information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

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

IN THE MATTER OF

PANAT JEWELRY CO., INC., ET AL.

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

Docket 8660. Complaint, April 30, 1965—Decision, Feb. 8, 1967

Order requiring New York City distributors of perfumes and costume jewelry to jobbers and retailers, to cease deceptively preticketing and misbranding its perfume and jewelry as to the regular selling price and composition, ambiguously using French words and symbols to falsely imply that its perfumes are imported, and furnishing retailers with means and materials to deceive the public in the above enumerated ways.

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 Panat Jewelry Co., Inc., a corporation, and Nathan Jachter, individually and as an officer of said corporation, and Nathan Jachter doing business and trading as Jáq de Paris, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Panat Jewelry Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 162 Fifth Avenue, in the city of New York, State of New York.

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

* Reported as amended by order of hearing examiner dated June 14, 1965, to reflect correct address of respondent.

tices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

Respondent Nathan Jachter has registered the trade name "Jáq de Paris" under his own name and at the same address. The name "Jáq de Paris" is used in connection with the sale of certain of respondents' products as hereinafter mentioned.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of perfumes, toilet waters, cosmetics and costume jewelry for men and women to distributors, jobbers, and retailers for resale to the public.

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

PAR. 4. Respondents sell their products through salesmen who call on the trade, through exhibits of their said products at various regional trade markets, through advertisements in newspapers, trade publications, other periodicals and circulars.

PAR. 5. Respondents for the purpose of inducing the purchase of their products, have engaged in the practice of using fictitious pricing and of misrepresenting the material of which their products are made or composed, the identity of the manufacturer and the country of origin or manufacture by the following methods and means:

(a) By using cardboard boxes or cartons, in which their bottled perfumes are packaged, on which are printed, or otherwise affixed, the figures "10.00," "15.00" or some other amount, and in advertisements and circulars, respondents thereby represented, directly or indirectly, that said amounts are the dollar prices that have been established in good faith as an honest estimate of the actual retail price and that they do not appreciably exceed the highest price at which substantial sales are or have been made at retail in respondents' trade area. In truth and in fact, said amounts are fictitious and are appreciably in excess of the highest

price at which substantial sales of said preticketed articles are made at retail in respondents' trade area.

(b) By using cardboard boxes or containers in which their bottled perfumes are packaged, on which are printed, or otherwise affixed on labels, in large print, the initial letters such as, but not limited to, "A," "C," "M" and "W" and, through salesmen calling on distributors, jobbers and retailers, respondents have thereby represented, directly or by implication, that the said perfumes so designated are those of or the same as those perfumes, sold under the brand names, "Arpege" by Lanvin Parfums, Inc., of New York, N.Y., "Chanel No. 5" by Chanel, Inc., of New York, N.Y., "My Sin" by Lanvin Parfums, Inc., of New York, N.Y., and "White Shoulders" by Parfums Evyan, Inc., of New York, N.Y. In truth and in fact, said perfumes sold by respondents are designated or labeled with the initial letters "A," "C," "M" and "W," are not the same as, nor those of, the said brand names "Arpege" by Lanvin Parfums, Inc., "Chanel No. 5" by Chanel, Inc., "My Sin" by Lanvin Parfums, Inc., or "White Shoulders" by Parfums Evyan, Inc.

(c) By use of the name "Jáq de Paris" and by a depiction of the Eiffel Tower with the tricolor French flag flying on top in connection with the name "Jáq de Paris" they have thereby represented, directly or by implication, that the same are French perfumes and are made, manufactured or compounded in Paris, France, and by a business entity or concern "Jáq de Paris." The representations are further accentuated by the wording "DISTRIBUTED BY JÁQ de PARIS, NEW YORK, N.Y.," or by words or markings of similar import or meaning used on containers in which the bottles of perfume are packaged and otherwise. In certain circulars used by respondents the words "Boudoir Ensemble" and "Paris Inspired Perfume" appear thereon. Respondents thereby add further support to the representation that their perfumes are made in France or are connected in some manner with Paris, France. In truth and in fact, Jáq de Paris is a trade name used by respondents and said perfumes are not French perfumes and are not made, manufactured or compounded in Paris nor in France; that same are not manufactured by a separate business entity or concern "Jáq de Paris" located in Paris nor in France. Respondents are not distributors for a business entity or concern under the name of Jáq de Paris located in Paris, France.

(d) By using individual boxes for packaging costume jewelry inside the top lid of which appears the wording or legend "STERLING SILVER" under the name "Panat," or under what appears to be

the depiction of a trademark, design or emblem, respondents represent directly or by implication that the costume jewelry so packaged is made up of at least 925/1000ths pure silver. In truth and in fact, said costume jewelry so packaged is not made of sterling silver of at least 925/1000ths pure silver.

(e) By using individual boxes for packaging costume jewelry inside the top lid of which appears the wording or legend "GOLD FILLED," under the name "Panat," or under what appears to be the depiction of a trademark, design or emblem, respondents represent that the costume jewelry so packaged is plated with a gold alloy of 24 karat fineness and of a substantial thickness of at least 1/20th of the weight of the metal in the entire article. In truth and in fact, said costume jewelry so packaged is not plated with a gold alloy of 24 karat fineness and is not of a substantial thickness of at least 1/20th of the weight of metal in the entire article of jewelry.

(f) By using individual boxes for packaging costume jewelry inside the top lid of which appears the wording or legend "14 KT. GOLD," and by attaching or affixing a tag or label to said article of jewelry on which tag or label appears the wording or legend "14 KT. GOLD," respondents represent, and have represented, that the article so packaged, marked, tagged or labeled is entirely composed and made of a gold alloy of 14 karat fineness for the metal portion of said article. In truth and in fact, the metal part of said articles so packaged, marked, tagged or labeled are composed or made of a gold alloy of less than 14 karat fineness.

(g) By placing tags or labels inside the boxes in which certain of respondents' articles of costume jewelry are packaged and on which tags or labels appear the words "CULTURED PEARL," respondents thereby represent, directly or by implication, that said jewelry contains a genuine cultured pearl. In truth and in fact, certain of said costume jewelry are not made with a genuine cultured pearl, but are imitations.

(h) By using labels or tags on which are printed "$24.95 plus tax" or some other amount, which are attached to or included with respondents' products, respondent thereby represented, directly or indirectly, that said amounts are the prices that have been established in good faith as an honest estimate of the actual retail price and that they do not appreciably exceed the highest price at which substantial sales have been made at retail in respondents' trade area. In truth and in fact, said amounts are fictitious and are appreciably in excess of the highest price at

which substantial sales of said preticketed articles are made at retail in respondents' trade area.

