or pointed surface on wood, metal, or other materials, or on the hands, which will catch onto, or pentrate, or snag the fabric in such a way as to dislocate or spread the stitch or weave of the fabric, or pull the stitch or yarn or thread of the fabric so that the yarn or thread is looped above the surface of the fabric, or break or sever the yarn or thread, all of which conditions are called "snags," and are observable as rough and uneven places and as holes.

When a snag is one in which one or more of the stitches, yarns, or threads of the fabric is broken or dropped, a run, that is, a ravel in, or a raveling out of, the fabric, running the way of, or the direction of, the weave, may, and often will, appear in the fabric, and may be long or short, depending on whether it is arrested by the weave or type of stitch or by some other means.

PAR. 5. By the representations made by respondents, as set forth in subparagraphs 1 to 3, inclusive, of paragraph 3 aforesaid, as to the hosiery made by it with a conventional weave and referred to by it as "Luxuria Crepes" and "Luxsheer Rayons," being "snag-resistant," and particularly by the use of the word "resistant," respondent has represented and implied and represents and implies that such hosiery is made of such materials and by such method that it is able to withstand and repel the action of such surfaces as those described aforesaid, which normally cause snags, so as to prevent the action of such surfaces making snags appear in such hosiery when being handled or worn during normal use, that such hosiery effectively does and will resist snags, that it does not and will not snag, and that snags do not and will not appear therein when such hosiery is being handled or worn during normal use.

While hosiery made of some materials and by some methods of manufacture may be more susceptible to snagging than hosiery made of other materials and by other methods, yet, the fact is that the hosiery referred to aforesaid made by respondent has not been made and is not made of materials or by a method that enables it to withstand or repel the action of snag producing surfaces, so as to prevent snags from appearing in such hosiery when being handled or worn during normal use. The fact is that said hosiery is susceptible to being snagged and having snags produced in it upon being subjected to the action of snag producing surfaces, and such hosiery will and does snag when being handled or worn during normal use.

The use by respondent of high twist yarn, in the making of the hosiery described last aforesaid, which it has represented and represents it uses in the making of such hosiery, and the use by it of chemicals in treating such hosiery, which it calls its "Beauty Lock" process, will not make, and neither of them will make, such hosiery "snag-resistant." While one of the results of the use of high twist yarn, and a chemical treatment of the character used by respondent, may be to make hosiery less susceptible to some types of snagging or to snagging by some types of snagging actions, in some instances, under some laboratory tests conditions, yet, the truth is that such seeming advantages are of little practical value when hosiery is being given normal use and wear, and such seeming advantages are insufficient and wholly inadequate to warrant, and do not warrant, a representation that such high twist yarn or such chemical treatment, or both,

will make hosiery "snag-resistant." Such representations were and are all false and deceptive.

PAR. 6. By the representations made by respondent, as set forth in subparagraph 4 of paragraph 3 aforesaid, as to its "exclusive finishing process, Beauty Lock," respondent has represented and implied and represents and implies that hosiery made by other manufacturers is not subjected to a finishing process of the type used by respondent. Said representations and implications were and are false and deceptive. To many persons familiar with knitting terms, the use by respondent of the word "lock" would, and does, imply that said process is a type of knitting in which a certain type of stitch is employed. The fact is that respondent's so-called "Beauty Lock" process is a process by which its hosiery is treated with certain chemicals and is not a process in which a certain type of stitch is employed. While the hosiery of other manufacturers may not be treated with the same chemicals that respondent uses in said process, yet, the fact is that the hosiery of many manufacturers is treated with chemicals that have substantially the same effects on hosiery as the chemicals used by respondent. By such representations respondent has given and gives purchasers of its hosiery the false and erroneous impression and belief that its hosiery, by reason of such process, is superior in quality to the hosiery of other manufacturers, and that such superiority is achieved by some process or method of knitting not used by other manufacturers in the making of their hosiery.

PAR. 7. By the representations set out in subparagraph 5 of paragraph 3 aforesaid, as to certain hosiery made by respondent being "non-run" hosiery, respondent has represented and represents that runs, as described aforesaid, will not appear in said hosiery, when being given normal use. Said representations were and are all false and deceptive. The fact is that runs, as described aforesaid, do and will appear in such hosiery, in the same manner and for the same reasons, as in the other hosiery hereinbefore described which have a conventional weave and, in like manner, such runs will not stop until they are arrested by the weave or stitch, or by some other means. Also, parts of said so-called "non-run" hosiery are made with a conventional weave. In such parts runs will and do appear the same as in hosiery made with a conventional weave.

PAR. 8. The aforesaid representations and implications made and published by respondent as aforesaid were and are grossly exaggerated, false, misleading and deceptive.

PAR. 9. The foregoing acts and practices used by respondent in connection with the offering for sale, and the sale and distribution, in commerce, of respondent's hosiery, have misled and deceived, and have the capacity and tendency to, and do, mislead and deceive purchasers of said hosiery into the erroneous and mistaken belief that the repre-

sentations and implications alleged aforesaid are true, when, in fact, they are not true, and to induce them to purchase said hosiery on account thereof for resale and use.

PAR. 10. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Complaint dismissed by the following order:

This matter came on to be heard by the Commission upon the complaint of the Commission, the respondent's answer thereto, together with respondent's amendments to said answer, testimony and other evidence taken before a trial examiner of the Commission theretofore duly designated by it, the trial examiner's recommended decision, exceptions of counsel supporting the complaint to such recommended decision, and the motion of counsel supporting the complaint for permission to withdraw the said exceptions to the trial examiner's recommended decision (filing of briefs having been waived and oral argument not having been requested).

