

## INITIAL DECISION BY JAMES A. PURCELL, TRIAL EXAMINER

Pursuant to the provisions of the act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" approved October 15, 1914 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (15 U. S. C., Sec. 13), the Federal Trade Commission on September 1, 1949, issued and subsequently served its complaint in this proceeding upon Central Soya Co., a corporation, and upon its subsidiaries, McMillen Feed Mills., Inc., of Tennessee, a corporation, and McMillen Feed Mills, Inc., of Ohio, a corporation, charging such respondents with violation of subsection (a) of section 2 of said act as amended. On November 1, 1949, respondents filed their answer thereto. Subsequently, and on May 15, 1950, respondents formally moved the trial examiner for leave to withdraw the said answer of November 1, 1949, and to file in lieu thereof a substitute answer, which motion was granted, whereupon respondents filed their joint answer, dated May 15, 1950, admitting all the material allegations of fact set forth in said complaint and waiving any further hearings as to the said facts. Said answer contains certain reservations to the respondents not necessary to be here considered and which do not affect the issues herein.

Subsequent to the filing of the original answer to the complaint several hearings were held for the purpose of clarifying the issues, agreeing upon the production of documentary evidence and exploring the possibilities of agreement between the parties looking to a final settlement. On May 25, 1950, the matter was closed for the taking of testimony and reception of evidence. On September 25, 1950, pursuant to motion by the attorney in support of the complaint, an order was passed, under provisions of rule XXII of the rules of practice, reopening the matter for reception of additional evidence. A further hearing was held on September 28, 1950, additional evidence received and the matter closed before the examiner by order dated November 21, 1950. At the last mentioned hearing a joint stipulation as to certain facts was received, the details of which are hereinafter described. All such hearings were conducted before the above-named trial examiner duly designated by the Commission, and were duly recorded and filed in the office of the Commission.

Thereafter, the proceeding regularly came on for final consideration by said trial examiner on the complaint, answer thereto, stipulation as to certain facts at variance with the provable charges of the complaint and supplementing deficiencies of the complaint (which facts are necessary of record to support the findings and conclusion), and

proposed findings as to the facts and conclusion jointly agreed to and submitted by counsel, oral argument thereon not having been requested. Said trial examiner, having duly considered the record herein, now makes his findings as to the facts, conclusion drawn therefrom, and order.

Preliminary to proceeding with findings as to the facts, the stipulation containing supplemental and provable facts, hereinabove referred to, appears of record and is epitomized as follows:

1. The correct address of respondent, Central Soya Co., Inc., is No. 300 Fort Wayne Bank Building, city of Fort Wayne, Ind.

2. McMillen Feed Mills Division is the trade name under which Central Soya sells and distributes animal foods.

3. Central Soya since it began business in 1935, McMillen of Tennessee since February 1947, and McMillen of Ohio since March 1943, have all been engaged in the production of animal-feed products of divers types, including both concentrate and complete feeds.

4. During the year ending August 31, 1948, the McMillen Division and the other respondents sold approximately 380,000 tons of feeds to retail dealers with gross sales of \$39,000,000.

5. That all respondents during the respective times herein mentioned have engaged in interstate commerce throughout the United States, as "commerce" is defined in the Clayton Act.

6. That in the conduct of their businesses, and from the dates specified in paragraph 3 hereof, respondents have been engaged in substantial competition with other manufacturers of animal-feed products who seek to sell and distribute such products in commerce between the several States of the United States and in the District of Columbia.

7. The so-called Master Mix patronage dividend plan was adopted by Central Soya and McMillen, of Ohio, for the fiscal year ending September 30, 1943, and by McMillen, of Tennessee, during the fiscal year ending August 31, 1948. Said plan was identical with all respondents except that the fiscal year for Central Soya and McMillen, of Ohio, ended September 30, for the years 1943 to 1946, but beginning with the fiscal year ending August 31, 1948, all three respondents adopted identical fiscal years. By said plan, the rates of dividends or discounts paid at the close of each fiscal year vary with the quantity or amount of feed purchased by respondents' dealers who, in some instances, are competitively engaged one with the other in the sale of said products within the United States. The respondents, so far as said plan is concerned, operate as a unit so that in computing points under said plan, it is immaterial from which of the respondents the dealer buys his feed or which of the respondents may invoice him for his purchases.

8. Under the plan some of respondents' dealer purchasers are paid an annual discount or rebate for the fiscal period September 1 of each respective year and ending August 31 of the succeeding or following year.

9. During the period September 1, 1947, to August 31, 1948, respondents granted discounts or rebates and paid out directly by check to dealer purchasers who accumulated credits and thereby earned such discounts or rebates under the plan, an amount which totaled approximately \$365,000.

10. Master Mix dealers were classified as franchise dealers, associate dealers, and dealers. Franchise dealers entered into a written agreement with respondents whereby there was allocated to such franchise dealers a fixed and exclusive trade or sales area or areas. An associate dealer was one located within an area allocated to a franchise dealer who had been appointed by said franchise dealer with the approval of respondents. All dealers, other than franchise or associate, were classified by respondents simply as dealers. Associate dealers and dealers have no written agreement with respondents, but do participate in the patronage dividend plan.

11. The written agreement with the franchise dealer, which in some instances was unknown to his associate dealers, provided further that in determining the rate of the franchise dealer's patronage dividend the aggregate of the sales of Master Mix animal feeds to the franchise dealer and his associate dealers should be combined, and the franchise dealer paid such dividend at a rate based upon the total of such sales of feed, with the associate dealers being paid their patronage dividend at a rate determined by their separate purchases. This has resulted at times in an associate dealer being paid at a lower rate than his franchise dealer, although individually he may have purchased more feed during the period than his franchise dealer. However, in determining the amounts to be paid to a franchise dealer, at the rate as above determined, there was first deducted therefrom all amounts paid to his associate dealers, at their respective rates.

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Central Soya Co., Inc., hereinafter referred to as respondent Central Soya, is a corporation organized and existing under and by virtue of the laws of the State of Indiana with its office and principal place of business located at 300 Fort Wayne Bank Building, in the city of Fort Wayne, State of Indiana.

PAR. 2. Respondent, McMillen Feed Mills, Inc., of Tennessee, hereinafter referred to as respondent Tennessee Corporation, is a corporation organized and existing under and by virtue of the laws of the

State of Tennessee with its office and principal place of business located in the city of Memphis, State of Tennessee; said corporation is a subsidiary of respondent Central Soya, which owns 98 percent of the stock of said respondent Tennessee Corporation and controls and directs its operations.

PAR. 3. Respondent, McMillen Feed Mills, Inc., of Ohio, hereinafter referred to as respondent Ohio Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Ohio with its office and principal place of business located in the city of Marion, State of Ohio; said corporation is a wholly owned and controlled subsidiary of respondent Central Soya.

PAR. 4. McMillen Feed Mills Division, hereinafter referred to as the Division is the trade name under which respondent Central Soya sells and distributes animal feeds.

PAR. 5. Respondent, Central Soya, since it began business in 1935, respondent Tennessee Corporation, since February 1947, and respondent Ohio Corporation since March 1943, have each and all been engaged in the manufacture of animal-feed products of various types, including both concentrate and complete feeds. The animal-feed products, thus manufactured, are offered for sale and sold by them under the brand name of Master Mix. During the year ending August 31, 1948, the aforesaid Division of respondent Central Soya, together with the other two said respondents, sold approximately 380,000 tons of such feeds to retail dealers, with gross sales in the amount of \$39,000,000.

PAR. 6. The said respondents do each sell and distribute, in commerce, as commerce is defined in the Clayton Act, such products to retail feed dealers throughout the United States. Respondents cause said animal-feed products when sold to be transported and shipped from their respective manufacturing plants and warehouses which are located in various States throughout the United States, across State lines to their respective dealer purchasers thereof, located in various States of the United States other than those where said shipments originate. Each of the respondents maintains and has maintained during all the respective times mentioned herein a course of trade and commerce in said products among and between various States of the United States.

PAR. 7. In the course and conduct of their respective businesses, as aforesaid, respondent Central Soya since it started business in January 1935, respondent, Tennessee Corporation, since it became a subsidiary of respondent Central Soya in February 1947, and respondent, Ohio Corporation, since it became a subsidiary of respondent Central Soya in March 1943, have each and all been engaged in substantial

competition with other persons, partnerships, firms, and corporations which likewise manufacture animal feed-products and which sell and seek to sell and distribute, or cause to be sold and distributed, such products in commerce between and among the several States of the United States and in the District of Columbia. Such competition between the respondents and some of the other manufacturers of animal-feed products, which sell and seek to sell same to retail dealers in commerce between and among the several States of the United States and in the District of Columbia, has been or may be substantially lessened by the discriminations in price by respondents which are hereinafter set forth.

PAR. 8. In the course and conduct of their businesses as aforesaid, since the respective times at which each of the respondents adopted the plan known as the Master Mix patronage dividend plan, which plan is hereinafter described in paragraphs 11, 12, 13, and 14, respondents have been discriminating in price between different dealer purchasers of its animal-feed products, including both concentrate and complete feeds, of like grade and quality. Under said plan, the rates of the dividends or discounts paid at the close of each fiscal year vary with the quantity or amount of such feed purchased, with the result that the net prices for products of like grade and quality paid by some of their dealer purchasers are higher than the net prices paid by other of their dealer purchasers, who, in some instances, are competitively engaged one with the other in the sale of said products within the United States.

PAR. 9. One or more of the purchases, which were the subject of such discrimination, were in commerce and such products were sold for use, consumption or resale within the United States.

PAR. 10. The aforesaid price discrimination resulted from the use by each and all of the respondents, in the manner and by the acts and practices hereinafter set forth, of the plan designated by each of the respondents as the Master Mix patronage dividend plan, and of the method of classifying dealers as hereinafter described in paragraphs 15 and 16.

PAR. 11. The so-called Master Mix patronage dividend plan had the effect of creating the aforesaid price discriminations, was adopted and used by respondents Central Soya and Ohio Corporation for the fiscal year ending September 30, 1943, and by respondent Tennessee Corporation during the fiscal year ending August 31, 1948. The plan was identical for all of the respondents, except that the fiscal year for the respondents Central Soya and Ohio Corporation ended on September 30 from 1943 to 1946, but beginning with the fiscal year ending on August 31, 1948, all three of the respondent corporations

had identical fiscal years for the operation of the said plan. The respondents so far as said plan is concerned, operate as a unit, so that in computing points under said plan, hereinafter described, it is immaterial from which of the respondents the dealer buys his feeds or which of the respondents may invoice him for his purchase.

PAR. 12. Under the Master Mix patronage dividend plan, as herein described, some of respondents' dealer purchasers are paid an annual discount or rebate for the period beginning September 1 of each respective year and ending August 31 of the succeeding or following year, which rebate is computed on the basis of points awarded for each ton of Master Mix feed purchased by such dealers. Under this system there is a sliding scale of discounts or rebates whereby different point values are assigned on purchases of each of the varieties or types of such products. Any dealer who accumulates a minimum of 1,000 points during the aforesaid annual period is the recipient of the minimum discount or rebate of 6 cents per point on his purchases from the respondents during this period. If a dealer fails to accumulate this minimum, he receives no discount or rebate on his purchases. Respondents' dealers, who earn greater numbers of points are credited with, and paid, discounts or rebates which are computed at higher rate per point, based on the following schedule:

Points per year :	<i>Dividend per point</i>
1,000 to 1,999.....	\$0.06
2,000 to 2,999.....	.08
3,000 to 3,999.....	.10
4,000 to 4,999.....	.125
5,000 to 7,499.....	.15
7,500 to 9,999.....	.175
10,000 and over.....	.20

PAR. 13. The so-called patronage dividend discounts or rebates are paid automatically, according to the aforesaid schedule, to those dealer purchasers who qualify under such plan, on or before November 1 of each annual period, without any further obligation or action by, or on behalf of, such dealers.

PAR. 14. During such specific annual period from September 1, 1947, to August 31, 1948, the respondents granted discounts or rebates and paid out, directly by check, to dealer purchasers who accumulated credits and thereby earned such discounts or rebates, an amount which totaled approximately \$365,000.

PAR. 15. The manner in which respondents classified their dealer purchasers, who in some instances were in competition with each other, also resulted in the aforesaid discriminations in price in that such

classification brought about the result whereby such dealer purchasers received different rates of discounts or rebates depending upon their respective classifications. Master Mix dealers were classified as franchise dealers, associate dealers, and dealers. The franchise dealer entered into a written agreement with the respondents whereby there was allocated to such franchise dealer a fixed and exclusive trading or sales area or areas. An associate dealer is a dealer located within an area allocated to a franchise dealer who has been appointed by said franchise dealer with the approval of the respondents. All dealers other than franchise or associate dealers are classified by the respondents simply as dealers. Associate dealers and dealers have no written agreement with respondents but participate in the patronage dividend plan.

PAR. 16. The said written agreement with the franchise dealer, which in some instances was unknown to his associate dealers, provided further that in determining the rate of the franchise dealer's patronage dividend the aggregate of the sales of Master Mix animal feeds to the franchise dealer and his associate dealers should be combined, and the franchise dealer paid said dividend at a rate based upon the total of such sales of feed, with the associate dealers being paid their patronage dividend at a rate determined by their separate purchases. This has resulted at times in an associate dealer being paid at a lower rate than his franchise dealer although individually he may have purchased more feed during the period than his franchise dealer. However, in determining the amounts to be paid to a franchise dealer, at the rate as above determined, there was first deducted therefrom all amounts paid to his associate dealers, at their respective rates. Dealers, other than franchise or associate, purchase their requirements direct from Central Soya, are paid their discounts or rebates direct by Central Soya; do not purchase or clear through franchise or associate dealers, and the quantities purchased by such "dealers" are not combined with purchases made by franchise or associate dealers for the purpose of computing points earned by the latter, nor are the discounts or rebates paid such dealers deducted from any amounts paid franchise or associate dealers.

PAR. 17. The effect of such discriminations in price, described herein, may be substantially to lessen competition in the line of commerce in which respondents and their competitors are engaged, which is the manufacture and sale to retailers of animal feed products, including both concentrate and complete feeds.

PAR. 18. The effect of such discriminations in price, described herein, may be to tend to create a monopoly in the respondents in the said line of commerce in which they were, and are, engaged.

PAR. 19. The effect of the discriminations in price, hereinbefore described, may be to injure, destroy, or prevent competition between those dealer purchasers of respondents' products who, directly or indirectly, received the benefits of said discriminations, as hereinbefore set forth, and those competing dealer purchasers of said products who do not receive said benefits, or who did not have the opportunity of participating in the receipt of said benefits.

#### CONCLUSION

The acts and practices of respondents herein found are violative of subsection (a) of section 2, of an act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an act of Congress, approved June 19, 1936 (the Robinson-Patman Act).

#### ORDER TO CEASE AND DESIST

*It is ordered,* That respondents, Central Soya Co., Inc., a corporation, and its subsidiaries, McMillen Feed Mills, Inc., of Tennessee, a corporation, and McMillen Feed Mills, Inc., of Ohio, a corporation, their, and each of their, respective officers, representatives, agents, and employees, directly or through any corporate or other device, in the sale of animal feed products, including both concentrate and complete feeds, whether sold under the name of Master Mix or any other name or designation, in commerce as commerce is defined in the aforesaid Clayton Act, between and among the several States of the United States and in the District of Columbia, do forthwith cease and desist from:

1. Directly or indirectly discriminating in price between different purchasers of animal-feed products, including both concentrate and complete feeds of like grade and quality, where the aforesaid products are sold for use, consumption, or resale within the United States or in the District of Columbia;

(a) By employing in any manner, or by any means, any arrangement or plan, regardless of designation, whereby allowances, discounts, rebates, refunds, compensation or consideration of any nature or description are granted or paid in any manner to dealer purchasers of such products when such allowances, discounts, rebates, refunds, compensation or consideration are compiled or computed at varied or different rates or percentages dependent upon the quantity or amount of the products purchased;



Order

47 F. T. C.

(b) By classifying, designating or defining, by any means or method, dealer purchasers of such products for the purpose or with the intent or effect of granting or paying in any manner allowances, discounts, rebates, refunds, compensation or consideration of any nature or description at varied or different rates or percentages which are dependent in any way upon such classifications, designations or definitions.

*Provided*, That nothing herein contained shall prevent any respondent from showing that any differentials alleged to be in violation of the provisions of this order are differentials which in fact make only due allowance for differences in cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such animal-feed products are to such purchasers sold or delivered, and when differentials are thus shown by any respondent to be so justified, they are not to be construed as in violation of this order.

#### ORDER TO FILE REPORT OF COMPLIANCE

*It is ordered*, That the respondents herein shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order [as required by said declaratory decision and order of January 11, 1951.]

## Syllabus

## IN THE MATTER OF

HERMAN G. HAYES TRADING AS HAYES HI-GRADE  
HATCHERY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

*Docket 5487. Complaint, Mar. 26, 1947—Decision, Jan. 12, 1951*

The national poultry improvement plan as approved by the Secretary of Agriculture has for its objective, among other things, improvement in the production and breeding qualities of poultry and authoritative identification of breeding stock, hatching eggs and chicks, and said plan, acceptance of which is optional with the States and individual members of the industry therein, affords protection from unscrupulous competition and enables purchasers to buy with more confidence.

Certain official terminology prescribed by the plan—which is administered within each State by an official State agency cooperating with the Bureau of Animal Industry, United States Department of Agriculture—such as United States Record of Performance, Record of Performance, and their abbreviations, U. S. R. O. P. and R. O. P., has acquired a definite meaning throughout the industry and trade, and when used to describe specified fowls indicates that each has an official performance or lineage record. Such terms, however, are not applicable to all poultry produced by a national poultry improvement plan participant and are misnomers for any fowl that has not been duly certified and registered under the plan.

A cockerel cannot become a U. S. R. O. P. or R. O. P. male in the accepted meaning of the term until passing certain official tests when it has reached 6 months of age, and regulations provide that use of the term U. S. R. O. P. or R. O. P. is permissible only when the males siring the chicks so described have been officially leg-banded as U. S. R. O. P. males and registered as such, so that the progeny of mere wing-banded cockerels who have not been leg-banded, are not R. O. P. sired, and a nonmember of the national poultry improvement plan cannot represent his chicks as R. O. P. or as U. S. R. O. P.

Where an individual engaged in the interstate sale and distribution of baby chicks; in advertising in newspapers and trade journals and by advertising folders, catalogs and price lists, directly or by implication—

- (a) Represented that his said chicks were R. O. P. sired, as that term is understood in the industry and authorized under the national poultry improvement plan; and
- (b) Similarly represented that he was a participant in said plan, at least to the extent of heading his flocks with males which had been officially leg-banded as U. S. R. O. P. males and registered as such;

The facts being he was not a participant in the plan, and did not operate a hatchery under the supervision thereof or in cooperation therewith; the R. O. P. wing-banded chicks bought by him from hatcheries which were participants in said plan, both within and without the State, had not been leg-banded at time of purchase and could not have been so banded there-

## Complaint

47 F. T. C.

after because he was not a member of the State organization which cooperated in the national plan; his chicks did not meet all the requirements of the program and were not sired by record of performance males, as such males had not been officially examined by a State inspector when they were 6 months of age and officially leg-banded;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true, and thereby induce the purchase of substantial quantities of his chicks by many members of said public:

*Held*, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public, and constituted unfair and deceptive acts and practices in commerce.

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

*Mr. R. P. Bellinger* for the Commission.

*Mr. Harry Benoit*, of Twin Falls, Idaho, for respondent.

## 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 Herman G. Hayes, an individual trading as Hayes Hi-Grade Hatchery, 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, Herman G. Hayes, is an individual trading and doing business as Hayes Hi-Grade Hatchery with his office and principal place of business located at Twin Falls, Idaho.

PAR. 2. Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of baby chicks. Respondent causes his baby chicks when sold by him to be transported from his aforesaid place of business in the State of Idaho 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 aforesaid business and for the purpose of inducing the purchase of his baby chicks, respondent has circulated and is now circulating among purchasers and prospective purchasers throughout the United States by United States mail, advertisements in newspapers and trade journals, by advertising folders, catalogs, and price lists, and by other means in commerce, many false statements and representations concerning his said prod-

853

## Complaint

uct. Among and typical of such false statements and representations disseminated as aforesaid are the following:

## HAYES' R. O. P. SIRED

300-Egg White Leghorns  
250-Egg New Hampshires  
Rhode Island Reds, Barred Rocks

U. S. R. O. P. Sired Chicks

U. S. R. O. P. Sired Rhode Island Reds

U. S. R. O. P. Sired New Hampshire Reds

IF YOU WANT THE FINEST PRODUCTION-BRED R.O.P. SIRED CHICKS IN THE STATE, GET IN TOUCH WITH HAYES HI-GRADE HATCHERY.

R. O. P. Sired and Regular White Leghorns, Austra-Whites, New Hampshires, R.I. Reds, Barred Rocks, White Rocks, Buff Orpingtons, White Giants, Straight runs or sexed. Blood tested.

Breeding Flocks Blood Tested—This is our 21st year in the hatchery business and for the last 15 consecutive years we have been blood testing our breeding flocks.

So far this season, out of 38 flocks tested, 26 of them were 100% clean and the total reaction of the 38 flocks, which represents more than 5,000 hens we have found exactly 13 reactors. This is one-fourth of one percent reaction. This is exceedingly low and it is one of the reasons why our chicks live and grow so well in the hands of our customers.

The Truth About "U.S. Approved" Flocks and Chicks.—Many people ask what "U.S. Approved" means. To best explain just what is required to have a "U.S. Approved Flock," I quote from the 1943 Idaho Poultry Improvement Assn.'s bulletin: "Females shall be rigidly culled and thoroughly selected once each year for constitutional vigor and for egg production, such selected females to combine Standard bred and production qualities to a reasonably high degree; (b) Males shall be selected especially for constitutional vigor and standard bred qualities; (c) The selection of the flock shall be approved by the official State Supervising Agent."

Please note that there are no requirements whatsoever, even for the males, for actual known production records. They may be from good, medium, or poor production blood. In fact, almost any flock that LOOKS GOOD and passes the blood test can be a U.S. Approved flock, even though nothing is known concerning the production characteristics of the ancestors. Now the chicks from these U.S. Approved flocks, if hatched in a U.S. Approved Hatchery, are in turn U.S. Approved chicks.

When you buy our 300-Egg R. O. P. sired White Leghorns or our 250-Egg R. O. P. sired heavy breed chicks, I guarantee that you are getting chicks direct from males with these official records back of them. If any one doubt this, we will gladly take them direct to our flocks where they can take the wing band numbers and check their records, which are on file with the U. S. R. O. P. Supervising agents.

HAYES' SUPER MATING CHICK SIRED BY MALE R. O. P. WING BANDED AS COCKEREL CHICK.—Leghorn male from 300-Egg R. O. P. hens, New Hampshires 200-275; White Rocks 225-275; also Buff Orpingtons, Austra-Whites, Barred Rocks, 23rd season. Idaho's largest hatchery. Breeders bloodtested. Literature free. Hayes Hi-Grade Hatchery, Twin Falls, Idaho.

## Complaint

47 F. T. C.

PAR. 4. Through the use of the statements and representations heretofore set forth and others similar thereto not specifically set out herein respondent has represented directly and by implication 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 Idaho.

That his R. O. P. sired white leghorn chicks are progeny of United States record of performance sires of dames with an egg production of 300 eggs per year. That his R. O. P. sired New Hampshires are progeny of United States record of performance sires of dames with an egg production of 250 eggs per year. That his Rhode Island reds and barred rocks are U. S. R. O. P. sired. That his New Hampshires chicks are U. S. R. O. P. sired. That he has the finest production bred R. O. P. sired chicks in the State of Idaho. That R. O. P. sired and regular white leghorn, austra-whites, New Hampshires, Rhode Island reds, barred-rocks, white rocks, buff orpingtons, white giants chicks are blood tested. That the breeding flocks from which he obtains his eggs are officially and scientifically blood tested. That his baby chicks meet all requirements of the United States record of performance program.