Therefore, the statements and representations set forth above were, and are, false, misleading and deceptive.

PAR. 6. There is a preference on the part of a substantial number of the purchasing public for perfumes manufactured in France, a fact of which the Commission takes official notice.

PAR. 7. In the course and conduct of their business, as aforesaid, respondents have represented through advertisements, labeling, orally and otherwise, that certain of their products are perfume whereas the same are not perfume as the term "perfume" is understood and used in the trade. Perfume contains at least 16 ounces of perfume oil per gallon of mixture. In truth and in fact said products are toilet waters or colognes.

PAR. 8. In the course and conduct of their business, as aforesaid, respondents have represented that certain of their products are guaranteed, and have enclosed a printed folded circular in the package or box in which the respondents' said product is packaged. Typical, but not all inclusive of said representations are the following: On the outside front of the circular—

BRONZINI
PEARLS
LIFETIME
GUARANTEE

On the inside right page:

THE GIFT THAT LASTS

A seed of the ocean's treasure selected for perfection * * * then oysterized by Oriental master craftsmen.

Emulating the cultured pearl with regard to luster, color, beauty * * * further enhanced by gem-like quality skins surpassing the hardness, durability and elegance of the cultured pearl * * * warranting a lifetime guarantee.

JAQ DE PARIS
New York, N.Y.

On the inside right page:

LIFETIME GUARANTEE*

The same shell-base-seeds are used as in growing cultured pearls * * * given a superb coating on the surface of special essence forming the depth and mystery of the heirloom pearl.

*Will not pit or peel

*Will not fade or discolor

In the manner aforesaid respondents represent that respondents' BRONZINI Pearls have an unconditional lifetime guarantee.

In truth and in fact respondents' BRONZINI Pearls are not unconditionally guaranteed in any manner.

Therefore, the statements and representations set forth above were, and are, false, misleading and deceptive.

PAR. 9. By the aforesaid acts and practices, respondents place in the hands of jobbers, retailers, and dealers, means and instrumentalities by and through which they may mislead the public as to the usual and regular price of said perfumes or other products, the composition of same, and the country or place of origin or manufacture of same, and by whom made, manufactured or compounded.

PAR. 10. In the course and conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with other corporations, firms and individuals in the sale of products of the same general kind and nature as those sold by respondents.

PAR. 11. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true and into the purchase of substantial quantities of respondents' product by reason of said erroneous and mistaken belief.

PAR. 12. The aforesaid acts and practices of respondents as herein alleged were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

Mr. Charles S. Cox supporting the complaint.

Mr. Matthew L. Salonger, New York, N.Y., for respondents.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

DECEMBER 10, 1965

This proceeding seeks to prevent respondents from conducting their perfume and jewelry business in a misleading manner. In addition to numerous minor contested factual matters, the principal questions are: when the term "perfume," may be used in labeling a scent; and, what parts, if any, may be base metal in an assembled piece of jewelry when its container is marked: "Sterling," "Gold Filled," or "14 Karat."

The Commission complaint dated April 30, 1965, initiated this proceeding. A prehearing conference was held June 11, 1965, and hearings commenced June 28, 1965, and were concluded on August 24, 1965.[1] Decision was reserved on respondents' motion to dismiss that was made at the conclusion of the case of counsel supporting the complaint (Tr. 1018–1021 *et seq.*).[2] The motion, as renewed at the conclusion of the hearings, is denied insofar as it seeks dismissal of the complaint in its entirety. We shall dispose of particular deficiencies, pointed out in respondents' motion, in ensuing Findings of Fact and Conclusions. However, we will consider first the issues presented prior to trial.

Issues Presented Prior to Trial

The complaint identifies the respondents (C. Par. 1); describes their business (C. Par. 2); alleges interstate commerce (C. Par. 3); and states that respondents use salesmen, advertising, etc., in selling their products (C. Par. 4).

The answer raised no issue on these allegations, hence such allegations will be incorporated in ensuing findings in the language of the complaint.

The complaint also stated that respondents were in competition with others (C. Par. 10). While this allegation was denied in the answer, it was admitted at the prehearing conference (Tr. 2–3) and will appear in terms in findings. Counsel for respondents indicated that he would offer no evidence to rebut the Commission's taking official notice that there is a preference for French perfumes (C. Par. 6; Tr. 12) or to contest the stated percentage requirements for "Sterling," "Gold Filled," and "14 Karat Gold" (see C. Par. 5(d) (e) and (f), and Tr. 4–5).

Specifically at issue is the balance of the complaint. Because of respondents' claim of fatal variance between the complaint and proof, we describe these charges in some detail.

The first charge (C. Par. 5) is that to induce the purchase of their products the respondents have used fictitious prices and

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[1] A total of twelve (12) days of hearings were held at: Dallas, Texas; Kansas City, Missouri; Providence, Rhode Island; New York, New York. Deviations from the rule regarding continuous hearings were approved by the Commission upon certificates of the hearing examiner issued on the facts as stated in motions of counsel supporting complaint; and on November 18, 1965, the Commission extended the time of the hearing examiner to file his initial decision until December 23, 1965.

[2] The following abbreviations will sometimes be used: Tr. = Transcript; C. = Complaint; A. = Answer; CX = Commission Exhibit; RX = Respondents' Exhibit; CF = Complaint Counsel's Proposed Findings; RF = Respondents' Proposed Findings; Panat for Respondents Panat Jewelry Co., Inc. Reference to particular citations are illustrative only. This decision has been made on the basis of the record as a whole including the demeanor of the witnesses.

have misrepresented: the material, the manufacturer, and the country of origin of their products "by the following methods and means." Then follow eight lettered subparagraphs. These deal respectively with: printing of "10.00" and "15.00" on cartons and advertisements that indicate fictitious prices (C. Par. 5(a)); using initial letters on perfume packages representing directly or by implication that the perfumes are the same as those sold by other manufacturers who use brand names having the same initial letters (C. Par. 5(b)); using the name "Jáq de Paris," the Eiffel Tower, and the French flag on perfumes, thereby falsely claiming French origin for their perfumes (C. Par. 5(c)); using the legend "Sterling" on boxes for costume jewelry, when the jewelry is not entirely 925/1000ths pure silver (C. Par. 5(d)); using the legend "Gold Filled" on boxes for costume jewelry, when the jewelry is not entirely 1/20th of its weight of 24 karat fineness of gold (C. Par. 5(e)); using the legend "14 Kt. Gold" on labels and boxes of costume jewelry where the jewelry is not entirely of 14 karat fineness (C. Par. 5(f)); using the term "Cultured Pearl" on tags and labels attached to costume jewelry when imitation pearls are used (C. Par. 5 (g)); using labels or tags marked "$24.95 plus tax" which indicate fictitious prices (C. Par. 5(h)).