The complaint alleges, and the respondent, Holeproof Hosiery Co., a manufacturer of ladies' full-fashioned hosiery, admits, that it has represented that certain of its hosiery is snag resistant, that it uses an exclusive finishing process called "Beauty Lock," and that certain of its hosiery is nonrun. The complaint alleges and respondent denies that the term "snag resistant" means extremely resistant to snags or snag-proof, that "exclusive finishing process" means that other hosiery manufacturers do not employ a finishing process of the same type as that used by respondent, and that the term "Beauty Lock" used in connection with hosiery implies that a lock stitch is employed in its construction. Respondent contends that its hosiery so represented is snag resistant, that it is finished by an exclusive finishing process, that "Beauty Lock" as used by respondent does not imply the use of a lock stitch, and that its hosiery represented as being nonrun will not run.

It appears to the Commission from the record herein that while respondent has represented that certain of its hosiery is snag resistant, said representations do not imply that such hosiery will not snag but only claim that the said hosiery is less susceptible to snagging due to special processes and construction. Because of its high crepe twist construction and its "Beauty Lock" process, which process consists of treating the hosiery with chemical solutions to bind the threads and filaments more closely together, respondent's hosiery, so represented, does tend to be less susceptible to snagging than is hosiery not made of high twist material and which has not been so chemically treated. Therefore, the falsity of respondent's claim that its hosiery so manufactured is snag resistant has not been sustained by the evidence.

It further appears to the Commission, from the evidence of record, that while other manufacturers do treat their hosiery with chemicals of the same general class as those used by respondent in its "Beauty Lock" process, the mixtures and proportions of the chemicals and the methods of application used by the hosiery manufacturers vary among them according to their individual experience and research. The chemical components of this process are purchased from chemical manufacturing concerns which issue special instructions for their use. Respondent's formula and methods of application vary considerably from these instructions. Such variations result in substantial differences in the qualities of the hosiery so treated. The evidence does not establish that any other hosiery manufacturer uses or has used the same formula or methods of application used by respondent. Therefore, the falsity of respondent's claim that its chemical finishing process is an exclusive process has not been established.

It further appears to the Commission that the evidence of record does not establish that by the use of the term "Beauty Lock" respondent has represented that its hosiery so referred to is constructed with a type of stitch commonly known as the lock stitch. A lock stitch is a method of knitting which forms a barrier against runs in the hosiery. An examination of respondent's advertisements containing the term "Beauty Lock" in their full context shows that respondent represents it to be a process which gives an improved appearance and longer wearing qualities to hosiery so treated. Respondent in no way implies that its "Beauty Lock" process will prevent runs or is a method of knitting. Therefore, the allegation of the complaint that respondent's use of the term "Beauty Lock" is false and misleading has not been sustained by the evidence.

It further appears to the Commission that the evidence of record does not sustain the allegation of the complaint that respondent has falsely represented that certain of its hosiery will not run. Where a break occurs in hosiery of conventional weave, the application of tension will frequently cause the hosiery to unravel for its entire length. Respondent's hosiery represented as nonrun employs at intervals a type of stitch, known as a lock stitch, which forms a barrier against such runs. When a thread is broken in said hosiery, it disengages only as far as the lock stitch unless unusual pressure is applied. These lock stitches appear at intervals of approximately one-fifth of an inch in one direction and one-tenth of an inch in the other direction in respondent's said hosiery. Therefore, if a thread is broken in this type of hosiery, the damage is usually confined to an area of approximately one-fifth of an inch or less. The evidence of record does not establish that a hole in hosiery of a length permitted by this type of construction is considered by the purchasing public to be a run.

It is therefore ordered, That the complaint herein be, and it hereby is, dismissed.

It is further ordered, That the motion of counsel supporting the complaint to withdraw his exceptions to the trial examiner's recommended decision be, and it hereby is, granted.

Before *Mr. George Biddle*, trial examiner.

Mr. D. E. Hoopingarner, *Mr. Edward L. Smith* and *Mr. George M. Martin* for the Commission.

Miller, Mack & Fairchild, of Milwaukee, Wis., and *Mr. A. M. Brown*, of Wyomissing, Pa., for respondent.

ALAN WRIGHT TRADING AS WADALON SALES. Complaint, May 26, 1950. Order, May 26, 1951. (Docket 5780.)

CHARGE: Using or selling lottery schemes or devices in merchandising and misrepresenting business status, advantages or connections as to dealer being manufacturer; in connection with the sale of novelty merchandise and other articles of merchandise.

COMPLAINT: Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Alan Wright, an individual trading as Wadalon Sales, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Alan Wright is an individual trading as Wadalon Sales with his principal office and place of business located at 2108 North Western Avenue, Chicago, Ill. Respondent is now, and for more than two years last past has been, engaged in the sale and distribution of novelty merchandise and other articles of merchandise to dealers. Respondent causes and has caused said merchandise, when sold, to be transported from his place of business in the State of Illinois to purchasers thereof at their respective points of location in the various States of the United States, other than Illinois, and in the District of Columbia.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent sells and has sold to dealers certain assortments of said merchandise so packed and assembled as to involve the use of a game of chance, gift enterprise or lottery scheme when said merchandise is sold and distributed to members of the consuming public. One of said assortments is and has been sold and distributed to the purchasing public in substantially the following manner:

This assortment consists of a large cardboard carton in which is contained a number of smaller cartons, each of which smaller cartons contains an article of merchandise and on the end of each of said

smaller cartons there appears a number. One end of said large carton is so constructed as to constitute a device commonly known as a pull card. Such pull card contains a number of partially perforated pull tabs and on the reserve side of each of said tabs there appears a number which corresponds to the number appearing on the end of one of said smaller cartons. Sales are 10 cents each and each purchaser pulls one of said tabs from the pull card. The purchaser is entitled to and receives the smaller carton bearing the number which corresponds to the number appearing on the reverse side of the tab pulled by such purchaser. The numbers on the reverse sides of said tabs are effectively concealed from purchasers and the prospective purchasers until selections have been made and the tabs have been separated or removed from the said card.