PAR. 5. The foregoing statements and representations are grossly exaggerated, false, and misleading. In truth and in fact respondent is not a United States 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 Idaho. Respondent's R. O. P. sired white leghorn baby chicks and New Hampshire baby chicks are not progeny of United States record of performance sires of dames with egg production of 300-250 eggs per year, respectively. Respondent's Rhode Island reds, barred rocks, and New Hampshire reds are not United States R. O. P. sired chicks. Respondent does not produce the finest production bred R. O. P. sired chicks in the State of Idaho. Respondent's so-called R. O. P. sired and regular white leghorn, austra-whites, New Hampshires, Rhode Island reds, barred rocks, white rocks, buff orpingtons, and white giants and the flocks producing the eggs from which are hatched the chicks offered for sale and sold by the respondent were and are not blood tested by any person properly qualified to conduct such tests under the rules and regulations of the national poultry im-

provement plan, and the breeding flocks producing the eggs from which respondent hatches his chicks offered for sale and sold by him are not and have not been blood tested by any person properly qualified to conduct such tests. Respondent's said baby chicks do not meet all requirements of the United States record of performance program. Respondent's supermating chicks sired by male R. O. P. wing banded as cockerel chicks are not record of performance males. Respondent's principal business is operating a chicken hatchery in which chicks thereof are hatched from eggs largely purchased by him from outside sources.

PAR. 6. A United States record of performance breeder or hatchery is understood by members of the poultry industry to be one operating under an official State agency cooperating with the Bureau of Animal Industry, United States Department of Agriculture, under what is known as the national poultry improvement plan. The national poultry improvement plan as approved by the Secretary of Agriculture has for its objective, among other things, improvement in the production and breeding qualities of poultry and authoritative identification of breeding stock, hatching eggs and chicks with respect to the quality, by describing them in terms uniformly accepted in all parts of the United States. Certain official terminology prescribed by the plan, such as United States Record of Performance, Record of Performance, and their abbreviations, U. S. R. O. P. and R. O. P. has acquired definite meaning throughout the industry and trade and when used to describe specified fowls, indicates that each thereof has an official performance or lineage record. The terms "United States Record of Performance" and "Record of Performance" and the symbols "U. S. R. O. P." or "R. O. P." are not applicable to all poultry produced by a national poultry improvement plan participant, and are misnomers for any fowl that has not been duly certified and registered as such. A cockerel cannot become a U. S. R. O. P. or an R. O. P. male in the accepted meaning of said term until the passing of certain official tests when it has reached 6 months of age. The cockerel's condition and qualities at the end of the 6 months' period are essential items in its record of performance, which is not kept until after said official inspection and certification. If such inspection is not officially made, or if the cockerel fails to pass the test when made, no record of performance has been established or is recognized, notwithstanding pedigree. Regulations of the Plan provide that the use of the term "R. O. P." is permissible only when the males siring the chicks so described have been officially leg-banded as U. S. R. O. P. males and registered as such. Accordingly, the progeny of mere wing-banded cockerels are not R. O. P. sired.

PAR. 7. The use by the respondent of the acts and practices herein set forth including the false and misleading statements made in connection therewith has a 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 belief so engendered causes and has caused a substantial portion of the purchasing public to purchase substantial quantities of respondent's said baby chicks.

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

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 26, 1947, issued and subsequently served its complaint in this proceeding upon the respondent Herman G. Hayes, individually and trading as Hayes Hi-Grade Hatchery, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing by respondent of his answer to the complaint, testimony, and other evidence in support of and in opposition to the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final consideration by the Commission upon the complaint, answer, testimony, and other evidence, recommended decision of the trial examiner and brief of counsel supporting the complaint (no brief having been filed on behalf of respondent and oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Herman G. Hayes, is an individual trading and doing business as Hayes Hi-Grade Hatchery, with his office and principal place of business located at Twin Falls, Idaho.

PAR. 2. Respondent is now, and for a number of years last past has been, engaged in the sale and distribution of baby chicks, causing said

chicks, when sold by him, to be transported from his place of business in the State of Idaho to purchasers, thereof located in various other States of the United States. Respondent is thus engaged in interstate commerce.

PAR. 3. In the course and conduct of his business and for the purpose of inducing the purchase of his baby chicks, respondent has circulated among purchasers and prospective purchasers throughout the United States, by means of advertisements in newspapers and trade journals and by advertising folders, catalogs, and price lists, various statements concerning his chicks, including the following:

Hayes "Super Mating Chicks" sired by Males R. O. P. wing banded as cockerel chicks

R. O. P. Sired and Regular White Leghorns

R. O. P. sired, big Hanson Strain White Leghorns

U. S. R. O. P. sired White Leghorns

HAYES' "SUPER MATING CHICKS" Sired By Officially Wing Banded Males From Leading U. S. R. O. P. BREEDERS

When you buy our 300-Egg R. O. P. sired White Leghorns or our 250-Egg R. O. P. sired heavy breed chicks, I guarantee that you are getting chicks direct from males with these official records back of them. If anyone doubts this, we will gladly take them direct to our flocks where they can take the wing band numbers and check their records which are on file with the U. S. R. O. P. Supervising agents.

We have been buying R. O. P. wing banded White Leghorn cockerel chicks from U. S. R. O. P. Breeders for the improvement of our chicks and flocks longer than for any of the other breeds. At first we bought eggs and unbanded chicks from high production stock but now we buy nothing but officially R. O. P. wing banded cockerel chicks and haven't for nearly ten years. \* \* \* We buy all of our R. O. P. Leghorn cockerel chicks direct from the J. A. Hanson Farm and we take none except those from his 300-egg, R. O. P. hens and they are mated with R. O. P. males with 300-egg pedigrees.

"SUPER MATING" NEW HAMPSHIRE—The hens in this mating are mated with high pedigree males, officially U. S. R. O. P. wing banded when hatched. Most of these males are from U. S. R. O. P. hens with 250 to 275 egg records with none less than 200-egg records.

"SUPER MATING" WHITE ROCKS—The U. S. R. O. P. wing banded cockerel chicks that we buy for our breeding males in this breed are from U. S. R. O. P. hens with egg records of from 200 to 250, \* \* \*.

PAR. 4. The national poultry improvement plan as approved by the Secretary of Agriculture has for its objective, among other things, improvement in the production and breeding qualities of poultry and authoritative identification of breeding stock, hatching eggs, and chicks. The plan affords protection from unscrupulous competition and enables purchasers to buy with more confidence. Acceptance of the plan is optional with the States and individual members of the industry within the States. The plan is administered within each State by an official State agency cooperating with the Bureau of Animal



Industry, United States Department of Agriculture. Certain official terminology prescribed by the plan, such as United States Record of Performance, Record of Performance and their abbreviations, U. S. R. O. P. and R. O. P., has acquired a definite meaning throughout the industry and trade, and when used to describe specified fowls indicates that each thereof has an official performance or lineage record. Such terms are not applicable to all poultry produced by a national poultry improvement plan participant and are misnomers for any fowl that has not been duly certified and registered as such. A cockerel cannot become a U. S. R. O. P. or R. O. P. male in the accepted meaning of the term until the passing of certain official tests when it has reached 6 months of age. The cockerel's condition and quality at the end of the 6-month period are essential items in its record of performance, which is not kept until after such official inspection and certification. Regulations provide that the use of the term "U. S. R. O. P." or "R. O. P." is permissible only when the male siring the chicks so described have been officially leg-banded as U. S. R. O. P. males and registered as such. Accordingly, the progeny of mere wing-banded cockerels who have not been leg-banded, are not R. O. P. sired. A nonmember of the national poultry improvement plan cannot represent his chicks as R. O. P. or as U. S. R. O. P.

PAR. 5. Through the use of the statements set forth in paragraph 3 and others similar thereto, respondent has represented, directly or by implication, that his baby chicks are R. O. P. sired as that term is understood in the industry and as authorized under the national poultry improvement plan. At the same time and in the same manner he has represented that he is a participant in said national poultry improvement plan, at least to the extent of heading his flocks with males which have been officially leg-banded as U. S. R. O. P. males and registered as such.

PAR. 6. The aforesaid representations are false and misleading. Respondent is not a participant in the national poultry improvement plan, and he does not operate a hatchery under the supervision of, or in cooperation with, the national poultry improvement plan. He has bought R. O. P. wing-banded chicks from hatcheries that were participants in the national poultry improvement plan, both in the State of Idaho and outside the State of Idaho, but these chicks had not been leg-banded at the time of purchase and they could not have been leg-banded thereafter because respondent was not a member of the State of Idaho Poultry Improvement Association which was the State organization cooperating in the national poultry improvement plan. Respondent's chicks do not meet all of the requirements of the United States record of performance program, and his chicks are not sired

by record of performance males, as such males have not been officially examined by a State inspector when they were 6 months of age and officially leg-banded.

PAR. 7. The use by respondent of these false and misleading statements and representations 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 said statements and representations are true and to induce many members of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's chicks.

#### CONCLUSION

The acts and practices of respondent as herein found are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

#### ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, 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 on behalf of respondent and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of the Federal Trade Commission Act:

*It is ordered*, That the respondent, Herman G. Hayes, individually and trading as Hayes Hi-Grade Hatchery, or trading under any other name, and his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of baby chicks in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the expression "U. S. R. O. P. sired" or "R. O. P. sired" to designate, describe, or refer to respondent's chicks, or otherwise representing, directly or by implication, that respondent's chicks are sired by United States record of performance males.

2. Representing by any means or in any manner that respondent is a participant in the United States poultry improvement plan.

This order shall not be construed as prohibiting representations

Order

47 F. T. C.

that respondent's baby chicks are R. O. P. sired when such chicks have actually been sired by males which have been officially banded with U. S. R. O. P. sealed and numbered official leg-bands and duly registered as such, or representations that the flocks supplying the eggs from which the baby chicks are hatched are headed by R. O. P. males when the flocks concerning which such representations are made are segregated and headed by such officially banded R. O. P. males: *Provided, however,* That such representations are not made in such a manner as to represent, directly or by implication, that the baby chicks so offered for sale are U. S. R. O. P. chicks, or that respondent is a participant in the national poultry improvement plan.

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

## Complaint

## IN THE MATTER OF

## LARRY QUINN FASHIONS, INC. ET AL.

COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF AN ACT OF CONGRESS APPROVED OCT. 14, 1940

*Docket 5812. Complaint, Sept. 19, 1950—Decision, Jan. 12, 1951*

Where a corporation and the officer and stockholder who formulated, controlled, and directed its policies and practices, engaged in the introduction and manufacture for introduction in commerce, and in the sale and distribution in commerce of wool products as defined in the Wool Products Labeling Act—  
**Misbranded** substantial quantities of ladies' suits in violation of said act and the rules and regulations promulgated thereunder by failing to affix to them the required stamp, tag, label, or other means of identification, showing the percentage of the fiber weight of wool, fiber other than wool, and other information, including the name of the manufacturer or of one or more persons subject to section 3 of said act, or the registered identification number of such person or persons as provided for in rule 4 of said regulations as amended :

*Held*, That such acts and practices, under the circumstances set forth, were in violation of said act and rules and regulations, and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Before *Mr. Frank Hier*, trial examiner.

*Mr. Jesse D. Kash* for the Commission.

*Mr. Joseph J. Einhorn*, of New York City, for respondents.

## 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 Larry Quinn Fashions, Inc., a corporation, and Lawrence I. Cohen, individually and as an officer of Larry Quinn Fashions, 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. Larry Quinn Fashions, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York. Its principal office and place of business is located at 240 West Thirty-fifth Street, New York, N. Y.

The respondent, Lawrence I. Cohen, is an officer and stockholder of the respondent Larry Quinn Fashions, Inc., and as such he formulates, controls, and directs its policies and practices.

PAR. 2. The respondents are engaged in the introduction and manufacture for introduction into commerce and in offering for sale, 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. Many of respondents' said products are composed in whole or in part of wool, 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 the 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 ladies' suits and other products. 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 garments 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 product, 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 name of one or more persons subject to section 3 of said act with respect to such wool product, or the registered identification number of such person or persons, as provided for in rule 4 of the regulations as amended.

PAR. 4. The aforesaid acts, practices, and methods of respondents as alleged were and are in violation of the Wool Products Labeling

Act of 1939, and the rules and regulations promulgated thereunder, 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, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated January 12, 1951, the initial decision in the instant matter of trial examiner Frank Hier, as set-out as follows, became on that date the decision of the Commission.

#### INITIAL DECISION BY FRANK HIER, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, the Federal Trade Commission on September 19, 1950, issued and subsequently served its complaint in this proceeding upon the respondents, Larry Quinn Fashions, Inc., a corporation, and Lawrence I. Cohen, individually and as an officer of such corporation, charging said respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of those acts. On October 12, 1950, respondents filed their answer to said complaint, but on November 15, 1950, at the initial and only hearing in this proceeding, they filed a motion to be permitted to withdraw said original answer and, in lieu thereof, to substitute an answer accompanying said motion, and on November 15, 1950, said motion was granted by the trial examiner. In said substitute answer, the respondents admitted all of the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to the said facts. Thereafter, the proceeding regularly came on for final consideration by the above-named trial examiner theretofore duly designated by the Commission upon said complaint and respondents' substitute answer thereto and said trial examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Larry Quinn Fashions, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York. Its principal office and place of business is located at 240 West Thirty-fifth Street, New York, N. Y.

Respondent, Lawrence I. Cohen, is an officer and stockholder of

respondent Larry Quinn Fashions, Inc., and as such he formulates, controls, and directs its policies and practices.

PAR. 2. Respondents are now and for several years last past have been engaged in the manufacture for introduction and the introduction into commerce and in the offering for sale, sale, distribution, and transportation 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.

PAR. 3. Among the wool products so manufactured for introduction and introduced into commerce, sold, distributed, and transported by respondents were ladies' suits, composed in whole or in part of wool, reprocessed wool, and 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 to the rules and regulations promulgated thereunder.

PAR. 4. Substantial quantities of the aforesaid wool products manufactured for introduction and introduced into commerce, offered for sale, sold, distributed, and transported in such commerce, since July 15, 1941, have been misbranded in violation of the provisions of said act and the rules and regulations promulgated thereunder by respondents' failure to affix to said wool 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 product, 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 name of one or more persons subject to section 3 of said act with respect to such wool product, or the registered identification number of such person or persons, as provided for in rule 4 of the regulations as amended.

#### CONCLUSION

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

## Order

## ORDER

*It is ordered*, That the respondents, Larry Quinn Fashions, Inc., a corporation, and its officers, and Lawrence I. Cohen, individually and as an officer of said corporation, their agents, representatives, and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the sale, transportation, or distribution of such products in commerce, as commerce is defined in the aforesaid acts, do forthwith cease and desist from misbranding ladies' suits or other "wool products," as defined in and subject to the Wool Products Labeling Act of 1939, which contain, purport to contain or in any way are represented as containing "wool," "reprocessed wool," or "reused wool," as those terms are defined in said act, by failing to securely affix to or place on such products a stamp, tag, label or other means of identification showing in a clear and conspicuous manner:

(a) The percentage of the total fiber weight of such 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 is 5 percentum or more and (5) the aggregate of all other fibers.

(b) The maximum percentage of the total weight of such wool product of any 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 name of one or more persons subject to section 3 of the Wool Products Labeling Act of 1939 with respect to such wool product, or the registered identification number of such person or persons, as provided for in rule 4 of the regulations to such act, as amended.

*Provided*, That the foregoing provisions concerning misbranding shall not be construed to prohibit acts permitted by paragraphs (a) and (b) of section 3 of the Wool Products Labeling Act of 1939; and

*Provided further*, That nothing contained in this order shall be construed as limiting any applicable provisions of said act or the rules and regulations promulgated thereunder.

## ORDER TO FILE REPORT OF COMPLIANCE

*It is ordered*, That the respondents herein shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order [as required by said declaratory decision and order of January 12, 1951].



## IN THE MATTER OF

## DON N. CARNERIE DOING BUSINESS AS CIVIL PREPARATION SERVICE AND AMERICAN EXTENSION SERVICE

COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

*Docket 5686. Complaint, Aug. 1, 1949—Decision, Jan. 13, 1951*

Where an individual engaged in the interstate sale and distribution of correspondence courses of study intended to prepare students for examination for certain civil service positions under the United States Government, advertising them through return post cards distributed to box holders, newspaper advertising, and by mail, and selling them through salesmen who called upon prospects who had written in—

- (a) Falsely represented and implied, through use of the trade name Civil Preparation Service and through representations in his aforesaid advertising, that said Civil Preparation Service was a branch of or connected with the United States Government or the United States Civil Service Commission; and
- (b) Represented through such advertisements that many positions in the United States civil service, including those specifically named, were vacant, that men and women were needed to fill vacancies, and that said positions might be obtained through his said Civil Preparation Service or American Extension Service;

The facts being that the Civil Service Commission does not advertise vacancies in the Government service; said individual had no authority to place anyone in any civil-service position or to qualify applicants for civil-service examinations or positions; while many vacancies exist generally in the civil service as a whole, they may not exist in particular positions and examinations for certain positions may not be held for several years, and appointment to a particular position after examination is passed is subject to conditions such as veterans preference, availability of eligibles in civil-service districts, residence requirements, etc.; and

Where said individual, through his said agents—

- (c) Falsely represented and implied that said Civil Preparation Service or American Extension Service was connected with the United States Government or the United States Civil Service Commission in some official capacity, and that his sales agents were so connected;
- (d) Falsely represented that if enrollees completed his course they would be placed by him in whatever position and location they might select, and that he would guarantee them a position;
- (e) Falsely represented that he had advance information with respect to positions available in said civil service even before such information could be posted through the United States post office;
- (f) Falsely represented that it was necessary to take his course of instruction in order to qualify for and obtain a position in the civil service, and that many vacancies existed therein; and
- (g) Represented that persons employed in the United States civil service were pensioned after 20 years of service; the facts being that the length of service required for a pension varies with the position;

(h) Falsely implied that his school was connected with or authorized by the Government and that his salesmen were clothed with official authority, through their practice, when soliciting enrollments, of exhibiting publications entitled "Reference Manual of Government Positions," "Handbook of Civil Service Positions," a Civil Service Commission pamphlet entitled "Specimen Questions from United States Civil Service Examinations," and other printed material which simulated official phraseology; and

Where said individual, in soliciting, procuring or accepting, through his salesmen, executed applications or contracts for his courses, which contained a statement that he was not connected with the Civil Service Commission, that he did not furnish advance dates of examinations, and that it is illegal and unethical to guarantee a civil-service appointment—

(i) Hurried the prospect or assured him that the document contained nothing the salesman had not already explained to him, or interrupted with continued sales talk when he attempted to read the application through, with the result that most prospects, some of whom believed the solicitor to be connected with the Government and felt no need to read the application, did not read it before signing:

*Held*, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

As respects other charges of the complaint, there was no substantial evidence that said individual directly or through his agents, alleged that the latter were in charge of a given regional office of the United States Civil Service Commission, that he was authorized to qualify people to take civil-service examinations and that his school had been selected by the Government to train applicants for the civil service; that he could place his students in civil-service positions by reason of his connection with the Government; that civil-service employees were pensioned after a given period of service on three-fourths pay or might retire on \$300 after 15 years of service; that the Government paid half of the tuition fee; that purchasers of his courses were entitled to a refund of whatever tuition fees they might have paid in the event they desired to discontinue the course; and that an eighth-grade education was sufficient to qualify for and obtain said civil-service positions, including those of customs inspector, border patrolman, railway mail clerk, and prison guard.

In said proceeding there was also no evidence that said individual had used applications or other forms in transacting business with prospects or enrollees on which the term "Students Foundation Fund" appeared, since 1948, at which time he executed an informal stipulation with the Commission to cease doing so.

Before *Mr. Frank Hier*, trial examiner.

*Mr. William L. Pencke* for the Commission.

#### 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 Don N. Carnerie,

an individual, doing business under the names of Civil Preparation Service and American Extension Service, 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, Don N. Carnerie, is an individual, trading and doing business under the names and styles of Civil Preparation Service and American Extension Service, with his office and principal place of business at 3704 West Alaska Street, in the city of Seattle and State of Washington.

PAR. 2. For more than 2 years last past, respondent has been and is now engaged in the sale and distribution in commerce between and among the various States of the United States of courses of study and instruction intended for preparing students thereof for examination for certain civil-service positions under the United States Government, which said courses are pursued by correspondence through the medium of the United States mail. Respondent, in the course and conduct of said business, causes his said courses of study and instruction to be transported from his said place of business in the State of Washington, to, into, and through States of the United States other than Washington to the purchasers thereof in such other States. There has been at all times mentioned herein a course of trade in said courses of instruction so sold and distributed by respondent in commerce between and among various States of the United States.

PAR. 3. In connection with the sale of said courses of study and instruction respondent has made and is making use of printed advertising matter distributed to prospective students throughout the Central and Western States, and of advertisements in newspapers circulated in said States, many of said advertisements appearing in the "Help Wanted" columns or sections of said newspapers, in and by which numerous false, misleading and deceptive representations have been and are made in regard to said courses of study and matters and things connected therewith. Typical of such representations are the following:

Men and Women Wanted  
Ages 18 to 45  
To Prepare for  
Civil Service Examinations.

Prepare immediately for Government Positions—Enter at \$145 to \$250 per month.

Many permanent appointments for Tacoma and vicinity expected in 1947.

## Complaint

## Men or Women Wanted

Men and Women, Civil Service offers permanent positions for Railway Mail Clerks, Clerk Carriers, Patrol and Customs Inspectors, general clerks, etc. . . . Prepare now for Nebraska examinations. Write giving age and occupation. Civil Preparation Service.

## Civil Service Exams

Prepare for these positions in your locality at once. Starting salaries as high as \$3,371 per year. Railway Mail Clerk, Post Office Clerk and Carrier, Statistical Clerk, Customs Inspector and many others.

PAR. 4. By means of the foregoing statements and representations and others to the same effect not herein set out and by the use of the trade name Civil Preparation Service, respondent represents and implies that said Civil Preparation Service is a branch of or connected with the United States Government or the United States Civil Service Commission. That many positions in the United States civil service, including those specifically named in said advertisements are vacant, that men and women are needed to fill said vacancies and that said positions may be obtained through respondent's Civil Preparation Service or American Extension Service.

PAR. 5. By means of oral statements and representations made by his sales agents, respondent represents and implies to prospective students and purchasers of his said courses of instruction that said Civil Preparation Service or American Extension Service is connected with the United States Government or the United States Civil Service Commission in some official capacity; that said agents are in charge of a given regional office of the United States Civil Service Commission; that if enrollees pursue and complete respondent's course of study they will be placed by respondent in whatever position and location said students may select; that respondent is authorized to qualify people for the taking of civil-service examinations and that his school has been selected by the United States Government to train applicants for said civil service; that respondent has advance information with respect to positions available in the United States civil service even before such information can be posted in the United States post offices; that it is necessary to take said course of instruction in order to qualify for and obtain a position in said United States civil service; that many vacancies exist in the United States civil service and that respondent can place his students in such positions by reason of his special connections with the United States Government; that an eighth-grade education is sufficient to qualify for and obtain said positions, including customs inspector, border patrolman, railway mail clerk, prison guard and many other positions; that persons employed in the United States civil service are pensioned after a service of 20

years on three-fourths of their salary, or may retire on \$300 after 15 years of service; that the Government pays half of the tuition fee; and that purchasers of said courses of instruction are entitled to a refund of whatever tuition fees they may have paid, in the event they desire to discontinue said course of study.