The second charge is that respondents have falsely advertised and labeled as "perfume" certain products that did not contain 16 oz. of perfume oil per gallon of mixture (C. Par. 7).

The third charge is that respondents have represented certain of their products as unconditionally guaranteed, when such is not the fact (C. Par. 8).

The fourth charge is that respondents have placed in the hands of jobbers, dealers, and retailers means and instrumentalities of deception through the acts previously alleged (C. Par. 9).

The complaint concludes that these practices have had the tendency to mislead and to divert purchasers to respondents (C. Par. 11) and that they are prejudicial to the public and are in violation of Section 5 of the Federal Trade Commission Act.

Counsel supporting complaint at the prehearing conference, unsuccessfully sought to reduce factual proof by disclosure of his documents and physical exhibits and by requesting an admission by respondents that they issued or produced the documents and exhibits. Hence, a large portion of the hearings was devoted to more or less successful efforts linking the exhibits produced at the hearings with the respondents.

At the prehearing conference, counsel for respondents amended

his answer to plead that some of the alleged practices occurred a long time ago and have since been discontinued by respondents (Tr. 3–4; Prehearing Order No. 1 dated June 14, 1965). This raised an issue of fact and of law, which also required proof at the hearings.

Basis of Decision

This decision is based on all of the evidence produced at the trial—oral, written, and physical. Consideration has been given, among other things, to the demeanor of the witnesses produced before the hearing examiner in determining their credibility. The proposed findings and conclusions submitted, but not incorporated in this decision in whole or part in terms or in effect, are denied as immaterial, irrelevant, erroneous, or argumentative. The following findings of fact, conclusions, and order are hereby adopted:

FINDINGS OF FACT

Uncontested Findings

1. Respondent Panat Jewelry Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 162 Fifth Avenue [2a] in the city of New York, State of New York (C. Par. 1, A.).

2. Respondent Nathan Jachter is an officer of the corporate respondent. He formulates, directs and controls the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent (C. Par. 1, A.).

3. Respondent Nathan Jachter has registered the trade name "Jáq de Paris" under his own name at the same address. The name "Jáq de Paris" is used in connection with the sale of certain of respondents' products as hereinafter mentioned (C. Par. 1, A.).

4. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of perfumes, toilet waters, cosmetics and costume jewelry for men and women to distributors, jobbers and retailers for resale to the public (C. Par. 2, A.).

5. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of New York, or from such other State in which said prod-

[2a] Complaint amended by Order dated June 14, 1965, on consent of the parties to show correct address.

ucts are ultimately packaged, to purchasers thereof located in various other States of the United States and in the District of Columbia, and they maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act (C. Par. 3, A.).

6. Respondents sell their products through salesmen who call on the trade, through exhibits of their said products at various regional trade markets, through advertisements in newspapers, trade publications, other periodicals and circulars (C. Par. 4, A.).

7. There is a preference on the part of a substantial number of the purchasing public for perfumes manufactured in France, a fact of which the Commission takes official notice (C. Par. 6; Tr. 12).

8. In the course and conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with other corporations, firms and individuals in the sale of products of the same general kind and nature as those sold by respondents (C. Par. 10; Tr. 2–3).

Contested Findings

Respondents' Perfume Operations

9. From 1958 to 1959, the respondents rebottled and sold genuine perfumes in very small quantities, including Arpege, Chanel No. 5, White Shoulders, and My Sin (CX 147, 148; Tr. 1099).

10. Sometime during 1960 or 1961, the respondents went into the business of assembling and selling scents that were compounded to their order. Their business consisted of purchasing cartons, boxes, tubes, valves, and glass or metal containers, and engaging a "filler," Aero-Chem Fillers, Inc. Aero-Chem obtained the approval of the Alcohol Tax Unit, Internal Revenue Service, compounded the approved mixture and filled the containers with a mixture of perfume, oil and alcohol (Tr. 465–532; CX 107–118, 119–125). In some cases the "filler" completed the assembling by inserting the containers into boxes, which were then ready for shipment to wholesalers and retailers. In other cases the respondents completed the assembling and affixed labels or sleeves to the containers before boxing them (Tr. 626–632). Respondents made the shipments to distributors and retailers in both cases. In addition, respondents prepared advertisements for publication and display material, for use by retailers (CX 4, 51, 52, 55; Tr. 130–144).

Preticketing Perfumes

11. Respondents sold a "golden filigree" spray perfume. On the bottom of the carton in which this item was packaged appeared the number 15, followed by two small zeros (CX 49A, 103; Tr. 128–129, 632). Later runs of the carton left off the "15.00" (Tr. 129). Respondents also sold another spray perfume item on the carton of which appeared the number 10 followed by two small zeros (CX 50A, 69, 95A; Tr. 632, 633).

12. Respondents thereby represented that "15.00" and "10.00" are the dollar prices established in good faith as an honest estimate of the actual retail price and do not appreciably exceed the highest prices at which substantial sales of such products are, or have been, made at retail in respondents' trade area.

13. In retail operations in trade areas served by respondents, their spray perfume was advertised and sold at approximately $1 a bottle (CXs 70, 71 A and B, 75, 96, 97, 103, 104; Tr. 217, 226, 228, 332, 407, 421).

Using Initials of Well-Known Perfumes

14. In submitting respondents' labels to the Alcohol Tax Unit, Internal Revenue Service, Aero-Chem Fillers, Inc., in some instances, used the initials A, C, M, W, for labels. In other instances, the following names were used in connection with the initial letters: A, Appreciation; C, Chanteuse; M, Mystic Sands; W, White Sands (CX 109–118; Tr. 524). In distributing their product, respondents sometimes used the initial letters alone on the product and sometimes used the initial letters with the names just listed (RX 12 A, B, 13 A, B; CX 45, 46, 48, 56 A, 57 A, 59, 71, 95; Tr. 1096).

15. Irving Auerbach, a former salesman of respondents, testified that he represented to customers that the fragrance designated "A" was an imitation of the fragrance of Arpege; "C" an imitation of Chanel No. 5; "W" an imitation of White Shoulders, and, "M" an imitation of My Sin (Tr. 130–132). He denied that he told customers the perfumes were genuine perfumes which the scent imitated (*id.*). Respondent Jachter testified that he gave no instructions to salesmen concerning what the initials stood for; just told them it was a good product to go out and sell it (Jachter, Tr. 1124). The hearing examiner regards Jachter's testimony as incredible in this regard. Respondents' bookkeeper testified that she could not recall instructions given to salesmen by Jachter that the perfumes were to be sold as genuine

(Tr. 1060). She was quite obviously not always present when conversations between Jachter and the salesmen took place (Tr. 1082–1083). Consequently, we find that there were representations made that the initials stood for scents which imitated famous perfumes having the same initial. This accords with the testimony given by Oscar Gerson, a Kansas City distributor. He said that Jachter told him in 1960 or 1961 that the letters "A," "C," "M," and "W" stood for imitation[s] of other perfumes which start with the same letter (Tr. 187–188).