The value of said articles of merchandise varies substantially. The fact is that the question as to which of said articles the purchaser receives, and whether he receives an article of greater or less value than the amount to be paid therefor, is thus determined wholly by lot or chance.

Respondent sells and distributes, and has sold and distributed, various assortments of his merchandise, together with devices for use in the sale or distribution of such merchandise, to the purchasing public by means of a game of chance, gift enterprise or lottery scheme but the sales plans or methods employed in connection with each of said assortments are substantially the same as the sales plans or methods hereinabove described, varying only in detail.

PAR. 3. Retail dealers who purchase respondent's said assortments of merchandise, either directly or indirectly, expose for sale and sell the same to the purchasing public in accordance with the aforesaid sales plans or methods. Respondent thus supplies to, and places in the hands of, others the means of conducting lotteries in the sale and distribution of his merchandise in accordance with the sales plans or methods hereinabove described. The use by respondent of said sales plans or methods in the sale of his merchandise, and the sale of said merchandise by and through the use thereof and by the aid of said sales plans or methods, is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of criminal laws.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure an article of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute merchandise in competition with respondent, as above alleged, are unwilling to adopt and use said sales plans or methods or any sales plans or methods involving a game of

chance or the sale of a chance to win something by chance or any other sales plans or methods that are contrary to public policy and such competitors refrain therefrom. Many dealers in and ultimate consumers by said merchandise are attracted by said sales plans or methods employed by respondent in the sale and distribution of his merchandise and the element of chance involved therein and are thereby induced to buy respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or equivalent sales plans or methods. The use of said sales plans or methods by respondent because of said game of chance has a tendency and capacity to and does unfairly divert trade to respondent from his said competitors who do not use the same or equivalent sales plans or methods and as a result thereof substantial injury is being and has been done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. By use of the phrase "manufacturers" on its letterheads and other stationery, respondent has represented that he manufactures the merchandise which he sells. In truth and in fact, respondent does not manufacture any of the articles of merchandise which he sells but buys the same from the manufacturers thereof and assembles them into his lottery merchandise deal.

There is a preference on the part of dealers and members of the purchasing public to purchase from the manufacturers and because of the misleading representations that he is a manufacturer, dealers and others have purchased respondent's products.

PAR. 6. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to rule XXII of the Commission's Rules of Practice, the attached initial decision of the trial examiner shall, on May 26, 1951, become the decision of the Commission.

ORDER CLOSING CASE WITHOUT PREJUDICE

Initial Decision by William L. Pack, trial examiner.

This matter is before the trial examiner upon a motion filed by counsel supporting the complaint to close the proceeding without prejudice. No answer to the complaint has been filed by respondent, nor has any evidence been introduced in the proceeding.

The motion recites that a recent investigation discloses that respondent has discontinued the business which gave rise to the proceeding and has moved to another location where he is now engaged in an entirely different type of business. In the circumstances there would not appear to be sufficient public interest in the matter to warrant further proceedings at the present time.

It is therefore ordered, That the motion be granted and that this proceeding be, and it hereby is, closed without prejudice to the right of the Commission to reopen it and take such further action therein in the future as may be warranted by the then existing circumstances.

Before *Mr. William L. Pack*, trial examiner.

Mr. J. W. Brookfield, Jr., for the Commission.

UNIVERSAL EDUCATIONAL GUILD, INC. ET AL. Complaint, December 5, 1949. Order, June 12, 1951. (Docket 5718.)

CHARGE: Advertising falsely or misleadingly and misrepresenting directly or orally by self or representatives as to connections with others, nature of business, reduced, special, or introductory prices, special or limited offers, free service, value of service, new, most modern, unabridged, comparative merits, quality, refunds and reimbursements, indorsements, sponsorship, or approval of product and sample, offer or order conformance and furnishing means and instrumentalities of misrepresentation and deception; in connection with the publication and sale of a work known as World Scope Encyclopedia.

COMPLAINT: Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the respondents named and referred to in the caption hereof, acting in the respective capacities set forth and described in said caption, 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 thereto would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Universal Educational Guild, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 17 Smith Street, Brooklyn 2, N. Y. Its officers are now and for more than 1 year last past, have been the following respondents; namely, Abe Halperin, president, S. Leslie Schwartz, vice president, Lily Berkowitz, assistant treasurer, and Myron C. Gelrod, secretary.

PAR. 2. Book Distributors, 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 at the aforesaid 17 Smith Street, Brooklyn 2, N. Y. Said respondent and respondent, Universal Educational Guild, Inc., share the same offices. Among its officers who are also officers of respondent Universal Educational Guild, Inc., are the following, to wit: Abe Halperin, president, Myron C. Gelrod, treasurer, and Lily Berkowitz, secretary. The following respondents are also officers of respondent Book Distributors, Inc.: Isidore J. Halperin, second vice president, and Mac Gache, vice president.

PAR. 3. Respondent, Publishers Shipping Corp. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at the aforesaid 17 Smith Street, Brooklyn 2, N. Y., where it shares common offices with respondent Universal Educational Guild, Inc., and respondent Book Distributors, Inc. Its officers, to wit: Respondents Abe Halperin, president, Lily Berkowitz, assistant treasurer, and Myron C. Gelrod, secretary, are also officers of respondent, Universal Educational Guild, Inc., and of respondent Book Distributors, Inc. Respondent, S. Leslie Schwartz, is vice president of respondent Publishers Shipping Corp.