By means of exhibiting books entitled "Reference Manual of Government Positions," "Librarian-Library Assistant—Practice Tests for Civil Service Examinations" and a pamphlet published by the United States Civil Service Commission entitled "Specimen Questions from United States Civil Service Examinations," to prospective purchasers, respondent's salesmen further the impression and implication that respondent's school is connected with, or authorized by the United States Government and that said salesmen are clothed with some official capacity or authority.

PAR. 6. In truth and in fact all of said statements, representations, and implications are grossly exaggerated, false, and misleading. The United States Civil Service Commission does not advertise for men and women to fill Government positions or that vacancies exist in Government service; and the general representation on postal cards distributed to box holders that men and women are wanted to prepare for civil-service examinations, coupled with the trade name Civil Preparations Service, creating the impression that said cards are official announcements of the United States Civil Service Commission is false and misleading. In fact, there is no connection whatever between respondent and the United States Civil Service Commission or any other agency or branch of the Government. Respondent has no power or authority to place any person in any civil-service position; and students cannot elect or designate the location where they may desire to be employed. Neither respondent nor his salesmen have been authorized by any Government agency to qualify applicants for civil-service examinations or positions, and his said school has not been selected by the United States Government to train applicants for civil-service positions. Respondent has no advance information with respect to dates, places, or positions pertaining to civil-service examinations; nor has he any information which persons interested in said examinations cannot readily obtain from said Civil Service Commission. It is not necessary to purchase respondent's courses of instruction in order to take civil-service examinations and obtain positions in civil service.

While many vacancies may exist generally in the United States civil service, respondent cannot place persons in said positions; nor does the taking and passing of an examination assure immediate employment in all instances, for the reason that such employment is sub-

ject to veterans' preference, the availability of eligible persons in various civil-service districts, the rating of eligibles, and other conditions. Moreover, examinations for certain positions may not be called for several years, and even if a student takes and passes an examination, his name may not be reached upon the eligible list; and there are a number of positions open only to veterans. While an eighth-grade education may be sufficient for some of the lower grades, a high-school education is required for many positions, such as custom's inspector; and still other positions require additional special training and special physical qualifications and practical experience.

The representations that civil-service employees are pensioned after 20 years of service at three-fourths of their salaries or any other specified time and amount is incorrect and misleading; in truth and in fact the amount of retirement pay depends upon the length of service and the amount of salary of Government employees having civil-service status, and may be subject to other conditions governed by civil-service regulations and statutory provisions.

The United States Government does not pay any part of respondent's tuition fees. Respondent makes no refunds of moneys paid on tuition if students desire to discontinue the course; and, while the contract for the taking of said course of study provides that no refunds are made in the event of discontinuing said course, prospective students are either prevented from reading the terms of the contract or rely upon the representations made by the sales agent that refunds will be made in the event the student desires to discontinue the course.

The use of official Government publications and other printed material simulating official phraseology by respondent's salesmen in connection with soliciting enrollments for said courses of study is misleading and deceptive by falsely creating or furthering the impression that respondent's school is connected with the United States Civil Service Commission.

PAR. 7. In the course and conduct of his business as aforesaid respondent, in soliciting enrollments, makes use of a printed form of contract which is captioned "Application." Prospective enrollees are not advised by respondent's salesmen that said document in fact contains a promise to pay respondent the amount of tuition fee or purchase price of said courses of study; nor is such enrollee informed that the coupon attached to said application and signed by said enrollee is in fact a promissory note payable to the order of Students' Foundation Fund for said amount. Moreover, the use of the term "Students' Foundation Fund" is misleading as implying a separate organization when in truth and in fact there is no such foundation or separate organization, and the term is used by respondent for the purpose of

furthering the impression that said Civil Preparation Service or American Extension Service has some official connection.

Purchasers of respondent's said courses of instruction rely upon the representations by said salesmen that they are connected with the United States Government and therefore do not read said so-called application before signing it; moreover, said salesmen, by purporting to be in a great hurry, and other means, prevent said purchasers from reading said document.

PAR. 8. The use by respondent of the statements and representations aforesaid, has had and has the tendency and capacity to and does confuse, mislead, and deceive members of the public into the erroneous and mistaken belief that such statements and representations are true, and induce them to purchase respondent's courses of study and instruction in said commerce on account thereof.

PAR. 9. 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, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated January 13, 1951, the initial decision in the instant matter of trial examiner Frank Hier, as set out as follows, became on that date the decision of the Commission.

#### INITIAL DECISION BY FRANK HIER, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 1, 1949, issued and subsequently served its complaint in this proceeding upon respondent, Don N. Carnerie, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, hearings were held at which testimony and other evidence in support of the complaint were introduced before the above-named trial examiner theretofore duly designated by the Commission and said testimony and other evidence were duly recorded and filed in the office of the Commission. Respondent did not attend any of these hearings, except one, to which he was subpoenaed as a witness. He retained no counsel. Although requested, respondent failed to advise the trial examiner of an intention or desire to offer evidence by way of defense to the complaint, after indicating he would not do so.

The taking of testimony was thereupon closed by the trial examiner and the case subsequently formally closed. Thereafter, the proceeding regularly came on for final consideration by said trial examiner on the complaint, the answer thereto, testimony, and other evidence, and said trial examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Don N. Carnerie, is an individual residing at 6023 Beach Drive, Seattle, Wash., training and doing business under the names and styles of Civil Preparation Service and American Extension Service with his office and principal place of business at 3704 West Alaska Street, Seattle, Wash., up to September 1, 1949, and subsequently at 2773 California Avenue, Seattle, Wash.

PAR. 2. For several years last past, respondent has been and is now engaged in the sale and distribution in commerce between and among the various States of the United States of courses of study and instruction intended to prepare students thereof for examination for certain civil-service positions under the United States Government, which said courses are pursued by correspondence through the medium of the United States mail. Respondent in the course and conduct of said business causes his said courses of study and instruction to be transported from his said place of business in the State of Washington to, into, and through States of the United States other than Washington to purchasers thereof located in such other States. There has been at all times mentioned herein a course of trade in said courses of instruction so sold and distributed by respondent in commerce between and among the various States of the United States.

PAR. 3. Respondent advertises for purchasers of his courses by means of double (return) post cards distributed broadcast to all box holders, and through newspapers advertising and by direct mail. Prospects are thus secured through their answering or sending in the return post card filled out with name and address or by inquiries in response to advertising. To sell the courses, respondent employs a number of salesmen, 11 in 1949, about 20 in 1948, who visit the prospect who has written in to respondent and who sell by personal solicitation. Respondent moves from State to State as business warrants. In 1948 he was operating in Missouri, Oklahoma, and Texas, in 1949 in the west coast States. His courses cost \$127.50, approximately 30 percent of which goes to the salesman making the sale. His sales amount to about 1,000 courses a year.



Findings

47 F. T. C.

PAR. 4. Typical of respondent's advertising in newspaper classified advertising sections, under "Help Wanted" and other categories and of printed advertising material distributed by respondent by mail to prospects are the following:

**CIVIL SERVICE EXAMS**

Men and Women 18-50

Prepare for These Positions in Your Locality at Once; Rural Mail Carrier, Customs Inspector, Statistical Clerk, Railway Mail Clerk, and others.

Start as high as \$3351 yearly.

For FREE information concerning examinations, write today, giving age and occupation, to

**AMERICAN EXTENSION SERVICE**

Dept. 145, P. O. Box 3104

Seattle 14, Washington.

(Cx. 8)

**CIVIL SERVICE EXAMS**

Prepare for These Positions in Your Locality AT ONCE!

Starting Salaries

as High as

\$3,371 Per Year

Railway Mail Clerk

Post Office Clerk and Carrier

Statistical Clerk

Customs Inspectors

Many Others

Men and Women 18-50

Promotions, Paid Vacations, Sick Leave and Pensions

For information concerning qualifications, requirements, and preparation

---

Write today before you mislay this, giving name, address, age and occupation. This inquiry does not obligate you but may result in your getting a well-paid GOVERNMENT JOB.

---

For full details concerning qualifications, write

**AMERICAN EXTENSION SERVICE**

Box AES, Dept. 125 c/o Emporia Gazette.

(Cx. 11)

**CIVIL SERVICE**

Offers permanent positions for Railway Mail Clerks, Clerk Carriers, Patrol and Customs inspectors, U. S. Clerks, etc. Good pay; promotions, paid vacations, sick leave and pensions.

868

## Findings

## Men and Women

Ages 18-50

Prepare immediately for examinations for government positions. Congress has authorized salary increases from \$330 to \$450 per year. Many permanent appointments for vicinity expected in 1949. Write today before you mislay this, giving name, age, address and occupation. This inquiry does not obligate you, but may result in your getting a well paid government job. For full details concerning qualifications, write Civil Preparation Service, Box G-757, Oklahoman and Times.

(Cx. 12)

## MEN, WOMEN WANTED

MEN and women, CIVIL SERVICE offers permanent positions for Railway Mail-Clerks, Clerk Carriers, Control and Custom Inspectors, General Clerks, etc. With good pay, promotions, paid vacations, sick leave and pensions; prepare for Wash. examination now. Write, giving age and occupation. Civil Preparation Service, 2212 California Ave., Seattle 6, Wash.

(Cx. 13)

PAR. 5. By means of the foregoing statements and representations and others in the record, and by the use of the trade name Civil Preparation Service, respondent has represented and implied that said Civil Preparation Service is a branch of or connected with the United States Government or the United States Civil Service Commission; that many positions in the United States civil service, including those specifically named in respondent's advertisements and other literature, are vacant; that men and women are needed to fill vacancies and that said positions may be obtained through respondent's Civil Preparation Service or American Extension Service.

PAR. 6. By means of oral statements and representations in sales talks made by his sales agents, respondent has represented and implied and does represent and imply to prospective purchasers of his courses of instruction that:

1. Civil Preparation Service or American Extension Service is connected with the United States Government or the United States Civil Service Commission in some official capacity and that his sales agents are so connected.

2. If enrollees pursue and complete respondent's course of study, they will be placed by respondent in whatever position and location said students may select and respondent will guarantee them a position.

3. Respondent has advance information with respect to positions available in the United States civil service even before such information can be posted in the United States post offices.

4. It is necessary to take respondent's course of instruction in order to qualify for and obtain a position in the United States civil service.

5. Many vacancies exist in the United States civil service.

6. Persons employed in the United States civil service are pensioned after 20 years of service.

PAR. 7. By means of exhibiting books entitled "Reference Manual of Government Positions," "Handbook of Civil Service Positions," and a pamphlet published by the United States Civil Service Commission entitled "Specimen Questions from United States Civil Service Examinations" to prospective purchasers, respondent's salesmen have furthered and do further the impression and implication that respondent's school is connected with, or authorized by, the United States Government and that said salesmen are clothed with some official capacity or authority.

PAR. 8. The representations and statements hereinabove set out in paragraphs 5 and 6 are false, misleading, and deceptive, either directly or in their implications and exaggeration. The United States Civil Service Commission does not advertise for men and women to fill Government positions or that vacancies exist in the Government service; and the general representation on postal cards distributed to box holders that men and women are wanted to prepare for civil-service examinations, coupled with the trade name Civil Preparation Service, creates the impression that said cards are official announcements of the United States Civil Service Commission, and is therefore false and misleading. In fact, there is no connection whatever between respondent and the United States Civil Service Commission or any other agency or branch of the Government. Respondent has neither power nor authority to place any person in any civil-service position. He has never held any such position himself, except during the war in 1944 on a temporary basis as an electrician's helper in the Navy for a period of about a month. Respondent has never been employed by the United States Civil Service Commission in any capacity. His students cannot elect or designate the location where they may desire to be employed nor can respondent arrange this in any manner. Neither respondent nor his salesmen have been authorized by any Government agency to qualify applicants for civil-service examinations or positions. Respondent has no advance information with respect to dates, places, or positions pertaining to civil-service examinations nor has he any information pertinent thereto not readily attainable from the United States Civil Service Commission. It is not necessary to purchase respondent's courses of instruction in order to take civil-service examinations and obtain positions in civil service, nor does their completion insure success in passing the examination

or obtaining appointment. With or without such courses respondent cannot guarantee that anyone will obtain a civil-service position.

PAR. 9. While many vacancies exist generally in the United States civil service as a whole, vacancies in particular positions vary greatly and there are frequently long periods of several years or more when no vacancies exist in particular positions. The taking and passing of an examination for a particular position does not assure immediate employment, the applicant thus qualified may have to wait substantial periods of time before a vacancy occurs. Furthermore, appointment is subject to veterans' preference, the availability of eligible persons in the various civil-service districts, the rating of eligibles and various other conditions. Certain positions are restricted by law to veterans only, others to bona fide residents of a particular locality. Examinations for certain positions may not be called for several years and even if an applicant qualifies by passing the examination, his name may not be reached upon the eligible list for several years. Civil-service employees are not pensioned necessarily after 20 years of service, the length of service required for a pension varies with the position.

PAR. 10. The use of official Government publications and other printed material simulating official phraseology by respondent's salesmen in their sales talks soliciting enrollments for said courses of study is misleading and deceptive by falsely creating or furthering the impression that respondent's school is connected with the United States Civil Service Commission.

PAR. 11. There is no substantial evidence in the record that respondent, directly or through his agents, represented as alleged in the complaint that such agents are in charge of a given regional office of the United States Civil Service Commission, that respondent is authorized to qualify people for the taking of civil-service examinations and that his school has been selected by the United States Government to train applicants for said civil service; that respondent can place his students in civil-service positions by reason of his special connections with the United States Government; that civil-service employees are pensioned after a given period of service on three-fourths pay or may retire on \$300 after 15 years of service; that the Government pays half of the tuition fee; that purchasers of respondent's courses of instruction are entitled to a refund of whatever tuition fees they may have paid in the event they desire to discontinue the course of study, and that an eighth-grade education is sufficient to qualify for and obtain said civil-service positions, including customs inspector, border patrolman, railway mail clerk, prison guard.

Order

47 F. T. C.

PAR. 12. There is no evidence that respondent has used application or other forms in the transaction of his business with prospects or enrollees on which the term "Students' Foundation Fund" appears since 1948, at which time he executed an informal stipulation with the Federal Trade Commission to cease doing so. The applications which respondent and his agents solicit and procure enrollees to sign is in substance a contract by the latter to take and pay for respondent's courses and by respondent to furnish same, to grade and correct answers and to furnish incidental assistance in completing the courses. These applications contain a statement that respondent is not connected with the United States Civil Service Commission, that the latter does not furnish advance dates of examinations and that it is illegal and unethical to guarantee a civil-service appointment. The testimony, however, was that most prospects did not read these applications before signing them because the solicitor was in a hurry, or assured them the document contained nothing he had not already explained to them, or because they were interrupted by continued sales talk when they attempted to read the application through. Some of these enrollees believed the solicitor to be connected with the Federal Government and felt no need to read.

## CONCLUSION

The aforesaid acts and practices of respondent, as herein found, 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.

## ORDER

*It is ordered,* That respondent, Don N. Carnerie, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of courses of study and instruction intended for preparing students thereof for examination for civil-service positions under the United States Government, or any similar courses of study, do forthwith cease and desist from:

1. Representing, directly or by implication, that respondent has any connection with the United States Government, or any branch or agency thereof, through the use of the term "Civil Preparation Service," or any other term of similar import or meaning, as a trade name, or as a part thereof.
2. Representing through the use of official publications of the United States Government, or other books or publications resembling

8687

## Order

or simulating them, that respondent or his agents are connected with the United States Government, or any branch thereof.

3. Representing in any manner, directly or by implication, that respondent has any connection with the Government of the United States, or any branch thereof.

4. Representing, directly or by implication, that the number of positions available or vacant in the United States civil service or any branch thereof, is greater than is actually the fact.

5. Representing, directly or by implication, that positions in the United States civil service can be obtained through respondent or by completing respondent's courses of study, or that it is necessary to take such courses in order to qualify for such positions, or that respondent can guarantee a position if such courses are completed.

6. Representing, directly or by implication, that students who complete respondent's courses of study can or will be placed by respondent in whatever position or location such students may select.

7. Representing, directly or by implication, that respondent has advance information, or information not generally available to the public, with respect to positions available in the United States civil service.

8. Representing, directly or by implication, that persons employed in United States civil-service positions are pensioned after 20 years of service, or that such persons may retire in any given number of years or at any designated pension when such is not the fact.

9. Soliciting, procuring or accepting executed applications or contracts for respondent's courses without permitting prospect to read same over fully and thoroughly without interruption.

## ORDER TO FILE REPORT OF COMPLIANCE

*It is ordered,* That the respondent herein shall, within 60 days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order [as required by said declaratory decision and order of January 13, 1951].

Complaint

47 F. T. C.

IN THE MATTER OF  
JACK KLEIN, INC. ET AL.

COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF AN ACT OF CONGRESS APPROVED OCT. 14, 1940

*Docket 5810. Complaint, Sept. 18, 1950—Decision, Jan. 13, 1951*

Where a corporation and the officers and stockholders responsible for its policies and practices, engaged in the introduction and manufacture for introduction into commerce, and in the sale and distribution therein of wool products, as defined in the Wool Products Labeling Act of 1939—

Misbranded substantial quantities of ladies' coats, in violation of the provisions of said act and rules and regulations promulgated thereunder, by failing to affix thereto a stamp, tag, label, etc., showing the percentage of the fiber weight of wool, and other information required thereby, including the name of the manufacturer or that of one or more persons subject to section 3 of said act with respect thereto or the registered identification number, etc.:

*Held*, That such acts, practices, and methods, under the circumstances set forth, were in violation of said act and rules and regulations, and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Before *Mr. Frank Hier*, trial examiner.

*Mr. Jesse D. Kash* for the Commission.

*Mr. Alexander Rothstein*, of New York City, for respondents.

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 Jack Klein, Inc., a corporation; and Jack Klein and Herman Rothstein, individually and as officers of Jack Klein, 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. The respondent, Jack Klein, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal place of business located at 241 West Thirty-seventh Street, New York, N. Y. The respondents, Jack Klein and Herman Rothstein, are officers and stockholders of the

respondent Jack Klein, Inc., and as such they formulate, control, and direct its policies and practices.

PAR. 2. The respondents are engaged in the introduction and manufacture for introduction into commerce and in offering for sale, 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. Many of respondents' said products are composed in whole or in part of wool, 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 the 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 ladies' coats and other products. 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 garments 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 product, exclusive of ornamentation not exceeding five per centum 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 per centum or more, and (5) the aggregate of all other fibers; (b) the maximum percentage of the total weight of the wool products 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 name of one or more persons subject to section 3 of the act with respect to such wool product, or the registered identification number of such person or persons as provided for in rule 4 of the regulations as amended.

PAR. 4. The aforesaid acts, practices, and methods of respondents as alleged were and are in violation of the Wool Products Labeling Act of 1939, and the rules and regulations promulgated thereunder, 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, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated January 13, 1951, the initial decision in the instant matter of trial examiner Frank Hier, as set out as follows, became on that date the decision of the Commission.

#### INITIAL DECISION BY FRANK HIER, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, the Federal Trade Commission on September 18, 1950, issued and subsequently served its complaint in this proceeding upon the respondents, Jack Klein, Inc., a corporation, and Jack Klein and Herman Rothstein, individually and as officers of Jack Klein, Inc., charging the respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of those acts. On October 19, 1950, respondents filed their answer to the complaint. On November 14, 1950, at the initial hearing in this proceeding, they filed a motion to be permitted to withdraw said original answer and, in lieu thereof, to substitute an answer on behalf of respondents Jack Klein, Inc., a corporation, and Jack Klein, individually and as an officer of Jack Klein, Inc., and on November 14, 1950, this motion was granted. Pursuant to and based on facts stated into the record and agreed to by counsel on both sides, counsel in support of the complaint moved the dismissal of the complaint as to respondent Herman Rothstein, which motion was granted by the trial examiner. In the substitute answer of respondents Jack Klein, Inc., a corporation, and Jack Klein, individually and as an officer of said corporation, these respondents admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to the said facts. Thereafter, the proceeding regularly came on for final consideration by the above-named trial examiner theretofore duly designated by the Commission upon said complaint and substitute answer thereto and said trial examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Jack Klein, Inc., is a corporation organized and existing under and by virtue of the laws of the State of

New York with its principal place of business located at 241 West Thirty-seventh Street, New York, N. Y. Respondent, Jack Klein, is an officer and stockholder of respondent Jack Klein, Inc., and as such formulates, controls, and directs its policies and practices. Up to May 31, 1950, Herman Rothstein was an officer and stockholder of the corporate respondent Jack Klein, Inc., but on that date sold all of his interest in the said corporate respondent to the respondent Jack Klein and ceased to be an officer of such corporation and has had no connection therewith since that time.

PAR. 2. The respondents are and for several years have been engaged in the introduction and manufacture for introduction into commerce and in offering for sale, sale, transportation, and distribution of wool products, including ladies' coats, 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. Many of respondents' said products are composed in whole or in part of wool, 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.

PAR. 3. Substantial quantities of the aforesaid wool products manufactured for introduction and introduced into commerce, offered for sale, sold, distributed, and transported in commerce, since July 15, 1941, have been misbranded in violation of the provisions of said act and the rules and regulations promulgated thereunder by respondents' failure to affix to said wool 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 product, 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 products 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 name of one or more persons subject to section 3 of the act with respect to such wool product, or the registered identification number of such person or persons as provided for in rule 4 of the regulations as amended.

Order

47 F. T. C.

## CONCLUSION

The foresaid acts, practices, and methods of respondents as herein found, were and are in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

## ORDER

*It is ordered*, That respondents, Jack Klein, Inc., a corporation, and its officers, and Jack Klein, individually and as an officer of Jack Klein, Inc., their representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the sale, transportation, or distribution of such products in commerce, as commerce is defined in the aforesaid acts, do forthwith cease and desist from misbranding ladies' coats or other "wool products," as defined in and subject to the Wool Products Labeling Act of 1939, which contain, purport to contain, or in any way are represented as containing "wool," "reprocessed wool," or "reused wool," as those terms are defined in said act, by failing to securely affix to or place on such products a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner:

(a) The percentage of the total fiber weight of a wool product, 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 is 5 percentum or more and (5) the aggregate of all other fibers.

(b) The maximum percentage of the total weight of such wool product of any 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 name of one or more persons subject to section 3 of the Wool Products Labeling Act of 1939 with respect to such wool product, or the registered identification number of such person or persons, as provided for in rule 4 of the regulations to such act, as amended.

*Provided*, That the foregoing provisions concerning misbranding shall not be construed to prohibit acts permitted by paragraphs (a) and (b) of section 3 of the Wool Products Labeling Act of 1939; and

## Order

*Provided further,* That nothing contained in this order shall be construed as limiting any applicable provisions of said act or the rules and regulations promulgated thereunder.

*It is further ordered,* That the complaint herein be, and the same hereby is, dismissed as to Herman Rothstein, individually and as an officer of Jack Klein, Inc.

## ORDER TO FILE REPORT OF COMPLIANCE

*It is ordered,* That the corporate respondent, Jack Klein, Inc., and the individual respondent Jack Klein, shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of January 13, 1951].