French Origin

16. Respondent Nathan Jachter registered the name "Jáq de Paris" under his own name in October 1961 (CX 204; Tr. 1135). That name in conjunction with a representation of the Eiffel Tower and the French flag was used by respondents in the sale and distribution of perfumes a large number of which had initials of well-known French perfumes (Findings 14, 15) and scents which imitated such perfumes (Finding 15; CX 4, 55; Tr. 1123, 1134). These perfumes were compounded in the United States by Aero-Chem Fillers, Inc. (Tr. 1134), and had no connection with Paris or with France.

Mislabeling Jewelry

17. Respondents are also engaged in assembling jewelry; that is, they purchase parts, or "findings" as they are called in the trade, and physically put together from such parts: cuff links, tie tacks, pendants, necklaces, and other similar pieces of jewelry (Tr. 626, 641–644). Respondents also purchase the boxes in which such jewelry is placed and is offered for sale (*id.*). In the boxes, respondents use an insert which contains a characteristic design known in the trade as a "logo" (Tr. 127, 128; CX 33A–36A inclusive). Some of these inserts also contain a statement of the quality of the jewelry, such as "Gold Filled," "Sterling" (*e.g.*, CX 33A–36A), or "Cultured Pearl"; others contain a tag stating the quality of the jewelry such as "14 Karat" which is placed on the piece of jewelry itself (see *e.g.*, CX 93A–D; Tr. 301).

18. Respondent Jachter claimed that his "logo" was not registered and that he had seen his "logo" used by others (Tr. 1191–1192) but no physical exhibits were produced showing the use of the characteristic "logo" by other manufacturers. The testimony of a former employee, now a competitor, that the crest (logo) was Panat's and no one else's, appeared to the hearing examiner to be entirely credible (Tr. 659). Another jewelry manufacturer

testified that it was not probable that anyone else would use a logo like Panat's (Tr. 993–995). Thus, the presence of the characteristic logo on boxes containing jewelry tends to corroborate identification of such jewelry as emanating from respondents.

19. In the middle of 1962, Coro, Inc., a jewelry distributor, purchased an extensive amount of jewelry from respondents (Tr. 755, 861; CX 169, 171). Thereafter, about September 1962, Coro, Inc., received complaints about the quality of the merchandise (Tr. 766). Coro, Inc., then tested a random sampling of the inventory in its Providence warehouse (Tr. 768). The tested merchandise was marked "Gold Filled" in some cases, and in others "Sterling" on the satin lining inside the box containing the jewelry (Tr. 769). As a result of the test, Coro, Inc., returned its entire inventory of respondents' merchandise (Tr. 772). When the merchandise was returned a representative of Coro, Inc., told respondent Jachter that the tests revealed some pieces were not as represented. Jachter stated that the mislabeling was a mistake, and he agreed to Coro's returning all its inventory for fresh merchandise (Tr. 786–787). Jachter thereafter replaced the merchandise (Tr. 788–790).

20. Fourteen items of jewelry which were chosen at random from Coro's stock, were tested by Gannon & Scott, Incorporated, expert assayers (Tr. 903, 907–918; CX 178 A–B). Of these fourteen, three marked "Sterling" and one marked "Gold Filled" were found to be as represented (Items 1, 10, 12 and 14 CX 178; Tr. 907, 908, 914, 915, 916–17). Of two additional items marked "Sterling," one had a base metal setting (Item 2 CX 178B; Tr. 908–910) and the other base metal oval link and spring ring (Item 13 CX 178B; Tr. 916). With the exception of these base parts the balance of the items were as represented (*id.*). An item marked "Gold on Sterling" was found to have a base metal oval link and connecting link and gold color on a sterling chain and setting (Item 11 CX 178B; Tr. 914–915). Seven items tested were marked "Gold Filled." Three of these had gold-filled parts, except for the setting which was sterling silver (Items 3, 6 & 7 CX 178B; Tr. 910, 911, 912, 913). Of the balance of the items Coro tested which were marked "Gold Filled," two had a base metal setting (Items 4, 8 CX 178B; Tr. 911, 913); one a connecting link of base metal and a setting of gold color (Item 5 CX 178B; Tr. 911–912); still another had a connecting link of base metal and a sterling silver setting (Item 9 CX 178B; Tr. 913–914).

21. Sometime in 1962 (Tr. 992), Harry Hedison, president of

Hedison Manufacturing Company of Cranston, Rhode Island (Tr. 996–997), purchased a number of items of jewelry which looked like those advertised by respondents in "Fashion Accessories" (CX 4, 133A through 137B; Tr. 978, 990). The items purchased had the Panat "logo" on them at the time of purchase (Tr. 977–990). After having some initial tests made by his own plating department (Tr. 976–986), Hedison sent some of the articles to George Conley Company, Inc., an assaying house in Cranston, Rhode Island (Tr. 986), who supplied a report of assay (CX 195A–D; Tr. 990). On cross-examination, however, Hedison testified that it was probable that the articles assayed were Panat's but he could not swear that the products "definitely came from Panat Jewelry" (Tr. 994–995). In light of the uncertainty of the identification of the articles as Panat's, we have not made any finding or conclusion based on these exhibits purchased by Hedison except in the case of Commission Exhibits 135–137. These exhibits were identified by someone else (see Tr. 634–636).

22. In 1961, in 1963, and in January 1965, Commission personnel purchased five articles of jewelry from tradespeople (CX 6, 7, 32, 33, 36, 41, 44; Tr. 15–24, 111, 112, 943, 945). At the hearing, the sellers identified these articles as having been bought from Panat (CX 37, 38, 39, 43; Tr. 15–24, 105–112, 1011). These five articles were assayed by Carl Kuck of Lucius Pitkin, Inc. (Tr. 706–707). Kuck testified that four out of the five articles were not qualified for the markings given (Tr. 711–724; CX 160–164 inclusive). One article marked "Gold Filled," although not up to the standard, was within manufacturing tolerance (CX 145, 146, 162–164; Tr. 715–718). Another article, a cuff link marked "Sterling" was sterling on the front but a base metal on the back or snap bar (CX 6, 163; Tr. 721). A pendant marked "14 Karat" (CX 41), which had been bought from Panat in 1964, and from the distributor in 1965, had no parts which measured up to 14 karat fineness (CX 164; Tr. 723–724). Two other pendants, marked respectively, "Sterling" and "Gold Filled" (CX 33, 36), were also assayed at less than the qualifying amount of precious metal (CX 160, 161; Tr. 711–714).