PAR. 4. Respondent, Public Distributors, 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 at the aforesaid 17 Smith Street, Brooklyn 2, N. Y., where it shares common offices with respondents Universal Educational Guild, Inc., Book Distributors, Inc., and Publishers Shipping Corp. Respondent, Public Distributors, Inc., has also had the corporate names Independent Surveys, Inc., and Public Surveys, Inc. The officers of respondent Public Distributors, Inc., to wit: Respondents, Abe Halperin, president, Lily Berkowitz, assistant treasurer, and Myron C. Gelrod, secretary, are also officers of respondents Universal Educational Guild, Inc., Book Distributors, Inc., and Publishers Shipping Corp. Respondent, S. Leslie Schwartz, vice president of respondent Public Distributors, Inc., is also vice president of Universal Educational Guild, Inc., and of Publishers Shipping Corp., respectively.

PAR. 5. The following-named respondents are corporations organized, existing, and doing business under and by virtue of the laws of the States hereinafter mentioned, with their offices and principal places of business in the following designated cities, and have as their officers the following hereinafter named respondents:

Corporation	Officers	State	Place of business
Empire State Guild, Inc.	Seymour Ross, president; Murray Green, vice president; Daniel Green, secretary; Nathan Kaplan, treasurer.	New York	180 State St., Albany, N. Y.
New England Home Educators, Inc.	Samuel Holtz, president; Irving Rosenfeld, secretary; Emmanuel H. Morgan, treasurer.	Massachusetts	739 Boylston St., Boston, Mass.
Eastern Guild, Inc.	Jack Weinstock, president; Robert K. Bertin, vice president; Jack Gerstel, secretary; Louis Tafler, treasurer; Nat Leroy, second vice president.	Pennsylvania	1649 N. Broad St., Philadelphia, Pa.
Keystone Guild, Inc.	Robert K. Bertin, president; George Nusbaum, vice president; C. W. Lockyer, secretary; J. H. Smith, treasurer.	do	336 4th Ave., Pittsburgh, Pa.
Capitol Guild, Inc.[1]	Robert K. Bertin, president; George Nusbaum, vice president; C. W. Lockyer, secretary; J. H. Smith, treasurer.	Maryland	200 W. Saratoga St., Baltimore, Md.
National Distributors, Inc.	Harry S. Cooper, president; Jack Marcus, vice president; Samuel Levitt, secretary; Maurice Mendelson, treasurer; Seymour Schwartz, assistant treasurer.	Michigan	1307 Industrial Bank Bldg., Detroit, Mich.
Central Guild, Inc.	Louis Katz, president and assistant treasurer; Nathan H. Schwartz, secretary; Irving Jacobson, treasurer.	Illinois	63 E. Adams St., Chicago, Ill.
To-Dor Service Corp.	Louis Katz, president; Martin Ressner, secretary; Jack Katz, treasurer.	do	Do.
World Surveys, Inc.	Isidor Buckbinder, president; Martin Morse, vice president; William Lache, second vice president; Murray Moss, treasurer; David B. Singer, secretary.	New York	Room 908, 165 W. 46th St., New York, N. Y. (home office). 707 S. Broadway, Los Angeles, Calif. (principal business address).
Pacific Guild, Inc.	Murray Moss, president and treasurer; David B. Singer, vice president; William Lache, secretary.	California	110 Market St., San Francisco, Calif.

[1] These are the same persons as are officers of respondent Keystone Guild, Inc.

Where the name of a respondent appears as an officer of more than one of the corporations hereinabove described in paragraphs 1 to 5, inclusive, that name applies to the same person.

PAR. 6. Respondent, Universal Educational Guild, Inc., was organized in December 1943, and then acquired the business theretofore conducted by a partnership known as Universal Educational Guild, and also acquired, and still owns, the copyright to and ever since its organization has been the publisher of a work known as World Scope Encyclopedia. By the use of franchise agreements, said respondent, since its organization, has been engaged, through respondent Book Distributors, Inc., its wholly owned subsidiary, in the distribution at wholesale of said World Scope Encyclopedia to those of the respondents hereinafter more particularly mentioned. Through the use of said franchise agreements said encyclopedia has also been handled and sold by other distributors, both wholesale and retail, employing house-to-house solicitors, and by other wholesale and retail distributors not employing house-to-house solicitors.

PAR. 7. Respondent, Publishers Shipping Corp., also a wholly owned subsidiary of respondent Universal Educational Guild, Inc., is now and since May 1946, has been engaged in the assembly of various volumes of World Scope Encyclopedia as such volumes are received from various printers thereof and in the shipping of such volumes as orders therefor are received by respondents Universal Educational Guild, Inc. and Book Distributors, Inc.

PAR. 8. All of the respondents are now, and for more than 1 year last past have been engaged in the sale of the aforesaid World Scope Encyclopedia in commerce between and among the various States of the United States and in the District of Columbia, and cause said World Scope Encyclopedia, when sold, to be transported from their respective places of business to the purchasers thereof located in the various States of the United States and in the District of Columbia, and there is now, and has been for more than 1 year last past, a constant current of trade and commerce by all the respondents in said World Scope Encyclopedia, between and among the various States of the United States, the territories thereof, and in the District of Columbia.

PAR. 9. In the course of such commerce, all of the respondents are now and for more than 1 year last past have been in substantial competition with other corporations and with firms and partnerships engaged in the sale of encyclopedia and other books in commerce aforesaid.