## IN THE MATTER OF

CHARLES U. BRANCH DOING BUSINESS AS NATIONAL  
SURVEYS AND EDUCATIONAL DEVELOPMENT CO.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

*Docket 5632. Complaint, Jan. 13, 1949—Decision, Jan. 16, 1951*

Where an individual engaged under the trade names National Surveys and Educational Development Co. in the interstate sale and distribution of some 59 book items, including different sets of reference books or encyclopedias, and other works of reference in combination with research membership certificates, coupon bonds for quarterly loose-leaf extension service, loose-leaf binders, and various other books, such as dictionaries, atlases, medical books, cookbooks, and books of fiction;

In selling and distributing under the trade name National Surveys in connection with the foregoing reference books (1) membership in General Research, Inc. for research service for 10 years, (2) 10-year quarterly supplements, including loose-leaf binders to match the encyclopedia set, and (3) other books in the combination offer selected; and also (1) the Home University Encyclopedia in 12 volumes, (2) membership in General Research for research service for 10 years, (3) the current International Yearbook by Funk and Wagnalls, and (4) other books selected in the combination offer, ranging in price from \$99.50 to \$139.50 depending upon the particular combination selected—

- (a) Falsely represented through salesmen who canvassed prospective purchasers, that he was conducting national educational surveys; and that purchasers or prospective purchasers, because of their prominence, had been selected to be given the aforesaid books or services "free" or at reduced introductory prices for the purpose of advertising and promoting the sale thereof, on condition that they subscribe to a combination offer and furnish said individual with commendatory letters after examination of the books;
- (b) Falsely represented that the price of certain combination offers covered merely the cost of the 10-year research service, 10-year quarterly supplements with binders to match the set, or other book or books included in such offers, and that the aforesaid reference sets or encyclopedias were given "free" to the subscriber;
- (c) Falsely represented that only a limited number of said books were being offered in the community or otherwise;
- (d) Falsely represented that the prices for the books when they were offered to the general public, would be considerably in excess of the price of the combination offer;
- (e) Falsely represented that the paper and bindings composing the books were of the finest quality;
- (f) Represented through statements in his stationery and otherwise that he was the publisher of the books he offered for sale; the facts being that while he had published some books and pamphlets, his principal stock of books were works that neither he nor any of his companies published; and,

(g) Falsely represented that United Acceptance Co., a trade name employed by him for a time, was an independent collection agency and bona fide purchaser for value of subscribers' conditional sales contracts and notes from the National Surveys and the Educational Development Co.;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations were true and thereby induce substantial purchase of his said books and services: *Held*, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

In said proceeding in which the complaint charged also that respondent had used other misleading representations and practices in connection with the sale and distribution of his books including, among other things, those pertaining to the time within which the publications were to be delivered and to the merits of certain of his books in comparison with reference works available to the public from other sources;

Such additional charges were dismissed without prejudice to the right of the Commission to institute a new proceeding or to take such future action as might be warranted, since the stipulation as to the facts contained in the record did not constitute a sufficient basis for a determination of the issue presented by such additional charges.

Before *Mr. Frank Hier*, trial examiner.

*Mr. DeWitt T. Puckett* and *Mr. Randolph W. Branch* for the Commission.

*Hornwood & Seltzer*, of Los Angeles, Calif., and *Mr. Henry Junge*, of Chicago, Ill., for respondent.

#### 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 Charles U. Branch, an individual, 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, Charles U. Branch, is an individual doing business under the trade name National Surveys, Educational Development Co., and the United Acceptance Co. Respondent's principal office and place of business is located at 416 West Eighth Street, Los Angeles, Calif. Respondent also maintains branch offices in Seattle, Wash., Portland, Oreg., and San Diego, Calif.

PAR. 2. Respondent is now and for several years last past has been engaged in selling books and certain research and other services connected therewith by direct mail advertising and through salesmen or house to house canvassers.

## Complaint

47 F. T. C.

PAR. 3. Respondent sells approximately 59 different book items, including different sets of reference books or encyclopedias known as American Educator Encyclopedia, the Wonderland of Knowledge, Home University Encyclopedia, and other works of reference in combination with research membership certificates, coupon bonds for quarterly loose-leaf extension service, including loose-leaf binders and various other books such as dictionaries, atlases, medical books, cook-books, and books of fiction.

PAR. 4. Under the trade name National Surveys, the respondent sells and distributes (1) the American Educator Encyclopedia, in 10 volumes; (2) membership in General Research, Inc., for research service for 10 years, in accordance with the terms stated in registered certificates; (3) 10-year quarterly supplements, including loose-leaf binders to match the encyclopedia set; and (4) other books in the combination offer selected.

Under the trade name National Surveys, the respondent also sells and distributes (1) the Home University Encyclopedia in 12 volumes; (2) membership in General Research for research service for 10 years; (3) the Current International Yearbook by Funk and Wagnalls; and (4) other books selected in the combination offer. This combination ranges in price from \$99.50 to \$139.50, depending upon the particular combination selected.

Under the trade name the Educational Development Co., respondent sells and distributes (1) the Wonderland of Knowledge in 14 volumes; (2) 10-year certificate of membership for service of General Research, Inc., and (3) 10-year Wonderland of Knowledge Quarterly Review.

PAR. 5. In the course and conduct of his business, as hereinbefore described, respondent utilizes the services of salesmen and solicitors who canvas individual prospective customers located in various States of the United States. When signed orders or contracts are received by such solicitors, the orders or contracts are forwarded to the Los Angeles office of respondent and the books called for therein are shipped from Los Angeles directly to the purchasers thereof located at various points in the several States of the United States and in the District of Columbia. Payments made for said books, except the initial payment made to the salesmen, are remitted directly to the respondents' office in Los Angeles, Calif.

PAR. 6. Respondent's salesmen or solicitors have used and are now using the following methods and practices, and have made and are now making the following representations in soliciting the sale of and in selling respondent's books:

(1) That the respondent is engaged in making or conducting national educational or other surveys, when such is not the fact.

(2) That purchasers or prospective purchasers, because of their prominence or standing in the community, profession, or trade, have been selected to receive or be given "free" or at reduced introductory or low prices, the American Educator Encyclopedia, the Wonderland of Knowledge, Home University Encyclopedia, or other books or services, for the purpose of advertising and promoting the sales thereof, on condition that purchasers or prospective purchasers subscribed to a combination offer and furnish respondent with commendatory letters after receipt and examination of the encyclopedias, works of reference, or books, when, in fact, such purchasers or prospective purchasers are not especially selected or chosen. The encyclopedias, works of reference; or books are not given "free" or at reduced introductory or low prices, and no testimonial or commendatory letters are required.

(3) That the cost or price of the combination offer covers merely the cost or price of the 10-year research service, 10-year quarterly supplements with binders to match set and other book or books included in the offer, and that American Educator Encyclopedia, the Wonderland of Knowledge, or the Home University Encyclopedia are given "free" to the subscriber, when such is not the fact.

(4) That only a limited number of encyclopedias, works of reference, or books are being offered, for any reason or in any way, in the community or otherwise when, in fact, there is no limitation to the offers.

(5) That the regular or prevailing selling price for the encyclopedias, works of reference, or books, is or will be, when the books are offered for sale to the general public, considerably in excess of the price of the combination offer, when, in truth and in fact, such is not the case.

(6) That the American Educator Encyclopedia and other works of reference or books offered by respondent are equal to, or comparable with, the Encyclopedia Britannica, and equal or superior to, other approved and generally accepted works, when such are not the facts.

(7) That the paper and bindings composing the encyclopedia, works of reference, and books are of the finest quality, when, in fact, such is not the case.

(8) That respondent's books will be delivered to purchasers promptly within a month or other stated time, when respondent has no control of or certain knowledge as to when delivery of said books can or will be made.



(9) The respondent has represented by statements in his stationery and otherwise that he is a publisher, when such is not a fact.

PAR. 7. In the conduct of his financial transactions with reference to collecting on the notes executed by purchasers of his books, the respondent has represented and now represents that:

(1) United Acceptance Co. is an independent collection agency and the bona fide purchaser for value without notice and before maturity of subscribers conditional sales contracts and notes from the National Surveys and the Educational Development Co., when such is not the fact.

(2) The State Investment Co. is a bona fide purchaser for value without notice and before maturity of subscribers conditional sales contracts and notes from the National Surveys and the Educational Development Co., when such is not the fact.

PAR. 8. The use by the respondent of the aforesaid means, methods, and practices in offering for sale and selling said books and services, in commerce as aforesaid, has had and now has a capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations are true, and as a result of this erroneous and mistaken belief, has induced and now induces a substantial number of the purchasing public to purchase respondent's said books and services.

PAR. 9. 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.

#### DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 13, 1949, issued and subsequently served its complaint in this proceeding upon the respondent, Charles U. Branch, an individual, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the issuance of said complaint and the filing of respondent's answer thereto, a hearing was held before a trial examiner of the Commission theretofore designated by it, at which a stipulation was received into the record whereunder it was stipulated and agreed between respondent and Daniel J. Murphy, Chief of the Division of Litigation of the Federal Trade Commission, that the statement of facts therein contained might be taken as the facts of this proceeding in lieu of evidence in support of the charges stated in

the complaint or in opposition thereto. On September 12, 1950, the trial examiner filed his initial decision.

The Commission, having reason to believe that the initial decision did not constitute an adequate disposition of this matter, on October 24, 1950, issued and thereafter served upon the parties its order placing this case on the Commission's own docket for review and affording the respondent an opportunity to show cause why said initial decision should not be altered in the manner and to the extent shown in the tentative decision of the Commission attached to said order. Respondent not having appeared in response to the leave to show cause, this proceeding regularly came on for final consideration by the Commission upon the record herein on review; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order, the same to be in lieu of the initial decision of the trial examiner:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Charles U. Branch, is an individual doing business under the trade names National Surveys and Educational Development Co. During the operation of his business as hereinafter described, and until the latter part of 1946, said respondent also used the trade name United Acceptance Co. Respondent's principal office and place of business is located at 416 West Eighth Street, Los Angeles, Calif., and he maintains branch offices in Seattle, Wash., Portland, Oreg., and San Diego, Calif.

PAR. 2. Respondent is now and for several years last past has been engaged in selling books and certain research and other services connected therewith by direct mail advertising and through salesmen or house-to-house canvassers.

PAR. 3. Respondent sells approximately 59 different book items, including different sets of reference books or encyclopedias, and other works of reference in combination with research membership certificates, coupon bonds for quarterly loose-leaf extension service, loose-leaf binders, and various other books such as dictionaries, atlases, medical books, cookbooks, and books of fiction.

PAR. 4. Under the trade name National Surveys, the respondent sells and distributes in connection with the foregoing reference books: (1) membership in General Research, Inc., for research service for ten years, in accordance with the terms stated in registered certificates; (2) 10-year quarterly supplements, including loose-leaf binders to match the encyclopedia set; and (3) other books in the combination offer selected.

The respondent also sells and distributes (1) the Home University Encyclopedia in 12 volumes; (2) membership in General Research for research service for 10 years; (3) the current International Yearbook by Funk and Wagnalls; and (4) other books selected in the combination offer. This combination ranges in price from \$99.50 to \$139.50, depending upon the particular combination selected.

PAR. 5. In the course and conduct of his business as hereinbefore described, respondent utilizes the services of salesmen and solicitors who canvass individual prospective purchasers located in the State of California and also in two or three of the neighboring Pacific Coast States. When signed orders or contracts are received by such solicitors the orders or contracts are forwarded to the Los Angeles office of respondent and the books called for therein are usually shipped from Los Angeles, Calif., directly to the purchasers thereof located in the aforesaid States. In some instances the books sold as aforesaid are delivered to said purchasers by the respondent or his representatives.

PAR. 6. Respondent's salesmen or solicitors have used and are now using the following methods and practices, and have made and are now making the following representations in soliciting the sale of and in selling respondent's books:

(1) That the respondent is engaged in making or conducting national educational or other surveys, when such is not the fact.

(2) That purchasers or prospective purchasers, because of their prominence or standing in the community, profession or trade, have been selected to receive or be given "free" or at reduced introductory or low prices, the aforesaid reference books or encyclopedia sets, or other books or services, for the purpose of advertising and promoting the sales thereof, on condition that purchasers or prospective purchasers subscribe to a combination offer and furnish respondent with commendatory letters after receipt and examination of the encyclopedias, works of reference or books when, in fact, such purchasers or prospective purchasers are not especially selected or chosen. The encyclopedias, works of reference or books are not given "free" or at reduced introductory or low prices, and no testimonial or commendatory letters are required.

(3) That the price of certain combination offers covers merely the cost or price of the 10-year research service, 10-year quarterly supplements with binders to match the set, or other book or books included in such offers, and that the aforesaid reference sets or encyclopedias are given "free" to the subscriber, when such is not the fact.

(4) That only a limited number of encyclopedias, works of reference, or books are being offered, for any reason or in any way, in the community or otherwise when, in fact, there is no limitation to the offers.

(5) That the regular or prevailing selling price for the encyclopedias, works of reference or books, is or will be, when the books are offered for sale to the general public, considerably in excess of the price of the combination offer when, in truth and in fact, such is not the case.

(6) That the paper and bindings composing the encyclopedia, works of reference and books are of the finest quality when, in fact, such is not the case.

(7) The respondent has represented by statements in his stationery and otherwise that he is the publisher of the books which are being offered for sale. Although he has published some books and pamphlets, nevertheless, the principal stock of books sold by him has been works that neither he nor any of his companies publish.

PAR. 7. In the conduct of his financial transactions for the purpose of collecting on the notes executed by purchasers of his books, the respondent has represented and now represents that United Acceptance Co. is an independent collection agency and the bona fide purchaser for value without notice and before maturity of subscribers' conditional sales contracts and notes from the National Surveys and the Educational Development Co., when such is not the fact. Use of this name and company was abandoned in the latter part of 1946.

PAR. 8. The use by the respondent of the aforesaid means, methods, and practices in offering for sale, sale, and distribution of said books and services, in commerce as aforesaid, has had and now has a capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations are true, and to induce a substantial number of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's said books and services.

PAR. 9. The complaint which issued in this proceeding charges also that respondent has used other representations and practices in connection with the distribution of his books which are alleged to be misleading. Such statements and representations pertain, among other things, to the time within which the publications are to be delivered and to the merits of certain of respondent's books in comparison with reference works available to the public from other sources. The stipulation as to the facts contained in the record does not constitute a sufficient basis for a determination of the issues presented by these additional charges and such charges accordingly are dismissed without prejudice to the right of the Commission to institute a new proceeding or to take such further or other action in the future as may be warranted by the then existing circumstances.

Order

47 F. T. C.

## CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, 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.

## ORDER

*It is ordered*, That the respondent, Charles U. Branch, doing business under the trade names National Surveys, Educational Development Co., or any other name, his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution in commerce, as commerce is defined in the Federal Trade Commission Act, of encyclopedias, periodic supplements thereto, research service memberships, or any other book or books or publications, do forthwith cease and desist from representing, directly or by implication:

(1) That respondent is engaged in making or conducting national educational or other surveys.

(2) That the prices at which respondent's books, supplements, research services, or other publications are customarily or regularly offered for sale or sold, either singly or in combination with others in the regular course of business, are reduced or introductory prices or are available only to chosen or selected persons in a community or to purchasers submitting letters commending respondent's publications.

(3) That encyclopedias or any other publications the cost of which is regularly included in the purchase price of respondent's research services, loose-leaf supplements, or other books sold in combination with such encyclopedias or publications, are offered free or as a gratuity.

(4) That only a limited number of encyclopedias, works of reference or books are being offered for any reason or in any way in the community or otherwise.

(5) That the regular or prevailing selling price for the encyclopedias, works of reference or other books or publications is or will be, when the books are offered for sale to the general public, greater than the price of the combination offer.

(6) That the paper and bindings of the encyclopedias, reference works, and other books or publications are of different quality in any respect than those which respondent has for sale and delivery or sells and delivers.

(7) That he is a publisher except in connection with the sale of books which he has actually published.

(8) That United Acceptance Co. or any other collection agency conducted and used by him as a means of collecting sums due or alleged to be due to him is an independent collection agency or that any agency or activity used by him for the purpose of collecting money from purchasers is a bona fide purchaser for value without notice and before maturity of purchasers' conditional sales contracts and notes.

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

IN THE MATTER OF  
ARMS TEXTILE MANUFACTURING CO. ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

*Docket 5783. Complaint, June 22, 1950—Decision, Jan. 16, 1951*

Where a corporation engaged in the manufacture and competitive interstate sale and distribution of "Armo" hair canvas, used in the manufacture of women's, misses', junior's, and teen-age untrimmed coats and suits, and its selling agent, a partnership, the partners in which were its officers and also officers in a second corporation, manufacturing hair canvas for use in men's garments, but not otherwise herein involved, which two constituted the largest manufacturers of hair canvas in the United States;

Operating under a plan of merchandising whereby they entered into agreements with large retail stores and large buying agencies which were engaged in buying women's, misses', junior's, and teen-age untrimmed coats and suits for retail stores located throughout the United States, and which represented a substantial number and a substantial volume of such business, whereby said corporation and selling agent agreed to pay in the way of allowances for advertising, substantial sums of money to said retailers and buying agencies when the latter made reference in their advertising to their use of said product "Armo";

With intent and effect of exerting pressure upon and intimidating manufacturers of coats and suits and coercing them into using "Armo" to the exclusion of competitors' products and of preventing them from buying competitive material through preference based on quality, price or other competitive factors—

Entered into further agreements with said stores and buying agencies whereby, as additional consideration for said advertising allowances, they undertook to and did—

- (a) Require manufacturers of women's, misses', junior's, and teen-age untrimmed coats and suits to use "Armo" as interfacings or linings of coats and suits purchased by such stores and buying agencies;
- (b) Require such manufacturers to attach to every garment purchased by them a Good Housekeeping tag, stamp, or label and to state thereon that "Armo" was used in such garment; and
- (c) Report to said corporate manufacturer and its selling agent the names of all manufacturers who refused to use "Armo";

With effect of hindering and restraining sale and distribution of hair canvas in commerce, and of hindering and preventing a normal trade and unrestrained competition in said product; and with a dangerous tendency to create in said corporate manufacturer and its said selling agent a monopoly in the manufacture and interstate sale and distribution of said product, and to deprive the public of the advantage of competition in price which it would otherwise enjoy:

**Held,** That said acts and practices were all to the prejudice and injury of the public and of their competitors, and constituted unfair methods of competition in commerce and unfair acts and practices therein.

As respects such agreements as those hereinbefore set forth, it is their effect on the public which alone is of consequence, the motive, purpose or belief of any party thereto being immaterial.

Before *Mr. Frank Hier*, trial examiner.

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

*Boyle, Feller, Stone & McGivern*, of New York City, for respondents.

#### 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 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. (a) Arms Textile Manufacturing Co. is a corporation organized and existing under and by virtue of the laws of the State of New Hampshire and has its home office and principal place of business located at 4301 Torresdale Avenue, Philadelphia, Pa. Said respondent is engaged in manufacturing and selling a hair canvas used in manufacturing women's, misses', junior, and teen-age untrimmed coats and suits. Said canvas is sold under the trade name "Armo-Set."

(b) Respondent, Phillip L. Sheerr & Sons, is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, and has its home office at Torresdale Avenue, Philadelphia, Pa. Said respondent is engaged in manufacturing hair canvas to be used as interlinings and facings for wearing apparel. One type of said canvas is sold under the trade name of "Hairvas" and this particular type of canvas is used as interlining for men's garments. Another type of canvas is sold under the trade name of "Armo-Set" and this particular type of canvas is used as interlining and facing for women's, misses', junior, and teen-age untrimmed coats and suits.

(c) Respondent, Sheerr Bros. & Co., is a copartnership with its home office and principal place of business located at 51 Madison Avenue, New York 10, N. Y. Said partnership is the selling agent for the two respondent corporations hereinbefore described.

(d) Respondents, Robert Sheerr, Stanley I. Sheerr, Alvin Sheerr, David B. Carmel, Isidore Doner, and Pearl Sheerr Bensinger, are individuals and copartners trading and doing business under the partnership name of Sheerr Bros. & Co. Their business address is 51 Madison Avenue, New York 10, N. Y.



(e) The respondent, Robert Sheerr, is the president of respondent Arms Textile Manufacturing Co., and also president of respondent Phillip L. Sheerr & Sons.

Stanley I. Sheerr is the executive vice president of respondent Arms Textile Manufacturing Co., and also executive vice president of respondent Phillip L. Sheerr & Sons.

Respondent, Alvin Sheerr, is treasurer of respondent Arms Textile Manufacturing Co. and the treasurer of respondent Phillip L. Sheerr & Sons.

Respondent, Isidore Doner, is secretary of Arms Textile Manufacturing Co. and also secretary of respondent Phillip L. Sheerr & Sons.

PAR. 2. (a) The respondent corporations are now, and have been for a number of years last past, engaged in the manufacture, sale, and distribution in commerce among and between the various States of the United States of a hair canvas sold under the trade name of "Armo-Set," and have caused said product when sold to be shipped to the purchasers thereof, many of whom are located in States of the United States other than the State of origin of said shipments. Respondents do now, and have for a number of years last past, maintained a constant course of trade in said products in said commerce.

(b) The individual respondents herein named trading under the partnership name of Sheerr Bros. & Co., are not engaged in manufacturing said products, but have been, are are now, acting as sales agents for the two corporate respondents, as aforesaid, in the sale and distribution of the product hereinbefore described, and, while acting in the capacity of selling agent, respondents ship, or cause to be shipped said products, when sold, to the purchasers thereof, many of whom are located in States of the United States other than the State of origin of said shipments.

PAR. 3. While there are other individuals, firms, and corporations engaged in the manufacture, sale, and distribution in said commerce of hair canvas, and with which the respondents are in active and substantial competition, the respondents herein named are the largest manufacturers of hair canvas in the United States, in that they manufacture and sell approximately 80 percent of the hair canvas manufactured and sold in the United States; they therefore, do now occupy, and have for a number of years last past occupied, a dominant position in said industry, and because of such position respondents are able to dominate and control the course of trade in said products to a substantial and dangerous extent.

PAR. 4. During, or about, the year 1948 the respondents conceived and put into operation a plan of merchandising designed and intended to hinder and eliminate competition and to monopolize in

themselves the manufacture, sale, and distribution of hair canvas for interlining and facing women's, misses', juniors', and teen-age untrimmed coats and suits. In carrying out said plan, respondents have entered into agreements with a large number of large and other retail stores and several large and important buying agencies who are engaged in buying women's, misses', juniors', and teen-age untrimmed coats and suits for retail stores which are located throughout the United States, and under the terms of said agreements respondents pay, and obligate themselves to pay, in the way of allowance for advertising, substantial sums of money to said retailers and buying agencies for which respondents require such retailers and buying agencies to do the following:

(a) Require manufacturers of women's, misses', juniors', and teen-age untrimmed coats and suits from whom said retailers buy to use respondents' said product for lining and facing such coats and suits purchased by said retailers.

(b) Refuse to accept shipments of such coats and suits not manufactured according to said request or demand.

(c) Require the manufacturers to attach to each garment a tag or label carrying the representation that the garment has been lined with respondents' said product and that said product has been approved by Good Housekeeping, though in some instances the use thereof is optional. (Said labels to be furnished to the manufacturers by respondents.)

(d) Include in advertisements advertising such coats and suits representations that such coats and suits are lined and faced with respondents' said product.

(e) Report to respondents all manufacturers who refuse to comply with the request or demand to use respondents' said product.

PAR. 5. The acts and practices of the respondents as herein alleged have a dangerous tendency to and have hindered and restrained the sale and distribution of hair canvas in commerce among and between the various States of the United States, and hindered and prevented normal, free, and unrestrained competition in said products in said commerce; have a dangerous tendency to create in said respondents a monopoly in the manufacture, sale, and distribution of said products in said commerce and deprive the public of the advantage of competition in price and otherwise which it would enjoy under a condition of normal, free, and unrestrained competition.

The retail merchants represented in said agreement buy great quantities of such untrimmed coats and suits and their actual or potential buying power is sufficiently strong to compel or induce manufacturers to conform to their requests and demands as to use of such

material in the manufacture of their said garments. The purpose and effect of said agreements were, and are, to exert pressure upon and to intimidate the manufacturers of such coats and suits, and to coerce them into using said respondents' said product to the exclusion of comparable and like products of respondents' competitors and prevent such manufacturers from buying competitive material through preference based on quality, price, or other competitive factors.

PAR. 6. The acts and practices of the respondents as herein alleged are all to the prejudice of the public and respondents' competitors and constitute unfair acts and practices and unfair methods of competition within the intent and meaning of section 5 of the Federal Trade Commission Act.