23. A Commission attorney bought from a dealer (CX 44) a Bronzini Pearl pendant (CX 42B) which the dealer bought from Panat (CX 43; Tr. 118–120). This exhibit was shown to Ernest Reuter, an expert in cultured pearls and a principal of Leys Christie (Tr. 688–689). Reuter, after examination through a jeweler's loupe, testified that it was not a cultured or a real pearl (Tr. 691). Morton Salm, a former employee of Panat, identified as Panat's,

two pendants marked "Cultured Pearls" (CX 135, 136; Tr. 634–636). These were purchased by Hedison and were sent to the Commission by Frankovich (Tr. 964, 990). Salm testified that these pendants were not cultured pearls, and his testimony was corroborated by Ernest Reuter who made an examination of them at the hearing (Tr. 690–691). Despite the testimony of an imitation pearl manufacturer that a chemical test was required to determine whether a pearl was imitation or cultured (Tr. 805, 806), we accept, as convincing, the explanation given by Ernest Reuter of how he could determine under a jeweler's loupe whether a pearl was imitation, cultured, or natural (Tr. 695–696). Hence, we find that the pearls sold as "Cultured Pearls" by respondents were not cultured pearls but imitation pearls.

24. Complaint counsel produced as an expert witness, George R. Frankovich, Executive Director of the Manufacturing Jewelers and Silversmiths of America, Incorporated (Tr. 957–958). Mr. Frankovich described in detail the process of producing rolled gold and differentiated this from the electroplating of gold (Tr. 965–968). And, he testified that rolled gold has vastly superior wearing qualities (Tr. 968). He also expressed the opinion that it would not be proper to place into a package marked "Gold Filled" or "Sterling" an article made in part of base metal (Tr. 968, 970), excepting those parts specifically exempted by the commercial standards of the Department of Commerce that now have been incorporated into the Federal Trade Commission Rules for the Jewelry Industry (CX 165, 166, 186, 188).

Preticketing Bronzini Pearls $24.95

25. A jewelry distributor in Kansas City produced a box containing a pendant marked "Bronzini Pearl" (CX 93A, B and C) that had attached to it a tag with "$24.95" on it when received from Panat on July 7, 1965 (Tr. 301, 302). He testified that these pendants are purchased from Panat at $22.50 a dozen by the distributor, and they are sold by the distributor to his retailers for $36 a dozen. The suggested retail price is $6 each (Tr. 303). A Commission attorney purchased a similar article from State Wide Distributors, January 25, 1965, for $2 (CX 44). On the basis of these facts, we find that the preticketing of the product at $24.95 is not an honest estimate of the retail price (RF 9).

Use of Label "Perfume"

26. Respondents utilized Aero-Chem Fillers, Inc., to compound and fill the containers supplied by respondents (Tr. 1088). Aero-

Chem in each instance used the proportion of perfume oil requested by respondents which would be used in each of the scents compounded for respondents (Tr. 510, 516). In addition, Aero-Chem in each instance filed with the Alcohol Tax Unit of the Internal Revenue Service an application for using denatured alcohol. Commission Exhibits 109 through 118 are the applications relating to the Panat compounds that were approved by the Alcohol Tax Unit and were kept in the regular course of business by Aero-Chem (Tr. 489–492, 508). These applications included the label to be used and the designation "Cologne" or "Perfume." Some of these applications showed only the initial letters. All of the products labeled "Perfume" had a perfume oil content of less than 16 ounces per gallon (CX 109–118, inclusive).

27. Respondents sold scents labeled perfume and spray perfume in accordance with labels submitted to the Alcohol Tax Unit which had a perfume oil content of substantially less than 16 ounces per gallon (CX 8B, 9B, 10B, 11B, 177A–D; Tr. 819–820).

28. A number of persons testified as experts in the field of preparing, selling, or investigating irregularities in the sales of perfume that, while there was no statute or regulation requiring that perfume contain at least 16 ounces of perfume oil per gallon, the practice in the industry was to label as perfume only a mixture of at least 16 ounces of perfume oil to a gallon of denatured alcohol (Tr. 552, 565, 616, 825, 826). There was no credible contrary testimony.

Guarantee of Bronzini Pearls

29. Respondents have represented that certain of their products are guaranteed, and they have enclosed a printed, folded circular in the package in which respondents' pearls are packaged. Typical, but not all inclusive of said representations are the following: On the outside front of the circular—

BRONZINI
PEARLS

LIFETIME
GUARANTEE

On the inside left page:

THE GIFT THAT LASTS

A seed of the ocean's treasure selected for perfection * * * then oysterized by Oriental master craftsmen.

Emulating the cultured pearl with regard to luster, color, beauty * * * further enhanced by gem-like quality skins surpassing the hardness, dura-

bility and elegance of the cultured pearl * * * warranting a lifetime guarantee.

JAQ DE PARIS
NEW YORK, N.Y.

On the inside right page:

LIFETIME GUARANTEE*

The same shell-base-seeds are used as in growing cultured pearls * * * given a superb coating on the surface of special essence forming the depth and mystery of the heirloom pearl.

*Will not pit or peel.
*Will not fade or discolor.

In the manner aforesaid, respondents represent that their BRONZINI Pearls have an unconditional lifetime guarantee (CX 41B, 42B, 93C).

30. No evidence was offered concerning failure on the part of respondents to replace Bronzini Pearls containing such guarantees. Respondent Jachter testified without contradiction that he had received no complaints concerning Bronzini Pearls (Tr. 1123).

Placing Instruments of Deception in the Hands of Retailers and Dealers

31. By placing prices on cartons in which scents were packaged and on the cartons in which the Bronzini Pearls were packaged, the respondents placed an instrumentality in the hands of retailers and dealers to deceive the public as to the true retail price of products which customarily sold at a much lower price, as heretofore found (see Findings 8, 10 and 24).

32. By the use of the name Jáq de Paris, coupled with the representation of the Eiffel Tower and the French flag, respondents placed an instrumentality in the hands of retailers and dealers to deceive the public as to the country of origin of their products (see Finding 15).

33. By marking their scents with the initials A, C, M, and W, and by representing that such markings stood for scents that imitated "Arpege," "Chanel No. 5," "My Sin," and "White Shoulders," respondents placed an instrumentality in the hands of retailers and dealers to deceive the public as to the composition of their products and as to the persons by whom they were made, manufactured, or compounded (see Findings 11 to 14).

34. Retailers, engaged in selling scents, advertised and sold respondents' products as genuine "Arpege," "Chanel No. 5," "My Sin," and "White Shoulders" (CX 70; Tr. 307, 357, 414, 418, 431).

They were assisted in this deception by the price tags on the products and by the manner of packaging (Tr. 414, 416).

35. Respondents were informed that retailers were engaged in misleading the public as to the composition and manufacturer of their products (CX 141, 142; Tr. 595, 596).

36. It was not established that respondents urged their dealers and retailers to advertise their products as genuine "Arpege," "Chanel No. 5," "My Sin," and "White Shoulders," except by providing a product packaged and marked in a manner to facilitate the deception (see Tr. 356–358, 416).

37. The denial by Mrs. Norman, a Commission witness, that she had stated that the Panat perfumes sold by her were genuine "Arpege," "Chanel No. 5," "White Shoulders," and "My Sin," is not credible in the light of the other circumstances and the testimony of Mr. Hayes, a Commission attorney investigator (CX 70; Tr. 213–240, 307).

Effect of Statements

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

Continuation of Practices

39. The major portion of the evidence in this case related to practices which were engaged in during 1960 and 1961. Respondents, however, continued to sell their products and to make certain false representations through 1964. Respondent Jachter testified that he stopped preticketing the Bronzini Pearls after they received the complaint in this case from the Federal Trade Commission (Tr. 1120–1121).

CONCLUSIONS

1. The Federal Trade Commission has jurisdiction over respondents; and their activities, including those charged to be misleading, were in commerce within the meaning of the Federal Trade Commission Act.

2. Respondents were engaged in the unfair practice of preticketing their perfume and their Bronzini Pearls with fictitious

prices that were in neither case an honest estimate of the prevailing retail prices. The preticketed prices were, in fact, considerably in excess of the highest prices at which substantial amounts of such products were sold at retail.

3. It was not established by the evidence that respondents represented, through the use of the initials A, C, M, and W, that scents manufactured for them and distributed by them were in fact the well-known perfumes "Arpege," "Chanel No. 5," "My Sin," and "White Shoulders." It was, however, established by the evidence that respondents sold said scents as imitations of said well-known perfumes.

4. Respondents, through the use of the fictitious trade name "Jáq de Paris" in conjunction with the use of the Eiffel Tower and the French flag and the method of advertising, packaging, and using the name "Jáq de Paris," represented falsely that their scents were of French origin. Because of the officially noticed fact that French perfume is preferred by consumers, such representations are false and misleading and constitute unfair trade practices.

5. Respondents in labeling certain of their jewelry products "Sterling Silver," "Gold Filled," and "14 Karat," represented that such jewelry was of the standard of fineness generally recognized in the industry and conformed to the Commercial Standards approved by the Department of Commerce and the Trade Practice Rules of the Federal Trade Commission. The exceptions specified in said standards and regulations are the exclusive exceptions recognized in the industry. Respondents in using any metal parts which were not of the fineness specified on the label and not within recognized exceptions, engaged in an unfair practice and in making false and misleading representations.

6. The term "Pearl" means a natural gem produced by an oyster without artificial stimulus. An imitation pearl is merely a bead coated with a lacquer to resemble a natural pearl. A cultured pearl means a gem produced by an oyster under artificial stimulus. To label an imitation pearl either as "Pearl" or "Cultured Pearl" tends to deceive the public who cannot without special expertise distinguish one from the other. Respondents in falsely labeling certain of their jewelry as "Pearl" or "Cultured Pearl," when in fact the jewelry contained an imitation pearl, were engaged in an unfair trade practice and in making false and misleading representations.

7. The term "Perfume" has a well-recognized meaning in the trade. It denotes a much higher percentage of essential perfume

oils than is found in toilet water or in cologne. Uncontradicted expert testimony placed the customary ratio of perfume oils in perfume as at least 16 ounces to the gallon of standard denatured alcohol or other solvent. In labeling their scent "Perfume," when it contained substantially less than 16 ounces of perfume oil to the gallon, respondents were engaging in an unfair trade practice and were making false and misleading representations. The fact that the respondents' "filler," Aero-Chem Fillers, Inc., filed applications with the Alcohol Tax Unit of the Internal Revenue Service, which were approved, containing the label, the formulae, and accompanied by a sample of the scent, did not constitute, merely because the label contained the word "Perfume," an approval by the Alcohol Tax Unit of such a misleading designation. The submission of the label was presumably for the purpose of identifying the product as sold in the market and of permitting the Alcohol Tax Unit to determine whether or not the amount of alcohol contained therein was in accordance with the representation of the "filler." This follows from the fact that the legislation, authorizing the formation of the Alcohol Tax Unit, is in aid of the tax on alcohol. It should not be construed as a prior restraint on the use of a label. Such a peacetime censorship of advertising in a label would hardly be consistent with the functions of the Alcohol Tax Unit.[3]

8. The proof did not establish that respondents failed to live up to the guarantee stated in the folder that accompanied its Bronzini Pearls.[4] The only testimony was that there had been no complaints concerning same.

9. The use of the term "Jáq de Paris" as an assumed trade name was part of respondents' effort to mislead the public as to the origin of its products. In such circumstances its continued use cannot be countenanced.

10. Respondent Jachter is the owner of the trade name "Jáq de Paris," and he formulates and controls the acts and practices of the corporate respondent, Panat. The proof established that in some instances the name Jáq de Paris was used alone, and at other times in conjunction with the name, Panat. This demon-

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[3] It is clear that approval "does not constitute an endorsement of the article, directions for use, claims of efficacy or strength or similar statements" (see 26 Code of Federal Regulations Part 211, § 211.106).

[4] The complaint charged only that by the terms of the guarantee respondents represent that their "Pearls" have an unconditional lifetime guarantee; while in truth, they are not unconditionally guaranteed in any manner. Hence, it is not charged that the terms of the guarantee constitute a material, factual misrepresentation (see Guides Against Deceptive Advertising of Guarantees, April 26, 1960, VII).

strates the versatility of respondent Jachter in utilizing different names to conduct respondents' business. In such circumstances it seems necessary to the protection of the public that Jachter be personally named in any order to cease and desist.

11. While respondents were not shown to have specifically represented that the initials used on their scents referred to genuine perfumes—"Arpege," "Chanel No. 5," "My Sin," and "White Shoulders"—they took actions which assisted retailers and dealers in so misrepresenting them. They packaged their scents to represent genuine perfumes. They preticketed their scents with a price comparable to the price of genuine perfumes. And, they represented to dealers that their scents were imitations of the genuine perfumes whose initials were shown on the respondents' packages. This constituted placing an instrumentality in the hands of dealers and retailers to represent to the public—as they did—that respondents' scents were the genuine perfumes whose initials appeared on respondents' scents. The fictitious prices and the use of the name Jáq de Paris, together with a depiction of the Eiffel Tower and the French flag, were similarly instrumentalities that respondents placed in the hands of the retailers and dealers with which said retailers and dealers could mislead the public as to the country of origin of respondents' perfumes. The placing of such means in the hands of dealers and retailers constituted an unfair trade practice calculated to result in a misrepresentation to the public. The proof established that respondents were aware that certain retailers were making misrepresentations concerning the country of origin of the scents sold by respondents.

12. There was no serious variance between the acts alleged and those established. There was, at most, merely a failure to prove certain of the misleading means alleged. Respondents had clear and ample notice of the facts, which formed the basis of the charges against them.

13. Despite the fact that a large portion of the evidence related to acts that occurred several years ago, some misleading acts were current at the time of the issuance of the complaint. Hence, the case is not moot, and it cannot be concluded that respondents' unlawful conduct has surely stopped.

14. The aforesaid acts and practices of respondents were and are prejudicial and injurious to the public and to respondents' competitors and constituted and now constitute unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act. Consequently, the following order should issue.

ORDER

It is ordered, That respondents Panat Jewelry Co., Inc., a corporation, and its officers, and respondent Nathan Jachter, individually and as an officer of said corporation, and Nathan Jachter trading and doing business as Jáq de Paris, or under any other name or names, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of perfumes, toilet waters, cosmetics, costume jewelry, or any other product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Preticketing any product at a suggested retail price that is not established in good faith as an honest estimate of the actual retail price or that appreciably exceeds the highest price at which substantial sales are made in respondents' trade area.

2. Furnishing to others, any means or instrumentality by or through which the public may be misled as to the actual bona fide retail prices of respondents' merchandise.

3. Using any letters, numerals, or symbols that are associated with or otherwise suggestive of nationally advertised or well-known perfumes, toilet waters, or related products in the labeling or advertising of respondents' products without clearly and conspicuously revealing in immediate conjunction therewith, the actual trade name of the manufacturer of said products.

4. Using the term "Jáq de Paris" or any other French word or words, or a depiction of the Eiffel Tower, the French flag, or any other typically French scene, in advertising or labeling to describe perfumes, toilet waters, or cosmetics that are not manufactured or compounded in France.

5. Representing in any manner that merchandise was manufactured, compounded or distributed by a named person or concern, or originated in a given country or geographical area, unless such article was so manufactured, compounded, distributed, or originated.

6. Using the word "Perfume" or "Perfumes" to designate, describe or refer to any product having a perfume oil content of less than 16 ounces per gallon.

7. Using the term "Sterling Silver" or any other word or words of similar import or meaning, to designate, describe,

or refer to an article which is not wholly composed of 925/1000ths pure silver.[5]

8. Using the term "Gold Filled," or any other word or words of similar import or meaning, to designate, describe, or refer to an article unless it is made by affixing a shell of karat gold alloy on one or more surfaces of base metal and unless the karat gold alloy is at least of 10 karat fineness and of a substantial thickness of at least 1/20th of the weight of the metal in the entire article.[5]

9. Using the term "14 K. GOLD," "14 KT. GOLD," "14 KARAT GOLD" or any other term, word, number, abbreviation, or symbol, either singularly or in combination one with another, relative to the karat fineness of the gold alloy content of the metal in the article to which it refers, unless the metal in the article is wholly composed of gold alloy of the karat fineness specified.[5]

10. Using the words "Pearl," "Cultured Pearl," or any other word or words of similar import or meaning to describe imitation pearls, or representing in any manner that imitation pearls are genuine pearls: *Provided, however,* That the word "Pearl" may be used to describe the appearance of an imitation pearl if, whenever used, the word "Pearl" is immediately preceded, in equally conspicuous type, by the words "imitation" or "simulated" or other words of similar import or meaning, which will clearly indicate that the imitation pearl is not a genuine pearl.

11. Furnishing or placing in the hands of retailers or dealers the means and instrumentalities by and through which they may mislead or deceive the public in the manner or as to the things hereinabove prohibited.

OPINION OF THE COMMISSION

FEBRUARY 8, 1967

This matter is before the Commission on the cross appeals of respondents and complaint counsel from the hearing examiner's initial decision finding that respondents had engaged in various

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[5] In construing paragraphs 7, 8 and 9 of this order, the provisions of Title 15 U.S.C. § 291–300 relating to tolerances and the exemptions customary in the industry; contained in Commercial Standards CS 51–35, CS 67–38, CS 118–44, and CS 47–34 issued by the Department of Commerce and incorporated in Trade Practice Rules for the Jewelry Industry promulgated by the Federal Trade Commission June 28, 1957, and amended November 17, 1959, shall be applied.

unfair and deceptive practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

Respondents are engaged in the sale and distribution of scents, cosmetics and costume jewelry to distributors, jobbers and retailers for resale to the public. The complaint charged them with preticketing their products with fictitious prices; falsely labeling certain of their jewelry products as "Sterling Silver," "Gold Filled," "14 Karat," "Pearl" and "Cultured Pearl"; falsely labeling certain of their products as "perfume"; falsely representing that scents manufactured for them were of French origin; falsely representing that certain of their products are unconditionally guaranteed; and placing in the hands of jobbers and retailers the means by which they might mislead the public as to the usual and regular prices of respondents' products, the composition of same, and their origin of manufacture. The hearing examiner held that all such allegations had been sustained except for the charge concerning respondents' representations of guarantees.

Respondents chose not to file briefs on appeal. In oral argument before the Commission, they took exception only to the hearing examiner's conclusion that they had falsely labeled certain of their products as "perfume," contending that the evidence was insufficient to support such a holding.

The record reveals that respondents, in the course of their business in commerce, assembled and sold scents that were compounded to their order. Certain of these products were labeled and sold by the respondents as "perfume." The hearing examiner found that the term "perfume" has a "well-recognized meaning in the trade"; that it denotes a product compounded from perfume oils and standard denatured alcohol or other solvent, each gallon of the compound containing at least 16 ounces of perfume oil. He further found that some of respondents' products, labeled and sold as "perfume," had a perfume oil content substantially less than "the customary ratio." On the basis of these findings, he concluded that respondents had falsely labeled their scents, and issued an order prohibiting respondents' use of the word "perfume" to describe any product "having a perfume oil content of less than 16 ounces per gallon."

In support of his finding concerning industry practice in compounding and labeling scents as "perfume," the examiner lists citations to the expert testimony of a "number of persons." Upon examination, we have noted that several of the record citations are inapposite and that only the testimony of two witnesses is pertinent to the point under review. This testimony tends to sup-

port the examiner's finding. However, when considered in the light of the record as a whole, it does not afford a substantial basis for a finding that could have significant ramifications within the industry. Accordingly, respondents' appeal is granted.

Counsel supporting the complaint takes exception to the examiner's dismissal of the allegation that respondents falsely represented that certain of their products were unconditionally guaranteed. Respondents sell imitation pearls under the trade name of BRONZINI and advertise that such products have a "LIFETIME GUARANTEE." The examiner correctly found that such advertising represents that respondents' BRONZINI pearls are unconditionally guaranteed. However, there was no evidence offered to show that respondents' guarantee on such products was actually conditional. Therefore, the examiner's dismissal of the allegation was clearly warranted.

Complaint counsel also takes exception to the hearing examiner's order, contending that in certain respects it is not broad enough to prevent repetition of respondents' misleading trade practices. We find no merit in his specific contentions. We are concerned, however, with that provision in the examiner's order relating to respondents' misleading use of the term "Gold Filled." This provision fails to require disclosure of the karat fineness of the alloy used in articles to be labeled as "Gold Filled." [1] In our opinion, the record and the public interest call for issuance of an order that will require such disclosure. The examiner's order will, therefore, also be modified in this respect.

This action was taken without the concurrence of Commissioner MacIntyre.

FINAL ORDER

This matter having been heard by the Commission upon the exceptions of respondents and of counsel supporting the complaint to the hearing examiner's initial decision, and upon a brief and oral argument in support thereof and in opposition thereto; and

The Commission having rendered its decision and having determined that the initial decision should be modified to conform with the views expressed in the accompanying opinion and, as so modified, adopted as the decision of the Commission:

It is ordered, That the initial decision be modified by striking therefrom finding 28 and conclusion 7 and substituting therefor the following:

[1] See Rule 22 C (2) of the Commission's Trade Practice Rules for the Jewelry Industry.

28. There is testimony in the record to the effect that, while there is no statute or regulation requiring that perfume contain at least 16 ounces of perfume oil per gallon, the practice in the industry is to label as perfume only a mixture of at least 16 ounces of perfume oil to a gallon of denatured alcohol. However, this testimony when considered in the light of the record as a whole, does not provide a substantial basis for a finding concerning industry practice in labeling scents as "perfume."

7. The proof did not establish that respondents falsely represented certain of their products as "perfume."

It is further ordered, That the order to cease and desist in the initial decision be modified to read as follows:

It is ordered, That respondents Panat Jewelry Co., Inc., a corporation, and its officers, and respondent Nathan Jachter, individually and as an officer of said corporation, and Nathan Jachter trading and doing business as Jáq de Paris, or under any other name or names, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of perfumes, toilet waters, cosmetics, costume jewelry, or any other product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Preticketing any product at a suggested retail price that is not established in good faith as an honest estimate of the actual retail price or that appreciably exceeds the highest price at which substantial sales are made in respondents' trade area.

2. Furnishing to others, any means or instrumentality by or through which the public may be misled as to the actual bona fide retail prices of respondents' merchandise.

3. Using any letters, numerals, or symbols that are associated with or otherwise suggestive of nationally advertised or well-known perfumes, toilet waters, or related products in the labeling or advertising of respondents' products without clearly and conspicuously revealing in immediate conjunction therewith, the actual trade name of the manufacturer of said products.

4. Using the term "Jáq de Paris" or any other French word or words, or a depiction of the Eiffel Tower, the French flag, or any other typically French scene, in ad-

vertising or labeling to describe perfumes, toilet waters, or cosmetics that are not manufactured or compounded in France.

5. Representing in any manner that merchandise was manufactured, compounded or distributed by a named person or concern, or originated in a given country or geographical area, unless such article was so manufactured, compounded, distributed, or originated.

6. Using the term "Sterling Silver" or any other word or words of similar import or meaning, to designate, describe, or refer to an article which is not wholly composed of 925/1000ths pure silver.*

7. Using the term "Gold Filled" or any word or words of similar import or meaning, to designate, describe or refer to an article unless the article contains a surface plating of gold alloy of not less than 10 karat fineness which is of a substantial thickness of at least 1/20th of the weight of the metal in the entire article, and unless the term is immediately preceded, with equal conspicuousness, by a correct designation of the karat fineness of the alloy.*

8. Using the term "14 K. GOLD," "14 KT. GOLD," "14 KARAT GOLD" or any other term, word, number, abbreviation, or symbol, either singularly or in combination one with another, relative to the karat fineness of the gold alloy content of the metal in the article to which it refers, unless the metal in the article is wholly composed of gold alloy of the karat fineness specified.*

9. Using the words "Pearl," "Cultured Pearl," or any other word or words of similar import or meaning to describe imitation pearls, or representing in any manner that imitation pearls are genuine pearls: *Provided, however,* That the word "Pearl" may be used to describe the appearance of an imitation pearl if, whenever used, the word "Pearl" is immediately preceded, in equally conspicuous type, by the words "imitation" or "simulated" or other words of similar import or meaning, which will

* In construing paragraphs 6, 7 and 8 of this order, the provisions of Title 15 U.S.C. § 291–300 relating to tolerances and the exemptions customary in the industry, contained in Commercial Standards CS 51–35, CS 67–38, CS 118–44, and CS 47–34 issued by the Department of Commerce and incorporated in Trade Practice Rules for the Jewelry Industry promulgated by the Federal Trade Commission June 28, 1957, and amended November 17, 1959, shall be applied.

clearly indicate that the imitation pearl is not a genuine pearl.

10. Furnishing or placing in the hands of retailers or dealers the means and instrumentalities by and through which they may mislead or deceive the public in the manner or as to the things hereinabove prohibited.

It is further ordered, That the initial decision, as modified, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That respondents Panat Jewelry Co., Inc., and Nathan Jachter shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner in which they have complied with the order to cease and desist.

By the Commission, without the concurrence of Commissioner MacIntyre.

IN THE MATTER OF

EDWARD W. PUTNAM DOING BUSINESS AS BLUE DIAMOND CHINCHILLAS

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

Docket C-1167. Complaint, Feb. 8, 1967—Decision, Feb. 8, 1967

Consent order requiring a Sioux City, Iowa, distributor of chinchilla breeding stock to cease misrepresenting the quality and fecundity of their animals and profits to be made from home breeding of chinchillas.

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 Edward W. Putnam, an individual doing business as Blue Diamond Chinchillas, 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 Edward W. Putnam is an individual doing business under the name of Blue Diamond Chinchillas, with