PAR. 10. Pursuant to and in furtherance of mutual understandings, agreements, and practices, respondents named in paragraphs 1, 2, 3, and 4 hereof, acting in concert and cooperation with each other, and with the respondents named in paragraph 5 hereof, in carrying out a common enterprise, have engaged in various unfair and deceptive acts and practices in commerce, and various unfair methods of competition in commerce as will be more fully hereinafter described and shown. In the course and conduct of said common enterprise, corporate respondents named in paragraphs 1, 2, 3, and 4 hereof, and their officers in their respective individual and official capacities have dominated, directed, and controlled, and now dominate, direct, and control the corporate policies, affairs, and activities of said respondents named in paragraph 5 hereof, and directly or indirectly, exercise and have exercised, a substantial measure of direction and control over the organization, management, sales policies and practices, and the operation and financing of the said respondents named in paragraph 5 hereof, in carrying out the unfair methods of competition and the unfair and deceptive acts and practices herein alleged in connection with the said common enterprise in which all of the respondents named in this complaint are and have been engaged. Respondents named in paragraph 5 hereof, and hereinafter referred to as Franchise Distributors are in fact and effect the agents of the respondents named in paragraphs 1, 2, 3, and 4 hereof, and each of the said respondents named herein has

cooperated with all other respondents named in the performance of the acts and practices hereinafter set forth.

The respondents named in paragraphs 1, 2, 3, and 4 hereof, supply the aforesaid respondent franchise distributors with sets of World Scope Encyclopedias when and as ordered from them by said franchise distributors; furnish said respondent franchise distributors with advertising literature, sales kits, transcribed radio programs, and other advertising media, and information and instructions intended to be used, and used, by the aforesaid franchise distributors in making door-to-door sales of said World Scope Encyclopedia through salesmen and representatives of said respondent franchise distributors. For the purpose of further directing, aiding, and assisting the said franchise distributors in the sale of the aforesaid World Scope Encyclopedia, the respondents named in paragraphs 1, 2, 3, and 4 hereof, have conducted sales campaigns for the benefit of the aforesaid franchise distributors and have sponsored contests among the salesmen of franchise distributors in which contests said respondents, named in paragraphs 1, 2, 3, and 4 hereof, have offered and awarded prizes.

PAR. 11. In the course and conduct of the business of the said franchise distributors, and to induce the purchase by the public of the aforesaid World Scope Encyclopedia, said franchise distributors have been using the following means, methods, acts, and practices:

Their agents, in a door-to-door solicitation of orders, represent that they are engaged in making surveys in behalf of newspapers, radio stations, and other organizations; that they are making such surveys to determine what newspapers are read by parents and by their children of school age; that such surveys are being made also to ascertain what are the most favored radio programs and what radio programs are listened to; that they are making such surveys for school boards or boards of education and other official agencies of similar nature and for industrial organizations; that they are making surveys for a broadcast of a radio program known as Ask Dr. Cyclo; that they are making a survey of radio and television programs through what the call Opinion Poll Sponsors, the results of which they represent are to be published in the magazine Radio and Television Best; that they are connected with local newspapers for which they are making such surveys and in connection therewith exhibit mastheads of such papers.

Respondent franchise distributors, through their said sales agents represent and have further represented that because newspaper advertisers or advertising agents are sponsoring the sale and distribution of said World Scope Encyclopedia, such work may be purchased for approximately one-half of the regular advertised price; that such newspaper advertisers or advertising agents are paying the difference

between the regularly advertised prices and the claimed reduced price at which the work is being offered to the purchaser; that such aforesaid saving can be effected by the purchaser clipping World Scope Encyclopedia advertisements from newspapers, or by clipping the mastheads from newspapers, and by accompanying them with small weekly payments over a period of time; that the World Scope Encyclopedia is offered at the aforesaid reduced special or introductory prices only to persons with children or only to a limited number of, or a selected group of persons in the area or community where the prospective buyer lives; that such offer is limited to a short period of time; that a 10 year consultation service offered with such work is "without charge" and "free," and that the 10 year consultation service is worth $10 per year if purchased separately and that therefore, buyers are effecting a saving when they buy such work. Said franchise distributors further represent that the annual yearbook or supplement to said World Scope Encyclopedia offered to buyers on presentation of coupons, at a price of $2.98, has a sales value of $10 if purchased separately, and that buyers of World Scope Encyclopedia effect thereby a saving of $7 or more; that the said World Scope Encyclopedia is new, most modern, unabridged, better than all other encyclopedias, and is the foremost work in America; that the lettering on the volumes of such work is gold stamped or embossed and stamped in gold; that deposits made by purchasers of such work would be refunded to such purchasers if they later decided not to purchase the work or if said World Scope Encyclopedia proved to be unsatisfactory to purchasers upon their inspection and examination; that the said World Scope Encyclopedia is endorsed and recommended by boards of education and by parent-teacher associations in the area in which the prospective purchaser lives.

It is and has been the practice of agents of respondent franchise distributors to exhibit to purchasers and prospective purchasers what they claim to be pages of said World Scope Encyclopedia, and numerous illustrations and pictures which they represent to be contained in such work, the printing so exhibited being of superior quality and on an excellent grade of paper. It is, and has been the custom and practice of such agents also to exhibit to purchasers and prospective purchasers a sample volume of said work with a binding of gold embossing and with paper and printing of superior quality. It is, and has been the practice of such agents to represent to prospective purchasers that such work, if purchased, will be delivered to the purchaser, in contents, illustrations, paper, pictures, printing, and binding the same as said samples and as orally and visually represented.

PAR. 12. All of the aforesaid representations and statements as alleged in paragraph 11 hereof and many others similar thereto, but not specifically set forth herein, are false, misleading, and deceptive.

In truth and in fact, all of the respondents are engaged in the sale of the World Scope Encyclopedia for their own profit. None of them is connected or affiliated in any manner whatsoever with any newspaper, radio station, publication (other than World Scope Encyclopedia), or other organization. Respondents are not engaged in making surveys in behalf of newspapers, radio stations, or of any other organization. The representations regarding the surveys made by agents of the respondents as alleged in paragraph 11 hereof are made for the purpose of securing the interest of prospective buyers of World Scope Encyclopedias. The prices at which said World Scope Encyclopedias are offered are not reduced, special, or introductory prices but are the regular prices at which the said World Scope Encyclopedia is regularly sold; nor does any newspaper advertiser nor anyone else pay the difference between what respondents claim to be the regularly advertised price and the aforesaid claimed reduced price. Said offers are not limited to persons with children or only to a limited number of a select group in the area or community where the prospective buyer lives but such World Scope Encyclopedia is offered at such prices to anyone anywhere, and the aforesaid offers are not limited to any period of time. The aforesaid 10 year consultation service is not without charge and is not free but the buyer pays therefor by paying the purchase price of said World Scope Encyclopedia. The aforesaid 10 year consultation service is not worth $10 per year and for the reason hereinabove mentioned, buyers are not effecting a saving when they buy World Scope Encyclopedia. The said World Scope Encyclopedia is not new, most modern, unabridged, better than all other encyclopedias, nor is it the foremost work in America. In truth and in fact, said World Scope Encyclopedia comprises reprints of other works, it has no index, its pages are not numbered, it has articles divided by being partly in one volume and partly in another, and is in other respects inferior to encyclopedias sold by competitors of the respondent in the commerce aforesaid. The lettering on the volumes of World Scope Encyclopedia is not gold stamped or embossed and stamped in gold. Respondents refuse to make refunds of deposits to purchasers when they later decide not to purchase the said World Scope Encyclopedia or when proved to be unsatisfactory to purchasers upon their inspection and examination of it. Said World Scope Encyclopedia is not and never has been endorsed or recommended by any board of education or by any parent-teachers association.

The aforesaid World Scope Encyclopedia does not contain all of the printed material or the illustrations and pictures represented by agents or franchise distributors, orally and by means of samples, to be contained in said World Scope Encyclopedia, nor is the printing contained therein of the quality nor the grade of paper therein of the grade of that exhibited to purchasers and prospective purchasers as

alleged in paragraph 11 hereof. The volumes of World Scope Encyclopedia when delivered to purchasers do not have the binding or gold embossing of the quality of the sample volume shown to purchasers and prospective purchasers as alleged in paragraph 11 hereof.

PAR. 13. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations, disseminated as aforesaid, and of the aforesaid methods, acts, and practices, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all of such statements and representations are true, and induces a substantial portion of the purchasing public to purchase said World Scope Encyclopedia, 10-year consultation service, and annual yearbook or supplements, because of such erroneous and mistaken beliefs. Thereby trade is diverted to respondents from their competitors engaged in the commerce aforesaid and substantial injury is done to substantial competition in interstate commerce.

The respondents named in paragraphs 1, 2, 3, and 4 hereof further, by reason of the acts, practices, and policies employed by them in directing and dealing with and through respondents named in paragraph 5 hereof, have supplied and placed in the hands of said respondents named in paragraph 5, means and instrumentalities designed to enable, and capable of enabling said respondents to mislead and deceive members of the public in connection with the purchase of the said books and publications sold by and for the account of all the respondents named herein.

PAR. 14. The aforesaid acts and practices of respondents are all to the injury of the public and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to rule XXII of the Commission's rules of practice, the attached initial decision of the trial examiner shall, on June 12, 1951, become the decision of the Commission.

ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE

INITIAL DECISION BY ABNER E. LIPSCOMB, TRIAL EXAMINER

This proceeding came on to be considered by the above-named trial examiner, heretofore duly designated by the Commission, upon the complaint of the Commission, the answers of respondents, and the motion by the attorney in support of the complaint that the complaint in this proceeding be dismissed without prejudice for the reasons that respondents' method of doing business described in the complaint was

abandoned by respondents prior to 1948 and a new method instituted which is not within the scope of the complaint; that certain of the corporate respondents have been dissolved or are in process of dissolution, and are no longer engaged in the sale of World Scope Encyclopedia; that some of the officers of various corporate respondents have died and others have been changed; that two revised editions of the encyclopedia have been published since 1948, to which the charges in the complaint are not applicable; that many of the affirmative representations charge in the complaint were abandoned at the time respondent's method of doing business was changed in 1948; that other charges in the complaint cannot be sustained by substantial evidence; and that a proceeding in support of the present complaint would not be in the public interest.

It appears that the reasons presented by the attorney in support of the complaint in the above-described motion are sufficient to warrant the disposition of the proceeding in the manner requested, and that all of the respondents who have been engaged in the business of selling and distributing the World Scope Encyclopedia since 1948 have waived the filing of an answer to the above-described motion, and have consented to the issuance forthwith, without further notice, of the trial examiner's decision. Accordingly, said motion is hereby granted, and

It is ordered, That the complaint in this proceeding be, and the same hereby is, dismissed without prejudice to the right of the Commission to institute further proceedings, should future facts warrant.

Before *Mr. Abner E. Lipscomb*, trial examiner.

Mr. Harry H. Harris, of New York City, for Universal Educational Guild, Inc., Book Distributors, Inc., Publishers Shipping Corp., Public Distributors, Inc., Abe Halperin, S. Leslie Schwartz, Lily Berkowitz, Myron C. Gelrod, Mac Gache, and Isidore J. Halperin.

Mr. Jules Aronson, of New York City, for Empire State Guild, Inc., Seymour Ross, Murray Green, Daniel Green, Nathan Kaplan, Central Guild, Inc., and To-Dor Service Corp.

Mr. William J. Wallace, of Boston, Mass., for New England Home Educators, Inc., and Samuel Holtz.

Sundheim, Folz, Kamsler & Goodis, of Philadelphia, Pa., for Eastern Guild, Inc., Keystone Guild, Inc., Capitol Guild Inc., Jack Weinstock, Robert K. Bertin, Nat Leroy, Jack Gerstel, Louis Tafler, George Nusbaum, C. W. Lockyer, and J. H. Smith.

Rosenberg & Grebs, of Detroit, Mich., for National Distributors, Inc., Harry S. Cooper, Jack Marcus, and Seymour Schwartz.

Mr. Maxwell S. Boas, of Los Angeles, Calif., for World Surveys, Inc., Pacific Guild, Inc., Isidor Buckbinder, Martin Morse, William Lache, Murray Moss, and David B. Singer.

STIPULATIONS

DIGEST OF STIPULATIONS [1] EFFECTED AND HANDLED THROUGH THE COMMISSION'S DIVISION OF STIPULATIONS [2]

02484.[3] **Shoe Polish and Dye and White Shoe Cleaner—Qualities, Unique Nature and Competitive Products.**—Stipulation No. 02484 has been amended so that it now reads:

Barton Manufacturing Co., Inc., a corporation, 4157 North Kingshighway, St. Louis, Mo., vendor-advertisor, engaged in selling a shoe polish and dye designated Dyanshine and a white shoe cleaner designated Barton's White Glaze Polish, entered into an agreement, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Dyanshine will eliminate scratched and marred areas from shoe leather or do more than render such areas less conspicuous to casual observation by supplying thereto a color similar to that of the leather wherein they occur.

(*b*) That the process of recoloring, redyeing, and imparting a highly polished, lively finish to used shoe leather with Dyanshine is a process of restoring color to such leather, or that this process is an exclusive feature found only in Dyanshine.

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[1] The digests published herewith cover those accepted by the Commission during the period covered by this volume, namely, July 1, 1950, to June 30, 1951, inclusive, with the exception of stipulations S. 8151–8172, inclusive, which involved use of such words, concepts and claims as "orthopedic", "corrective", or "health" in connection with the offer and sale of shoes. Said stipulations, while *accepted* by the Commission during the period in question, were not put into *effect* until June 30, 1952, and are therefore reserved for publication in the following volume.

Digests of previous stipulations of the kind herein involved accepted by the Commission may be found in vols. 10 to 46 of the Commission's Decisions.

[2] Under a reorganization of the Commission's internal structure, effective June 1, 1950 (see annual report for that year at p. 6), the former Bureau of Trade Practice Conferences and the Bureau of Stipulations were consolidated into the Bureau of Industry Cooperation, and a Division of Stipulations was created, under said Bureau, to handle such work.

For an account of a prior reorganization, effective August 12, 1946, under which the Division of Stipulations, then created, was charged with the handling of all matters considered appropriate for settlement by stipulation, including both such matters as had theretofore culminated in the false and misleading advertising stipulations effected through the Commission's Radio and Periodical Division, as it theretofore functioned, and those theretofore effected through the Trial Examiner's Division, see footnote in volume 45 at p. 845.

[3] Amended.

(*c*) That Dyanshine or the oils thereof will render shoe leather impervious to water or keep it in its original condition.

(*d*) That Dyanshine causes shoes or the leather of which they are composed to retain the appearance they had when new; take on the appearance of new shoes after being repaired one or more times; or remain in their original, new condition while being used.

(*e*) That shoe dyes, pastes or polishes other than Dyanshine cause shoes to become marred by unsightly cracks or in any manner whatsoever damage or detract from the appearance of the shoe leather on which they are used.

(*f*) That Dyanshine exerts any influence or control in any manner whatsoever over the number of times a shoe may be repaired or half-soled.

(*g*) That Dyanshine will cause shoes to wear better or last longer than they would if Dyanshine had not been used thereon.

(*h*) That when shoe dyes, pastes or polishes other than Dyanshine are used on the shoes, the upper leather thereof will dry out, become cracked, lose its original appearance, become dull and lusterless, or that such shoes are apparently worthless as soon as the soles become worn.

(*i*) That Dyanshine will have any effect whatsoever on the outer sole, insole, box-toe, lining, welting, and other parts of a shoe, excluding the upper shoe leather, by making unqualified statements relative to its effect upon "shoes."

(*j*) That Barton's White Glaze Polish will not rub off shoes after its application thereto.

Barton Manufacturing Co., Inc., further agreed that as thus amended Stipulation No. 02484, approved September 23, 1941, shall remain in full force and effect. (1–14409, June 26, 1951.)

2494.[4] **American Lobster—Nature.**—Stipulation No. 2494 has been amended so that it now reads:

Hudgins Fish Co., a corporation, engaged in the sale and distribution of fish and crustacea in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

The American lobster, also known as the Northern lobster, is found only along the North American Coast from North Carolina to Labrador. It is more abundant and attains its greatest size in the northerly part of its range in Eastern Maine and the Maritime Provinces. These lobsters are scientifically known as macrurous crustaceans of the genus Homarus. Another type of marine macrurous crustacean

[4] Amended. See 29 F. T. C. 1441.

of the genus Palinurus is found in Southern waters and variously referred to as Sea Crayfish, Spiny Lobster, Rock Lobster, and Southern Lobster. The term "Lobster" has long been associated in the minds of the consuming public with the genus Homarus.

Hudgins Fish Co. in connection with the sale and distribution of its products in commerce as defined by said act, agreed to cease and desist from the use in its advertising of the word "Lobster" as descriptive of a species of food fish other than that properly known as "lobster," the macrurous crustacean of the genus Homarus; provided, however, that this agreement is not to be construed as prohibiting use of the common names "Spiny Lobster" and "Rock Lobster" as descriptive of a species of crawfish (Palinurus interruptus) so long as the word "spiny" or the word "rock" appears in direct connection with the word "lobster" and in type of equal size and prominence.

Hudgins Fish Co. also agreed that should it ever resume or indulge in any of the aforesaid methods, acts or practices which it has herein agreed to discontinue, or in the event the Commission should issue its complaint and institute formal proceedings against the respondent as provided herein, this stipulation as to the facts and agreement to cease and desist, if relevant, may be received in such proceedings as evidence of the prior use by the respondent of the methods, acts or practices herein referred to.

Hudgins Fish Co. also stipulated and agreed that this amended stipulation cancels Stipulation No. 2494 executed by Hudgins Fish Co. and approved by the Federal Trade Commission on July 14, 1939. (1–12672, Jan. 8, 1951.)

2519.[5] **Bread—Composition and Certification.**—Stipulation No. 2519 has been amended so that it now reads:

Columbia Baking Co., a corporation, engaged in manufacture, sale and distribution of bakery products from some 15 branch establishments in Southern States which it operates, selling and distributing its products in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Columbia Baking Co., in connection with the sale and distribution of its products in commerce as defined by said act, agreed to cease and desist from:

(*a*) Representing directly, inferentially, by picturization or in any other way that the bread sold by it contains whole milk, or pure rich milk or certified milk, when such is not the fact;

(*b*) The use of the word "Certified" as applied to its products, except under the following conditions:

[5] Amended. See 29 F. T. C. 1456.

(1) That the identity of the certifier be clearly and plainly disclosed;

(2) That the certifier be qualified and competent to know what has been certified is true;

(3) That if the certifier be other than the seller, any connection between the certifier and the seller be clearly shown.

Columbia Baking Co. further agreed that all terms and provisions of Stipulation No. 2519 shall remain in full force and effect. (1–13263, Apr. 13, 1951.)

2600.[6] **Chicks—Quality and Certification.**—Stipulation No. 2600 has been amended so that it now reads:

Milton Johnson and Mark Johnson, copartners, trading as Trail's End Poultry Farm, engaged in the chick hatchery business and in the sale and distribution of chicks incubated at their place of business from eggs, certain of which were purchased by the said copartners from nearby farm flocks owned or controlled and operated by others, pursuant to contracts existing between such flock owners and the aforesaid copartners, in interstate commerce, in competition with other partnerships and with corporations, individuals and firms likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Milton Johnson and Mark Johnson, in connection with the sale and distribution of their products in commerce, as defined by said act, agreed to cease and desist from the use in advertising or printed matter of whatever kind or character, or in any other way, of the words "300-egg double pedigree White Leghorn breeding males" or of any other words of similar implication, either alone or in connection with the words "finest bred chicks," "finest breeding cockerels," or with any other words, so as to import or imply or the effect of which tends or may tend to convey the belief to purchasers that the chicks supplied by said copartners in filling orders therefor are or have been hatched from eggs laid by stock of the 300-egg or pedigreed type, when such is not the fact. Said copartners also individually agree to cease and desist from the use of the word "Certified" or any other word or words of similar meaning as descriptive of their chick products except under the following conditions:

(1) That the identity of the certifier be clearly and plainly disclosed;

(2) That the certifier be qualified and competent to know what has been certified is true;

(3) That if the certifier be other than the seller any connection between the certifier and seller be clearly shown;

[6] Amended. See 30 F. T. C. 1396.

(4) That a certificate be given to the purchaser and the qualities to which the certificate appertains be clearly disclosed.

Milton Johnson and Mark Johnson further agreed that, as thus amended, all the terms and provisions of Stipulation No. 2600 shall remain in full force and effect. (1–12370, Apr. 13, 1951.)

2707.[7] **American Lobster—Nature.**—Stipulation No. 2707 has been amended so that it now reads:

East Coast Fisheries, Inc., a corporation, engaged in the sale and distribution of fish and crustacea in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

The American lobster, also known as the Northern lobster, is found only along the North American Coast from North Carolina to Labrador. It is more abundant and attains its greatest size in the northerly part of its range in Eastern Maine and the Maritime Provinces. These lobsters are scientifically known as macrurous crustaceans of the genus Homarus. Another type of marine macrurous crustacean of the genus Palinurus is found in Southern waters and variously referred to as Sea Crayfish, Spiny Lobster, Rock Lobster, and Southern Lobster. The term "lobster" has long been associated in the minds of the consuming public with the genus Homarus.

East Coast Fisheries, Inc., in connection with the sale and distribution of seafood products in commerce, as defined by said act, agreed to cease and desist from the use in its advertising of the word "Lobster" as descriptive of a species of food fish other than that properly known as "lobster," the macrurous crustacean of the genus Homarus; provided, however, that this agreement is not to be construed as prohibiting use of the common names "Spiny Lobster" and "Rock Lobster" as descriptive of a species of crawfish (Palinurus interruptus) so long as the word "spiny" or the word "rock" appears in direct connection with the word "lobster" and in type of equal size and prominence.

East Coast Fisheries, Inc., also agreed that should it ever resume or indulge in any of the aforesaid methods, acts or practices which it has herein agreed to discontinue, or in the event the Commission should issue its complaint and institute formal proceedings against the respondent as provided herein, this stipulation as to the facts and agreement to cease and desist, if relevant, may be received in such proceedings as evidence of the prior use by the respondent of the methods, acts or practices herein referred to. (1–13631, Jan. 8, 1951.)

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[7] Amended. See 30 F. T. C. 1464.