DECISION OF THE COMMISSION AND ORDER TO FILE  
REPORT OF COMPLIANCE

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 22, 1950, issued and subsequently served its complaint in this proceeding upon the respondents, Arms Textile Manufacturing Co., a corporation, Philip L. Sheerr & Sons, a corporation, and Robert Sheerr, Stanley I. Sheerr, Alvin Sheerr, David B. Carmel, Isidore Doner, and Pearl Sheerr Bensinger, individually and as copartners trading under the name of Sheerr Bros. & Co., charging said respondents with the use of unfair methods of competition in commerce and unfair acts and practices in commerce in violation of the provisions of said act. A trial examiner of the Commission was thereafter designated by it to take testimony and receive evidence in support of and in opposition to the allegations of the complaint, and at the initial hearing convened for such purpose a stipulation of all of the facts in the case was entered into by and between counsel for the respondents and counsel in support of the complaint. There was also presented and received into the record an appendix to said stipulation in which the respondents expressly waived their right to present further evidence and waived all intervening procedure; and on the record thus presented the trial examiner on September 19, 1950, filed his initial decision.

The Commission, having reason to believe that the initial decision was deficient in certain material respects, on October 30, 1950, issued and thereafter served upon the parties its order placing this case on the Commission's own docket for review and affording the respondents an opportunity to show cause why said initial decision should not be altered in the manner and to the extent shown by the tentative decision attached to said order. The respondents not having appeared

in response to the leave to show cause, this proceeding regularly came on for final consideration by the Commission upon the record herein on review; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that said proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order, the same to be in lieu of the initial decision of the trial examiner.

#### FINDINGS AS TO THE FACTS

PARAGRAPHS 1. Respondent, Arms Textile Manufacturing Co., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business located at 4301 Torresdale Avenue, in the city of Philadelphia, State of Pennsylvania. Said respondent is engaged in manufacturing and selling hair canvas used in manufacturing women's, misses', juniors', and teen-age untrimmed coats and suits. Said canvas is sold under the trade name of "Armo."

Respondent, Philip L. Sheerr & Sons, is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its home office on Torresdale Avenue, in the city of Philadelphia, State of Pennsylvania. Said respondent is engaged in manufacturing hair canvas to be used as interlinings and facings. The hair canvas manufactured by the said respondent Philip L. Sheerr & Sons is sold under the trade name "Hairvas," and this particular type of canvas, used as interlining for men's garments, is not involved in this proceeding. Said respondent does not manufacture any hair canvas under the trade name of "Armo." Said respondent, Philip L. Sheerr & Sons, has had no significant or substantial connection with the acts and practices alleged in the complaint.

Respondent, Sheerr Bros. & Co., is a copartnership, with its home office and principal place of business located at 51 Madison Avenue, New York 10, N. Y. Said partnership is the selling agent for the two respondent corporations hereinbefore described and is composed of the respondents Robert Sheerr, Stanley I. Sheerr, Alvin Sheerr, David B. Carmel, Isidore Doner, and Pearl Sheerr Bensinger as copartners.

Respondent Robert Sheerr is the president, respondent Stanley I. Sheerr is the executive vice president, respondent Alvin Sheerr is the treasurer, and respondent Isidore Doner is the secretary, respectively, of both of the corporate respondents, Arms Textile Manufacturing Co. and Philip L. Sheerr & Sons.

PAR. 2. Respondent, Arms Textile Manufacturing Co., is now, and for a number of years last past it has been, engaged in the manufacture

and in the sale and distribution in commerce among and between the various States of the United States of a hair canvas sold under the trade name of "Armo," and has caused said product, when sold, to be shipped to purchasers thereof, many of whom are located in States of the United States other than the State of origin of said shipments. Said respondent now maintains, and for a number of years last past it has maintained, a constant course of trade in said product in said commerce.

PAR. 3. The individual respondents herein trading under the partnership name of Sheerr Bros. & Co. are not engaged in manufacturing the product sold under the trade name "Armo," but they have been and are now acting as sales agents of the corporate respondent Arms Textile Manufacturing Co., as aforesaid, in the sale and distribution of the product hereinbefore described and, while acting in the capacity of sales agents, the individual respondents, trading under the partnership name of Sheerr Bros. & Co., have shipped or caused to be shipped said product, when sold, to the purchasers thereof, many of whom are located in States of the United States other than the State of origin of said shipments.

PAR. 4. While there are other individuals, firms, and corporations engaged in the manufacture and in the sale and distribution in commerce of hair canvas, and with which the respondents are in active and substantial competition, the respondents herein named are the largest manufacturers of hair canvas in the United States.

PAR. 5. During or about the year 1948, the respondents herein, other than Philip L. Sheerr & Sons, put into operation a plan of merchandising whereby they entered into agreements with large retail stores and large buying agencies engaged in buying women's, misses', juniors', and teen-age untrimmed coats and suits for retail stores located throughout the United States. Said stores and buying agencies represented a substantial number and a substantial volume of such trade and business. Under the terms of said agreement said respondents agreed to pay, and obligated themselves to pay, in the way of allowances for advertising, substantial sums of money to said retailers and buying agencies when said retailers and buying agencies in their advertising made reference to their use of the product "Armo."

PAR. 6. As an additional consideration for the advertising allowances paid and to be paid by respondents, as aforesaid, stores and buying agencies agreed, undertook to, and did:

1. Require manufacturers of women's, misses', juniors', and teenage untrimmed coats and suits to use as interfacings or linings of coats

and suits purchased by such stores and buying agencies the respondents' product "Armo."

2. Require such manufacturers to attach to every garment purchased by them a Good Housekeeping tag, stamp, or label, and to state on such tag, stamp, or label that the respondents' product was used in such garment.

3. Report to respondents the names of all manufacturers who refused to use respondents' product.

PAR. 7. The acts and practices of the respondents herein, with the exception of respondent Philip L. Sheerr & Sons, have had a dangerous tendency to and have hindered and restrained the sale and distribution of hair canvas in commerce among and between the various States of the United States and have hindered and prevented a normal, free, and unrestrained competition in said product in said commerce; have had a dangerous tendency to create in said respondents, except the respondent Philip L. Sheerr & Sons, a monopoly in the manufacture and in the sale and distribution of said product in said commerce and to deprive the public of the advantage of competition in price which it would otherwise enjoy. The purpose and effect of the above-described agreements was to exert pressure upon and to intimidate the manufacturers of coats and suits and to coerce them into using the respondents' said product "Armo" to the exclusion of comparable and like products of respondents' competitors, and to prevent such manufacturers from buying competitive material through preference based on quality, price, or other competitive factors.

#### CONCLUSION

The acts and practices of the respondents herein, except Philip L. Sheerr & Sons, have been to the prejudice and injury of the public and of respondents' competitors and have constituted unfair methods of competition in commerce and unfair acts and practices in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act.

The motive, purpose, or belief of any party to the agreements described hereinabove was immaterial; it is the effect of such agreements on the public which alone is of consequence.

#### ORDER

*It is ordered,* That the respondents, Arms Textile Manufacturing Co., a corporation, and its officers, and Robert Sheerr, Stanley I. Sheerr, Alvin Sheerr, David B. Carmel, Isidore Doner, and Pearl Sheerr Bensinger, individually and as copartners trading as Sheerr

## Order

47 F. T. C.

Bros. & Co., or trading under any other name or trade designation, and said respective respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution in commerce, as commerce is defined in the Federal Trade Commission Act, of hair canvas used in the manufacture of women's, misses', juniors', and teen-age untrimmed coats and suits, do forthwith cease and desist from entering into, cooperating in, or carrying out any understanding or agreement with any retailer or buying agency whereby such retailer or buying agency undertakes to, or does:

1. Require any manufacturer or supplier of women's, misses', juniors', or teen-age untrimmed coats or suits to use the respondents' hair canvas as interfacings or linings in any coats or suits purchased by said retailer or buying agency.

2. Require any such manufacturer or supplier to attach to any garment wherein the respondents' hair canvas was used a Good House-keeping tag, stamp, or label, or any tag, stamp, or label showing that the respondents' product was used in such garment.

3. Report to the respondents the name of any manufacturer who refuses to use the respondents' hair canvas in garments manufactured by them.

*It is further ordered,* That nothing contained in this order shall be construed as prohibiting any of the respondents from entering into cooperative advertising contracts or agreements with retail stores or buying agencies which do not contain any of the requirements herein referred to and which are not otherwise contrary to law, nor as prohibiting any of the respondents from directly requiring any manufacturer purchasing and using the respondents' hair canvas in garments to so label such garments.

*It is further ordered,* That the complaint herein be, and it hereby is, dismissed as to the respondent, Philip L. Sheerr & Sons, without prejudice, however, to the right of the Commission to institute a new proceeding against said respondent or to take such further or other action in the future as many be warranted by the then existing circumstances.

*It is further ordered,* That Arms Textile Manufacturing Co., Robert Sheerr, Stanley I. Sheerr, Alvin Sheerr, David B. Carmel, Isidore Doner, and Pearl Sheerr Bensinger shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

## Complaint

## IN THE MATTER OF

## GOODALL-SANFORD, INC., ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF AN ACT OF CONGRESS APPROVED OCT. 14, 1940

*Docket 5740. Complaint, Feb. 6, 1950—Decision, Jan 17, 1951*

Where a corporate manufacturer of wool products as defined in the Wool Products Labeling Act and its wholly owned sales subsidiary, and certain officers and directors, engaged in the offer, sale, transportation, and distribution in commerce of such products—

Misbranded the same in violation of the provisions of the Wool Products Labeling Act and the rules and regulations promulgated thereunder by failing to affix thereto the required stamp, tag, etc., showing the percentage of the fiber weight of wool and other fiber, and other information required thereby including the name of the manufacturer or that of one or more persons subject to section 3 of said act, or the registered identification number of such person or persons, etc., in that they—

- (a) Shipped interstate on 23 separate occasions between November 12, 1947, and May 6, 1948, about 18,000 yards of fabric sold by said subsidiary and labeled as containing 54-percent cotton, 26-percent rayon, and 20-percent mohair, when in fact composed of about 63-percent cotton, 27-percent rayon, and 10-percent mohair;
- (b) During and subsequent to the aforesaid period shipped wool fabrics from their plant in Maine to concerns in Ohio and New York, which bore no labels showing the fiber content and name or registered identification number; and
- (c) Sold and shipped from their said plant in Maine to a Boston concern quantities of wool waste packed in cardboard cartons which did not bear any name or registered identification number:

*Held*, That such acts and practices, under the circumstances set forth, were in violation of said act and rules and regulations, and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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

*Burns, Blake & Rich*, of Boston, Mass., for respondents.

## 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 Goodall-Sanford, Inc., a corporation, Elmer L. Ward, Cornelius A. Callahan, F. Everett Nutter, and Ernest Chamberlain, individually, and as officers and directors of Goodall-



## Complaint

47 F. T. C.

Sanford, Inc., a corporation, and Goodall Fabrics, Inc., a corporation, hereinafter referred to as respondents, have violated the provisions of said acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Goodall-Sanford, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Maine. Its principal office and factory are located in Sanford, Maine, and it maintains a sales office in New York City.

The officers and directors of respondent, Goodall-Sanford, Inc., are respondents Elmer L. Ward, Cornelius A. Callahan, F. Everett Nutter, and Ernest Chamberlain.

The respondent, Goodall Fabrics, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York and has its principal office at 525 Madison Avenue, New York, N. Y. Said respondent is a wholly owned subsidiary and sales agency for the products manufactured by respondent Goodall-Sanford, Inc.

PAR. 2. The respondent, Goodall-Sanford, Inc., is engaged in the introduction and manufacture for introduction into commerce, and all of the respondents are engaged in offering for sale, 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. Many of respondents' said products are composed in whole or in part of wool, 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 the 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 fabrics and other products. 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 garments 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 product, 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 per centum 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 name of one or more persons subject to section 3 of said act with respect to such wool product, or the registered identification number of such person or persons as provided for in rule 4 of the regulations as amended.

PAR. 4. The aforesaid acts, practices, and methods of respondents as alleged were and are in violation of the Wool Products Labeling Act of 1939, and the rules and regulations promulgated thereunder, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER

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, on February 6, 1950, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of those acts. No answer was filed by the respondents. On June 20, 1950, a stipulation as to the facts was entered into by and between Daniel J. Murphy, Chief, Division of Litigation, of the Commission, and counsel for the respondents, in which it was stipulated and agreed that subject to the approval of the Commission the statement of facts contained therein may be taken as the facts in this proceeding and in lieu of evidence in support of the charges stated in the complaint or in opposition thereto, and that the Commission may proceed upon such statement of facts to make its report stating its findings as to the facts (including inferences which it may draw from said stipulated facts) and its conclusion based thereon, and enter its order disposing of the proceeding, without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission

upon the complaint and stipulation, said stipulation having been approved, accepted, and filed; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Goodall-Sanford, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maine. Its principal office and factory are located in Sanford, Maine.

The respondents, Elmer L. Ward, F. Everett Nutter, and Ernest Chamberlain, are officers and directors, and the respondent Cornelius A. Callahan is an officer, of Goodall-Sanford, Inc.

The respondent, Goodall Fabrics, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maine, and having an office at 525 Madison Avenue, New York. Said respondent is a wholly owned subsidiary of Goodall-Sanford, Inc., and the sales agency for certain of the products manufactured by said Goodall-Sanford, Inc.

PAR. 2. The respondent, Goodall-Sanford, Inc., is engaged in the introduction and manufacture for introduction into commerce, and all of the respondents are engaged in the offering for sale, 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. Many of the respondents' said products are wool products as such products 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.

PAR. 3. On 23 separate occasions between November 12, 1947, and May 6, 1948, Goodall-Sanford, Inc., shipped from Sanford, Maine, to Needham Heights, Mass., approximately 18,000 yards of fabric sold by Goodall Fabrics, Inc., to Mansbrooke Rainwear Co., which fabric was incorrectly labeled as containing 54-percent cotton, 26-percent rayon, and 20-percent mohair. This fabric was in fact composed of approximately 63-percent cotton, 27-percent rayon, and 10-percent mohair.

During and subsequent to the aforesaid period, the respondents also made shipments of wool fabrics from their plant in Sanford, Maine, to Palm Beach Co., Cincinnati, Ohio, S. Augstein, New York, N. Y., and Beau Brummel Co., Cincinnati, Ohio, which bore no labels showing the fiber content of said fabrics and the name or registered identification number of any of the respondents.

## Order

During and subsequent to the aforesaid period, the respondent Goodall-Sanford, Inc., sold and shipped from its plant in Sanford, Maine, to Forte, Dupee & Sawyer in Boston, Mass., quantities of wool waste packed in cardboard cartons that did not bear the name or registered identification number of any of the respondents.

PAR. 4. The aforesaid wool products manufactured for introduction into commerce and sold, transported, and distributed by the respondents in commerce, as aforesaid, were misbranded within the intent and meaning of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, in that each of said products did not have on or affixed to it a stamp, tag, label, or other means of identification showing (a) the percentage of the total fiber weight of such wool product, exclusive of ornamentation not exceeding 5 percent 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 percent or more, and (5) the aggregate of all other fibers; (b) the maximum percentage of the total weight of such wool product of any nonfibrous loading, filling, or adulterating matter; and (c) the name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, or distribution thereof in commerce, as commerce is defined in the Federal Trade Commission Act and in the Wool Products Labeling Act of 1939.

## CONCLUSION

The acts and practices of the respondents in the manufacture for introduction into commerce, and in the sale, transportation, and distribution in commerce, of wool products which were misbranded, as herein found, were in violation of the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder and were to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and a stipulation as to the facts entered into by and between Daniel J. Murphy, Chief, Division of Litigation, of the Commission, and counsel for the respondents, in which stipulation the respondents waived all intervening procedure and further hearing as to said facts; and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Wool Products

Labeling Act of 1939 and the provisions of the Federal Trade Commission Act:

*It is ordered*, That the respondents, Goodall-Sanford, Inc., a corporation, and its officers, Elmer L. Ward, F. Everett Nutter, and Ernest Chamberlain, individually and as officers and directors of Goodall-Sanford, Inc., Cornelius A. Callahan, individually and as an officer of Goodall-Sanford, Inc., and Goodall Fabrics, Inc., a corporation, and its officers, and said respondents' respective agents, representatives, and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation, or distribution in commerce, as "commerce" is defined in the aforesaid acts, of wool products as such products are defined in and subject to the Wool Products Labeling Act of 1939, which products contain, purport to contain, or in any way are represented as containing "wool," "reprocessed wool," or "reused wool" as those terms are defined in said act, do forthwith cease and desist from misbranding such wool products by failing to affix securely to or place on such products a stamp, tag, label, or other means of identification, showing in a clear and conspicuous manner:

(a) The percentage of the total fiber weight of such wool product, 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 is 5 percentum or more, and (5) the aggregate of all other fibers.

(b) The maximum percentage of the total weight of such wool product of any nonfibrous loading, filling, or adulterating matter.

(c) The name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, or distribution thereof in commerce, as commerce is defined in the Federal Trade Commission Act and in the Wool Products Labeling Act of 1939.

*Provided*, That the foregoing provisions concerning misbranding shall not be construed to prohibit acts permitted by paragraphs (a) and (b) of section 3 of the Wool Products Labeling Act of 1939; *And provided further*, That nothing contained in this order shall be construed as limiting any applicable provisions of said act or the rules and regulations promulgated thereunder.

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

## Syllabus

## IN THE MATTER OF

## NED R. BASKIN

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

*Docket 4902. Complaint, Feb. 8, 1943—Decision, Jan. 26, 1951*

Where an individual engaged in enlarging and coloring photographs made from pictures and negatives sent in by persons in the various States, and in their interstate sale to such senders, in advertisements through paper match-book covers widely disseminated throughout the United States by match manufacturers, and through newspapers and periodicals of general circulation, and radio continuities—

- (a) Represented, directly and by implication, that colored enlargements of the pictures or negatives submitted in response to his advertisements, and frames therefor, would be obtained at no cost beyond the 10 cents, or, later, 19 cents, advertised, through some such statement as, "Just to get acquainted we will make a beautiful professional 5 by 7 enlargement free of any snapshot, photo, kodak picture, print, or negative. Please include color of eyes, hair, and clothing for prompt information on a natural, life-like color enlargement in a free frame to set on the table or dresser. Your original returned. Please send 10 cents for handling and mailing . . .";

The facts being that it was his practice to send to those complying a circular letter acknowledging the receipt of the snapshot and containing some such statement as that since "I can see that it is a picture which means a great deal to you," "I have told our cameraman to make you the best 'black and white' 5 by 7 enlargement"; and an offer to "have our expert artists hand color it in natural life-like colors, then place it in a beautiful free frame," and to send it as soon as the prospect indicated on an enclosed form whether he desired the Ivory and Gold Frame or the Brown and Gold Frame, and obligated himself to pay a dollar and mailing costs; and it was not until after the customer failed to return said order card, that it was said individual's policy to send him without further charge, the black and white enlargement; and

- (b) Represented in follow-up form letters that for a limited time only and by the payment of an additional sum varying from \$1 to \$1.29 for a colored enlargement, prospective customers would receive free their choice between a frame finished in ivory and gold or brown and gold and, as a reward for promptness, a colored picture of their favorite movie star, and that the return of the enclosed order card was desired in order that he might verify the name and address of the customer;

The facts being that the offer was not limited but was made in the regular course of business; the signature and address of the recipient of the authorization card was sought to get his signature on an order for a colored enlargement at a stated additional sum plus certain unstated charges; and costs of the free frame and movie star's picture were included in the sum which the customer paid for the colored enlargement; and,

## Complaint

47 F. T. C.

(c) Represented falsely through the use of the term "Hollywood Film Studios," together with pictures of motion-picture celebrities on his form letterhead, that he was connected with the motion picture industry;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true, and thereby into the purchase of substantial numbers of said enlargements:

*Held*, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

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

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

*Mr. William A. Romanek*, of Chicago, Ill., for respondent.

## 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 Ned R. Baskin, an individual, 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, Ned R. Baskin, is an individual, with an office and principal place of business at 7021 Santa Monica Boulevard, city of Hollywood, State of California. Respondent trades and conducts the business hereinafter described under the name Hollywood Film Studios.

PAR. 2. Respondent is now, and has been for more than 2 years last past, engaged in the business of enlarging and coloring photographs made from pictures and negatives sent to him by persons in various States of the United States and in the District of Columbia, and selling to such persons enlarged, and enlarged and colored, photographs made therefrom, which respondent causes, when sold, to be transported from aforesaid place of business in the State of California to such persons in various States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said enlargements in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his business respondent has made and caused to be made numerous deceptive and misleading representations with respect to the terms on which said enlargements

and colored enlargements could be obtained, and with respect to the character and quality thereof.

Respondent's initial representations were made by means of paper-match books and cards widely disseminated throughout the United States, advertisements published in newspapers and periodicals of general circulation throughout the United States, and continuities broadcast over the radio. Among and typical of such representations are the following:

#### FREE HOLLYWOOD ENLARGEMENT

Just to get acquainted we will make a beautiful PROFESSIONAL enlargement of any snapshot, photo, kodak picture, print or negative to 5 x 7 FREE. Please indicate color of eyes, hair and clothing for prompt information on a natural, life-like color enlargement in a FREE FRAME to set on the table or dresser. Your original returned with your FREE PROFESSIONAL enlargement. Please send 10¢ for mailing. Act quick.

#### HOLLYWOOD FILM STUDIOS

Chicago Branch  
32 W. Randolph Street  
Chicago, Illinois

Just to get acquainted we will make a beautiful Professional 5 x 7 enlargement FREE of any snapshot, photo, kodak picture, print or negative. Your original returned. Please include color of eyes, hair and clothing for prompt information on a natural, life-like color enlargement in a FREE FRAME to set on the table or dresser. Please send 10¢ for handling and mailing. Act quickly.

Color of eyes\_\_\_\_\_hair\_\_\_\_\_clothing\_\_\_\_\_

Name\_\_\_\_\_Street and number\_\_\_\_\_City and state\_\_\_\_\_

When your snapshot or photo or film arrives, it is turned over to skilled camera-men—the type of expert that has made the word “Hollywood” synonymous with fine photography—the matchless “Hollywood” skill that's called upon to make these enlargements what they are.

You'll get a big seven by five enlargement of that very snapshot or negative absolutely free—. You understand this enlargement comes to you free. No charge whatever for the enlargement or for the professional Hollywood skill which goes into its making—. It costs money for postage and envelopes and stationery. So to help cover these handlings costs please mail 10¢ with the negative you send in.

This amazing offer is necessarily limited in time—.

Be sure to print name and address plainly. Be sure to enclose 10¢. Be sure to state color of hair, eyes and clothing.

PAR. 4. The use by respondent of the representations hereinabove set forth, and others similar thereto not specifically set-out herein, in connection with the offering for sale, sale, and distribution of the said enlargements, has had the tendency and capacity to induce, and has



induced, many persons to believe that for 10 cents respondent would supply them with 5 by 7-inch enlargements of any photographs or negatives which they might send to respondent; that such enlargements would be appropriately colored and would be framed; that the said enlargements and frame were free to such persons and that 10 cents was to defray in part the expense to respondent for handling and mailing said enlargements; that the art of photography has reached its zenith at Hollywood and that this superlative excellence in the art would be reflected in the quality of said enlargements; that respondent was in some fashion connected with the motion-picture industry and that the offer was for a limited time only.

PAR. 5. The beliefs so engendered were erroneous and mistaken. In truth and in fact respondent's offer was continuously made over a long period of time and was not for a limited time only. Respondent is in no way connected with the motion-picture industry. The enlargement of a photograph is a purely mechanical process involving no artistry or experience in portrait or motion-picture photography. The enlargements were not free, since the 10 cents required by respondent defrayed a substantial part, if not all, of the cost of the enlargement as well as the expense of getting it to the purchaser. The enlargements were not colored nor framed unless an additional sum was paid.

PAR. 6. Upon receipt of an order and remittance of 10 cents, pursuant to the advertisements referred to in paragraph 4 hereof, respondent sent to the customer a circular letter, accompanied by a post card addressed to respondent. The said letters and cards varied somewhat in phraseology from time to time, but at all times the contents substantially resembled that of the letters and cards exemplified by the photostatic copies thereof, marked "Exhibits A, B, and C," attached hereto, and by this reference incorporated herein and made a part hereof.<sup>1</sup>

PAR. 7. The said letters and cards had the capacity and tendency to induce, and have induced, many recipients thereof to believe: That colored enlargements of the pictures or negatives which they had submitted, frames, and colored pictures of their favorite screen stars would be obtained at no cost beyond the 10 cents already sent by them, by merely inserting in the post card their names and addresses and indicating their choice between a frame finished ivory and gold or brown and gold and their choice of colored pictures of motion-picture celebrities; that the frame was in fact free and that the chosen colored picture of a luminary of the screen was also free; that the return of the said card was desired in order that respondent might verify the name

<sup>1</sup> See pp. 917-921

Complaint

[Commission exhibit A, front]

*Your Gift for Prom, dress*  
**FREE**  
 Check your favorite on order card

SHIRLEY TEMPLE	PAULETTE GODDARD
LORETTA YOUNG	MICKY ROONEY
JAMES STEWART	ROBERT TAYLOR
DEANA DURBIN	ANN SHERIDAN
HEDY LAMARR	CLARK GABLE
GINGER ROGERS	BETTE DAVIS
ALICE FAYE	FAT O'BRIEN

A BEAUTIFUL 5 X 7 COLORED PICTURE OF  
**YOUR FAVORITE MOVIE STAR**

**What our CUSTOMERS say about HOLLYWOOD FILM STUDIOS**

**WORLD'S BEST**  
 Your photo work is the world's best. I had one on H's Hollywood Film Studio.  
 Frank K. Jr. Nashville Tenn.

**ORDERS YOUR WORK**  
 Enclosed please find one check. Enclosed please find one check. Please send 1. Please send 1. I have been very pleased with your work on each. William F. Mrs. T. Memphis, W.

**A BIRTHDAY GIFT**  
 I have received the enlargement which you sent me and I am so pleased with your work. This is for a birthday gift. I plan to have more photo work done later.  
 Edna F. S. Wokanda, S. D.

**VERY WELL PLEASED**  
**TILL FRIMING**  
 I wish to take this opportunity to tell you how well pleased I was with my head covered picture. I have always been amazed at the results you do that correspond to the wonderful press of work.  
 Gladys M. I. Cleveland  
 Mrs. How Queens, La.

**'ROMANTICAL PICTURE - MARVELOUS WORK'**  
 Fritz makes 5¢. This sure of this picture as it is of marvellous value. The work you did on the other picture I sent you is marvellous. All my friends said it was a wonderful piece of work. I know you will do the same on this picture.  
 Robert I. Newborn Phil  
 Albany N. Y.

**YOUR STUDIOS HAVE THEM ALL BEAT**  
 We received our pictures and certainly were well pleased. I think your studios have been all beat.  
 Mrs. Glenn F. E. Ly. Ray.

**"WORTH A1000"**  
 The picture you made for me is worth 1000 times more than the cost of the colored film picture.  
 Otto C. Rockwell Jr. Chicago, Ill.

**"FINEST PICTURES WE EVER HAD"**  
 These were the finest pictures we have ever had finished. Thanks to the Hollywood Film Studios and their capable work.  
 W. H. Woodstock, Ill.


**"MORE THAN SATISFACTORY"**  
 The work that I previously mentioned that you was more than satisfactory. I have told several people about your excellent work and they all will send their work to you.  
 Maurice A. Stone Sr.  
 Albany N. Y.

and address of the customer; that the sum stated was for expenses and artists' labor only; that the colored enlargement was being made as a step in advertising respondent's business. By the use of the name Hollywood depicted in electric lights as is usual in signs over motion-picture theaters, and of the pictures of the well-known film artists Shirley Temple and Clark Gable on the letterhead used for said letters, respondent has represented that Hollywood Film Studios is in some fashion connected with the motion-picture industry.

Complaint

47 F. T. C.

[Commission exhibit A, back]



7021 Santa Monica Blvd., Hollywood, California

Dear Friend:

Your snapshot was just received. I can see that it is a picture which means a great deal to you. Because of this, I have told our cameraman to make you the best 'black and white' 5X7 enlargement. But, in justice to you I feel that you should have time to write us regarding your further desires.

Since the color of hair, eyes, and clothing was included, we will make a Professional 5X7 inch enlargement from your cherished snapshot, and have our expert artists hand color it in natural, life-like colors, then place it in a beautiful FREE FRAME. This gorgeous oil colored enlargement will be sent to you so that you can see for yourself how natural coloring makes your picture appear so life-like that it seems as if a person could almost step right out of the picture and talk.

**THE UNFINISHED WORK...** In any black and white picture, however good, the "work" so to speak really remains "unfinished". It is only "finished" when you portray a person as living (true, natural, and life-like). In other words, you need color to transform a black and white enlargement to a "finished" work of art.

**THE FINISHED WORK...** Everyone knows that colored photography and technicolor movies are wonderful because they bring out people and surroundings so natural and life-like. Now, thanks to the magic touch of the artist's brush in blending an array of beautiful colors, colors that have depth, transparency, and never-fading qualities, your little snapshot becomes a beautiful work of art, one that you will cherish and keep forever.

We want to please you in every way and rush your hand colored enlargement to you, and will do this just as soon as you let us know which Free Frame you wish, the Ivory and Gold frame or the Brown and Gold frame. We also like to check the address on our shipping label when mailing your valuable enlargement so ask you to give us all necessary information on the enclosed card, which is stamped for your convenience.

We are even willing to stand part of the extra expense so that when you receive your beautiful colored enlargement in a handsome standing easel frame to set on a table or dresser, you will be so delighted that you will show it to all your friends and neighbors, which is the best advertising we can get.

**Free For Promptness.** A Beautiful 5X7 Colored Picture of your Favorite Movie Star. Absolutely Free if you mail your card promptly. Check your favorite Movie Star on order card. Your choice of -

Lark Gable, Ann Sheridan, Robert Taylor, Bette Davis, James Stewart, Ginger Rogers, Deana Durbin, Alice Faye, Pat O'Brien, Hedy La Marr, Melvin Douglas, Shirley Temple, Barbara Stanwyck, Mickey Rooney, James Cagney.

Now it's up to you. Mail your card now and get your Favorite Movie Star's colored picture Free, and get your beautifully framed hand colored enlargement that much sooner.

Don't delay as we do not keep pictures over 30 days.

Sincerely yours, *Ned Ronald* Studio Director

HOLLYWOOD FILM STUDIOS

NR:CM  
Discontinued about  
February 1944  
(See page in Exhibit F) J.H.S.

ASKED MAY 15 1937  
Dennis J. H. H. H. H.  
1-12-38  
167

PAR. 8. The belief so engendered was erroneous and mistaken and the representation so made was false and misleading. The free frame and free movie-star picture were not in fact free, but the cost or price thereof was included in the sum which respondent endeavored to obtain ostensibly for the colored enlargement. The recipients of said letters and cards did not receive colored enlargements, frames, or the selected colored pictures of cinema celebrities except after signing the

Complaint

[Commission exhibit B, front]

*Your Gift for Prowiness*

# FREE

Check your favorite on order card

SHIRLEY TEMPLE	VAULETTE GODDARD
LORETTA YOUNG	MIKEY ROONEY
JAMES STEWART	ROBERT TAYLOR
DEANA DURBIN	ANN SHERIDAN
HEDY LAMARR	CLARK GABLE
GINGER ROGERS	BETTE DAVIS
ALICE FAY	PAT O'BRIEN

A BEAUTIFUL 5 X 7 COLORED PICTURE OF  
**YOUR FAVORITE MOVIE STAR**

**What our CUSTOMERS say about HOLLYWOOD FILM STUDIOS**

**"WORLD'S BEST"**  
Your photo work is the world's best. From now on it's Hollywood Film Studios.  
Frank K. H., Nashville, Tenn.

**"GODS FOR MORE"**  
Richard Gere had one photo. Please send 4 colored photos. I have ordered yours before and have been very much pleased with your work on each one.  
Mrs. J. Marlowe, II

**"A BIRTHDAY GIFT"**  
I have received the photograph which you sent me and I am so pleased with your work. This is for a birthday gift. I plan to have more photo work done soon.  
Dale E. S., Wakanda, S. D.

**"VERY WELL TIMED"**  
I like the opportunity of FREE TRIALS. I wish to have the opportunity of all my best colored photos. I will try your work on several of my best photos. I am confident my friends and I will appreciate the wonderful piece of work.  
C. L. Cleveland, New Orleans, La.

**"ROMANTIC PICTURE—MARVELOUS WORK"**  
Please make 3x5. Take care of this picture as it is sentimental value. The work you did on the other picture I sent you is marvelous. All my friends said it was a wonderful piece of work. I know you will do the same on this picture.  
Robert L. Matthews, New Albany, N. Y.

**"YOUR STUDIOS HAVE THEM ALL BEAT"**  
We received your picture and certainly were well pleased. I think your studio have them all beat.  
Mrs. Glenn T. E. Ely, Nev.

**"WORTH \$100"**  
The picture you made me is worth \$100. Please make one of each of the pictures.  
Edna M. Rockwell, St. Chicago, Ill.

**"FINEST PICTURES WE EVER HAD"**  
These were the best pictures we have ever had finished. Thanks to the Hollywood Film Studios and their capable staff.  
W. H. Woodstock, Ill.


**"MORE THAN SATISFACTORY"**  
The work that I previously mentioned here was more than satisfactory. I have had several and they are all excellent work and they are all sent just what I need.  
Marjorie S. Snow, Albany, N. Y.

said card and paying a further sum in addition to the 10 cents previously paid. The signature and address of the recipient of the post card was not sought for the purpose of enabling respondent to verify it but in order to get the recipient's signature to an order for a colored photograph at a stated additional price plus certain charges of unstated amount. The additional sum stated in the post card not only covered "expense and artists' labor" but also included a profit to respondent. Respondent did not make the colored enlargements to which said letters

Complaint

47 F. T. C.

[Commission exhibit B, back]



7021 Santa Monica Blvd., Hollywood, California

Dear Friend!

Your snapshot was just received. I can see that it is a picture which means a great deal to you. Because of this, I have told our cameraman to make you the best 'black and white' 5x7 enlargement. But, in justice to you I feel that you should have time to write us regarding your further desires.

We have some wonderful news for you! Since the color of hair, eyes and clothing was included, we will make this Professional 5x7 inch enlargement from your cherished snapshot, and actually have our expert artists hand color it in natural, life-like colors, then place it in a beautiful FREE FRAME. This gorgeous oil colored enlargement will be sent to you so that you can see for yourself how natural coloring makes your picture appear so life-like that it seems as if a person could almost step right out of the picture and talk.

**THE UNFINISHED WORK....**In any black and white picture, however good, the "work" so to speak really remains "unfinished". It is only "finished" when you portray a person as living (true, natural, and life-like). In other words, you need color to transform a black and white enlargement to a "finished" work of art.

**THE FINISHED WORK....**Everyone knows that colored photography and technicolor movies are wonderful because they bring out people and surroundings so natural and life-like. Now, thanks to the magic touch of the artist's brush in blending an array of beautiful colors, colors that have depth, transparency, and never-fading qualities, your little snapshot becomes a beautiful work of art, one that you will cherish and keep forever.

We want to please you in every way and send your hand colored enlargement to you, so please read enclosed card for details and rush card back to us. Tell us which Free Frame you wish, the Ivory and Gold frame or the Brown and Gold frame. Please give us all necessary information on the enclosed card, which is stamped for your convenience.

We are even willing to stand part of the extra expense so that when you receive your beautiful colored enlargement in a handsome standing easel frame to set on a table or dresser, you will be so delighted that you will show it to all your friends and neighbors, which is the best advertising we can get.

**Free For Promptness.** A beautiful 5x7 Colored Picture of your Favorite Movie Star Absolutely Free if you mail your card promptly. Check your favorite Movie Star on order card. Your choice of- Clark Gable, Ann Sheridan, Robert Taylor, Bette Davis, James Stewart, Ginger Rogers, Deanna Durbin, Alice Faye, Pat O'Brien, Hedy La Marr, Helvin Douglas, Shirley Temple, Barbara Stanwyck, Mickey Rooney, James Cagney.

Now it's up to you. Get your colored enlargement now. Don't delay! If you do not wish enlargement colored, however, do not return enclosed card. We do not hold pictures more than 30 days; after then plain enlargement and original are returned to you.

*Baskin* EXHIBIT E  
 RECEIVED MAY 12, 1942  
 Sincerely yours, *Ned Ronald* Studio Director  
 David H. Schmitt  
 HOLLYWOOD FILM STUDIOS  
 Circular now in use 1942

168  
 File 1-17381

and cards referred as a means of advertising his business but for a profit.

PAR. 9. The use by respondent of the foregoing false and misleading representations with respect to his enlargements, both colored and uncolored, the quality thereof, frames, colored photographs of movie

[Commission exhibit C]

PLACE  
1 CENT  
STAMP  
HERE

**HOLLYWOOD FILM STUDIOS**

**7021 Santa Monica Blvd.,**

**Hollywood, Calif.**

**RUSH ORDER**

**Thank You!** Check the frame you want, fill in your name and address and return this card immediately. Your beautifully framed, colored enlargement will be promptly mailed to you.

**FREE FRAME**

Choice of beautiful Ivory-and-Gold or Brown-and-Gold Frame GIVEN with your hand-colored enlargement. Frame has easel back and permanently protects your cherished enlargement from dust, dirt, tearing or finger marks and makes it more valuable as years go on. Check below which frame you want FREE!

- IVORY AND GOLD FRAME       BROWN AND GOLD FRAME

**... FREE ...**

For Promptness, a Beautiful

**5 x 7 COLORED PICTURE OF YOUR FAVORITE MOVIE STAR**

- |  |                                      |  |   |  |   |
|--|--------------------------------------|--|---|--|---|
| <input type="checkbox"/> Check Your Favorite | <input type="checkbox"/> Hedy Lamarr | <input type="checkbox"/> Pat O'Brien   | <input type="checkbox"/> Shirley Temple | <input type="checkbox"/> James Stewart | <input type="checkbox"/> Melvin Douglas   |
| <input type="checkbox"/> Mickey Rooney       | <input type="checkbox"/> Alice Faye  | <input type="checkbox"/> Allice Faye   | <input type="checkbox"/> Robert Taylor  | <input type="checkbox"/> Jean Arthur   | <input type="checkbox"/> Barbara Stanwyck |
| <input type="checkbox"/> Ann Sheridan        | <input type="checkbox"/> Clark Gable | <input type="checkbox"/> Deanna Durbin | <input type="checkbox"/> Jean Arthur    | <input type="checkbox"/> Bette Davis   | <input type="checkbox"/> Ginger Rogers    |

**HOLLYWOOD FILM STUDIOS**

Please rush my order. I have checked the free frame I want for the "DELUXE" 5 x 7 inch enlargement that you are having your artist hand tint in natural oil colors. I will be glad to help with the few cents for mailing as well as the expense and artist's labor of a dollar when I receive my natural life-like colored enlargement, C.O.D., on FIVE DAYS' APPROVAL, so I can see for myself how expert hand coloring gives lasting beauty, sparkle and life.

NAME Ned R. Baskin  
 ADDRESS 7021 Santa Monica Blvd.  
 OR R.F.D. May 18 42  
 CITY Los Angeles, Calif.  
 STATE Calif.

stars, and the terms upon which they could be obtained, 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 said statements and representations were true and into the purchase of substantial numbers of said enlargements by reason of said erroneous and mistaken belief.

PAR. 10. 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.

## REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on February 8, 1943, issued and subsequently served its complaint in this proceeding upon the respondent, Ned R. Baskin, an individual, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the filing of respondent's answer, testimony, and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial examiner of the Commission theretofore designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the aforesaid complaint, the respondent's answer thereto, the testimony and other evidence, the trial examiner's recommended decision, and brief in support of the complaint (no brief having been filed on behalf of the respondent and oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Ned R. Baskin, is an individual residing at 1640 East Fiftieth Street, Chicago, Ill., doing business under the name and style of Hollywood Film Studios, with an office and place of business at 7021 Santa Monica Boulevard, Hollywood, Calif.

PAR. 2. Respondent is now and since about the year 1939 has been engaged in the business of enlarging and coloring photographs made from pictures and negatives sent him by persons in the various States of the United States and in the District of Columbia, and selling to such persons enlarged and colored photographs made therefrom, which respondent has caused and now causes, when sold, to be transported from his aforesaid place of business in the State of California to persons in the various States of the United States and in the District of Columbia. Respondent now maintains, and at all times mentioned herein has maintained a course of trade in said enlargements in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his said business respondent has made, in about 1941 or 1942, representations with respect to the said enlargements by means of paper match-book covers widely disseminated throughout the United States by match manufacturers, and

advertisements published in newspapers and periodicals of general circulation throughout the United States, and in continuities broadcast over the radio.

Among and typical of such representations on match-book covers are the following:

**HOLLYWOOD FILM STUDIOS, 7021 Santa Monica Blvd., Hollywood, Calif.**

Just to get acquainted we will make a beautiful Professional 5 x 7 enlargement FREE of any snapshot, photo, kodak picture, print or negative. Please include color of eyes, hair and clothing for prompt information on a natural, life-like color enlargement in a FREE FRAME to set on the table or dresser. Your original returned. Please send 10¢ for handling and mailing. Act quickly.

Among and typical of newspaper and magazine advertisements are the following:

**Free Hollywood Enlargement of Your Favorite Photo**

Just to get acquainted, we will make you a FREE beautiful PROFESSIONAL enlargement of any snapshot, photo, kodak picture, print or negative to 5 x 7 inch. Please include color of eyes, hair, and clothing for prompt information on a natural, life-like color enlargement in a FREE FRAME to set on the table or dresser. Your original returned with FREE enlargement. Please send 10¢ for return mailing. Act quick. Offer limited to U. S. Hollywood Film Studios.

Among and typical of the radio continuities are the following:

You'll get a big seven by five enlargement of that very snapshot or negative, ABSOLUTELY FREE. \* \* \* Your seven by five enlargement will be made by skilled camera men, many of them with years of experience doing this very type of work in the great Hollywood motion picture studios. You understand, this enlargement comes to you FREE. No charge whatever for the enlargement or for the professional Hollywood skill which goes into its making. \* \* \* It costs money for postage, and envelopes and stationery. So, to help cover these handling costs, please mail ten cents along with the negative you send in.

And listen! Here's something EXTRA special. Be sure to write, along with your snapshot, the color of the HAIR \* \* \* EYES \* \* \* and CLOTHING of the person in the picture. The HOLLYWOOD FILMS will tell you how you can get a BEAUTIFULLY FRAMED, HAND-COLORED enlargement. And those BEAUTIFULLY FRAMED, HAND-COLORED enlargements \* \* \* done by Hollywood experts are just WONDERFUL!

I don't have to tell you that a seven by five enlargement of a negative would ordinarily cost you anywhere from forty cents to a dollar—and if it were a PRINT and not a negative you were having enlarged, you could expect to pay as high as TWO dollars. So this offer is REALLY sensational \* \* \* a FREE seven by five enlargement \* \* \* of any photo negative or snapshot \* \* \* if you'll just send a dime to help along with handling costs \* \* \* We suggest you send NOW, while you're thinking about it \* \* \* because this offer will be made for a LIMITED time only.

Be sure to write—along with your snapshot—the color of the hair—eyes—and clothing of the person in the picture. The HOLLYWOOD FILM STUDIOS will tell you how you can get an exquisite *hand-colored* enlargement.

A beautiful big seven by five enlargement of that snapshot or photo. And your original will be returned. Talk about an offer! Seven by five enlargements



of negatives ordinarily cost fifty cents to a dollar. PRINTS—as high as TWO DOLLARS! So send your favorite snapshot, small photo or negative. Enclose the ten cents that covers all charges \* \* \* And here's something EXTRA special. If you'll list the color of the hair—eyes—and clothing of the person in the picture—the HOLLYWOOD FILM STUDIOS will tell you how you can get a beautiful HAND-COLORED enlargement—handsomely framed.

PAR. 4. In 1941 and 1942, when respondent received from the customer reading the advertisements the sum mentioned in the advertisement, together with a print or film, he immediately sent to such customer a circular letter acknowledging the receipt of the snapshot and made the further representations as follows:

#### HOLLYWOOD FILM STUDIOS

7021 Santa Monica Blvd., Hollywood, California

Dear Friend: Your snapshot was just received. I can see that it is a picture which means a great deal to you. Because of this, I have told our cameraman to make you the best "black and white" 5 x 7 enlargement. But, in justice to you I feel that you should have time to write us regarding your further desires.

Since the color of hair, eyes, and clothing was included, we will make a Professional 5 x 7 inch enlargement from your cherished snapshot, and have our expert artists hand color it in natural, life-like colors, then place it in a beautiful FREE FRAME. This gorgeous oil colored enlargement will be sent to you so that you can see for yourself how natural coloring makes your picture appear so life-like that it seems as if a person could almost step right out of the picture and talk.

\* \* \*

We want to please you in every way and rush your hand-colored enlargement to you, and will do this just as soon as you let us know which Free Frame you wish, the Ivory and Gold frame or the Brown and Gold frame. We also like to check the address on our shipping label when mailing your valuable enlargement so ask you to give us all necessary information on the enclosed card, which is stamped for your convenience.

We are even willing to stand part of the extra expense so that when you receive your beautiful colored enlargement in a handsome standing easel frame to set on a table or dresser, you will be so delighted that you will show it to all your friends and neighbors, which is the best advertising we can get.

Free For Promptness. A Beautiful 5 x 7 Colored Picture of your Favorite Movie Star Absolutely Free *if you mail your card promptly*. Check your favorite Movie Star on order card. \* \* \*

Now it's up to you. Mail your card now and get your Favorite Movie Star's colored Picture FREE, and get your beautifully framed hand colored enlargement that much sooner.

\* \* \*

Sincerely yours,

Ned Ronald, Studio Director  
HOLLYWOOD FILM STUDIOS.

The card enclosed with the foregoing form letter to be filled out by the customer and mailed to respondent contained the following statement:

THANK YOU! Check the frame you want, fill in your name and address and return this card immediately. Your beautifully framed, colored enlargement will be promptly mailed to you.

FREE FRAME—Choice of beautiful Ivory-and-Gold or Brown-and-Gold Frame GIVEN with your hand-colored enlargement. Frame has easel back and permanently protects your cherished enlargement from dust, dirt, tearing or finger marks and makes it more valuable as years go on. Check below which frame you want FREE!

FREE—For Promptness, A Beautiful 5 x 7 Colored Picture of Your Favorite Movie Star.

Hollywood Film Studios.

Please rush my order. I have checked the free frame I want for the "DELUXE" 5 x 7 inch enlargement that you are having your artist hand tint in natural oil colors. I will be glad to help with the few cents for mailing as well as the expense and artist's labor of a dollar when I receive my natural life-like colored enlargement, C. O. D., on FIVE DAYS' APPROVAL, so I can see for myself how expert hand coloring gives lasting beauty, sparkle and life.

Since 1942, the respondent used the following circular letter in acknowledging the receipt of the snapshot:

#### HOLLYWOOD FILM STUDIOS

7021 Santa Monica Blvd., Hollywood, California

Dear Friend: Your snapshot has just arrived. I can see it is a picture which you treasure very highly. That is why I am sure you will want the enlargement given special attention and come back to you made into a real work of art.

*WE HAVE SOME WONDERFUL NEWS FOR YOU!* Since the color of hair, eyes and clothing was included, we will make this professional 5 x 7 enlargement from your cherished snapshot and have our expert artists **ACTUALLY HAND-COLOR IT IN NATURAL LIFE-LIKE COLORS.** We will then mount it in a beautiful gold-tooled frame at **NO EXTRA COST.** This gorgeous oil-colored enlargement will be sent to you so that you can see for yourself how natural coloring makes your picture appear so lifelike that it seems as if a person could almost step right out of the picture and talk.

\* \* \* \* \*

We want to please you in every way and send your hand-colored enlargement to you without delay. So, please read the enclosed card for details. Then rush the card back to us immediately. Be sure and tell us which frame you wish included **AT NO EXTRA COST**—the Ivory and Gold or the Brown and Gold. Be sure to include all necessary information on the enclosed card which is stamped for your convenience and return it to us **TODAY.**

When you receive your beautiful colored enlargement in a handsome standing easel frame to set on your table or dresser, you will be so delighted that you will show it to all your friends and neighbors, which is the best advertising we can get.

*FOR PROMPTNESS \* \* \* WITH OUR COMPLIMENTS*—A beautiful 5 x 7 Colored picture of your Favorite Movie Star *if you mail your card promptly.* Check your Favorite Movie Star on order card. \* \* \*

Now it's up to you. Get your colored enlargement now. Don't delay! We wish to give you ample time to take advantage of this offer. But if we do not

Findings

47 F. T. C.

hear from you in 30 days, this offer may be withdrawn, and the plain enlargement, together with the original you sent us, will be returned.

Sincerely yours,

Ned Ronald, Director  
HOLLYWOOD FILM STUDIOS.

Since 1942 the following statement appears on the card enclosed by the respondent to the customer for his use in ordering the colored enlargement:

THANK YOU! Check the frame you want, fill in your name and address and return this card immediately. Your beautifully framed, colored enlargement will be promptly mailed to you.

BEAUTIFUL GOLD TOOLED FRAME AT NO EXTRA COST! Choice of beautiful Ivory-and-Gold or Brown-and-Gold Frame GIVEN with your hand-colored enlargement. Frame has easel back and permanently protects your cherished enlargement from dust, dirt, tearing or finger marks and makes it more valuable as years go on. Check below which frame you want to protect your picture.

FOR PROMPTNESS WITH OUR COMPLIMENTS A Beautiful 5 x 7 Colored Picture of Your Favorite Movie Star.

Hollywood Film Studios.

Please rush my order.

I have checked the Special Gold Tooled Frame you are to include at no extra cost for the "DELUXE" 5 x 7 inch enlargement that you are having your artist hand tint in natural oil colors. I will be glad to help with the few cents C. O. D. fees, as well as \$1.29 which includes artist's labor, when I receive my natural life-like colored enlargement on FIVE DAYS' APPROVAL, so I can see for myself how expert hand-coloring gives lasting beauty, sparkle and life.

PAR. 5. When the card authorizing the colored enlargement to be made, as set forth in paragraph 4 hereof, is received by the respondent, the respondent colors the 5- by 7-inch enlargement and sends it, together with a frame and a picture of a movie star checked by the customer on the card, to the customer c. o. d. In the event the customer does not return the order card, respondent's policy is to send a 5- by 7-inch black-and-white enlargement to the customer without further charge.

PAR. 6. The ordinary black-and-white enlargements made by the respondent and furnished customers in response to the initial offer do not require the services of a person having any previous knowledge of photography or of any special skill. However, respondent employs color artists to color the enlargements who are skilled in that art. The coloring of the enlargements requires a special skill.

PAR. 7. The use by respondent of the said representations in the advertisements as hereinbefore set forth has had and now has the capacity and tendency to induce and has induced many recipients thereof to believe that colored enlargements of the pictures or negatives which they have submitted and frames would be obtained at no

cost beyond the 10 cents (now 19 cents) sent to the respondent by them. Further, the use of the statements contained in the form letters and authorization cards has had the capacity and tendency to induce and has induced many of respondent's customers who answered the advertisements contained in match-book covers, movie magazines, and radio broadcasts, to believe that, for a limited time only, by the payment of an additional sum, varying from \$1 to \$1.29 for a colored enlargement, they would receive free their choice between a frame finished in ivory and gold or brown and gold, and their choice of colored pictures of motion-picture celebrities, and that the return of the card was desired that the respondent might verify the name and address of the customer and that the sum required was for expenses and artists' labor only; and that the colored enlargement was being made as a step in respondent's business advertising. By the use of the term "Hollywood Film Studios," and of the pictures of well-known film artists on the form letterhead, respondent has represented himself to be in some way connected with the motion-picture industry.

PAR. 8. The beliefs so engendered were erroneous and mistaken and the representations so made were false and misleading. The recipient of the advertisements contained in match-book covers, magazines, and newspapers and radio broadcasts did not receive colored enlargements or the frames for the sum of 10 cents (now 19 cents) and was required to pay a further sum in addition thereto in order to obtain the colored enlargements, frames, and pictures of moving-picture celebrities. The signature and address of the recipient of the authorization card sent to the customer by respondent upon the receipt of the initial payment was not sought for the purpose of enabling respondent to verify it but in order to get the recipient's signature to an order for a colored enlargement at a stated additional sum plus certain charges of an unstated amount. The frame and movie star's picture were not, in fact, free, the cost thereof being included in the sum which the customer paid to the respondent for the colored enlargement. Neither respondent nor any of his employees have any connection with the moving-picture industry. There was no actual time limit on the offers of respondent.

PAR. 9. The use by respondent of the false and misleading representations and the terms upon which respondent's products could be obtained as hereinbefore set forth 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 such statements and representations were true, and into the purchase of substantial numbers of said enlargements by reason of said erroneous and mistaken belief.

Order

47 F. T. C.

## CONCLUSION

The acts and practices of the respondent as herein found 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.

Commissioner Mason not participating.

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the respondent's 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, the trial examiner's recommended decision, and brief in support of the complaint (no brief having been filed on behalf of the respondent and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act:

*It is ordered,* That the respondent, Ned R. Baskin, an individual trading under the name of Hollywood Film Studios, or trading under any other name, and his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of plain or colored photographs, or enlargements thereof, in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Representing, directly or by implication, that any photograph or enlargement, colored, or black and white, framed or unframed, will be made and delivered for a stipulated price, unless such photograph or enlargement will in fact be made and delivered for the stipulated price without the imposition or attempted imposition of any condition not clearly disclosed in the representation.

(2) Representing, directly or by implication, that any offer is for a limited time only, when such offer is not in fact limited in point of time, but is made by respondent in the regular course of business.

(3) Using the words "free" or "given," or any other word or term expressly or impliedly importing a like meaning, in advertising, to designate, describe, or refer to any article of merchandise which is not in fact a gift or gratuity or which is not given without requiring the purchase of other merchandise or the performance of some service inuring directly or indirectly to the benefit of the respondent.

(4) Using the name "Hollywood Film Studios," together with pictures of motion picture celebrities, on letterheads or in advertising matter; or otherwise representing that the respondent has any connection whatsoever with the motion picture industry.

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

Commissioner Mason not participating.

IN THE MATTER OF  
CYCLE JOBBERS ASSOCIATION OF AMERICA, INC.,  
ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

*Docket 5635. Complaint, Mar. 3, 1950<sup>1</sup>—Decision, Jan. 26, 1951*

Where an association, its officers, directors, and members, some seventy concerns which constituted the leading jobbers in bicycles, bicycle parts, and accessories, engaged in interstate commerce in purchasing products from assemblers and manufacturers, for resale and distribution to retail dealers and bicycle repair shops, in competition with each other and other jobbers except as below set forth; and an association of assemblers and manufacturers, its officers and members, some 45 concerns including most of the leading manufacturers of such parts, materials, and accessories; acting through their respective associations and between and among themselves—  
Conspired and combined to adopt, carry out and maintain in commerce, through coercion, compulsion, and other unfair means and methods certain policies and trade-practices which, severally, contemplated—

- (1) Restricting jobber membership to those with whom the membership during the period concerned were willing to compete;
- (2) Compelling all assemblers and manufacturers to sell equipment only through jobber members and preventing their selling to any nonmember jobbers;
- (3) Preventing assemblers and manufacturers of completed cycles, parts, or accessories from selling directly to mail order houses, chain stores, department stores, or any other outlets at lower prices than those charged by them to jobber members;
- (4) Compelling all assemblers and manufacturers to refrain from selling directly to retail dealers, bicycle repair shops, and ultimate users;
- (5) The purchasing, by jobber members, of products from those assemblers and manufacturers who cooperated with said jobbers in carrying out aforesaid policies and practices;
- (6) The urging assemblers and manufacturers to fix and maintain resale prices both with respect to sales by jobbers to retailers, and by the latter to ultimate consumers; and finally,
- (7) A policy and practice by the two associations and their officers and members for some time during the period concerned which tended to interfere with the sources of supply of nonmember jobbers, and which contemplated the carrying out of agreements and understandings to restrict to jobber members the sale and distribution of products concerned by said Parts Association; and

Where said Jobbers Association, acting collectively and through certain officers and members, to effectuate aforesaid unfair policies and trade practices—

- (a) Agreed to adopt and carry out the aforesaid policies and practices, and to a substantial extent did so;

<sup>1</sup> Amended.

- (b) Agreed to and did hold at least one national meeting each year, and regular and special meetings at which aforesaid policies and practices were adopted and agreed to, and agreed to and did appoint standing and special committees to enforce them;
- (c) Agreed to and did in 1931 adopt a resolution, accepted by said Parts Association, to compile and publish, in conjunction with the latter, a directory for all jobbers "whose reputation in the trade is such as to entitle them to recognition for carrying on their business according to the highest standards of commercial practice," with all members of both associations requested to cooperate actively in the compilation thereof;
- (d) Distributed to Parts Association members, as a guide as to who were "legitimate" jobbers, the annual membership lists of said Jobbers Association, with intent an effect of having parts members confine their sales to jobbers who appeared on such lists, and of instructing new manufacturers as to who were the legitimate jobbers;
- (e) Pursuant to its resolution adopted in 1931, endeavored to secure the cooperation of the Parts Association members in refraining from selling their bicycle equipment through any channel of distribution other than their own jobber members;
- (f) Agreed to and to some extent did confine purchases to said Parts Association members, to the exclusion of other manufacturers or assemblers, and by various means and methods sought to prevent sales by said Parts Association members, as well as other manufacturers, to nonmember jobbers;
- (g) Sought to have manufacturers of bicycle tires discontinue selling their factory brand tires directly to bicycle dealers and to confine such distribution to their own jobber members;
- (h) Sought to require dealers to make purchases through their Jobber Association members;
- (i) Attempted to prevent price cutting by nonmember jobbers, as well as by jobber members, and obtained specific agreements from some of their jobber members not to cut prices, or to discontinue price cutting activities;
- (j) Sought to prevent Parts Association members, as well as other manufacturers, from selling directly to retail dealers and ultimate consumers, and to prevent manufacturers from selling to chain store organizations at less than their jobber members sold equipment thereto;
- (k) To some extent, entered into agreements between and among themselves to sell various articles of bicycle equipment at uniform prices;
- (l) Agreed that each individual member would use his best efforts to convince manufacturers not to sell completed bicycles directly to chain stores at jobbers' prices but to require the stores to pay the same prices as they would pay if they purchased from association members; and endeavored to prevent such manufacturers from selling their products otherwise than through Jobber Association members; and,
- (m) Agreed to and did supervise and investigate through their association and in other ways, the practices and policies of nonmember jobbers for the purpose of having the latter recognize and conform to those of their Jobber Association; and,

Where said Parts Association, acting through certain officers and members, for the collective purposes above designated in subparagraph 7—



## Syllabus

47 F. T. C.

- (a) Entered into agreements with respondent Jobbers Association and certain of its members with intent and effect that said members restrict their purchases to member manufacturers or assemblers;
- (b) Accepted and caused its members to accept a resolution adopted by Jobber Association in 1931, to compile and publish, in conjunction with the latter, a directory of all jobbers "whose reputation in the trade is such as to entitle them to recognition for carrying on their business according to the highest standards of commercial practices," with all members of both associations requested to cooperate actively in compiling such a directory;
- (c) Received and accepted the lists of jobbers distributed as hereinbefore noted, by said Jobber Association, to said parts members, as a guide as to who were "legitimate" jobbers, with intent and effect of having its members confine their sales to those jobbers; and,
- (d) In conjunction with said Jobber Association and pursuant to a resolution adopted by it in 1931, agreed to and to some extent did refrain from selling the bicycle equipment which its members manufactured or sold, through other channels of distribution;

Capacity and tendency and, in some instances, effect of which agreements, policies, practices and acts were—

- (1) To give an illegal competitive advantage to said Jobber members in the sale and distribution of bicycles, parts, accessories, and equipment to retail bicycle parts and accessories dealers and other retail distributors of such equipment throughout the United States;
- (2) To give an illegal competitive advantage to said parts members in the manufacture and sale of such equipment throughout the United States;
- (3) To prevent, in some instances, nonmember jobbers from securing various types of bicycles, parts, accessories, and equipment from the manufacturers or distributors thereof;
- (4) To discriminate against nonmembers of said Jobber Association, who had been engaged in or desired to engage in the sale and distribution of such products;
- (5) To unreasonably restrain and suppress competition in the sale and offer of various types of said products throughout the United States;
- (6) To prevent the establishment throughout the United States of new jobbers in such equipment;
- (7) To prevent direct sales by manufacturers to mail order houses, chain stores, retail dealers, and bicycle repair shops;
- (8) To burden, hamper, and interfere with the normal and natural trade in commerce of said products;
- (9) To result, to some extent, in said parts members not selling to jobbers and wholesalers who were not members of respondent jobbers;
- (10) To divert business from manufacturers who did not conform to the unfair policies and practices hereinbefore set forth; and,
- (11) To injure the competitors of respondent Jobber and parts members by unfairly diverting business and trade in commerce from them to said respondents:

*Held*, That such acts and practices of respondents, under the circumstances set forth, were to the prejudice of competitors of respondent jobber and parts members and to the public; had a dangerous tendency to and did actually hinder competition in the sale of bicycles and various types of bicycle equipment in commerce; unreasonably restrained commerce in said products; had

a dangerous tendency to create in respondent jobber members a monopoly in the resale and distribution of such products; and constituted unfair methods of competition in commerce.

Appropriate disposition of the proceeding, under the terms of the order to cease and desist, through service as there set out, upon various respondents, of the findings as to the facts and conclusion of the Commission, and of such order, is set forth and explained, following the Commission conclusion.

*Mr. Fletcher G. Cohn, Mr. James E. Corkey and Mr. Robert F. Quinn* for the Commission.

*Mr. Allan R. Rosenberg*, of Washington, D. C., for Cycle Jobbers Association of America, Inc., its officers, directors, various members thereof, and along with—

*Weekes & Candler*, of Decatur, Ga., for Herman E. Short, Sr., and Walthour & Hood Co.;

*Hamblen, Gilbert & Brooke*, of Spokane, Wash., for Alexander Sales Co.; and

*Mr. Herman Goldman*, of New York City, for The Merry Co., Inc.

*Fawver & Fawver*, of Elyria, Ohio, for Cycle Parts and Accessories Association, its officers, directors, various members thereof, and along with—

*Spence, Hotchkiss, Parker & Duryee*, of New York City, for Ernest A. Moller;

*Hughes, Hubbard & Ewing*, of New York City, for Bendix Aviation Corp. and Eclipse Machine Division;

*Van Atta, Batton & Harker*, of Marion, Ind., for Delta Electric Co.;

*Mr. Henry M. Hogan*, of Detroit, Mich., for General Motors Corp. and New Departure Division;

*Mr. Howard L. Hyde and Mr. Robert Crafts*, of Akron, Ohio, for Goodyear Tire & Rubber Co. and Goodyear Tire & Rubber Co. of California;

*Mr. Herman Goldman*, of New York City, for D. P. Harris Hardware & Manufacturing Co., Inc.;

*Mr. Vandiver Brown and Mr. Arthur L. Fisk, Jr.*, of New York City, for Johns-Manville Corp. and Cle-Van, Inc.;

*Jones, Day, Cookley & Harper*, of Cleveland, Ohio, for Murray Ohio Manufacturing Co.;

*Mr. Mark L. Sperry*, of Waterbury, Conn., for Scovill Manufacturing Co. and A. Schrader's Son, Inc.;

*Mr. William W. Miller and Winston, Strawn, Shaw & Black*, of Chicago, Ill., for Stewart-Warner Corp.;

*Mr. James W. Evans*, of Erie, Pa., for W. J. Surre & Son; and

*Chadbourne, Wallace, Parke & Whiteside*, of New York City, for Torrington Co. and Standard Plant Division.

Complaint

47 F. T. C.

*Spence, Hotchkiss, Parker & Duryee*, of New York City, also represented The Pharis Tire and Rubber Co., Carlisle Corp. and Carlisle Tire & Rubber Division.

*Talamo & Talamo*, of Worcester, Mass., for Sheperd Products Co.

## AMENDED COMPLAINT

Pursuant to 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, and more specifically described hereinafter, 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 amended complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Cycle Jobbers Association of America, Inc., hereinafter referred to as respondent Jobbers Association, is a nonprofit corporation, organized and existing under and by virtue of the laws of the State of Indiana with its office and principal place of business located in care of the president of the association whose address is 596 Commonwealth Avenue, Boston, Mass.

The control, direction, and management of respondent Jobbers Association's affairs, policies, practices, and actions are vested in respondents Jobbers Association officers, directors, and members.

The officers of respondent, Jobbers Association, consist of a president, a vice president, a secretary and a treasurer who are members of respondent Jobbers Association and are elected annually by the respondent Jobbers Association members. The officers of respondent Jobbers Association, for the year 1949 are herewith and hereby made party respondents as though specifically named herein.

The board of directors of respondent Jobbers Association consists of five of respondent Jobbers Association members who are elected annually by the membership of said respondent Jobbers Association. The directors of respondent Jobbers Association for the year 1949 are herewith and hereby made party respondents as though specifically named herein.

The membership of respondent Jobbers Association consists of approximately 70 corporations, individuals, firms, and partnerships who are all jobbers of bicycles, bicycle parts, and bicycle accessories, the principal part of whose business is of a wholesale nature, with the said respondent Jobbers Association members constituting most of the leading jobbers in this equipment throughout the United States. The number of members of respondent Jobbers Association varies

from year to year. Respondent, Jobbers Association, is made a party respondent herein, not only on its own behalf but also as representative of those of its members as of January 1, 1949, whose principal places of business are located in the continental United States, and all of said members of respondent Jobbers Association as of January 1, 1949, as so represented, are herewith and hereby made parties respondents as though specifically named herein. Whenever respondent Jobbers Association members are referred to hereinafter, they shall include only said members whose principal places of business are located in the continental United States.

PAR. 2. Respondent, Cycle Parts and Accessories Association, hereinafter referred to as respondent Parts Association, is an unincorporated trade association, with its executive offices located at 122 East Forty-second Street, New York, N. Y.

The control, direction, and management of respondent Parts Association's affairs, policies, practices, and actions are vested in respondents Parts Association officers and members.

The officers of respondent Parts Association consist of a president, a vice president, a secretary, and a treasurer, who are members of respondent Parts Association and are elected annually by the membership of respondent Parts Association. The officers of respondent Parts Association for the year 1949 are herewith and hereby made party respondents as though specifically named herein.

The membership of respondent Parts Association consists of approximately 45 corporations, individuals, firms, and partnerships who are engaged in the business of manufacturing for sale, parts, materials, and accessories for bicycles and who, except in a few instances, are not manufacturers, wholesalers, or retailers, of completed bicycles. The members of said respondent Parts Association comprise most of the leading manufacturers of bicycle parts, materials, and accessories in the United States. The number of said members varies from year to year. Respondent Parts Association is made a party respondent herein, not only on its own behalf but also as representative of its members as of January 1, 1949, and all of the members of respondent Parts Association as of January 1, 1949, as so represented, are herewith and hereby made party respondents as though specifically named herein.

PAR. 3. In the course and conduct of their respective businesses, respondent Jobbers Association members purchase the several types of bicycle equipment, for the purpose of resale, from various respondent Parts Association members and other assemblers and manufacturers thereof, and cause such equipment to be transported to said respondent

Jobbers Association members from the States of origin into the various other States of the United States and in the District of Columbia.

Said respondent, Jobbers Association members, likewise in the course and conduct of their respective businesses resell and distribute such equipment to retail bicycle, parts and accessories dealers and to bicycle repair shops and as part of said sales, transport, or cause to be transported, such equipment from their respective places of business to said purchasers, most of whom are located in States of the United States other than the States of origin of such shipments, and in the District of Columbia.

Both of said classes of respondents, Jobbers Association members and Parts Association members, are and were, during the periods hereinafter set forth, engaged in commerce between and among the several States of the United States and in the District of Columbia.

PAR. 4. Respondents, Jobbers Association, Jobbers Association officers, Jobbers Association directors, Parts Association, and Parts Association officers, all aided, abetted, furthered and cooperated with other respondents in establishing and carrying out the understandings, agreements, combinations, and conspiracies hereinafter set forth, and actively participated in furtherance thereof in the manner and to the extent hereinafter set forth.

PAR. 5. Respondents, Jobbers Association members, are in competition with each other and with other jobbers in bicycle equipment in selling, and seeking to sell, in commerce, between and among the several States of the United States and in the District of Columbia, to retail bicycle, parts, and accessory dealers and bicycle repair shops, various bicycle equipment, which is manufactured and sold to said respondent Jobbers Association members by respondent Parts Association members and other assemblers, and manufacturers of such equipment except insofar as actual and potential competition has been hindered, lessened, restricted, restrained, and forestalled by the unfair methods and practices hereinafter set forth.

Those jobbers who are in competition with respondent Jobbers Association members in selling and seeking to sell such equipment in the manner hereinbefore described, likewise purchase, or seek to purchase, such equipment from the manufacturers thereof, including respondent Parts Association members and other assemblers and manufacturers of bicycle equipment, and as part of such purchases, the said manufacturers and assemblers, including the aforesaid respondent Parts Association members, transport, or cause to be transported, such equipment to the various places of business of said competitors, which are located in States of the United States other than the States of origin of such shipments, and in the District of Columbia.

PAR. 6. Respondent, Jobbers Association members, acting through and by means of respondents Jobbers Association, Jobbers Association officers, Jobbers Association directors, and, in some instances, acting between and among themselves, since about 1931, have, by means of agreements, understandings, combinations, and conspiracies between and among themselves, and with the other respondents, Parts Association, Parts Association officers, and Parts Association members, and by other means and methods, conspired and combined together and with others, and have united in and pursued a common and concerted planned course of action to adopt, carry out, and maintain in commerce between and among the several States of the United States and in the District of Columbia, certain restricting, restraining, and unfair policies and trade practices hereinafter described, which they have effectuated and carried out by coercion, compulsion, and other unfair means and methods, as hereinafter set forth.

PAR. 7. Among the said restricting, restraining, and unfair policies and trade practices referred to in the preceding paragraphs, which were so formulated, adopted, and put into effect by the respondents, are the following:

(1) A policy and practice which tends to, and does, restrict and confine membership in respondent Jobbers Association, by means of certain arbitrary rules or standards, to such jobbers in bicycle equipment as the respondent members of said association are willing to compete with, in the sale and distribution of said bicycle equipment, and to prevent the acquisition of membership in said respondent Jobbers Association by those other jobbers with whom the said members do not desire such competition.

(2) A policy and practice by respondents Jobbers Association, Jobbers Association officers, directors, and members to compel all assemblers and manufacturers of bicycles, parts, and accessories to sell such equipment only through respondent Jobbers Association members.

(3) A policy and practice by respondents, Jobbers Association, Jobbers Association officers, directors, and members to prevent assemblers and manufacturers of bicycle equipment, parts, and accessories from selling said equipment to any jobbers in same who are not members of respondent Jobbers Association.

(4) A policy and practice by respondents, Jobbers Association, Jobbers Association officers, directors, and members to prevent assemblers and manufacturers of completed cycles or of individual bicycle parts or accessories from selling same directly to mail-order houses, chain stores, department stores, or to any other outlets unless such sales are made at the same or higher prices than those charged by said assemblers and manufacturers to respondent Jobbers Association members.

(5) A policy and practice by respondents, Jobbers Association, Jobbers Association officers, directors, and members to compel all assemblers and manufacturers of bicycles, parts, and accessories to refrain from selling such equipment directly to retail bicycle, parts and accessory dealers, to bicycle repair shops and to ultimate users thereof.

(6) A policy and practice by respondents, Jobbers Association, Jobbers Association officers, directors, and members to encourage and persuade respondents Jobbers Association members to make their purchases of completed bicycles, and also of parts and accessories for bicycles, from those assemblers and manufacturers who "cooperate" with respondent Jobbers Association in carrying out the policies and practices herein enumerated.

(7) A policy and practice by respondents Jobbers Association, Jobbers Association officers, directors, and members to urge upon assemblers and manufacturers of bicycle equipment, parts, and accessories to fix and maintain resale prices for such equipment, not only with respect to sales by jobbers to the retail trade, but by the latter to the ultimate consumers.

(8) A policy and practice by all of the respondents which tends to interfere with the sources of supply of nonmembers of respondent Jobbers Association.

(9) A policy and practice by all of the respondents to enter into, and thereafter carry out, agreements and understandings between and among themselves relating to bicycles, parts, accessories and equipment manufactured or sold by respondents Parts Association members to restrict the sale and distribution of same to respondents Jobbers Association members.

PAR. 8. Pursuant to, in furtherance of, and with the result of effectuating, the aforesaid objectives, policies, trade practices, and purposes of the hereinbefore mentioned combinations, conspiracies, agreements, and common courses of action, respondents, Jobbers Association, Jobbers Association officers, Jobbers Association directors, and Jobbers Association members, and each of them, have done and performed prior to January 1, 1947, among other acts and things, the following:

(1) Respondents Jobbers Association members, acting through and by means of respondent Jobbers Association, agreed to formulate, adopt, follow, carry out, enforce, impose, and make effective, and have to a substantial extent formulated, adopted, followed, carried out, enforced, imposed, and made effective the policies and practices described in paragraph 7 hereof.

(2) Respondents Jobbers Association members agreed to hold, and have held, at least one national meeting each year at which the aforesaid policies and practices were adopted and agreed to.

(3) Respondents Jobbers Association directors agreed to hold, and have held, regular and special meetings at which the aforesaid policies and practices were adopted and agreed to.

(4) Respondents, Jobbers Association members, have agreed to appoint, and have appointed, through and by means of respondents, Jobbers Association, Jobbers Association officers, and Jobbers Association directors, standing and special committees to enforce the aforesaid policies and practices by various means and methods.

(5) Respondent, Jobbers Association, agreed to, and adopted, a resolution in 1931, which was accepted by respondent Parts Association, to compile and publish, in conjunction with respondent Parts Association, a directory of all jobbers "whose reputation in the trade is such as to entitle them to recognition for carrying on their business according to the highest standards of commercial practice," with all members of both respondent Associations being requested to actively cooperate in compiling such a directory.

(6) Respondent, Jobbers Association, acting through and by means of respondents, Jobbers Association officers and Jobbers Association directors, have distributed, or caused to be distributed, to respondents Parts Association members as a guide to them as to who are legitimate jobbers, the annual membership lists of respondent Jobbers Association, for the purpose and with the intent and effect of having said respondents Parts Association members confine their sales to jobbers of bicycle equipment, to those jobbers appearing on such lists, and, with a further intent and effect of informing and instructing new manufacturers of bicycles, parts and accessories, as they began selling and distributing such equipment, as to who are the legitimate jobbers in same.

(7) Respondents, Jobbers Association, pursuant to a resolution adopted by said respondent association in 1931, endeavored to secure the cooperation of respondents Parts Association members in refraining from selling the bicycle equipment which said respondents Parts Association members manufactured, through any channel of distribution other than respondents Jobbers Association members.

(8) Respondents, Jobbers Association members, agreed to, and to some extent do, confine the purchase of their bicycle equipment, parts, and accessories to respondents Parts Association members to the exclusion of other manufacturers or assemblers of such equipment.

(9) Respondents, Jobbers Association members, by various means and methods, sought to prevent sales by respondents Parts Association members, as well as other manufacturers of bicycle parts and equipment, to jobbers who were not members of respondent Jobbers Association.



## Complaint

47 F. T. C.

(10) Respondents, Jobbers Association members, acting by and through respondent Jobbers Association, sought to have the manufacturers of bicycle tires discontinue selling their factory brand bicycle tires directly to bicycle dealers and to confine such distribution to respondent Jobbers Association members.

(11) Respondents, Jobbers Association members, acting through and by means of respondent Jobbers Association, sought to require retail dealers to make their purchases through respondents Jobbers Association members.

(12) Respondent, Jobbers Association, attempted, by various means and methods, to prevent "price cutting" by jobbers who were not members of respondent Jobbers Association, as well as by respondents Jobbers Association members.

(13) Respondents, Jobbers Association officers, obtained specific agreements from some respondents Jobbers Association members not to cut prices or to discontinue price-cutting activities.

(14) Respondents, Jobbers Association members, by various means and methods, sought to prevent respondents Parts Association members, as well as other manufacturers of bicycle parts and equipment, from selling same directly to retail dealers and ultimate consumers.

(15) Respondents, Jobbers Association members, acting through and by means of respondent Jobbers Association, sought to prevent manufacturers of bicycle equipment from selling such equipment to chain store organizations at less than the prices at which respondents Jobbers Association members sold such equipment to dealers thereof.

(16) Respondents, Jobbers Association members, to some extent, have entered into agreements between and among themselves to sell various articles of bicycle equipment at uniform prices.

(17) Respondents, Jobbers Association members, acting through and by means of respondent Jobbers Association agreed that each individual respondent member would use his best efforts to convince, by divers means and methods, manufacturers of completed bicycles not to sell same directly to chain stores at jobbers' prices, but to require them to pay the same prices which said stores would be required to pay if they purchased such bicycles from respondents Jobbers Association members.

(18) Respondents, Jobbers Association members, acting through and by means of respondent Jobbers Association, endeavored to prevent manufacturers of completed bicycles from selling same by means of distribution other than by respondents Jobbers Association members.

(19) Respondents, Jobbers Association members, agreed to supervise and investigate, and did supervise and investigate through and by

means of respondents Jobbers Association, Jobbers Association officers, and Jobbers Association directors, and by other means and methods, the practices and policies of jobbers, who are not members of respondent Jobbers Association, for the purpose of having said non-members recognize and conform to the policies, and practices of respondent Jobbers Association.

PAR. 9. Pursuant to, in furtherance of and with the result of effectuating the aforesaid objectives, policies, trade practices, and purposes of the hereinbefore mentioned combinations, conspiracies, agreements, and common planned course of action, respondents, Parts Association, Parts Association officers, and Parts Association members have done and performed prior to January 1, 1947, among other acts and things, the following:

(1) Entered into agreements and understandings with respondent Jobbers Association and certain of its members which had for their purpose and effect that respondent Jobbers Association members, in connection with their purchasing or securing of bicycle parts, accessories, or equipment should differentiate between those manufacturers and assemblers who were members of respondent Parts Association and those manufacturers and assemblers who were not members of said association by limiting and restricting their purchases of such equipment to those manufacturers or assemblers who were members of said association.

(2) Respondent Parts Association accepted, and caused respondents Parts Association members to accept, a resolution agreed to and adopted by respondent Jobbers Association in 1931, to compile and publish, in conjunction with respondent Parts Association, a directory of all jobbers whose reputation in the trade is such as to entitle them to recognition for carrying on their business according to the highest standards of commercial practice, with all members of both respondent Associations being requested to actively cooperate in compiling such a directory.

(3) Received and accepted, and caused to be received and accepted, the lists of jobbers hereinbefore referred to in subparagraph (6) of paragraph 8, which respondent Jobbers Association, acting through and by means of respondents Jobbers Association officers and Jobbers Association directors, have distributed, or caused to be distributed, as a guide to respondents Parts Association members, for the purpose, and with the intent and effect of having said respondent members confine their sales to jobbers of bicycle equipment to those jobbers appearing in such lists.

(4) In conjunction with respondent Jobbers Association and pursuant to a resolution adopted by said respondent Jobbers Association

in 1931, agreed to, and to some extent do, refrain from selling the bicycle equipment which they manufacture or sell, through channels of distribution other than respondent Jobber Association members.

PAR. 10. Each of the respondents named herein, in some instances, acted in concert and in cooperation with one or more of the other respondents, either directly or through or by means of respondents, Jobbers Association, Jobbers Association officers, Jobbers Association directors, Parts Association or Parts Association officers, or by other means or methods, in doing and performing the acts and things hereinabove alleged, and in effectuating, furthering and requiring compliance with the restricting, restraining, and unfair policies and trade practices formulated and adopted by respondent Jobbers Association members, as hereinabove alleged.

PAR. 11. The capacity, tendency, and effect of the aforesaid agreements, combinations, policies, and practices, as well as the acts and things done and performed by the respondents herein, in pursuance thereof, are, and have been:

(1) To give an illegal competitive advantage to respondents Jobbers Association members in the sale and distribution of bicycles, parts, accessories, and equipment to retail bicycle parts and accessories dealers and other retail distributors of such equipment, throughout the United States, and in the District of Columbia.

(2) To give an illegal competitive advantage to respondent Parts Association members in the manufacture and sale of such equipment throughout the United States and in the District of Columbia.

(3) To prevent jobbers in bicycle equipment throughout the United States and in the District of Columbia, who are not members of respondent Jobbers Association, from securing various types of bicycles, parts, accessories, and equipment from the manufacturers or distributors thereof.

(4) To suppress, eliminate, and discriminate against those who are, or have been, engaged in, or desire to engage in, the sale and distribution of bicycles, parts, accessories, and equipment, but who are not members of, or cannot become members of, or who do not wish to become members of, respondent Jobbers Association.

(5) To unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress competition in the sale and offering for sale of various types of bicycles, parts, accessories, and equipment throughout the United States and in the District of Columbia.

(6) To prevent the establishment throughout the United States and in the District of Columbia of new jobbers in bicycles, parts, accessories, and equipment.

(7) To prevent direct sales throughout the United States and in the District of Columbia by manufacturers of various types of bicycles, parts, accessories, and equipment to mail-order houses, chain stores, retail sellers, and dealers of bicycle parts and accessories, and to bicycle repair shops.

(8) To burden, hamper, and interfere with the normal and natural flow of trade in commerce of bicycles, parts, accessories, and equipment, into, through, and from the various States of the United States and in the District of Columbia.

(9) To result in respondents Parts Association members not selling to those jobbers and wholesalers throughout the United States and in the District of Columbia who were not members of respondent Jobbers Association, or who cannot, or do not wish to, become members thereof.

(10) To divert business in various bicycle equipment from the manufacturers thereof who do not conform to the restricting, restraining, and unfair policies and practices of respondents hereinbefore set forth.

(11) To injure the competitors of respondents Jobbers Association members and Parts Association members by unfairly diverting business and trade in bicycles, parts, accessories, and equipment in commerce between and among the several States of the United States and in the District of Columbia to said respondents and from said competitors.

PAR. 12. The acts and practices of the respondents as herein alleged, are all to the prejudice of competitors of respondents Jobbers Association members and Parts Association members and to the public; and have a dangerous tendency to hinder, and have actually hindered and prevented, competition in the sale of various types of bicycle equipment in "commerce" within the intent and meaning of the Federal Trade Commission Act; have unreasonably restrained such commerce in said bicycle equipment; have a dangerous tendency to create in respondents Jobbers Association members a monopoly in the resale and distribution of such equipment, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on March 3, 1950, issued and subsequently served its amended complaint in this proceeding upon the respondents named in the caption hereof charging the respondents in this proceeding with the use of unfair methods of competition in

commerce in violation of the provisions of that act. Thereafter, answers to the amended complaint were filed including those filed by respondent, Cycle Jobbers Association of America, Inc., on behalf of itself and its officers and members as such who are parties respondent herein, by respondent, Cycle Parts & Accessories Association, on its own behalf and on behalf of its officers and members as such who are parties respondent herein, and by respondent, the D. P. Harris Hardware Manufacturing Co., Inc., which three separate answers admitted certain of the allegations of fact set forth in the amended complaint and contained certain stipulations of evidentiary fact pertaining to other allegations thereof, and waived the right to further hearings as to the facts and other intervening procedure but reserved to such answering respondents the right to file briefs or to present oral argument as to what order, if any, should be issued by the Commission.

This matter thereafter came on to be heard upon the amended complaint, the answers thereto, the memorandum filed by counsel supporting the amended complaint, the motion filed on April 26, 1950, by respondent Cycle Jobbers Association of America, Inc., on behalf of itself, its officers, directors, and members as such, who are respondents herein, and memorandum of counsel supporting the amended complaint in reply thereto, which memoranda and motion contained proposals respecting the form of any tentative order as might be issued by the Commission prior to final disposition of this proceeding. The Commission having reason to believe that the disposition recommended did not constitute an adequate disposition of the matter, on September 19, 1950, issued and subsequently served upon the parties its tentative findings as to the facts, conclusion, and order under the provisions of which respondents were afforded opportunity to be heard as to any objections they might have as to entry of said tentative findings as to the facts, conclusion, and tentative order to cease and desist, as the findings as to the facts, conclusion, and order to cease and desist of the Commission. Thereafter this matter came on to be heard before the Commission upon the record as aforesaid and upon the memorandum of Cycle Parts & Accessories Association containing certain objections to the tentative findings as to the facts of the Commission and requesting inclusion of a proviso, memorandum of respondent, the D. P. Harris Hardware & Manufacturing Co., Inc., recommending revision of certain parts thereof, the memorandum filed by counsel supporting the amended complaint and the reply memorandum of Cycle Parts & Accessories Association; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Cycle Jobbers Association of America, Inc., hereinafter referred to as respondent Jobbers Association, is a nonprofit corporation, organized, and existing under and by virtue of the laws of the State of Indiana, with its office and principal place of business located in care of the president of the association whose address is 596 Commonwealth Avenue, Boston, Mass.

The control, direction, and management of respondent Jobbers Association's affairs, policies, practices, and actions are vested in respondents Jobbers Association officers, Jobbers Association directors, and Jobbers Association members.

The officers of respondent Jobbers Association consist of a president, a vice president, a secretary, and a treasurer, who are members of respondent Jobbers Association and are elected annually by the Jobbers Association members. The board of directors of respondent Jobbers Association consists of five members of respondent Jobbers Association, who are elected annually by the Jobbers Association members. Respondents Jobbers Association officers and respondents Jobbers Association directors, whose names are listed in section I of the conclusion which follow herein, comprise the officers and directors respectively for the year 1949 of respondent Jobbers Association.

The membership of respondent Jobbers Association has consisted of approximately seventy corporations, individuals, firms, and partnerships, who are jobbers of bicycles, bicycle parts, and bicycle accessories, the principal part of whose business is of a wholesale nature, with the said respondents Jobbers Association members constituting most of the leading jobbers in this equipment throughout the United States. The number of members of respondent Jobbers Association varies from year to year. Respondents Jobbers Association members are those corporations, firms, individuals, and partnerships comprising the membership of respondent Jobbers Association on January 1, 1949, whose principal places of business are located in the continental United States. The names of said respondents Jobbers Association members are listed in section II, subsection A and B of the conclusion which follows hereinafter.

PAR. 2. Respondent, Cycle Parts & Accessories Association, hereinafter referred to as respondent Parts Association, is an unincorporated trade association, with its executive offices located at 122 East Forty-second Street, New York, N. Y.

The control, direction, and management of respondent Parts Association's affairs, policies, practices, and actions are vested in respondents Parts Association officers and members.

The officers of respondent Parts Association consist of a president, a vice president, a secretary, and a treasurer, who are members of respondent Parts Association and are elected annually by the membership of respondent Parts Association. Respondents Parts Association officers are those individuals who have comprised the officers of respondent Parts Association for the year 1949. The names of said respondents are listed in section I of the conclusion hereinafter set forth.

The membership of respondent Parts Association has consisted of approximately 45 corporations, individuals, firms, and partnerships who are engaged in the business of manufacturing for sale, parts, materials, and accessories for bicycles and who, except in a few instances, are not manufacturers, wholesalers, or retailers of completed bicycles. The members of said respondent Parts Association comprise most of the leading manufacturers of bicycle parts, materials, and accessories in the United States. The number of said members has varied from year to year. Respondents Parts Association members are those corporations, individuals, firms, and partnerships comprising the membership of respondent Parts Association on January 1, 1949. The names of said respondents Parts Association members are listed in section II, subsections C and D of the conclusion herein.

PAR. 3. In the course and conduct of their respective businesses, respondents Jobbers Association members purchase the several types of bicycle equipment, for the purpose of resale, from various respondents Parts Association members and other assemblers and manufacturers thereof, and cause such equipment to be transported to said respondents Jobbers Association members from the States of origin into the various other States of the United States, and in the District of Columbia.

Said respondents, Jobbers Association members, likewise in the course and conduct of their respective businesses resell and distribute such equipment to retail bicycle, parts, and accessories dealers and to bicycle repair shops and as part of said sales, transport, or cause to be transported, such equipment from their respective places of business to said purchasers, most of whom are located in States of the United States other than the States of origin of such shipments, and in the District of Columbia.

Both of said classes of respondents, Jobbers Association members and Parts Association members, are and were, during the periods hereinafter set forth, engaged in commerce between and among the several States of the United States, and in the District of Columbia.

PAR. 4. Respondent, Jobbers Association, and some of its officers and some of its members, which officers are no longer officers thereof and

which members are no longer members thereof, and respondent Parts Association, and some of its officers, which officers are no longer officers thereof, and some of its members, prior to January 1, 1947, variously aided, abetted, furthered, and cooperated with other respondents in establishing and carrying out some or all of the understandings, agreements, combinations, and conspiracies hereinafter set forth.

PAR. 5. Respondents, Jobbers Association members, are in competition with each other and with other jobbers in bicycle equipment in selling, and seeking to sell, in commerce, between and among the several States of the United States and in the District of Columbia, to retail bicycle, parts, and accessory dealers and bicycle repair shops, various bicycle equipment, which is manufactured and sold to said respondents Jobbers Association members by respondents Parts Association members and other assemblers, and manufacturers of such equipment except insofar as actual and potential competition has been hindered, lessened, restricted, restrained, and forestalled by the unfair methods and practices hereinafter set forth.

Those jobbers who are in competition with respondents Jobbers Association members in selling and seeking to sell such equipment in the manner hereinbefore described, likewise purchase, or seek to purchase, such equipment from the manufacturers thereof, including respondents Parts Association members and other assemblers and manufacturers of bicycle equipment, and as part of such purchases, the said manufacturers and assemblers, including the aforesaid respondents Parts Association members, transport, or cause to be transported, such equipment to the various places of business of said competitors, which are located in States of the United States other than the States of origin of such shipments, and in the District of Columbia.

PAR. 6. Respondent, Jobbers Association, and some of its officers, which officers are no longer officers thereof, and some of its members, which members are no longer members thereof, did, prior to January 1, 1947, engage variously in some or all of the following acts and things:

- (1) Acting through and by means of respondent Jobbers Association, agreed to formulate, adopt, follow, carry out, enforce, impose, and make effective, and have to a substantial extent formulated, adopted, followed, carried out, enforced, imposed, and made effective the policies and practices hereinafter described in Paragraph 8 hereof;
- (2) Agreed to hold, and have held, at least one national meeting each year at which the aforesaid policies and practices were adopted and agreed to.



## Findings

47 F. T. C.

(3) Agreed to hold, and have held, regular and special meetings at which the aforesaid policies and practices were adopted and agreed to.

(4) Agreed to appoint, and have appointed, through and by means of respondent Jobbers Association and its officers and directors, standing and special committees to enforce the aforesaid policies and practices by various means and methods.

(5) Agreed to, and adopted, a resolution in 1931, which was accepted by respondent Parts Association, to compile and publish, in conjunction with respondent Parts Association, a directory of all jobbers whose reputation in the trade is such as to entitle them to recognition for carrying on their business according to the highest standards of commercial practice, with all members of both respondent associations being requested to actively cooperate in compiling such a directory.

(6) Acting through and by means of officers and directors of respondent Jobbers Association, have distributed, or caused to be distributed, to respondents Parts Association members as a guide to them as to who are "legitimate" jobbers, the annual membership lists of respondent Jobbers Association, for the purpose and with the intent and effect of having said respondents Parts Association members confine their sales to jobbers of bicycle equipment, to those jobbers appearing on such lists, and, with a further intent and effect of informing and instructing new manufacturers of bicycles, parts, and accessories, as they began selling and distributing such equipment, as to who are the legitimate jobbers in same.

(7) Pursuant to a resolution adopted by said respondent association in 1931, endeavored to secure the cooperation of respondents Parts Association members in refraining from selling the bicycle equipment which said respondents Parts Association members manufactured, through any channel of distribution other than respondents Jobbers Association members.

(8) Agreed to, and to some extent have confined the purchase of bicycle equipment, parts, and accessories to respondents Parts Association members to the exclusion of other manufacturers or assemblers of such equipment.

(9) By various means and methods, sought to prevent sales by respondents Parts Association members, as well as other manufacturers of bicycle parts and equipment, to jobbers who were not members of respondent Jobbers Association.

(10) Acting by and through respondent Jobbers Association, sought to have manufacturers of bicycle tires discontinue selling their factory

brand bicycle tires directly to bicycle dealers and to confine such distribution to respondents Jobbers Association members.

(11) Acting through and by means of respondent Jobbers Association, sought to require retail dealers to make their purchases through respondents Jobbers Association members.

(12) Attempted, by various means and methods, to prevent price cutting by jobbers who were not members of respondent Jobbers Association, as well as by respondents Jobbers Association members.

(13) Obtained specific agreements from some respondents Jobbers Association members not to cut prices or to discontinue price-cutting activities.

(14) By various means and methods, sought to prevent respondents Parts Association members, as well as other manufacturers of bicycle parts and equipment, from selling same directly to retail dealers and ultimate consumers.

(15) Acting through and by means of respondent Jobbers Association, sought to prevent manufacturers of bicycle equipment from selling such equipment to chain store organizations at less than the prices at which respondents Jobbers Association members sold such equipment to dealers thereof.

(16) To some extent, have entered into agreements between and among themselves to sell various articles of bicycle equipment at uniform prices.

(17) Acting through and by means of respondent Jobbers Association, agreed that each individual respondent member would use his best efforts to convince, by divers means and methods, manufacturers of completed bicycles not to sell same directly to chain stores at jobbers' prices, but to require them to pay the same prices which said stores would be required to pay if they purchased such bicycles from respondents Jobbers Association members.

(18) Acting through and by means of respondent Jobbers Association, endeavored to prevent manufacturers of completed bicycles from selling same by means of distribution other than by respondents Jobbers Association members.

(19) Agreed to supervise and investigate, and did supervise and investigate through and by means of respondent Jobbers Association, and its officers and directors, and by other means and methods, the practices and policies of jobbers, who were not members of respondent Jobbers Association, for the purpose of having said nonmembers recognize and conform to the policies, and practices of respondent Jobbers Association.

PAR. 7. Respondent, Parts Association and some of its officers, who no longer are officers thereof, and some of its members, did, prior to January 1, 1947, engage in some or all of the following acts and things: