In the Matter of

UBIKO MILLING COMPANY

COMPLAINT, SETTLEMENT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSEC. (a) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 5972. Complaint, Mar. 24, 1952—Decision, Aug. 6, 1952

Where a corporation engaged in the manufacture and competitive interstate sale and distribution of animal feed products of various types, including both concentrate and complete feeds, under the trade name "Life Guard", which, during the year ending October 31, 1949, sold about 65,558 tons thereof, amounting to $4,150,000 in gross sales;

In selling its said feed products, primarily to retail dealers, in the area composed of Southern Ohio, West Virginia, Virginia, Western Pennsylvania, New Jersey, Kentucky, Tennessee, the two Carolinas, Georgia and Florida, through its so-called "Dealer Profit Selling Plan", pursuant to which it paid discounts, refunds or rebates automatically to dealers who qualified thereunder and who had not become delinquent in their payments during the twelve month period applicable thereto—

Discriminated in price between different purchasers by selling to some at higher prices than it sold products of like grade and quality to others actively engaged in competition with one another in their resale, through the use of a sliding scale pursuant to which annual purchases of a minimum of fifty to one hundred tons entitled a dealer to a discount of 50¢ a ton, and larger purchases ranging up to 500 tons or more entitled him to larger discounts up to $1.00 a ton;

Effect of which discriminations in price might be substantially to lessen competition or tend to create a monopoly in the line of commerce in which it was engaged and to injure, destroy and prevent competition between it and other manufacturers and sellers of animal feed products; and to injure, destroy and prevent competition between favored customers who received the benefits of such discriminations and competing dealer purchasers who did not receive such benefits:

Held, That such plans, acts and practices were in violation of the provisions of Sec. 2 (a) of the Clayton Act, as amended by the Robinson-Patman Act.

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

Mr. Fletcher G. Cohn and *Mr. Robert F. Quinn* for the Commission.

Dinsmore, Shohl, Sawyer & Dinsmore, of Cincinnati, Ohio, for respondent.

Complaint

Pursuant to the provisions 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 (Clayton Antitrust Act), as amended by an Act of Congress approved June 19, 1936 (Robinson-Patman Act), the Federal Trade Commission, having reason to believe that the respondent named in the caption hereof, and hereinafter more particularly described, has violated, and is now violating, the provisions of section 2 (a) of said Act, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Ubiko Milling Company, hereinafter referred to as "respondent Ubiko Company," is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its offices and principal place of business located at 5216 Vine Street, Cincinnati, Ohio.

PAR. 2. The respondent Ubiko Company, for several years last past and more particularly since June 19, 1936, has been engaged, and is now engaged, in the manufacture, sale and distribution of animal feed products of various types, including both concentrate and complete feeds. Said animal feed products thus manufactured, sold and distributed by respondent are generally sold under trade name, and known as, "Life Guard" feeds.

During the year ending October 31, 1949, respondent sold approximately 65,558 tons of said feeds, primarily to retail dealers, which amounted to gross sales of $5,151,000. Respondent's feed is sold in the area comprised of Southern Ohio, West Virginia, Virginia, Western Pennsylvania, New Jersey, Kentucky, Tennessee, South Carolina, North Carolina, Georgia and Florida. Respondent does not maintain or operate any warehouses except at Cincinnati, Ohio.

Said respondent sells and distributes in commerce, as "commerce" is defined in the Clayton Antitrust Act, as amended by the Robinson-Patman Act, said animal feed products to retail dealers located in various States of the United States. Respondent causes said animal feed products, when sold, to be transported from its manufacturing plant or warehouse, each of which is located in Cincinnati, Ohio, across State lines to its dealer purchasers thereof, located in various States of the United States other than the State of Ohio, where such shipments originate. Respondent maintains, and has maintained during all the times mentioned herein, a course of trade in said products, in commerce between and among the several States of the United States.

PAR. 3. In the course and conduct of its business, as aforesaid, respondent, particularly since June 19, 1936, has been engaged in substantial competition with other persons, partnerships, firms and corporations which likewise manufacture animal feed products and sell and seek to sell and distribute said products in commerce between and among the several States of the United States to retail feed dealers, except insofar as such competition has been, or may be, affected by the acts and practices hereinafter alleged.

PAR. 4. In the course and conduct of its business, as aforesaid, respondent, since some time prior to 1943, and particularly since 1947, has been, and is now, discriminating in price between different purchasers of its animal feed products of like grade and quality by selling such products to some of its purchasers at higher prices than it sells the said products of like grade and quality to others of its purchasers who are in competition one with the other in the sale of said products within the United States.

Some of the purchases, which were, and are, involved in such discriminations, were, and are, in commerce and the animal feed products so involved, were and are sold for use, consumption or resale within the United States.

PAR. 5. Among the aforesaid price discriminations are those which were, and are, accomplished by a plan instituted and used by respondent for some time prior to 1943, when it was temporarily discontinued, but which in its general tenets and outline was resumed in 1947, and which has been utilized continuously, and is now being utilized, by the respondent in the sale and distribution in the aforesaid commerce of respondent's animal feed products. The plan presently is known as the "Dealer Profit Sharing Plan."

The nature of said plan, especially since its resumption in 1947, is that some of respondent's dealers are paid by the respondent an annual discount, refund or rebate on their purchases of the respondent's aforesaid animal feed products made during a period of time extending from November 1 to October 31 of the following year. Such discount, refund or rebate is computed on the basis of the number of tons of "Life Guard" feeds purchased during the said period. There is a sliding scale whereby the rate of discount, refund or rebate per ton is proportionally higher according to the total tonnage of such feeds purchased during the aforesaid period. Any dealer who purchases 50 tons of said feeds and who also meets the requirement of maintaining a record of prompt cash payments for feeds purchased during the aforesaid period, receives from the respondent the minimum volume discount, refund or rebate of 50 cents per ton on all of his purchases of said feed from respondent during this period. If a dealer's purchases do not aggregate this required minimum during the aforesaid period of 50 tons or if he becomes delinquent in his payments during the period, he does not qualify for any discount, refund or rebate on his purchases regardless of the volume of same. Also, even though a dealer should promptly pay all of his purchases during the period, unless he has purchased 50 tons of said feeds during such period, he receives no discount, refund or rebate on his purchases.

Respondent's dealers who meet the requirements of maintaining a good record of prompt cash payments for feeds purchased during the said period, and who during said period also purchase more than the minimum requirement of 50 tons of said feeds, obtain discounts, refunds or rebates computed on the following schedule of purchases during the period:

Rebate per ton:	*Tons purchased per year*
50 cents per ton on	50 to 100 tons.
60 cents per ton on	100 to 200 tons.
70 cents per ton on	200 to 300 tons.
80 cents per ton on	300 to 400 tons.
90 cents per ton on	400 to 500 tons.
$1.00 per ton on	500 tons or more.

A discount, refund or rebate applies only on Ubiko manufactured feeds and is payable only on a full year's business; no discount, refund or rebate is payable on any part year. The discounts, refunds or rebates are paid automatically according to the aforesaid schedule as quickly as possible after November 1 of each annual period, without any further obligation or action by, or on behalf of such dealers.

During the annual period from November 1, 1948, to October 31, 1949, respondent granted discounts, refunds or rebates under the aforesaid plan in a total amount of approximately $40,722.87.

Respondent does not enter into any agreements with its animal feed dealers whereby said dealers are required to sell "Life Guard" feeds to the exclusion of competitive brands of feeds produced and sold by other manufacturers, and most of the dealers to whom respondent sells its animal feed products purchase and sell one or more competitive brands of such products.

PAR. 6. The effect of the discriminations in price, as alleged herein, and of any part or fraction thereof, may be substantially to lessen competition or tend to create a monopoly in the respondent in the line of commerce in which it has been and is now engaged, and to injure, destroy, or prevent competition between the respondent and other manufacturers and sellers of animal feed products, and in the line of commerce in which the customers of the respondent, their dealer purchasers, are engaged, may be to injure, destroy or prevent competition between those customers, who in purchasing respondent's products receive the benefits of such discriminations which respondent grants, as hereinbefore set forth, and those competing dealer purchasers from the respondent who do not receive such benefits.

PAR. 7. The foregoing described plan, acts and practices of respondent are in violation of the provisions of subsection (a) of section 2 of the Clayton Antitrust Act, as amended by the Robinson-Patman Act, approved June 19, 1936.

CONSENT SETTLEMENT [1]

Pursuant to the provisions 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 (Clayton Act), as amended by an Act of Congress approved June 19, 1936 (Robinson-Patman Act), the Federal Trade Commission, on the 24th day of March 1952, issued and subsequently served its complaint on the respondent named in the caption herein, charging it with violation of subsection (a) of section 2 of the Clayton Act, as amended.

The respondent, desiring that this proceeding be disposed of by the consent settlement procedure provided in Rule V of the Commission's Rules of Practice, solely for the purposes of this proceeding, any review thereof, and the enforcement of the order consented to, and conditioned upon the Commission's acceptance of the consent settlement hereinafter set forth, and in lieu of answer to said complaint heretofore filed and which, upon acceptance by the Commission of this settlement, is to be withdrawn from the record, hereby:

1. Admits all of the jurisdictional allegations set forth in the complaint.

2. Consents that the Commission may enter the matters hereinafter set forth as its findings as to the facts, conclusion, and order to cease and desist. It is understood that the respondent, in consenting to the Commission's entry of said findings as to the facts, conclusions, and order to cease and desist, specifically refrains from admitting or denying that it has engaged in any of the acts or practices stated therein to be in violation of law or that such acts and practices, if engaged in, would be in violation of law.

3. Agrees that this consent settlement may be set aside in whole or in part under the conditions and in the manner provided in paragraph (f) of Rule V of the Commission's Rules of Practice.

The admitted jurisdictional facts, the statement of the acts and practices which the Commission had reason to believe were unlawful,

[1] The Commission's "Notice of Acceptance of Consent Settlement and Order to File Report of Compliance", follows:

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was on August 6, 1952, accepted by the Commission, subject only to the condition that the respondent comply with the requirements of the following paragraph with respect to the filing of a report showing the manner and form in which it has complied with the order to cease and desist; and subject to such condition said consent settlement was ordered entered of record as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

It is accordingly ordered, That the respondent, Ubiko Milling Company, a corporation, shall within sixty (60) days after service upon it of this notice and order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist contained in the consent settlement entered herein.

the conclusion based thereon, and the order to cease and desist, all of which respondent consents may be entered in final disposition of this proceeding, are as follows:

COMMISSION'S FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Ubiko Milling Company, hereinafter referred to as "respondent Ubiko Company," is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its offices and principal place of business located at 5216 Vine Street, Cincinnati, Ohio.

PAR. 2. The respondent Ubiko Company for several years last past and more particularly since June 19, 1936, has been engaged, and is now engaged, in the manufacture, sale and distribution of animal feed products of various types, including both concentrate and complete feeds. Said animal feed products thus manufactured, sold and distributed by respondent are generally sold under trade name, and known as "Life Guard" feeds.

During the year ending October 31, 1949, respondent sold approximately 65,558 tons of said feeds, primarily to retail dealers, which amount to gross sales of $4,151,000.00. Respondent's feed is sold in the area comprised of Southern Ohio, West Virginia, Virginia, Western Pennsylvania, New Jersey, Kentucky, Tennessee, South Carolina, North Carolina, Georgia and Florida. Respondent does not maintain or operate any warehouses except at Cincinnati, Ohio.

Said respondent sells and distributes in commerce, as "commerce" is defined in the Clayton Antitrust Act, as amended by the Robinson-Patman Act, said animal feed products to retail dealers located in various States of the United States. Respondent causes said animal feed products, when sold, to be transported from its manufacturing plant or warehouse, each of which is located in Cincinnati, Ohio, across State lines to its dealer purchasers thereof, located in various States of the United States other than the State of Ohio, where such shipments originate. Respondent maintains, and has maintained, during all the times mentioned herein, a course of trade in said products in commerce between and among the several States of the United States.

PAR. 3. In the course and conduct of its business, as aforesaid, respondent, particularly since June 19, 1936, has been engaged in substantial competition with other persons, partnerships, firms and corporations which likewise manufacture animal feed products and sell and seek to sell and distribute said products in commerce between and among the several States of the United States to retail feed dealers, except insofar as such competition may have been affected by the acts and practices hereinafter stated.

PAR. 4. In the course and conduct of its business, as aforementioned, respondent, since some time prior to 1943, and particularly since 1947, has been, and is now, discriminating in price between different purchasers of its animal feed products of like grade and quality by selling such products to some of its purchasers at higher prices than it sells the said products of like grade and quality to others of its purchasers who are in competition one with the other in the sale of said products within the United States.

Some of the purchases, which were, and are, involved in such discriminations, were, and are, in commerce and the animal feed products so involved, were and are sold for use, consumption or resale within the United States.

PAR. 5. The aforesaid price discriminations were, and are, accomplished by a plan instituted and used by respondent for some time prior to 1943, when it was temporarily discontinued, but which in its general tenets and outline was resumed in 1947, and which has been utilized continuously, and is now being utilized, by the respondent in the sale and distribution in the aforesaid commerce of respondent's animal feed products. The plan presently is known as the "Dealer Profit Sharing Plan."

The nature of said plan, especially since its resumption in 1947, is that some of respondent's dealers are paid by the respondent an annual discount, refund or rebate on their purchases of the respondent's aforesaid animal feed products made during a period of time extending from the date of the initial purchase by each of respondent's dealers to the same date one year thereafter. Such discount, refund or rebate is computed on the basis of the number of tons of "Life Guard" feeds purchased during the said period. There is a sliding scale whereby the rate of discount, refund or rebate per ton is proportionally higher according to the total tonnage of such feeds purchased during the aforesaid period. Any dealer who purchases 50 tons of said feeds and who also meets the requirement of maintaining a record of prompt cash payments for feeds purchased during the aforesaid period, receives from the respondent the minimum volume discount, refund or rebate of 50 cents per ton on all of his purchases of said feed from respondent during this period. If a dealer's purchases do not aggregate this required minimum during the aforesaid period of 50 tons or if he becomes delinquent in his payments during the period, he does not qualify for any discount, refund or rebate on his purchases regardless of the volume of same. Also, even though a dealer should promptly pay all of his purchases during the period, unless he has purchased 50 tons of said feeds during such period, he receives no discount, refund or rebate on his purchases.

Respondent's dealers who meet the requirements of maintaining a good record of prompt cash payments for feeds purchased during the said period, and who, during said period also purchase more than the minimum requirement of 50 tons of said feeds, obtain the aforesaid discounts, refunds or rebates computed on the following schedule of purchases during the period:

Rebate per ton:	*Tons purchased per year*
50 cents per ton on	50 to 100 tns.
60 cents per ton on	100 to 200 tons.
70 cents per ton on	200 to 300 tons.
80 cents per ton on	300 to 400 tons.
90 cents per ton on	400 to 500 tons.
$1.00 per ton on	500 tons or more.

A discount, refund or rebate applies only on Ubiko manufactured feeds and is payable only on a full year's business; no discount, refund or rebate is payable on any part year. The discounts, refunds or rebates are paid automatically according to the aforementioned schedule as quickly as possible after the end of each respective dealer's annual period, without any further obligation or action by, or on behalf of such dealers.

During the annual period from November 1, 1948 to October 31, 1949, respondent granted discounts, refunds or rebates under the aforesaid plan in a total amount of approximately $40,722.87.

Respondent does not enter into any agreements with its animal feed dealers whereby said dealers are required to sell "Life Guard" feeds to the exclusion of competitive brands of feeds produced and sold by other manufacturers, and most of the dealers to whom respondent sells its animal feed products purchase and sell one or more competitive brands of such products.

PAR. 6. The effect of the discrimination in price, as stated herein, and of any part or fraction thereof, may be substantially to lessen competition or tend to create a monopoly in the respondent in the line of commerce in which it has been and is now engaged, and to injure, destroy, or prevent competition between the respondent and other manufacturers and sellers of animal feed products, and in the line of commerce in which the customers of the respondent, their dealer purchasers, are engaged, may be to injure, destroy or prevent competition between those customers, who in purchasing respondent's products receive the benefits of such discriminations which respondent grants, as hereinbefore set forth, and those competing dealer purchasers from the respondent who do not receive such benefits.

COMMISSION'S CONCLUSION

The foregoing described plan, acts and practices of respondent are in violation of the provisions of subsection (a) of section 2 of the Clayton Antitrust Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. Title 15, Sec. 13).

ORDER TO CEASE AND DESIST

It is ordered, That the respondent, Ubiko Milling Company, a corporation, directly or indirectly, through any corporate or other device, through its officers, agents, representatives or employees, or by any other means or methods in the sale of animal feed products, including both concentrate and complete feeds, whether sold under the name of "Life Guard" or any other name or designation, in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Directly or indirectly discriminating in price between different competing 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, 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 competing 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.

UBIKO MILLING COMPANY,
By (S) S. P. THOMPSON,
Vice President.

MAY 22, 1952.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record this 6th day of August, 1952, subject only to the condition that the respondent shall, within sixty (60) days after service upon it of a copy of this consent settlement, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist contained in said consent settlement.

IN THE MATTER OF

EARLY & DANIEL CO.

COMPLAINT, SETTLEMENT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSEC. (a) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 5973. Complaint, Mar. 24, 1952—Decision, Aug. 6, 1952

Where a corporation engaged in the manufacture and competitive interstate sale and distribution of animal feed products of various types, under the brand name "Tuxedo"; which, during the year ending March 31, 1949, sold about 240,000 tons or 4,800,000 sacks of said feeds, amounting to $13,254,000 in gross sales;

In selling its said feed products, primarily to retail dealers, through its "Tuxedo volume rebate schedule", pursuant to which it paid to dealers who qualified—who, for the period ending May 31, 1949, numbered only about 356 of some 2,000 dealer purchasers—dividends, discounts, rebates or refunds—

Discriminated in price between different purchasers by selling to some at higher prices than it sold products of like grade and quality to others actively engaged in competition with one another in their resale, through use of a sliding scale whereby any dealer who purchased an annual minimum of 120 tons or 2,400 sacks, or their equivalent, of said feeds received, in the form of cash or credit memoranda, applicable on past or future purchases, discounts, rebates or refunds at the rate of 25¢ per ton upon purchases ranging from 2,400 to 3,599 hundred-pound sacks or its equivalent, and proportionally higher rebates ranging up to $2.50 per ton upon purhases up to 60,000 sacks or more;

Effect of which discriminations in price might be substantially to lessen competition or tend to create monopoly in the line of commerce in which it was engaged and to injure, destroy and prevent competition between it and other manufacturers and sellers of animal feed products; and to injure, destroy and prevent competition between customers who received the benefits of such discriminations and competing dealer purchasers who did not:

Held, That such plans, acts and practices were in violation of the provisions of Sec. 2 (a) of the Clayton Act, as amended by the Robinson-Patman Act.

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

Mr. Fletcher G. Cohn and *Mr. Robert F. Quinn* for the Commission.

Dinsmore, Shohl, Sawyer & Dinsmore, of Cincinnati, Ohio, for respondent.

COMPLAINT

Pursuant to the provisions 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 (Clayton Antitrust Act), as amended by an Act of Congress approved June 19, 1936 (Robinson-Patman Act), the Federal Trade Commission, having reason to believe that the respondent named in the caption hereof, and hereinafter more particularly described, has violated and is now violating the provisions of section 2 (a) of said Act, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Early & Daniel Co., hereinafter referred to as "respondent Early & Daniel," is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its general offices and principal place of business located at Chamber of Commerce Building, city of Cincinnati, State of Ohio.

PAR. 2. The respondent Early & Daniel, for several years last past and more particularly since June 19, 1936, has been engaged and is now engaged in the manufacture, sale and distribution of animal feed products of various types. Said animal feed products manufactured, sold and distributed by respondent are known as "Tuxedo" brand feeds. The said feeds are usually sold by the respondent in 100 lb. sacks, primarily to retail dealers in animal feed products. During the year ending May 31, 1949, respondent sold approximately 240,000 tons or 4,800,000 sacks of said feeds, which amounted to gross sales of $13,254,000.

Respondent's manufacturing plants are located in Cincinnati, Ohio; Sumter, South Carolina; and Tampa, Florida. It likewise owns and operates some 13 warehouses for the storage and distribution of said feeds, located in the following States: Delaware, Virginia, West Virginia, Ohio, Kentucky, North Carolina, South Carolina, Tennessee, and Florida.

Said respondent Early & Daniel sells and distributes, in commerce, as "commerce" is defined in the Clayton Antitrust Act, as amended by the Robinson-Patman Act, said animal feed products to retail dealers located in various States of the United States. Respondent causes said animal feed products, when sold, to be transported and shipped from its respective manufacturing plants and warehouses in the several States of the United States, across State lines, to the purchasers thereof, located in various States of the United States other than where such shipments originate. Respondent maintains and has maintained during all times mentioned herein a course of trade in said products, in commerce, among and between the several States of the United States.

PAR. 3. In the course and conduct of its business, as aforesaid, respondent, particularly since June 19, 1936, has 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 said products in commerce between and among the several States of the United States to retail feed dealers, except insofar as such competition has been or may be affected by the acts and practices hereinafter alleged.

PAR. 4. In the course and conduct of its business, as aforesaid, since on or about January 1, 1938, respondent has been, and is now, discriminating in price between different purchasers of its animal feed products of like grade and quality by selling such products to some of its purchasers at higher prices than it sells these said products of like grade and quality to others of its purchasers who are in competition one with the other in the sale of said products within the United States.

Some of the purchases, which are involved in such discriminations, were, and are, in commerce and the animal feed products so involved were and are sold for use, consumption or resale within the United States.

PAR. 5. Among the aforesaid price discriminations are those which were and are accomplished by a plan instituted by the respondent on or about January 1, 1938. Since then, this plan, known as the "Tuxedo Volume Rebate Schedule" has been utilized continuously and is still utilized by the respondent in the sale and distribution in the aforesaid commerce of its animal feed products.

The plan is that some of respondent's dealers are paid an annual discount, refund or rebate on their total purchases of such feeds for the period beginning June 1 each year and ending May 31, of the following year. Such discount, refund or rebate is computed on the basis of the total number of tons of "Tuxedo" feeds purchased during the period. There is a sliding scale whereby the rate of discount, refund or rebate per ton is proportionally higher according to the total number of 100 lb. sacks of such feeds which are purchased during the period. Any dealer who purchases a minimum of 120 tons, or 2,400 such sacks, or their equivalent of said feeds, during the aforesaid period is the recipient of the minimum volume discount, refund or rebate at the rate of 25 cents per ton or 1¼ cents per sack on such purchases from respondent during said period. Should a dealer's total purchases not aggregate this required minimum, such dealer receives no volume discount, refund or rebate on his purchases. As respondent's dealers purchase larger volume quantities of said animal feeds, they obtain discounts, refunds or rebates which are computed at a higher rate per ton, according to the following schedule of total purchases during such period:

100-lb. sacks (or equivalent):	Rebate per ton
Under 2,400	None
2,400–3,599	$0.25
3,600–4,799	.50
4,800–7,199	1.00
7,200–9,599	1.10
9,600–11,999	1.20
12,000–17999	1.30
18,000–23,999	1.50
24,000–35,999	1.75
36,000–47,999	2.00
48,000–59,999	2.25
60,000 or more	2.50

For the period ending May 31, 1949, of the approximately 2,000 dealers to whom respondent sold such feeds, only about 356 received volume discounts, refunds or rebates under the aforesaid schedule, in the total amount of $224,636. To such dealers, respondent paid discounts, refunds or rebates in the form of cash or credit memoranda on past purchases or which could be applied on future purchases by them.

Respondent does not enter into any agreements with animal feed dealers whereby said dealers are required to sell "Tuxedo" brand feeds to the exclusion of competitive brands of feeds produced by other manufacturers. Most of the dealers to whom respondent sells its animal feed products purchase and sell one or more competitive brands of such products.

PAR. 6. The effect of the discriminations in price, as alleged herein, and any part or fraction thereof, may be substantially to lessen competition or tend to create a monopoly in the respondent in the line of commerce in which it has been and is now engaged, and to injure, destroy or prevent competition between the respondent and other manufacturers and sellers of animal feed products, and in the line of commerce in which the customers of the respondent, their dealer purchasers, are engaged, may be to injure, destroy or prevent competition between those customers, who in purchasing respondent's products receive the benefits of such discriminations which respondent grants, as hereinbefore set forth, and those competing dealer purchasers from the respondent who do not receive such benefits.

PAR. 7. The foregoing described plan, acts and practices of respondent are in violation of the provisions of subsection (a) of section 2 of the Clayton Antitrust Act, as amended by the Robinson-Patman Act, approved June 19, 1936.

CONSENT SETTLEMENT [1]

Pursuant to the provisions 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 (Clayton Act), as amended by an Act of Congress approved June 19, 1936 (Robinson-Patman Act), the Federal Trade Commission, on the 24th day of March 1952, issued and subsequently served its complaint on the respondent named in the caption herein, charging it with violation of subsection (a) of section 2 of the Clayton Act, as amended.

The respondent, desiring that this proceeding be disposed of by the consent settlement procedure provided in Rule V of the Commission's Rules of Practice, solely for the purposes of this proceeding, any review thereof, and the enforcement of the order consented to, and conditioned upon the Commission's acceptance of the consent settlement hereinafter set forth, and in lieu of answer to said complaint heretofore filed and which, upon acceptance by the Commission of this settlement, is to be withdrawn from the record, hereby:

1. Admits all the jurisdictional allegations set forth in the complaint.

2. Consents that the Commission may enter the matters hereinafter set forth as its findings as to the facts, conclusion, and order to cease and desist, It is understood that the respondent, in consenting to the Commission's entry of said findings as to the facts, conclusion, and order to cease and desist, specifically refrains from admitting or denying that it has engaged in any of the acts or practices stated therein to be in violation of law or that such acts and practices, if engaged in, would be in violation of law.

3. Agrees that this consent settlement may be set aside in whole or in part under the conditions and in the manner provided in paragraph (f) of Rule V of the Commission's Rules of Practice.

The admitted jurisdictional facts, the statement of the acts and practices which the Commission had reason to believe were unlawful,

[1] The Commission's "Notice of Acceptance of Consent Settlement and Order to File Report of Compliance", follows:

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was on August 6, 1952, accepted by the Commission, subject only to the condition that the respondent comply with the requirements of the following paragraph with respect to the filing of a report showing the manner and form in which it has complied with the order to cease and desist; and subject to such condition said consent settlement was ordered entered of record as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

It is accordingly ordered, That the respondent, Early & Daniel Co., a corporation, shall within sixty (60) days after service upon it of this notice and order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist contained in the consent settlement entered herein.

the conclusion based thereon, and the order to cease and desist, all of which respondent consents may be entered in final disposition of this proceeding, are as follows:

COMMISSION'S FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Early & Daniel Co., hereinafter referred to as "respondent Early & Daniel," is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its general offices and principal place of business located at Chamber of Commerce Building, city of Cincinnati, State of Ohio.

PAR. 2. The respondent Early & Daniel, for several years last past, and more particularly since June 19, 1936, has been engaged and is now engaged in the manufacture, sale and distribution of animal feed products of various types. Said animal feed products manufactured, sold and distributed by respondent are known as "Tuxedo" brand feeds. The said feeds are usually sold by the respondent in 100 lb. sacks, primarily to retail dealers in animal feed products. During the year ending May 31, 1949, respondent sold approximately 240,000 tons, or 4,800,000 sacks of said feeds, which amounted to gross sales of $13,254,000.

Respondent's manufacturing plants are located in Cincinnati, Ohio; Sumter, South Carolina, and Tampa, Florida. It likewise owns and operates some 13 warehouses for the storage and distribution of said feeds, located in the following States: Delaware, Virginia, West Virginia, Ohio, Kentucky, North Carolina, South Carolina, Tennessee, and Florida.

Said respondent Early & Daniel sells and distributes, in commerce, as "commerce" is defined in the Clayton Antitrust Act, as amended by the Robinson-Patman Act, said animal feed products to retail dealers located in various States of the United States. Respondent causes said animal feed products, when sold, to be transported and shipped from its respective manfacturing plants and warehouses in the several States of the United States, across State lines, to the purchasers thereof, located in various States of the United States other than where such shipments originate. Respondent maintains and has maintained during all times mentioned herein, a course of trade in said products, in commerce, among and between the several States of the United States.

PAR. 3. In the course and conduct of its business, as aforesaid, respondent, particularly since June 19, 1936, has 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 said products in commerce between and among the several States of the United States to retail feed dealers, except insofar as such competition may have been affected by the acts and practices hereinafter stated.

PAR. 4. In the course and conduct of its business, as aforesaid, since on or about January 1, 1938, respondent has been, and is now, discriminating in price between different purchasers of its animal feed products of like grade and quality by selling such products to some of its purchasers at higher prices than it sells these said products of like grade and quality to others of its purchasers who are in competition one with the other in the sale of said products within the United States.

Some of the purchases, which are involved in such discriminations, were, and are, in commerce and the animal feed products so involved were and are sold for use, consumption or resale within the United States.

PAR. 5. The aforesaid price discriminations were and are accomplished by a plan instituted by the respondent on or about January 1, 1938. Since then, this plan, known as the "Tuxedo Volume Rebate Schedule," has been utilized continuously and is still utilized by the respondent in the sale and distribution in the aforesaid commerce of its animal feed products.

The plan is that some of respondent's dealers are paid an annual discount, refund or rebate on their total purchases of such feeds for the period beginning June 1 each year, and ending May 31 of the following year. Such discount, refund, or rebate is computed on the basis of the total number of tons of "Tuxedo" feeds purchased during the period. There is a sliding scale whereby the rate of discount, refund or rebate per ton is proportionally higher according to the total number of 100 lb. sacks of such feeds which are purchased during the period. Any dealer who purchases a minimum of 120 tons, or 2,400 such sacks, or their equivalent of said feeds, during the aforesaid period is the recipient of the minimum volume discount, refund or rebate at the rate of 25 cents per ton or 1¼ cents per sack on such purchases from respondent during said period. Should a dealer's total purchases not aggregate this required minimum, such dealer receives no volume discount, refund or rebate on his purchases. As respondent's dealers purchase larger volume quantities of said animal feeds, they obtain the aforesaid discounts, refunds or rebates, which are computed at a higher rate per ton, according to the following schedule of total purchases during such period:

100-lb. sacks (or equivalent):	Rebate per ton
Under 2,400	None
2,400–3,599	$0.25
3,600–4,799	.50
4,800–7,199	1.00
7,200–9,599	1.10
9,600–11,999	1.20
12,000–17,999	1.30
18,000–23,999	1.50
24,000–35,999	1.75
36,000–37,999	2.00
38,000–59,999	2.25
60,000 or more	2.50

For the period ending May 31, 1949, of the approximately 2,000 dealers to whom respondent sold such feeds, only about 356 received volume discounts, refunds or rebates under the aforesaid schedule, in the total amount of $224,626. To such dealers, respondent paid the aforesaid discounts, refunds or rebates, in the form of cash or credit memoranda on past purchases or which could be applied on future purchases by them.

Respondent does not enter into any agreements with animal feed dealers whereby said dealers are required to sell "Tuxedo" brand feeds to the exclusion of competitive brands of feeds produced by other manufacturers. Most of the dealers to whom respondent sells its animal feed products purchase and sell one or more competitive brands of such products.

PAR. 6. The effect of the discriminations in price, as stated herein, and any part or fraction thereof, may be substantially to lessen competition or trend to create a monopoly in the respondent in the line of commerce in which it has been and is now engaged, and to injure, destroy or prevent competition between the respondent and other manufacturers and sellers of animal feed products, and in the line of commerce in which the customers of the respondent, their dealer purchasers, are engaged, may be to injure, destroy or prevent competition between those customers, who in purchasing respondent's products receive the benefits of such discriminations which respondent grants, as hereinbefore set forth, and those competing dealer purchasers from the respondent who do not receive such benefits.

COMMISSION'S CONCLUSION

The foregoing described plan, acts and practices of respondent are in violation of the provisions of subsection (a) of section 2 of the Clayton Antitrust Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. Title 15, Sec. 13).

ORDER TO CEASE AND DESIST

It is ordered, That the respondent, Early & Daniel Co., a corporation, directly or indirectly, through any corporate or other device, through its officers, agents, representatives or employees, or by any other means or methods in the sale of animal feed products, whether sold under the name of "Tuxedo" or any other name or designation, in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Directly or indirectly discriminating in price between different competing purchasers of animal feed products of like grade and quality where the aforesaid products are sold for use, consumption or resale within the United States, 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 competing 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.

EARLY & DANIEL CO.,
By (S) ELLIS V. EARLY,
Exec. V. Pres.

MAY 22, 1952.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record this 6th day of August, 1952, subject only to the condition that the respondent shall, within sixty (60) days after service upon it of a copy of this consent settlement, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist contained in said consent settlement.

IN THE MATTER OF

RAINBOW GIRL COAT COMPANY, 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 5924. Complaint, Sept. 21, 1951—Decision, Aug. 9, 1952

Where a corporation and its two officers, engaged in the manufacture and interstate sale and distribution of wool products as defined in the Wool Products Labeling Act, including certain girls' coats—

(*a*) Misbranded certain of said wool products in that they were not stamped, tagged, or labeled as required by said Act and the Rules and Regulations promulgated thereunder;

(*b*) Misbranded certain girls' coats in that, labeled as "100% Wool", they contained substantial quantities of other fibers;

(*c*) Misbranded certain of their wool products in that the name of the constituent fibers appearing on the stamp, tag, or label affixed thereto was abbreviated and not fully spelled out as required under the provisions of Rule 9 of the aforesaid Rules and Regulations; and

(*d*) Misbranded certain girls' coats in that the character and amount of constituent fibers contained in the linings, which were represented as containing wool, reprocessed wool or reused wool, were not separately set forth on the label as required by said Act and Rule 24 of the aforesaid Rules and Regulations:

Held, That such acts and practices, under the circumstances set forth, were in violation of the Wool Products Labeling Act, and the Rules and Regulations promulgated thereunder, and constituted unfair acts and practices in commerce.

Certain evidence offered by respondents for the purpose of showing that the misbranding involved was due to inadvertence and carelessness on the part of respondents' employees did not constitute a defense to the proceeding, and was, in fact, offered only to show the circumstances under which the violations occurred.

Before *Mr. Earl J. Kolb*, hearing examiner.

Mr. Carlo J. Aimone and *Mr. George E. Steinmetz* for the Commission.

Mr. Gerald J. Parish, of Springfield, 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 Rainbow Girl Coat Company, Inc., a corporation, and Arnold Freed and Harold Freed, individually and as officers of said corporation have violated the provisions of said

Acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939 and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Rainbow Girl Coat Company, Inc., is a corporation organized and existing under and by virtue of the laws of the Commonwealth of Massachusetts, and respondents Arnold Freed and Harold Freed are the president and treasurer, respectively, of the said respondent corporation. Respondents Arnold Freed and Harold Freed formulate, direct and control the policies, acts and practices of the corporate respondent. The offices and principal place of business of all respondents are located at 1879 Columbus Avenue, Springfield, Massachusetts.

PAR. 2. Subsequent to the effective date of the Act and more especially since 1949, respondents have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, and offered for sale, in commerce as "commerce" is defined in the Wool Products Labeling Act, wool products, as "wool products" are defined therein.

PAR. 3. Certain of said wool products were misbranded in that they were not stamped, tagged or labeled as required under the provisions of section 4 (a) (2) of the Wool Products Labeling Act of 1939, and in the manner and form as prescribed by the Rules and Regulations promulgated under such Act.

PAR. 4. Certain of said wool products were misbranded within the intent and meaning of the said Act and the Rules and Regulations thereunder in that they were falsely and deceptively labeled with respect to the character and amount of the constituent fibers contained therein. Among the misbranded products aforementioned were girls' coats labeled by the respondents as "100% wool," when in truth and in fact the coats were not 100% wool, but contained substantial quantities of fibers other than wool.

Certain of respondents' wool products were misbranded in that on the stamp, tag, or label affixed thereto, the required information descriptive of fiber content was falsely and deceptively set out in that the name of the constituent fibers appearing therein, was abbreviated and not fully spelled out as required under the provisions of Rule 9 of the Regulations.

PAR. 5. Other wool products of the respondent corporation, namely, girls' coats, were misbranded in that the character and amount of the constituent fibers contained in the linings thereof which purported to contain or were represented as containing wool, reprocessed wool or reused wool, were not separately set forth on the stamp, tag, or label as required by the said Act and Rule 24 of the Rules and Regulations promulgated thereunder.

PAR. 6. The acts and practices of the respondents as herein alleged were in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder and constituted unfair and deceptive acts 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 August 9, 1952, the initial decision in the instant matter of hearing examiner Earl J. Kolb, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

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 September 21, 1951, issued and subsequently served its complaint in this proceeding upon the respondents Rainbow Girl Coat Company, Inc., a corporation and Arnold Freed and Harold Freed, individually and as officers of said corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of those Acts. After the service of said complaint upon said respondents, a stipulation as to the facts was entered into upon the record whereby it was stipulated and agreed that a statement of facts executed by counsel supporting the complaint and counsel for respondents might be taken as the facts in this proceeding and in lieu of evidence in support of and in opposition to the charges stated in the complaint, and that such statement of facts might serve as the basis for findings as to the facts and conclusion based thereon and an order disposing of the proceeding without presentation of proposed findings and conclusions or oral argument. The stipulation further provided that upon appeal to or review by the Commission such stipulation might be set aside by the Commission and this matter remanded for further proceedings under the complaint. Thereafter, the proceeding regularly came on for final consideration by the above-named hearing examiner, theretofore duly designated by the Commission, upon the complaint and stipulation as to the facts, said stipulation having been approved by said hearing examiner, who, after duly considering 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, Rainbow Girl Coat Company, Inc., is a corporation organized and existing under and by virtue of the laws of the Commonwealth of Massachusetts, and respondents Arnold Freed and Harold Freed are the president and treasurer, respectively, of the said respondent corporation. Respondents Arnold Freed and Harold Freed formulate, direct and control the policies, acts and practices of the corporate respondent. The offices and principal place of business of all respondents are located at 1879 Columbus Avenue, Springfield, Massachusetts.

PAR. 2. Subsequent to the effective date of the Act and more especially since 1949, respondents have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, and offered for sale, in commerce as "commerce" is defined in the Wool Products Labeling Act, wool products, as "wool products" are defined therein.

PAR. 3. Certain of said wool products were misbranded in that they were not stamped, tagged or labeled as required under the provisions of section 4 (a) (2) of the Wool Products Labeling Act of 1939, and in the manner and form as prescribed by the Rules and Regulations promulgated under such Act.

PAR. 4. Certain of said wool products were misbranded within the intent and meaning of the said Act and the Rules and Regulations thereunder in that they were falsely and deceptively labeled with respect to the character and amount of the constituent fibers contained therein. Among the misbranded products aforementioned were girls' coats labeled by the respondents as "100% wool," when in truth and in fact the coats were not 100% wool, but contained substantial quantities of fibers other than wool.

Certain of respondents' wool products were misbranded in that on the stamp, tag, or label affixed thereto, the required information descriptive of fiber content was falsely and deceptively set out in that the name of the constituent fibers appearing therein, was abbreviated and not fully spelled out as required under the provisions of Rule 9 of the Regulations.

PAR. 5. Other wool products of the respondent corporation, namely, girls' coats, were misbranded in that the character and amount of the constituent fibers contained in the linings thereof which purported to contain or were represented as containing wool, reprocessed wool or reused wool, were not separatly set forth on the stamp, tag, or label as required by the said Act and Rule 24 of the Rules and Regulations promulgated thereunder.

PAR. 6. The respondents, in addition to entering into said stipulation, introduced evidence with reference to the circumstances under which the various products had been misbranded for the purpose of showing that such misbranding was due to inadvertence and carelessness on the part of their employees. Such evidence does not constitute a defense to this proceeding and was, in fact, offered only to show the circumstances under which the violations occurred.

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

It is ordered, That the respondent, Rainbow Girl Coat Company, Inc., a corporation, and its officers, and the respondents, Arnold Freed and Harold Freed, individually and as officers of said respondent corporation, and said respondents' respective 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 offering for sale, sale, transportation, or distribution in commerce, as "commerce" is defined in the aforesaid Act, of girls' coats or other 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 products by:

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

2. Failing to securely affix or to place on each such product 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 five 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 five 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 non-fibrous 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, distribution or delivering for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939;

3. Failing to separately and distinctly set forth on the required stamp, tag, label, or other means of identification affixed to or placed on any such product, the character and amount of the constituent fibers appearing in the linings thereof which purport to contain, or in any manner are represented as containing wool, reprocessed wool, or reused wool.

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 respondent 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 the order to cease and desist [as required by said declaratory decision and order of August 9, 1952].

Syllabus

IN THE MATTER OF

HARRY C. HAYES DOING BUSINESS AS DELUXE SALES CO. AND DELUXE MANUFACTURING CO.

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

Docket 5750. Complaint, Mar. 15, 1950—Decision, Aug. 18, 1952

There is a preference on the part of dealers and of the purchasing public for dealing with the manufacturer of the products directly, due to their belief that thereby lower prices and other advantages may be obtained.

Where an individual engaged in the interstate sale and distribution of various kinds of push cards and punchboards, which, bearing explanatory legends or space therefor, were designed for and used only in combination with other merchandise in the sale thereof by ultimate purchasers by lot or chance under plans whereby purchasers who, by chance, selected certain specified numbers, received articles at much less than their normal retail prices and others received nothing for their money other than the privilege of a push or punch—

(*a*) Sold and distributed such devices to dealers who packed them with assortments of candy, cigarettes, clocks, razors, cosmetics, clothing, and other articles, following which they were exposed and sold by the retail dealer purchasers by lot or chance; and

Thereby supplied to and placed in the hands of others means of conducting lotteries, games of chance or gift enterprises in the sale or distribution of their merchandise, in contravention of an established public policy of the United States Government; in the violation of which said individual assisted and participated;

With the result that many members of the purchasing public were induced to trade or deal with retailers who thus sold or distributed merchandise; many retailers were induced to deal with suppliers who sold and distributed said assortments; and gambling among members of the public was taught and encouraged, all to their injury; and

(*b*) Represented through use of the trade name "Deluxe Manufacturing Company" that he manufactured the devices and merchandise sold by him; when in fact he purchased said products from the manufacturers;

With effect of misleading and deceiving many persons into the erroneous belief that he was a manufacturer, and into the purchase of his said products in such belief; and with capacity and tendency so to do:

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

Mr. J. W. Brookfield, Jr., 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 Harry C. Hayes, an individual, trading as De Luxe Sales Co. and De Luxe Manufacturing Company, hereinafter referred to as respondent, has violated the provisions of said Act and it appearing to the Commission that a proceeding by it in regard thereto would be in the public interest hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Harry C. Hayes is an individual, trading and doing business as De Luxe Sales Co. and De Luxe Manufacturing Company, with his office and principal place of business located at Blue Earth, Minnesota. Respondent is now and for more than three years last past has been engaged in the sale and distribution of devices commonly known as push cards and punchboards and in the sale and distribution of said devices to dealers in various articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia and to dealers located in the various States of the United States.

Respondent causes and has caused said devices when sold to be transported from his place of business in the State of Minnesota to purchasers thereof at their points of location in the various States of the United States and in the District of Columbia. There is now and has been for more than three years last past a course of trade in such devices by said respondent in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his said business as described in Paragraph One hereof, respondent sells and distributes, and has sold and distributed, to said dealers in merchandise, push cards and punchboards so prepared and arranged as to involve games of chance, gift enterprise or lottery schemes when used in making sales of merchandise to the consuming public. Respondent sells and distributes, and has sold and distributed many kinds of push cards and punchboards, but all of said devices involve the same chance or lottery features when used in connection with the sale or distribution of merchandise and vary only in detail.

Many of said push cards and punchboards have printed on the faces thereof certain legends or instructions that explain the manner in which said devices are to be used or may be used in the sale or distribution of various specified articles of merchandise. The prices of the sales on said push cards and punchboards vary in accordance with the individual device. Each purchaser is entitled to one punch or push from the push card or punchboard, and when a push or punch is made a disc or printed slip is separated from the push card or punchboard and a number is disclosed. The numbers are effectively concealed from the purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified numbers entitle purchasers to designated articles of merchandise. Persons securing lucky or winning numbers receive articles of merchandise without additional cost at prices which are much less than the normal retail price of said articles of merchandise. Persons who do not secure such lucky or winning numbers receive nothing for their money other than the privilege of making a push or punch from said card or board. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Others of said push card and punchboard devices have no instructions or legends thereon but have blank spaces provided therefor. On those push cards and punchboards the purchasers thereof place instructions or legends which have the same import and meaning as the instructions or legends placed by the respondents on said push card and punchboard devices first hereinabove described. The only use to be made of said push card and punchboard devices, and the only manner in which they are used, by the ultimate purchasers thereof, is in combination with other merchandise so as to enable said ultimate purchasers to sell or distribute said other merchandise by means of lot or chance as hereinabove alleged.

PAR. 3. Many persons, firms and corporations who sell and distribute, and have sold and distributed, candy, cigarettes, clocks, razors, cosmetics, clothing, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia and in the various States of the United States, purchase and have purchased respondent's said push card and punchboard devices, and pack and assemble, and have packed and assembled, assortments comprised of various articles of merchandise together with said push cards and punchboard devices. Retail dealers who have purchased said assortments either directly or indirectly have exposed the same to the purchasing public and have sold or distributed said articles of merchandise by means of said push cards and punchboards in accordance with the sales plan as described in Paragraph Two hereof. Because of the element of chance involved in connection with the sale and distribution of said merchandise by means of said push cards and punchboards, many members of the purchasing public have been induced to trade or deal with retail dealers selling or distributing said merchandise by means thereof. As a result thereof many retail dealers have been induced to deal with or trade with manufacturers, wholesale dealers and jobbers who sell and distribute said merchandise together with said devices.

PAR. 4. The sale of merchandise to the purchasing public through the use of, or by means of, such devices in the manner above alleged, involves a game of chance or the sale of a chance to procure articles of merchandise at prices much less than the normal retail price thereof and teaches and encourages gambling among members of the public, all to the injury of the public. The use of said sales plan or methods in the sale of merchandise and the sale of merchandise by and through the use thereof, and by the aid of said sales plan or method is a practice which is contrary to an established public policy of the Government of the United States and in violation of criminal laws, and constitutes unfair acts and practices in said commerce.

The sale or distribution of said push card and punchboard devices by respondent as hereinabove alleged supplies to and places in the hands of others the means of conducting lotteries, games of chance or gift enterprise in the sale or distribution of their merchandise. The respondent thus supplies to, and places in the hands of, said persons, firms and corporations the means of, and instrumentalities for, engaging in unfair acts and practices within the intent and meaning of the Federal Trade Commission Act.

PAR. 5. Through the use of the trade name De Luxe Manufacturing Company, respondent represents that he manufactures the products and merchandise sold by him as aforesaid. In truth and in fact, respondent does not manufacture such push cards, punchboards or other merchandise but purchases the same from others who do manufacture said products.

There is a preference on the part of dealers and the purchasing public for dealing with the manufacturer of products direct, such preference being due to a belief on the part of such dealers and the purchasing public that thereby lower prices and other advantages may be obtained.

PAR. 6. The use as hereinabove set forth of the foregoing false and misleading trade name has had the capacity and tendency to mislead and deceive, and has misled and deceived many persons into the erroneous and mistaken belief that respondent is a manufacturer and because of said mistaken belief have purchased respondent's products.

PAR. 7. The aforesaid acts and practices of respondent as hereinabove alleged are all to the prejudice and injury of the public and constitute unfair 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 15, 1950, issued and subsequently served its complaint in this proceeding upon the respondent, Harry C. Hayes, an individual, charging said respondent with the use of unfair acts and practices in commerce in violation of the provisions of said Act. Respondent filed his answer denying certain of the allegations of said complaint. On May 1, 1950, respondent filed with the Commission a substitute answer to the complaint, admitting all of the material allegations of fact and waiving all intervening procedure, which answer was filed subject to the condition that the Commission would take no action herein until the matter of Superior Products, Inc., Docket No. 5561, was before the Commission for final determination. The Commission having issued its order to cease and desist in the matter of Superior Products, Inc., and having served upon the respondent herein its tentative decision, together with leave to show cause why such tentative decision should not be entered as the final decision of the Commission, and respondent not having appeared in response to the leave to show cause, this proceeding regularly came on for final consideration before the Commission upon the aforesaid complaint and respondent's substitute answer; 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. Harry C. Hayes is an individual trading and doing business as De Luxe Sales Co. and De Luxe Manufacturing Company, with his office and principal place of business located at Blue Earth, Minnesota. Respondent for more than five years last past has been engaged in the sale and distribution of devices commonly known as push cards and punchboards and in the sale and distribution of said devices to dealers in various articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia and to dealers located in the various States of the United States.

Respondent causes said devices, when sold, to be transported from his place of business in the State of Minnesota to purchasers thereof at their points of location in the various States of the United States and in the District of Columbia. There has been for more than five years last past a course of trade in such devices by said respondent in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his said business, respondent sells and distributes to said dealers in merchandise, push cards and punchboards so prepared and arranged as to involve games of chance, gift enterprises or lottery schemes when used in making sales of merchandise to the consuming public. Respondent sells and distributes many kinds of push cards and punchboards, but all of said devices involve the same chance or lottery features when used in connection with the sale or distribution of merchandise and vary only in detail.

Many of said push cards and punchboards have printed on the faces thereof certain legends or instructions that explain the manner in which said devices are to be used or may be used in the sale or distribution of various specified articles of merchandise. The prices of the sales on said push cards and punchboards vary in accordance with the individual device. Each purchaser is entitled to one punch or push from the push card or punchboard, and when a push or punch is made a disc or printed slip is separated from the push card or punchboard and a number is disclosed. The numbers are effectively concealed from the purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified numbers entitle purchasers to designated articles of merchandise. Persons securing lucky or winning numbers receive articles of merchandise without additional cost at prices which are much less than the normal retail price of said articles of merchandise. Persons who do not secure such lucky or winning numbers receive nothing for their money other than the privilege of making a push or punch from said card or board. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Others of said push card and punchboard devices have no instructions or legends thereon but have blank spaces provided therefor. On those push cards and punchboards the purchasers thereof place instructions or legends which have the same import and meaning as the instructions or legends placed by the respondent on said push cards and punchboard devices first hereinabove described. The only use to be made of said push card and punchboard devices, and the only manner in which they are used, by the ultimate purchasers thereof, is in combination with other merchandise so as to enable said ultimate purchasers to sell or distribute said other merchandise by means of lot or chance.

PAR. 3. Many persons, firms and corporations who sell and distribute candy, cigarettes, clocks, razors, cosmetics, clothing, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia and in the various States of the United States, purchase respondent's said push card and punchboard devices, and pack and assemble assortments comprised of various articles of merchandise together with said push cards and punchboard devices. Retail dealers who have purchased said assortments either directly or indirectly have exposed the same to the purchasing public and have sold or distributed said articles of merchandise by means of said punch cards and punchboards by lot or chance. Because of the element of chance involved in connection with the sale and distribution of said merchandise by means of said push cards and punchboards, many members of the purchasing public have been induced to trade or deal with retail dealers selling or distributing said merchandise by means thereof. As a result thereof many retail dealers have been induced to deal with or trade with manufacturers, wholesale dealers and jobbers who sell and distribute said merchandise together with said devices.

PAR. 4. The sale of merchandise to the purchasing public through the use of such devices in the manner above described involves a game of chance or the sale of a chance to procure articles of merchandise at prices much less than the normal retail price thereof and teaches and encourages gambling among members of the public, all to the injury of the public.

The sale or distribution of said push card and punchboard devices by respondent as hereinabove found supplies to and places in the hands of others the means of conducting lotteries, games of chance or gift enterprises in the sale or distribution of their merchandise. The sale of merchandise by and through the use of a game of chance, gift enterprise or lottery scheme is a practice which is in contravention of an established public policy of the Government of the United States, and this respondent through the supplying of such means of selling merchandise has assisted and participated in the violation of said policy.

PAR. 5. Through the use of the trade name De Luxe Manufacturing Company, respondent represented that he manufactured the products and merchandise sold by him as aforesaid. In truth and in fact, respondent does not manufacture such push cards, punchboards or other merchandise but purchases the same from others who do manufacture said products.

There is a preference on the part of dealers and the purchasing public for dealing with the manufacturer of products direct, such preference being due to a belief on the part of such dealers and the purchasing public that thereby lower prices and other advantages may be obtained.

PAR. 6. The use as hereinabove set forth of the foregoing false and misleading trade name has had the capacity and tendency to mislead and deceive, and has misled and deceived, many persons into the erroneous and mistaken belief that respondent is a manufacturer, and because of said mistaken belief a substantial number of such persons have purchased respondent's products.

CONCLUSION

The acts and practices of the respondent as herein found are all to the prejudice and injury of the public and constitute unfair 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 respondent's answer admitting all of the material allegations of fact therein and waiving all intervening procedure, 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, Harry C. Hayes, individually, trading under the name De Luxe Sales Co. or De Luxe Manufacturing Company or trading under any other name, and his agents, representatives and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Selling or distributing in commerce, as "commerce" is defined in the Federal Trade Commission Act, push cards, punchboards, or other lottery devices which are to be used or which, due to their design, are suitable for use in the sale or distribution of merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

It is further ordered, That said respondent 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 push cards, punchboards or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using the word "manufacturing" or any other word or words of similar import or meaning in respondent's trade name; or otherwise representing, directly or by implication, that respondent manufactures the merchandise sold by him.

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

Syllabus

IN THE MATTER OF

LOUIS RAFANELO TRADING AND DOING BUSINESS AS BRADFORD SPORTSWEAR COMPANY

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

Docket 5948. Complaint, Jan. 24, 1952—Decision, Aug. 19, 1952

Products made from wool, a highly desirable material for sweaters, have for many years held, and still hold, great public esteem and confidence because of their outstanding qualities.

Articles of wearing apparel made from rayon fibers so manufactured as to simulate wool in texture and appearance, have the appearance and feel of wool and cannot be distinguished by many members of the purchasing public, so that rayon articles of wearing apparel are readily accepted by some as wool.

Where an individual engaged in the manufacture and interstate sale and distribution of sweaters which, composed of brushed rayon, simulated wool in texture and appearance—

(*a*) Falsely represented through the labeling on the boxes containing his sweaters that they were hand-tailored; when in fact they were machine-made;

(*b*) Sold and distributed said sweaters without informing the purchasing public of the fact that they were made of rayon and not wool; and,

(*c*) Sold and distributed said sweaters which he thus represented and impliedly warranted as suitable and safe for wearing, without revealing on the garments or otherwise that they were highly inflammable by reason of the length of the fibers on the brushed-up surface of the fabric, and were unsafe to wear;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public in the aforesaid respects and thereby into the purchase of substantial quantities of said sweaters: and with result of placing in the hands of retailers a means whereby members of the purchasing public might be misled and deceived as above set forth:

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. Abner E. Lipscomb*, hearing examiner.
Mr. Joseph Callaway for the Commission.
Mr. Benedetto A. Cerilli, of Providence, R. I., for respondent.

COMPLAINT [1]

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that Louis Rafaneli, an individual trading and doing business as Bradford Sportswear Company, 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. The respondent Louis Rafaneli is an individual trading and doing business as Bradford Sportswear Company with his office and principal place of business located at 1100 Westminster Street, Providence, Rhode Island.

PAR. 2. The respondent is now, and for more than two years last past has been, engaged in the manufacture, sale and distribution of articles of wearing apparel including sweaters which are composed of rayon. Respondent causes his products when sold to be transported

[1] The complaint is published as amended by an order dated May 6, 1952, which, after placing the case on the Commission's own docket for review, amended the complaint, vacated and set aside the initial decision of the hearing examiner, and remanded the case, as follows:

Service of the initial decision of the hearing examiner in this proceeding having been completed on February 25, 1952, and the Commission having, on March 25, 1952, extended until further order of the Commission the date on which said initial decision would otherwise become the decision of the Commission; and

Counsel supporting the complaint having filed on March 12, 1952, a motion requesting that the Commission place this case on its own docket for review and thereafter amend the complaint and the initial decision of the hearing examiner in the respects set forth in said motion, and counsel for the respondent having interposed no objections to the granting of said motion and having agreed that the answer to the complaint, heretofore filed shall be considered as respondent's answer to the complaint as amended, if said motion is granted; and

It appearing that the complaint herein does not adequately allege the reason or reasons why the garments manufactured and sold by the respondent are highly inflammable, and that, therefore, the initial decision of the hearing examiner, which is based upon said complaint and answer of the respondent admitting all of the material allegations of fact, does not constitute an appropriate disposition of this proceeding; and

The Commission being of the opinion that the complaint herein should be amended and that the initial decision of the hearing examiner should be vacated and set aside, rather than amended as requested by counsel supporting the complaint, and that the case should be remanded to the hearing examiner for further proceedings in conformity with the Commission's Rules of Practice:

It is ordered, In conformity with the provisions of Rule XXII of the Commission's Rules of Practice, that this case be, and it hereby is, placed on the Commission's own docket for review.

It is further ordered, That the complaint herein be, and it hereby is, amended by striking the second sentence of Paragraph Seven of said complaint and inserting in lieu thereof the following allegations:

In truth and in fact the said sweaters, made of brushed rayon, are highly inflammable because of the length of the fibers on the brushed-up surface of this particular material.

It is further ordered, That the initial decision of the hearing examiner heretofore filed in this proceeding be, and it hereby is, vacated and set aside.

It is further ordered, That this case be, and it hereby is, remanded to the hearing examiner for further proceedings in conformity with the Commission's Rules of Practice.

from his place of business in the State of Rhode Island to the purchasers thereof located in the various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Rayon is a chemical fiber which may be manufactured so as to simulate wool and other natural fibers in texture and appearance. Articles of wearing apparel manufactured from such rayon fibers have the appearance and feel of wool and many members of the purchasing public are unable to distinguish between such rayon articles of wearing apparel and articles of wearing apparel manufactured from wool. Consequently, such rayon articles of wearing apparel are readily accepted by some of the purchasing public as wool products.

PAR. 4. The sweaters so manufactured are sold and distributed by respondent under the brand name "Embassy" and simulate wool in texture and appearance. In the course and conduct of his said business respondent sells and distributes the sweaters in boxes labeled as follows:

Standard of Excellence

(picture of the face of a puma)

Embassy Sportswear

For Town and Country—Hand Tailored

PAR. 5. By the aforesaid labeling, respondent has represented that said sweaters are hand tailored. In truth and in fact, they are not hand tailored but are machine made.

PAR. 6. Products manufactured from wool have for many years held, and still hold, great public esteem and confidence because of their outstanding qualities. Wool is a highly desirable material for sweaters.

Respondent sells and distributes said sweaters as aforesaid without informing the purchasing public of the fact that the sweaters which resemble wool in texture and appearance are made of rayon and not of wool.

PAR. 7. By the labeling of said sweaters and by selling and distributing them as aforesaid, respondent has represented and impliedly warranted that they are suitable and safe to be worn as sweaters are ordinarily worn. In truth and in fact the said sweaters, made of brushed rayon, are highly inflammable because of the length of the fibers on the brushed-up surface of this particular material. Sweaters made from such material are dangerous and unsafe to be worn as articles of clothing because of their inflammability. At no place on the sweaters themselves, on the containers in which they are packaged or otherwise is the fact revealed that said sweaters are highly inflammable and dangerous and unsafe to wear.

PAR. 8. The practice of respondent, as aforesaid, of representing that said sweaters are hand tailored, failing to reveal that said sweaters are made of rayon and failing to reveal that they are made of a highly inflammable material unsafe to be worn as an article of clothing, 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 sweaters are made by tailors by hand, are made of wool and are suitable and safe to be worn as sweaters are ordinarily worn, and into the purchase of substantial quantities of said sweaters because of such erroneous and mistaken belief. Furthermore, respondent's said practices place in the hands of retailers of respondents's sweaters a means and instrumentality whereby members of the purchasing public may be misled and deceived in the manner aforesaid.

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 August 19, 1952, the initial decision in the instant matter of hearing examiner Abner E. Lipscomb, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 24, 1952, issued and subsequently served its complaint in this proceeding upon the respondent, Louis Rafanelo, incorrectly spelled in the complaint as Louis Rafaneli, an individual trading and doing business as Bradford Sportswear Company, charging him with the use of unfair and deceptive acts and practices in commerce, in violation of the provisions of said Act. On February 6, 1952, respondent filed his answer, in which he 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 hearing examiner theretofore duly designated by the Commission upon said complaint and answer thereto, all intervening procedure having been waived, and said hearing examiner, on February 11, 1952, issued his initial decision therein. Thereafter, upon motion of counsel supporting the complaint, the Commission placed this proceeding on its docket for review, amended the complaint, vacated and set aside the initial decision of the hearing examiner theretofore issued, and remanded the case to the hearing examiner for further proceedings upon the amended complaint.

Thereafter, on June 13, 1952, respondent filed his answer to the amended complaint, in which he admitted all the material allegations of fact set forth therein and waived all intervening procedure and further hearing as to said facts. Thereupon the hearing examiner, having duly considered the amended complaint and respondent's answer thereto, as well as the complete record herein, finds that this proceeding is in the interest of the public, and makes the following findings as to the facts, conclusions drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent Louis Rafenelo is an individual trading and doing business as Bradford Sportswear Company, with his office and principal place of business located at 1100 Westminster Street, Providence, Rhode Island.

PAR. 2. The respondent is now, and for more than two years last past has been engaged in the manufacture, sale and distribution of articles of wearing apparel, including sweaters which are composed of rayon. Respondent causes his products, when sold, to be transported from his place of business in the State of Rhode Island to the purchasers thereof located in the various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Rayon is a chemical fiber which may be manufactured so as to simulate wool and other natural fibers in texture and appearance. Articles of wearing apparel manufactured from such rayon fibers have the appearance and feel of wool and many members of the purchasing public are unable to distinguish between such rayon articles of wearing apparel and articles of wearing apparel manufactured from wool. Consequently, such rayon articles of wearing apparel are readily accepted by some of the purchasing public as wool products.

PAR. 4. The sweaters so manufactured are sold and distributed by respondent under the brand name "Embassy" and simulate wool in texture and appearance. In the course and conduct of his said business respondent sells and distributes the sweaters in boxes labeled as follows:

Standard of Excellence
(picture of the face of a puma)
Embassy Sportswear
For Town and Country—Hand Tailored.

PAR. 5. By the aforesaid labeling, respondent has represented that said sweaters are hand tailored. In truth and in fact, they are not hand tailored but are machine made.

PAR. 6. Products manufactured from wool have for many years held, and still hold, great public esteem and confidence because of their outstanding qualities. Wool is a highly desirable material for sweaters.

Respondent sells and distributes said sweaters as aforesaid without informing the purchasing public of the fact that the sweaters which resemble wool in texture and appearance are made of rayon and not of wool.

PAR. 7. By the labeling of said sweaters and by selling and distributing them as aforesaid, respondent has represented and impliedly warranted that they are suitable and safe to be worn as sweaters are ordinarily worn. In truth and in fact said sweaters are made of a material known as brushed rayon, which, because of the length of the fibers on the brushedup surface, thereof, is highly inflammable. Sweaters made from such material are dangerous and unsafe to be worn as articles of clothing because of their inflammability. At no place on the sweaters themselves, on the containers in which they are packaged or otherwise, is the fact revealed that said sweaters are highly inflammable and dangerous and unsafe to wear.

PAR. 8. The practices of respondent, as hereinbefore found, of representing that said sweaters are hand tailored; of failing to reveal that said sweaters are made of rayon; and of failing to reveal that, because of the length of the fibers on the brushed-up surface of the fabric of which said sweaters are made, such garments are highly inflammable and are unsafe to be worn as an article of clothing, have had, and now have, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said sweaters are made by tailors by hand, are made of wool, and are suitable and safe to be worn as sweaters are ordinarily worn, and into the purchase of substantial quantities of said sweaters because of such erroneous and mistaken belief. Furthermore, respondent's said practices place in the hands of retailers of respondent's sweaters a means and instrumentality whereby members of the purchasing public may be misled and deceived in the manner aforesaid.

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 the respondent Louis Rafanelo, an individual trading and doing business as Bradford Sportswear Company, or under any other name or names, and 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 sweaters or of any other garments made of the material known as brushed rayon or of any similar material, do forthwith cease and desist from:

1. Representing, directly or by implication, that said garments are hand tailored;
2. Offering for sale or selling any garments, composed in whole or in part of rayon, without clearly and affirmatively disclosing thereon, or on tags or labels affixed thereto, such rayon content;
3. Offering for sale or selling garments made of highly inflammable material without clearly and affirmatively disclosing thereon, or on tags or labels affixed thereto, that said garments are highly inflammable and are dangerous and unsafe to be worn as articles of clothing.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondent herein shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist [as required by said declaratory decision and order of August 19, 1952].

IN THE MATTER OF

INTERNATIONAL SALT COMPANY AND EASTERN SALT COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSECS. (a) AND (d) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCTOBER 15, 1914, AS AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 4307. Complaint, June 5, 1943[1]*—Decision, Aug. 22, 1952*

Any appreciable difference in the wholesale or the retail price of table salt of the same brand, grade and quality has a tendency to divert sales.

Where one of the largest salt producers in the United States and its wholly owned subsidiary, engaged in the competitive interstate sale and distribution of their evaporated salt under various trade names including "Sterling", "Columbia", and "Purity", to purchasers competitively engaged with one another in the resale thereof at wholesale, at retail, and at wholesale to retailers competing with certain of said purchasers—

(*a*) Discriminated in price by selling their table salt at lower net prices to purchasers classified as having purchased $50,000 worth in a twelve consecutive month period, irrespective of the source thereof, through the practice of granting such favored purchasers a "unit discount" equal to about 4 to 5 per cent of the published price on each item; and

(*b*) Discriminated in price in their northern sales territory, prior to January 15, 1940, through granting to purchasers who bought in single order quantities of 100 cases or more a unit discount of the same value as that above described, and thereafter through establishing higher posted prices for quantities of less than 100 cases, which made up the amount of the unit discount previously granted on 100 case purchases;

With the result that each of their customers who did not receive the advantage of buying at their lowest prices through the application of their 5 cent per case unit discount, and who were in competition with the customers who received such discriminations, necessarily either resold the salt at a higher price than that of said favored competitors or received a lower gross margin on their sales; and with tendency to cause purchasers who did not receive respondents' lowest net price to resell their salt at higher prices than did purchasers who received respondents' lowest prices;

Effect of which discriminations in price, neither shown as made in good faith to meet an equally low price of a competitor, nor justified by due allowance for differences in cost, etc., under the statute, might be substantially to lessen competition in the line of commerce concerned, and to injure, destroy and prevent competition between purchasers who received the benefit of said discriminatory prices and discounts and those to whom they were denied:

Held, That such acts and practices of respondents in selling their table salt to certain purchasers at lower net prices than to others who competed in its resale, as above set forth, constituted violations of Subsec. (a) of Sec. 2 of the Clayton Act as amended by the Robinson-Patman Act; and—

[1] Second amended.

Where said producer, in selling table salt to certain customers through its "Local Feature Service Agreements", which required the furnishing of certain advertising and display services by the customer and the payment to him of a specified amount by said respondent and which were negotiated individually, depending upon the judgment of respondent's officials, in each case, and involved many different factors, including type and quantity of advertising contemplated, type of store display offered, shelf position, quality, character, personnel, location and cleanliness of store, among others—

(*c*) Entered into such agreements upon an individual basis with each customer, upon the customer's request, as above set forth, without making any effort to inform its other customers, including competitors of those thus favored, of the existence of such agreements, and without making available to them any payments whatever for advertising or display services in lieu of payments made under such agreements:

Held, That such acts and practices of said respondent International in making payments to certain of its customers as compensation for advertising and display services under its "Local Feature Service Agreements", without making such payments available on proportionally equal terms to their competitors, constituted violations of Subsec. (d) of Sec. 2 of the Clayton Act as amended by the Robinson-Patman Act.

As respects respondents' contention that their practice of granting a unit discount to purchasers classified as $50,000 purchasers, while not granting it to competing purchasers of table salt of like grade and quality was justified, since made in good faith to meet equally low prices of competitors;

It appearing that respondents in September 1936, after receiving bulletins of competitors stating that they were granting one unit discount to certain purchasers classified as buying at least $50,000 worth of table salt in a twelve consecutive month period, granted identical discount to the purchasers named in said bulletin and continued the practice until June, 1948, when it was abandoned; that prior to said time, however, they had granted discounts on the basis of the total annual requirements of a purchaser, regardless of from whom they were purchased; that the price differences which resulted from the granting of such discounts to some but not all of respondents' customers were not the consequence of a departure from a nondiscriminatory pricing scale which was made to meet lower prices of competitive sellers, but represented only the continued application of the discriminatory pricing standards previously adopted by them and used since November 1935; and that, despite the fact that the illegal nature of the discount was brought to their attention by the Commission's original complaint in 1940, there was no evidence that they made any attempt to eliminate or lesson the amount of such discrimination until 1948:

The Commission concluded that in such circumstances respondents could not be said to have acted in "good faith" within the meaning of Sec. 2 (b) of the statute involved and, after careful consideration of all the facts, was of the opinion and found, that respondents had not shown their discriminatory prices accorded to recipients of such discounts were lower prices made in good faith to meet an equally low price of a competitor.

With respect to respondents' contention that their discriminatory lower prices on single order purchases of table salt in quantities of 100 cases or more made only due allowance for differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities in which such salt was sold or delivered:

The Commission found that said price discrimination had not been thus justified since, even accepting respondents' attempted cost justification through combining all sales costs in the area concerned and dividing it by the total number of sales, with a resulting figure which would justify sales in single order quantities of 100 cases, with a discount of five cents per case, as compared with the cost of sales in single order quantities of fifty-five cases or less, it appeared that respondents refused to sell salt in quantities which would permit a minimum sale of less than seventy-four cases, and also that the record failed to provide a basis for respondents' basic assumption that the sales cost was the same for all orders.

With respect to respondents' further contention that the $50,000 purchaser discount was similarly justified: the Commission was likewise of the opinion that said price discrimination had not been shown as justified by such costs since the analysis presented by respondents of the cost of selling to A & P as compared with the costs of selling to all other purchasers, regardless of their volumes of purchase, methods of purchasing, or price at which purchased, was incapable of establishing the differences in costs of sales as between their purchasers who received said quantity discount and those who did not, and also because the allocation of certain of the costs in said analysis was made without sufficient record basis.

As respects respondents' contention that they had discontinued the practice of granting a discount to purchasers classified as buying $50,000 worth of table salt in a twelve consecutive month period, as a result of the decision in *Federal Trade Commission* v. *Morton Salt Company*, 334 U. S. 37, in 1948, and that consequently there was no public interest in the issuance of an order prohibiting the practice: it appeared that respondents did not contend that they had abandoned the practice of granting a lower price to purchasers in their northern sales territory who purchased in single order quantities of 100 or more cases; that said practice involved the same amount of price discrimination and had the same effect on competition that had been held illegal; and, such being the case, the Commission was of the opinion that an order was required in the matter to impress upon the respondents the necessity of stopping all of their discriminatory pricing practices.

As regards the "Store Display and Sales Service Agreements" entered into by respondent International at various periods, with retail stores selling its "Sterling" brand of table salt to the consuming public, which called for the payment by it of about ten cents for every case of salt purchased during a specified period by the store in consideration of the store's furnishing certain specified display services in connection with the offer of said salt during said period: it appeared that it was said respondent's policy to enter into such agreements with every retail outlet of its table salt products in the United States, whether purchasing "Sterling" table salt from it directly or indirectly, and that respondent made every reasonable effort to carry out such policy and to make the payments under said plan available on proportionally equal terms to all the retail outlets of its said salt; and the Commission did not find respondent's activities in connection with payments made under such agreements to have been illegal.

Before *Mr. John P. Bramhall*, hearing examiner.

Mr. James I. Rooney for the Commission.

Mr. George S. Ward, of Washington, D. C., and *Putney, Twombly, Hall & Skidmore*, of New York City, for respondents.

AMENDED COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof and hereafter more particularly designated and described, since June 19, 1936, have violated and are now violating the provisions of subsections (a) and (d) of section 2 of the Clayton Act (U. S. C. Title 15, section 13), as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its amended complaint stating its charges with respect thereto as follows:

COUNT I

PARAGRAPH 1. International Salt Company is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, having its principal office and place of business located in the Scranton Life Insurance Company Building, Scranton, Pennsylvania.

Eastern Salt Company is a corporation organized and existing under and by virtue of the laws of the State of Massachusetts, having its principal office and place of business located at 150 Causeway Street, Boston, Massachusetts.

Respondent Eastern Salt Company is a wholly-owned subsidiary of respondent International Salt Company and is under the direct and immediate control of, and its policies are directed by, said respondent International Salt Company.

PAR. 2. Respondent International Salt Company, and its wholly-owned subsidiary, Eastern Salt Company, are now and have been engaged in the business of offering for sale, selling and distributing salt in various States of the United States. The respondent International Salt Company is one of the largest producers and distributors of salt in the United States. The respondent International Salt Company also distributes its product through its wholly-owned subsidiary, respondent Eastern Salt Company. Respondent International Salt Company sells its products directly and through such subsidiary to wholesalers, retailers, corporate wholesale chains, corporate retail chains, voluntary and cooperative chains, and individual commercial purchasers. Respondents International Salt Company and Eastern Salt Company sell and distribute their products in commerce between

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and among the various States of the United States and in the District of Columbia and preliminary to or as a result of such sale cause such products to be shipped and tranported from the places of origin of the shipment to the purchasers thereof who are located in States of the United States and in the District of Columbia other than the State of origin of the shipment, and there is and has been at all times herein mentioned a continuous current of trade in commerce in said products across State lines between respondents' plants, factories, or warehouses and the purchasers of such products. Said products are sold and distributed for use, consumption and resale within the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business, as aforesaid, respondents have been and are now engaged in substantial competition in commerce with other corporations, individuals, partnerships and firms who for many years prior hereto have been and are now engaged in processing, selling, and distributing salt in commerce across State lines to purchasers thereof located in the various States of the United States.

Many of the respondents' customers are competitively engaged with each other and with the customers of the respondents' competitors in the resale of said products within the several trade areas in which the respondents' said customers respectively offer for sale and sell the said products purchased from respondents.

PAR. 4. In the course and conduct of their business, as aforesaid, since June 19, 1936, respondents have been and are now discriminating in price between different purchasers buying such products of like grade and quality by selling their products to some of their customers at higher prices than they sell products of like grade and quality to other of their customers who are competitively engaged one with the other in the resale of said products within the United States.

The respondents have effectuated their discriminations in price heretofore alleged by various and sundry means and methods, among which are the following:

(1) The respondents grant to some of their customers who are competitively engaged in the sale of salt of like grade and quality with other of respondents' customers a "unit discount" amounting to approximately 5¢ per case on table salt where a single order is placed for 100 cases or more of table salt.

(2) The respondents grant to some of their customers who are competitively engaged in the sale of salt of like grade and quality with other of respondents' customers in addition to the "unit discount" referred to in Paragraph (1) hereof, "multiple unit discounts" of various amounts on all grades of salt purchased during a 12 consecu-

tive month period where such purchases are equal to or in excess of $50,000.

The "multiple unit discounts" referred to in Paragraph (2) hereof mentioned are allowed to some, but not all, customers of the respondents who do not purchase from the respondents $50,000 worth of salt during a 12 consecutive month period, provided, however, the total purchases of salt from all sources made by said customer total $50,000 during said given period of time.

In the industry, this type of selling is known as "split business," that is, basing the price upon the total requirements of a customer and not upon the actual quantity purchased from any particular source.

In addition to the discriminations effected by the aforementioned "multiple unit discounts" respondents discriminate in price between different purchasers of their products and such price discriminations result from the respondents' selling salt to an individual customer where the delivery thereof is made to several branches or outlets of said individual customer at prices based upon the total quantity or volume delivered to all of the separate branches or outlets of the said customer, provided such total quantity or volume amounts to the required minimums during the 12 consecutive month period as set forth in Paragraph (2) hereinbefore mentioned and not upon the quantity or volume delivered by the respondents to the respective branches or outlets of some individual customers.

In the industry, this type of selling is known as "combined selling," that is, basing the price upon the total quantity delivered to all the separate branches or outlets of an individual customer and not upon the quantity delivered to the respective branches or outlets of said customer. Some customers of the respondents operating several branches whose combined purchases are less than the total quantity or volume amounts required during the 12 consecutive month period as set forth in Paragraph (2) hereinbefore mentioned receive "multiple unit discount" in addition to the "unit discounts" as set forth in Paragraph (1) hereof and are competitively engaged with other of respondents' customers who purchase in like quantity or volume and who receive no discounts whatsoever.

PAR. 5. The effect of the discriminations in price generally alleged and of those specifically set forth in Paragraph Four hereof has been and may be substantially to lessen competition in the line of commerce in which the purchasers receiving the benefits of such discriminatory prices are engaged and to injure, destroy and prevent competition between those purchasers receiving the benefit of said discriminatory prices and those to whom they are denied and has been and may be to tend to create a monopoly in those purchasers receiving the benefit of said discriminatory prices in said line of commerce in the various localities or trade areas in the United States in which said favored customers and their competitors are engaged in business.

PAR. 6. The foregoing acts and practices of said respondents are violations of subsection 2 (a) of section 1 of said Act of Congress, approved June 19, 1936, entitled "An Act to amend Section 2 of an Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes' approved October 15, 1914, as amended (U. S. C. Title 15, Sec. 13) and for other purposes."

COUNT II

PARAGRAPH 1. Paragraphs One, Two, and Three of Count I are hereby adopted and made part of this count as fully as if herein set out verbatim.

PAR. 2. In the course and conduct of their business in commerce, respondents, since June 19, 1936, have secretly given free salt products or paid and contracted to pay to some of their customers certain definite sums of money as compensation and in consideration for advertising, display, and distribution services, and facilities furnished by such customers in connection with the sale and offering for sale of table salt, while concealing such gifts and payments from competing customers and not making such gifts and payments available on proportionally equal terms or on any terms to customers competing in the distribution of salt. Such gifts and payments are in addition to the price discriminations referred to in Count I.

Among the general practices thus pursued by the respondents in granting allowances or compensation to their favored customers, as alleged in Count II hereof, are the following:

(1) The respondents have paid to some favored customers the sum of $50 per month as an advertising and display allowance while respondents did not and do not make such payments available on proportionally equal terms to all competing customers or on any terms to customers competing in the sale and distribution of such products.

(2) The respondents have paid compensation to some retail chain store customers in connection with the sale of respondents' table salt, the sum of $2.50 for each display of "2 pound round cans of plain or iodized Sterling Salt in quantities between 10 and 15 cases in each" of such customer's retail outlets. The respondents have not and do not make such display allowances available on proportionally equal terms to all competing customers or on any terms to customers competing in the sale and distribution of such products.

PAR. 3. The respondents have not made known to their customers, except their favored customers that they grant and allow any compensation or free salt products for advertising, display, and distribution services.

PAR. 4. The above acts and practices of respondents are in violation of subsection (d) of section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. Title 15, Section 13).

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions 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), and by virtue of the authority vested in the Federal Trade Commission by the aforesaid Act, the Federal Trade Commission, on September 9, 1940, issued and subsequently served its original complaint in this proceeding upon the respondents named in the caption hereof, together with two other named corporations, charging each of them with violation of the provisions of subsection (a) of section 2 of the aforesaid Clayton Act, as amended. On April 2, 1942, the Commission issued and subsequently served its first amended complaint charging the same respondents as named in the original complaint with violation of the provisions of subsections (a) and (d) of section 2 of the aforesaid Clayton Act, as amended. After the issuance of the first amended complaint and the filing of respondents' answers thereto, testimony and other evidence in support of the allegations of said complaint were taken before a hearing examiner of the Commission duly designated by it. Thereafter, on June 5, 1943, the Commission issued and subsequently served its second amended complaint upon the respondents named in the caption hereof, charging each of them with violation of the provisions of subsections (a) and (d) of section 2 of the aforesaid Clayton Act, as amended. After the filing of respondents' answers to the second amended complaint, testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before the hearing examiner of the Commission previously designated by it. All of the testimony and other evidence introduced before said hearing examiner 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 second amended complaint, the answers thereto, testimony and other evidence, the recommended decision of the hearing examiner and respondents' exceptions thereto, and briefs and oral argument of counsel; and the Commission, having duly considered the matter and having entered its order disposing of the exceptions to the hearing examiner's recommended decision and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent International Salt Company is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its office and principal place of business in the Scranton Life Insurance Building, Scranton, Pennsylvania.

Respondent Eastern Salt Company is a corporation organized and existing under and by virtue of the laws of the State of Massachusetts, with its office and principal place of business at 150 Causeway Street, Boston, Massachusetts. Respondent Eastern Salt Company is a wholly owned subsidiary of respondent International Salt Company by whom its sales policies, at all times material herein, have been controlled and directed.

PAR. 2. Respondent International Salt Company, one of the largest salt producers in the United States, has been engaged in the manufacture, sale and distribution of salt, including table salt, since April 1, 1940. Prior to that date said business was carried on by this respondent's wholly owned subsidiaries. Respondent International Salt Company and its said subsidiaries have sold their salt products in the eastern and southern States of the United States.

Since prior to June 19, 1936, respondent Eastern Salt Company has been engaged in the sale and distribution of salt products, including table salt, purchased largely from its parent corporation, respondent International Salt Company. Its sales territory is limited to the States of New Hampshire and Massachusetts.

Respondents transport or cause said salt products, when sold, to be transported to the purchasers thereof at their respective locations in States other than the States in which the shipments originate.

Respondents maintain, and during the periods of time they have been engaged in the business of selling and distributing salt, as aforesaid, they have maintained, a course of trade in said products in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of their business as aforesaid, respondents are now, and during the periods of time they have been engaged in the business of selling and distributing salt as aforesaid, they have been, in substantial competition with other corporations engaged in the business of selling and distributing salt in commerce among and between the various States of the United States.

PAR. 4. Respondent International Salt Company packages evaporated table salt under various trade names, including "Sterling," "Columbia" and "Purity." All of the evaporated table salt sold under each of said brand names is of like grade and quality.

PAR. 5. Respondent Eastern Salt Company since September 15, 1936, and respondent International Salt Company since April 1, 1940, in the course and conduct of their respective businesses as above described, have both discriminated in price between their respective purchasers buying table salt of like grade and quality by selling said table salt to some of their purchasers at higher prices than they sold their products of like grade and quality to other of their purchasers. Certain of said other purchasers were competitively engaged with certain of said favored purchasers in the resale of said table salt at wholesale. Others were competitively engaged with certain of said favored purchasers in the resale of said table salt at retail. Others sold said table salt at wholesale to retailers who were engaged in competition with certain of said favored purchasers in the resale of said table salt to the consuming public.

PAR. 6. The general practices pursued by respondents in so discriminating in price have consisted of (1) selling at lower net prices to purchasers classified as having purchased $50,000 worth of table salt in a twelve consecutive month period, and (2) selling at lower net prices to purchasers buying carton table salt in single order quantities of 100 cases or more.

The first of these pricing practices was engaged in by respondent Eastern Salt Company from September 17, 1936, until June 1948 and by respondent International Salt Company from April 1, 1940, until June 1948. The second of these pricing practices has been engaged in by respondent Eastern Salt Company at all times since September 15, 1936, and by respondent International Salt Company at all times since April 1, 1940. Prior to April 1, 1940, respondent International Salt Company was not actively engaged in the sale of salt products, these activities having then been carried on by its wholly owned subsidiaries, including International Salt Company, Inc., which engaged in the above referred to pricing practices from September 17, 1936, until it was dissolved on April 1, 1940.

Respondents discriminated in price during said periods of time in favor of their purchasers classified as having purchased $50,000 or more of table salt in a twelve consecutive month period by granting to each of them a price discount called a "unit discount." A "unit discount" consisted of a specified amount in cents per case of table salt, which amount varied from item to item but which equalled approximately 4 to 5 percent of the published price on each item. The purchasers receiving the discount were accounts which had purchased $50,000 worth of table salt in a twelve consecutive month period from all sources. This classification was not restricted to those accounts which had purchased table salt in this quantity from respondents alone.

The discrimination in price in favor of purchasers buying in single order quantities of 100 cases or more was made from September 15, 1936, until January 15, 1940, by granting to such purchasers one "unit discount." This unit discount was of the same value as the unit discount previously described. Since January 15, 1940, this discrimination has been made by establishing higher published prices for quantities of less than 100 cases. The difference in price between orders of 100 cases or more and those for lesser quantities, in effect since January 15, 1940, has been equal in amount to the unit discount previously granted on purchases of 100 cases or more. This pricing practice has at all times been limited to respondents' northern sales territory which consists of the New England States, Ohio, New York, New Jersey, Pennsylvania, Delaware, Maryland, the District of Columbia and two counties in Virginia. In the southern sales territory, sales have been regularly made at prices equal to the 100 cases quantity price in the northern sales territory regardless of the quantity purchased.

PAR. 7. Respondent Eastern Salt Company has granted the unit discount for purchasers classified as buying $50,000 or more of table salt in a consecutive twelve month period to only one of its purchasers, First National Stores, Inc., of Somerville, Massachusetts. This corporation, which operates approximately 1800 retail grocery stores in the New England area, purchased in carload quantities and, therefore, received this respondent's lowest net price. For example, in April 1942, this respondent sold to First National Stores, Inc., "Sterling" brand table salt in one and one-half pound cartons at a net delivered price of $1.03 per case and "Purity" brand table sale in one and one-half pound cartons at a net delivered price of ninety-three cents per case. These prices were one unit discount of five cents per case lower than the lowest price at which this respondent sold the same brand of salt in the same cartons to its other purchasers. These other purchasers included smaller retail chain stores which were in direct competition with First National Stores, Inc., in the resale of said brands of table salt to the consuming public. These other purchasers also included wholesalers whose retail customers were in competition with First National Stores, Inc., in the resale of said brands of table salt to the consuming public.

PAR. 8. Respondent International Salt Company has granted the unit discount to purchasers classified as buying $50,000 or more of table salt in a consecutive twelve month period to certain chain retail grocery stores, wholesalers and cooperative wholesale buying organizations through which affiliated members, wholesale and retail, purchase grocery products. The favored chain retail grocery purchasers were The Great Atlantic & Pacific Tea Company, Sanitary Grocery Co., Inc. (Safeway Stores, Inc.), American Stores, Inc., Kroger Grocery and Baking Company, Dixie Home Stores, First National Stores, Inc., Creasy Corporation, and Colonial Stores, Inc. The favored wholesale purchasers were the Thomas & Howard Company and C. D. Kenny Co. The favored cooperative wholesale buying organizations were the National Retailer-Owned Groceries, Inc., and the Wholesale Grocery Sales Company.

As a result of the discount allowed the above-named purchasers on the $50,000 purchase basis, the prices paid by said purchasers to respondent International Salt Company on their purchases of table salt in quantities of 100 cases or more has been one unit discount less than the lowest price available to any of this respondent's other customers in the same competitive area. For example, in 1942, this respondent sold to The Great Atlantic & Pacific Tea Company "Sterling" brand table salt in one and one-half pound cartons at a net delivered price of $1.03 per case, while the lowest price at which it sold the same brand of table salt in one and one-half pound cartons to purchasers other than those above named was $1.08 per case. Certain of said other purchasers were in competition with one or more of said favored purchasers in the resale of said respondent's table salt of the same brand, grade and quality at wholesale. Others were in competition with one or more of said favored chain retail grocery purchasers in its resale at retail to the consuming public. And others sold at wholesale to retail grocers who were in competition with one or more of said favored chain retail grocery purchasers in the resale of said table salt to the consuming public.

The record shows that many of the above-named purchasers who received the $50,000 purchaser discount on their purchases of table salt did not purchase in that quantity from either of the respondents herein during any consecutive twelve month period. For example, the dollar purchases of table salt from respondents of the following listed purchasers, each of whom received said discount in 1940 and 1941, totaled as follows:

	1940	1941
Wholesale Grocery Sales Company	$18,714	$14,479
C. D. Kenny Co.	2,947	1,670
Creasy Corporation	9	490
American Stores, Inc.	1,290	1,631
Sanitary Grocery Co., Inc. (Safeway Stores, Inc.)	11,909	11,878
National Retailer-Owned Groceries, Inc.	22,900	29,160

PAR. 9. The Commission finds that the price differences allowed by respondents in the sale of their table salt of the same brand, including the price differential on purchases of 100 cases or more and the unit discount allowed to the accounts classified as $50,000 purchasers, constituted discriminations in price between purchasers of commodities of like grade and quality.

Each of respondents' customers not receiving the advantage of buying at respondents' lowest prices, who were in competition in the resale of said table salt at retail or at wholesale with respondents' customers receiving the benefit of said discriminations in price, necessarily either resold its table salt at a higher price than said favored competitors or received a lower gross margin on its sales of said salt.

PAR. 10. As an example of the competitive pricing situation in the retail field among purchasers buying table salt from respondents at different prices, the record shows that The Great Atlantic & Pacific Tea Company and Thomas Roulston, Inc., sold respondents' table salt through their chain retail grocery stores in the Long Island-Brooklyn, New York, area in competition with each other. Both purchased and resold respondents' "Sterling" brand one and one-half pound cartons of table salt. During 1940 and 1941, the former bought said salt from respondent International Salt Company at its lowest net price of $1.03 per case of thirty-six cartons and resold it through its self-service stores in this area at three cartons for ten cents and through its regular stores at two cartons for nine cents. During the same period of time the latter, which was not classified as a $50,000 purchaser, purchased said salt from said respondent at $1.08 per case and resold it through its stores at five cents per carton, except for short intervals in which it received advertising allowances from said respondent, during which intervals it lowered its resale price to four and one-half cents per carton.

If Thomas Roulston, Inc., had met the A & P self-service stores' price of three cartons for ten cents, the five cent price discrimination would have allowed A & P a gross margin on its sales of table salt 41 percent larger than the margin of Thomas Roulston, Inc., on its sales of salt of the same brand.

PAR. 11. As an example of the competitive pricing situation in the wholesale field by purchasers buying from respondents at different prices, Talmadge Bros., Inc., of Athens, Georgia, not classified as a $50,000 purchaser, during 1941 and 1942 purchased from respondent International Salt Company "Sterling" brand table salt in one and one-half pound cartons at $1.08 per case of thirty-six cartons, which it resold to retailers at $1.25 per case. Talmadge Bros., Inc., was at that time in competition with the Timberlake Grocery Company, a member of the Thomas & Howard Company group which was classified as a $50,000 purchaser, which company purchased the same item from said respondent at a net price of $1.03 per case and resold it to retailers at $1.20 per case during this same period.

Both of these companies, therefore, received an identical gross margin of seventeen cents per case. If Talmadge Bros., Inc., had met the Timberlake Grocery Company's price of $1.20 per case, the five cent price discrimination would have allowed the Timberlake Grocery Company a 41 percent larger gross margin on its sales of said table salt than that of Talmadge Bros., Inc., on its sales of salt of the same brand.

PAR. 12. In a similar manner each retailer who purchased respondents' table salt from one of respondents' wholesale purchasers not receiving the lowest price was necessarily placed at a disadvantage in its attempts to sell said table salt in competition with respondents' retail purchasers receiving the lowest price. Said retailer either sold said table salt at a higher price than said favored retail competitors or the gross margin between its wholesaler's purchase price and its resale price to the consuming public was less than the gross margin of said favored retail competitors'.

For example, The Great Atlantic & Pacific Tea Company in 1941 purchased one and one-half pound "Sterling" cartons of table salt from respondent International Salt Company at its lowest net price of $1.03 per case of thirty-six cartons. In the New York City area A & P resold these cartons of salt through its self-service super markets at three cartons for ten cents. This equalled $1.20 per case and allowed A & P a gross margin of seventeen cents per case. During the same period of time, respondents' wholesale purchasers in this area who did not receive the discount for $50,000 purchasers paid $1.13 per case for the same salt on orders under 100 cases, or paid $1.08 per case on larger orders. To have met A & P's price of three cartons for ten cents, which gave A & P a gross margin of seventeen cents per case, the gross margin of the non-favored wholesale purchaser and that of his retail customer combined would be reduced to either twelve cents or seven cents per case depending upon the quantity purchased in each order. Thus, the five cent per case price discrimination would have allowed A & P a 41 percent larger gross margin and the ten cent per case price discrimination would have allowed A & P a 142 percent larger gross margin than would have been received by competing retailers and the wholesaler combined on said table salt sold to the consuming public at the same price as A & P.

PAR. 13. The Commission finds that because of the narrow margin between the purchase price and the resale price of respondents' table salt retained by respondents' wholesale and retail purchasers who buy at respondents' lowest prices, a price difference equivalent to one unit discount (difference between $1.03 and $1.08 per case of thirty-six cartons of one and one-half pound "Sterling" brand table salt) constituted a substantial difference in the price of respondents' table salt of the same brand, grade and quality. The purchase price of respondents' table salt was an important factor considered by respondents' purchasers in determining their respective resale prices of said table salt. Respondents' discriminations in price, therefore, had a tendency to cause respondents' purchasers not receiving respondents' lowest net price, both wholesalers and retailers, to resell respondents' table salt of the same brand, grade and quality at higher prices than those at which those purchasers receiving respondents' lowest prices resold at wholesale and retail.

Any appreciable difference in the wholesale or the retail price of table salt of the same brand, grade and quality has a tendency to divert sales. The Commission, therefore, finds that the effect of respondents' discriminations in price (i. e., the unit discount for accounts classified as $50,000 purchasers and the unit discount or lower prices for purchasers buying in single order quantities of 100 cases or more) may be substantially to lessen competition in the line of commerce in which the purchaser receiving the benefit of said discriminatory prices is engaged and to injure, destroy and prevent competition between those purchasers receiving the benefit of said discriminatory prices and discounts and those to whom they are denied.

Par. 14. Respondents contend that their practice of granting a unit discount to purchasers classified as $50,000 purchasers while not granting it to competing purchasers of table salt of like grade and quality was legally justified, as this discount was made in good faith to meet equally low prices of competitors. The record shows that prior to the time on which respondent International Salt Company assumed direct operation of the sale of its salt products, its wholly owned operating subsidiary, International Salt Company, Inc., granted annual quantity discounts to certain of its purchasers. As early as November 29, 1935, it allowed two unit discounts to those of its customers in the Louisiana field whose purchases of salt for resale equalled $250,000 or more per year, regardless of the company from which such salt was purchased. Also, in the New York field, from prior to May 11, 1936, until at least July 24, 1936, this subsidiary granted a 3 percent discount to buyers who had purchased $150,000 worth of salt during the calendar year. On September 17, 1936, having received bulletins of competitors stating they were granting one unit discount to certain purchasers classified as buying at least $50,000 worth of table salt in a twelve consecutive month period, said subsidiary and respondent Eastern Salt Company adopted the same practice and granted an identical discount to the purchasers named by their competitors' bulletins. The practice of granting this discount was continued without change until June 1948, at which time it was abandoned. Thus, while respondents on September 17, 1936, apparently altered the amount of and the requirements for receiving this quantity discount to conform with what they understood to be the pricing practices of their competitors, this fact is of no particular importance, since the practice of granting discounts on the basis of the total annual requirements of a purchaser regardless of from whom they were purchased was employed by respondents or their wholly owned subsidiaries prior to that date. Contrary to respondents' contention, the price differences resulting from the granting of these discounts to some but not all of the respondents' competing customers were not the consequence of departures from a non-discriminatory pricing scale which were made to meet lower prices of competitive sellers, but represented only the continued application of the discriminatory pricing standard previously adopted by respondents and used by them since November 1935. Moreover, despite the fact that the illegal nature of this discount was brought to the attention of respondents by the Commission's complaint in 1940, there is no evidence that respondents made any attempt to eliminate or lessen the amount of this discrimination until 1948. Respondents, in such circumstances, cannot be said to have acted "in good faith" within the meaning of section 2 (b) of the statute.

After careful consideration of all of the facts, the Commission is of the opinion, and finds, that respondents have not shown that their discriminatory prices accorded the recipients of this discount were lower prices made in good faith to meet an equally low price of a competitor.

Par. 15. Respondents further contend that both the $50,000 purchaser discount and the lower price on single order purchases of table salt in quantities of 100 cases or more made only due allowance for differences in the cost of manufacture, sale, or delivery of said salt resulting from the differing methods or quantities in which such salt were sold or delivered.

In connection with their attempts to show a cost justification for the differences in price between single order purchases of 100 cases of carton table salt and purchases in smaller quantities, respondents have not attempted to show any difference between the cost of handling a large order and that of handling a small order. They have instead combined all sales costs in the area in which this price discrimination was in effect during the period January 1, 1944, through July 31, 1944, and divided it by the total number of sales made in this area during the same period. In this manner they secured the figure of $5.62 which is considered by respondents to be the cost of making one sale regardless of size and regardless of who the purchaser may be. Under this theory, the sale of 100 cases in two orders would cost two times as much as selling the same quantity in one order. Under this theory, also, sales in single order quantities of 100 cases would result in a saving of five cents per case or more as compared with the cost of sales in single order quantities of fifty-five cases or less. Thus, under respondents' own theory, a five cent per case higher price would be fully cost justified only on purchases of fifty-five cases or less. Even assuming it would be proper for respondents to maintain this price difference if their sales in single order quantities under 100 cases averaged fifty-five cases or less per order, the record shows that this is not the fact. Since August 27, 1941, and during the period of time and in the sales area covered by this cost study, respondents refused to sell table salt in quantities of less than two tons which equalled a minimum sale of seventy-four cases of "Sterling" thirty-six one and one-half pound cartons of table salt. Respondents' average sale of table salt in lots of less than 100 cases, therefore, must have been in excess of this minimum. Thus, respondents' attempted justification by comparing the cost of selling in 100 case quantities with the cost of selling in fifty-five or less case quantities is not adequate to justify respondents' actual discriminatory pricing practices. Furthermore, inasmuch as the record does not provide a basis supporting respondents' basic assumption that the sales cost is the same for all orders, respondents' comparative analysis of their cost of selling in 100 case quantities or less is not supported by the evidence.

As evidence of cost justification of the differences in price resulting from granting a unit discount to those customers classified as $50,000 purchasers, respondents have presented an analysis of the cost of selling table salt in 1942 to The Great Atlantic & Pacific Tea Company as compared with the cost of selling table salt to all of their other purchasers combined. By combining the costs of selling to all purchasers other than A & P regardless of the customers' volumes of purchases, methods of purchasing or whether purchasing at respondents' highest or lowest price, respondents have made an analysis which is incapable of establishing the differences in costs of sales as between respondents' purchasers who received this quantity discount and those who did not. Furthermore, the allocation of certain of the costs in said analysis was made without sufficient record basis. For example, the allocation of merchandising expenses was made on the assumption that the cost of each call by a salesman was of equal duration regardless of the purchaser. There is no record basis for such an assumption. Also, respondents' contention that the comparative cost of selling each of their purchasers receiving their lowest prices was the same as that of selling A & P is not established by this record.

The Commission finds, therefore, that respondents' price discriminations consisting of their discounts to accounts classified as $50,000 purchasers of table salt and their lower net prices to purchasers buying in single order quantities of 100 cases or more of table salt have not been shown to have been justified by reason of differences in the cost of manufacture, sale or delivery resulting from differing methods or quantities in which respondents' table salt was sold or delivered to their various purchasers.

PAR. 16. Respondents further contend that inasmuch as they have discontinued the practice of granting a discount to purchasers classified as buying $50,000 worth of table salt in a twelve consecutive month period as a result of the decision of the Supreme Court of the United States in *Federal Trade Commission* v. *Morton Salt Company*, 334 U. S. 37 (1948), there is no public interest in an order being issued herein prohibiting this practice. However, respondents have made no contention that they have abandoned their practice of granting a lower price to purchasers in their northern sales territory who purchase in single order quantities of 100 or more cases of table salt. The amount of this price discrimination is exactly the same as the amount of the $50,000 purchaser discount. Its effect on competition is the same. This practice of discriminating in price in favor of 100 case purchasers was also held to be illegal in said Morton Salt Company case. The Commission, therefore, is of the opinion that an order is required in this matter to impress upon these respondents the necessity of stopping altogether their discriminatory pricing practices.

PAR. 17. In the course of its business of selling table salt in commerce, respondent International Salt Company paid money to certain of its customers as compensation and in consideration for advertising and display services furnished by such customers in connection with their sale and offering for sale to the consuming public of table salt manufactured and sold by said respondent. In connection therewith, said respondent entered into "Local Feature Service Agreements" with certain of its said customers for certain specified limited periods of time. These agreements, which required the furnishing of certain advertising and display services by the customer and the payment of a specified amount by said respondent, were entered into by said respondent upon an individual basis with each such customer upon the request of the customer. Said respondent did not enter into, offer or make any effort to inform its other customers of the existence of, such agreements and did not make available to such other customers any payments whatever for advertising or display services in lieu of payments made under such agreements. Certain of said customers who were not offered or informed of the existence of such agreements and to whom no payments in lieu thereof were made available were in competition with certain of the customers receiving payments from this respondent under the agreements above described, in the resale of said respondent's table salt to the consuming public.

In determining whether or not to enter into a "Local Feature Service Agreement" with a customer and whether the amount to be paid for such service was agreeable to it, said respondent considered many different factors, including the type and quantity of advertising contemplated, the type of store displays offered, shelf position of product offered, quality of store, character of store personnel, location of store, cleanliness of store and many other factors. No specific terms for such contracts were set out, however, and the determination of whether such an agreement would be entered into with a customer was made in each case upon the judgment of said respondent's officials and after negotiation with an individual customer.

Thus, the payments made by respondent International Salt Company in accordance with its "Local Feature Service Agreements" to certain of its customers in consideration for advertising and display services and facilities furnished by said customers in connection with the offering for sale and sale of table salt manufactured and sold by said respondent were not made available on proportionally equal terms to many of its other customers competing in the distribution of such table salt with said favored customers.

PAR. 18. Respondent Eastern Salt Company did not make any payments for advertising or display services to its customers. However, respondent International Salt Company, of which it is a wholly owned subsidiary, made such payments available to certain of the customers of Eastern Salt Company upon the same basis as it did to its own customers.

PAR. 19. Respondent International Salt Company at various periods of time has also entered into "Store Display and Sales Service Agreements" with retail stores selling its "Sterling" brand of table salt to the consuming public. These agreements called for the payment by said respondent of approximately ten cents for every case of "Sterling" table salt purchased during a specified period of time by said store in consideration of its furnishing certain specified display services in connection with the offering for sale of said table salt during said period. It was said respondent's policy to enter into these agreements with every retail outlet of its table salt products in the United States, whether the purchasers were purchasing "Sterling" table salt from it directly or indirectly. Respondent made every reasonable effort to carry out this policy and to make the payments under this plan available on proportionally equal terms to all of the retail outlets of said table salt. The Commission does not find the respondent's activities in connection with payments made under these agreements to have been illegal.

CONCLUSION

1. The acts and practices of respondents International Salt Company and Eastern Salt Company in selling their table salt to certain purchasers thereof at lower net prices than to other purchasers competing with said favored purchasers in the resale of said salt, as herein found, constituted violations of subsection (a) of section 2 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 an Act of Congress approved June 19, 1936 (the Robinson-Patman Act).

2. The acts and practices of respondent International Salt Company in making payments to certain of its customers as compensation or in consideration for advertising and display services furnished by such customers in connection with the sale and offering for sale of said respondent's table salt, under its "Local Feature Service Agreements," without making such payments available on proportionally equal terms to all of its other customers competing with said favored customers in the resale of said salt, as herein found, constituted violations of subsection (d) of section 2 of the aforesaid Clayton Act, as amended.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon an amended complaint of the Commission, the respondent's answers thereto, testimony and other evidence in support of and in opposition to the allegations of said amended compaint introduced before a hearing examiner of the Commission theretofore duly designated by it, the hearing examiner's recommended decision and exceptions thereto, and briefs and oral argument of counsel, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of subsection (a) of section 2, and that respondent International Salt Company has violated subsection (d) of section 2, 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 an Act of Congress approved June 19, 1936 (the Robinson-Patman Act):

It is ordered, That respondent International Salt Company, a corporation, and respondent Eastern Salt Company, a corporation, and their respective officers, representatives, agents, and employees, directly or through any corporate or other device, in the sale of table salt in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from discriminating, directly or indirectly, in the price of such products of like grade and quality:

1. By selling such table salt to any wholesaler thereof at prices different from the prices charged any other wholesaler who in fact competes with said wholesaler in the sale or distribution of such table salt.

2. By selling such table salt to any retailer thereof at prices different from the prices charged any other retailer who in fact competes with said retailer in the sale or distribution of such table salt.

3. By selling such table salt to any retailer thereof at prices lower than prices charged any wholesaler whose customers compete with such retailer in the sale or distribution of such table salt.

For the purpose of comparison, the term "price" as used in this order takes into account discounts, rebates, allowances, and other terms and conditions of sale.

It is further ordered, That respondent International Salt Company, a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the sale of table salt in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

1. Paying or allowing, or contracting to pay or allow, anything of value to, or for the benefit of, any customer for advertising or display services or facilities furnished by or through such customer in connection with the sale or offering for sale of said table salt, unless such payment or consideration is made available on proportionally equal terms to all of its other customers competing with said favored customer in the resale of such table salt.

2. Paying or allowing, or contracting to pay or allow, anything of value to, or for the benefit of, any customer as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the handling, processing, sale, or offering for sale of said table salt, unless such payment or consideration is available on proportionally equal terms to all of its other customers competing with said favored customer in the sale or distribution of such table salt.

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

Commissioner Carretta not participating for the reason that oral argument on the merits was heard prior to his appointment to the Commission.

IN THE MATTER OF

MINK TRADERS ASSOCIATION, 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

Docket 5844. Complaint, Jan. 26, 1951—Decision, Aug. 28, 1952

Where a membership corporation and its seventy-member mink fur dealers, manufacturers of mink fur products, and retailers located in New York City, who, normally in competition with each other and with others, represented a substantial part of the mink fur trade in said city and the country at large;

Following the organization of said association in September 1948, for the purposes, among others, of improving trade conditions, reforming and eliminating abuses relative thereto, and establishing lawful uniform rules, regulations and practices in the mink division of the fur industry; and the adoption of a program which included the reduction of the number of auction sales, the selling of mink in larger lots, the cancellation of the early December sales, cessation of the selling of mutation mink in the raw state, and the discontinuance of "private treaty" sales by the auction companies; through joint meetings with the auction companies in the United States and Canada, letters, other communications and meetings, and withdrawals from certain auction sales—

(*a*) Cooperatively, concertedly, and collectively devised, dictated and composed methods, terms and conditions as to which those engaged in the mink fur industry, including the ranchers, breeders' associations and auction companies, were to market and distribute their mink pelts with respect to matters embraced in the aforesaid program; and

(*b*) Persuaded, threatened, and coerced, and through the use of boycott and threats thereof, compelled those engaged in said industry, to comply with and abide by such terms and conditions;

With the result that members of the industry other than those included in the association membership, and particularly the breeders and the auction houses, were compelled and coerced to a certain extent to change methods of doing business which they had found to their advantage; nonmember buyers of mutation pelts at the New York auction houses and nonmember small fur dealers who dealt therein were prejudiced in various ways; the free play of competition by and among the breeders and the auction companies on the one hand and the members of respondent association and other buyers of mink pelts on the other hand was hampered, suppressed and hindered; and the business of nonmember competitors, who were deprived of their rights to buy in quantities most suitable for their needs and, potentially, of the opportunity to buy dressed mutation mink pelts from the breeders at the auction houses, was interfered with;

Capacity, tendency, and effect of which agreement, understanding and combination, and the methods, acts and practices, and things done and performed by respondents in pursuance thereof, were to unreasonably lessen, suppress and restrain competition and trade in the sale and distribution of mink fur pelts:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and competitors of the members of said association and, in the light of the decision in *Fashion Originators Guild of America, Inc.* v. *Federal Trade Commission*, 312 U. S. 457, constituted unfair methods of competition in commerce.

While the members of respondent association used boycott and threats thereof only with respect to one phase of their program, namely, their determination that the mutation breeders be urged to cease offering their mink as dressed pelts "so that the traders would be enabled to buy quantity lots of goods without having to meet the competition of the small retailer who is interested in only one or two bundles", it was believed that such action on their part was an indication of the lengths to which they would go in the enforcement of any part of their program unless they were curbed by Government authority.

In the foregoing proceeding it was noted that it was not a case where the joint action of respondents had to do only with their own activities, but that there was involved a situation where, if the respondents carried their joint activities to their logical conclusion they would substantially interfere with the rights of members of other segments of the mink fur industry, and would not only deprive breeders of their freedom of action in selling their mink pelts, but also hinder and interfere with other mink buyers who were their competitors.

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

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

Mr. Irving I. Dolowich, 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 in the caption hereof, and hereinafter more particularly designated and described, 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 Mink Traders Association, Inc., is a membership corporation organized on or about September 27, 1948, under the laws of the State of New York, with its principal office and place of business located at 450 Seventh Avenue, New York, New York.

Said respondent sometimes hereinafter referred to as the "Association" or "Traders Association," is composed of approximately seventy members consisting of mink fur dealers, manufacturers of mink products and retailers located in the City of New York. The Association was organized for and serves its members as an instrumentality or vehicle for joint and cooperative action among them. Said Association represents a substantial, if not an actual dominant, part of the mink fur trade in said city and the country at large.

PAR. 2. The following individuals are or have been during the time of the happenings herein described and set forth, officers of said association, and individually and as such officers, are named as respondents herein:

Joseph Liebergall, President.
Jack Levine, Vice-President.
Barney Wollman, Vice-President.
Sidney Ziskind, Treasurer.
Martin Schwarz, Secretary.

The following individuals are now, or have been, directors of said association during the time of the happenings hereinafter described and set forth, and as such directors, and individually, are named as respondents herein:

Al Weinig
Murray Schulman
Morris Greenbaum
Sam Cherny
Joe Feirstein
Arthur Margolyes
Henry Bild
Mannie Lederberg
Jack Farmer
Jack Klein
S. B. Levin
Philip Lieberman
Henry Mechutan
E. J. Pager
A. S. Gold

The said officers and directors, hereinabove named, are either directly engaged in the industry as mink fur dealers, manufacturers of mink articles, or retailers or are connected with the business of one or more of the members of the respondent Association, engaged as aforesaid, and are therefore generally and fairly representative of the industry.

PAR. 3. The following individuals, partnerships and corporations are now, or have been, members of said Association during the time of the happenings hereinafter described and set forth, and as such, and individually, are named as respondents herein:

Joseph Liebergall and Sophie Liebergall, a partnership, trading as Joseph Liebergall and Company, 206 West 30th Street, New York, New York.

Arthur B. Margolyes, Inc., is a corporation, organized, existing and doing business under the laws of the State of New York and has its office and place of business at 200 West 30th Street, New York, New York.

Samuel B. Levin, Irene Levin and Edith Falick, a partnership, trading as S. B. Levin Fur Company, are located at 348 Seventh Avenue, New York, New York.

B. Wollman and Bros., Inc., is a corporation, organized, existing and doing business under the laws of the State of New York, and has its office and place of business at 352 Seventh Avenue, New York, New York.

Jack Levine Fur Company, Inc., is a corporation, organized, existing and doing business under the laws of the State of New York, and has its office and place of business at 356 Seventh Avenue, New York, New York.

Joseph Schwarz and Martin Schwarz, a partnership trading as Joseph Schwarz and Son, 233 West 29th Street, New York, New York.

Samuel Cherny and Joseph Cherny, a partnership, trading as Cherny Fur Company, 208 West 39th Street, New York, New York.

The membership of the respondent Mink Traders Association, Inc., is as above described, and from time to time the membership therein is changed by the addition and withdrawal of members, so that all of the members of said association at any given time cannot be properly described herein for the purpose of naming them as respondents without considerable inconvenience and delay, and also said respondent membership constitutes a class so numerous as to make it impracticable, without considerable inconvenience and delay, to name them all as respondents herein; wherefore, the respondents hereinbefore named as respondents, as such officers, directors, and members, are also made respondents as generally and fairly representative of and as representing all of the members of said respondent Association, including those members not herein specifically named.

PAR. 4. The membership of said respondent Association since its organization has consisted of the several corporations, partnerships and individuals referred to and named in the preceding paragraphs as respondents and as representative of those members not specifically named herein and sometimes hereinafter referred to and described as member respondents. All of the said member respondents were during the times mentioned herein, and still are, engaged as aforesaid, in the mink fur business, either as dealers in mink furs or manufacturers of various articles from mink and the retailers thereof. Said skins or pelts are purchased by respondent members at auction market sales held in various States of the United States, and Canada, and are then shipped or otherwise transported from such market places to the respective factories, warehouses and places of business of said purchasers located in various States other than where purchased, where they are resold, after in some instances having been first processed or manufactured into coats, stoles, jackets, or other fur articles, and caused to be shipped or otherwise transported from the States wherein said member respondents maintain their respective places of business to the purchaser or purchasers thereof located in States other than the place of origin of such shipment, and there has been, and now is, a constant current and course of trade and commerce in said products between and among the several States of the United States, and in the District of Columbia.

PAR. 5. Said member respondents are in competition with each other and with other members of respondent Association in the purchase, manufacture, sale and distribution of their said articles of merchandise in the various States of the United States and in the District of Columbia, except in so far as their said competition has been hindered, lessened or restrained, or potential competition among them forestalled, by the acts and practices, methods and policies of said respondents as herein set forth.

There are other corporations, partnerships, firms and individuals not affiliated with respondent Association, and which are engaged in the purchase, manufacture, sale and distribution of similar articles or products in the area in which said respondents trade in competition with one another and with one or more of said member respondents, or other members of respondent association, except in so far as such competition has been hindered, lessened and restrained, or potential competition among them forestalled by the said respondent's acts, practices, methods and policies hereinafter described.

PAR. 6. Said respondents within the last two years, including the present time, have entered into, maintained and carried out an agreement, understanding and combination between and among themselves, and others, to suppress, hinder and lessen competition in the purchase, manufacture, sale and distribution of said mink fur pelts and mink fur products among and between the various States of the United States and in the District of Columbia.

Pursuant to, and in furtherance of, and to make effective said agreement, understanding and combination said respondent members and individuals have cooperatively, concertedly and collectively adopted, engaged in, and carried out, among others, the following methods, acts and practices:

1. Organized respondent Association, as aforesaid, to control and regulate the manner in which mink pelts were marketed or distributed so as to achieve or bring about the following results:

(*a*) Bring about generally a decrease in the number of auction sales conducted by auction firms and pending a general decrease in the number of such sales to call off or cancel certain specified ones;

(*b*) Prevent or curtail fluctuation in the price of mink pelts;

(*c*) Increase the size of individual bundles or auction lots;

(*d*) Cause the discontinuance or at least a reduction in the number of "dressed" mink pelts offered for sale: and

(*e*) Cause the discontinuance of private sales between members of breeder and respondent associations and others.

2. Devised, dictated and imposed methods, terms and conditions under which those engaged in the mink fur industry, including the ranchers, breeder associations and auction companies were to market or distribute their mink pelts and thus achieve the aims and purchases of respondents, as aforesaid.

3. Persuaded, threatened, coerced, and through the use of other means and methods, including boycott and threats to boycott, compelled those engaged in the mink for industry, including the ranchers, breeders associations and auction companies to conform, comply with and abide by said methods, terms and conditions devised, dictated and imposed by said respondents in order to make effective the said aims, intent and purposes of respondents, as aforesaid.

PAR. 7. The capacity, tendency and effect of the aforesaid agreement, understanding and combination and the methods, acts and practices and things done and performed by respondents in pursuance thereof are, and have been, to unreasonably lessen, suppress and restrain competition and trade in the purchase, manufacture, sale and distribution of said articles of merchandise in the various States of the United States and in the District of Columbia, and to deprive the purchasing, using, and consuming public of the advantage of competitive prices, terms, and conditions in connections with the purchase thereof, and other advantages which they would receive and enjoy under conditions of normal, unobstructed, free and fair competition in said trade and industry and to otherwise operate as a restraint upon, obstruction and detriment to, the freedom of fair and legitimate competition in such trade and industry.

PAR. 8. The acts and practices of said respondents, and the things done and performed by them, as herein alleged, are all to the prejudice of the public; have a dangerous tendency to hinder and prevent, and actually hindered and prevented competition and restrained trade between and among said member respondents and others in the purchase, manufacture, sale and distribution of their said articles of merchandise in commerce, within the intent and meaning of the Federal Trade Commission Act; and placed in respondents the power to control and enhance prices and other terms and conditions in connection with the purchase, manufacture, sale and distribution of the said articles of merchandise; have a dangerous tendency to create in said respondents a monopoly in said articles of merchandise in said commerce; have unreasonably restrained such commerce in their said articles of merchandise, and constitute unfair methods of competition and unfair and deceptive acts or practices in commerce, within the intent and meaning of Section 5 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 August 28, 1952, the initial decision in the instant matter of hearing examiner Everett F. Haycraft, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 26, 1951, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said Act. After the filing of answers to the complaint, hearings were held at which testimony and other evidence in support of the complaint were introduced before the above-named hearing examiner theretofore duly designated by the Commission. At the conclusion of these hearings in October 1951, at which time attorneys in support of the complaint closed their case in chief, respondents moved to dismiss the complaint. Thereupon the hearing examiner heard oral argument on said motion, which was later denied, and thereafter testimony and other evidence in opposition to the allegations of the complaint were introduced before the above-named hearing examiner, and on January 31, 1952, the taking of testimony was closed before the hearing examiner. Thereafter proposed findings were submitted by attorneys in support of the complaint, counsel for the respondents having waived the filing of proposed findings and conclusions. Oral argument was heard before the hearing examiner on the merits of the case on March 31, 1952; and on April 14, 1952, the proceeding before the hearing examiner was closed. Thereafter, this proceeding regularly came on for final consideration by said hearing examiner upon the complaint, the answers thereto, testimony and other evidence, proposed findings as to the facts and conclusions presented by counsel in support of the complaint, and oral arguments of counsel, and said hearing 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, conclusions drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Mink Traders Association, Inc., sometimes hereinafter referred to as the "Association," is a membership corporation organized on or about September 27, 1948 under the laws of the State of New York with its principal office and place of business located at 450 Seventh Avenue, New York, New York. Said Association is composed of approximately seventy members consisting of mink fur dealers, manufacturers of mink fur products, and retailers located in the city of New York, and said Association was organized for and serves its members as an instrumentality or vehicle for joint or cooperative action among them. Said Association represents a substantial part of the mink fur trade in said city and the country at large.

PAR. 2. The following individuals are now or have been during the period of time since September 1948 officers and directors of said respondent Association:

(*a*) Respondent Joseph Liebergall was President of respondent Association from on or about September 27, 1948, until the fall of 1950 when he was succeeded by respondents Al Weinig, Arthur B. Margolyes and Henry Mechutan who were designated as presidents.

(*b*) Respondent Jack Levine was Vice-President of respondent Association at the date of issuance of the complaint on January 26, 1951.

(*c*) Respondent Barney Wollman was Vice-President of respondent Association until September 30, 1950, at which time his firm B. Wollman and Bros., Inc., resigned as members of respondent Association and respondent Barry Wollman ceased to be an officer thereof.

(*d*) Respondent Sidney Ziskind was Treasurer of respondent Association on January 26, 1951.

(*e*) Respondent Martin Schwartz (erroneously named as Martin *Schwarz* in the complaint) was Secretary of respondent Association on January 26, 1951.

(*f*) The following named individuals were directors of said respondent Association during the period subsequent to September 1948 and held such office on January 26, 1951, the date of the issuance of the complaint: respondents Al Weinig, Murray Schulman, Morris

Greenbaum, Sam Cherny, Joe Feirstein, Arthur Margolyes, Henry Bild, Mannie Lederberg, Nathan Farber (erroneously named as *Jack Farmer* in the complaint), Jack Klein, S. B. Levin, Philip Lieberman, Henry Mechutan, E. J. Pager and A. S. Gold.

PAR. 3. The following individuals, partnerships, and corporations are now or have been members of said respondent Association during the period of time subsequent to September 1948:

(*a*) Respondents Joseph Liebergall and Sophie Liebergall are a partnership, trading as Joseph Liebergall and Company, 206 West 30th Street, New York, New York.

(*b*) Respondent Arthur B. Margolyes, Inc., is a corporation organized, existing and doing business under the laws of the State of New York and has its office and place of business at 200 West 30th Street, New York, New York.

(*c*) Respondents Samuel B. Levin, Irene Levin and Edith Falick are a partnership, trading as S. B. Levin Fur Company and are located at 348 Seventh Avenue, New York, New York.

(*d*) Respondent B. Wollman and Bros., Inc., is a corporation organized, existing and doing business under the laws of the State of New York, and has its office and place of business at 352 Seventh Avenue, New York, New York.

(*e*) Respondent Jack Levine Fur Company, Inc., is a corporation organized, existing and doing business under the laws of the State of New York, and has its office and place of business at 356 Seventh Avenue, New York, New York.

(*f*) Respondents Joseph Schwartz (erroneously named as Joseph *Schwarz* in the complaint) and Martin Schwartz (erroneously named as Martin *Schwarz* in the complaint) are a partnership trading as Joseph Schwartz and Son, 233 West 29th Street, New York, New York.

(*g*) Respondents Samuel Cherny and Joseph Cherny are a partnership, trading as Cherny Fur Company, 208 West 39th Street, New York, New York.

The membership of said respondent Association is changed by the addition and withdrawal of members from time to time so that all the members of said Association cannot be properly described herein as respondents without inconvenience and delay, wherefor, the respondents hereinbefore named as members are also named respondents as generally and fairly representative of and as representing all the members of said respondent Association, including those members not herein specifically named.

PAR. 4. A substantial quantity of the mink skins pelted in the United States and Canada are sold at auction market sales held in the cities of New York, Milwaukee, Minneapolis, Seattle and Denver, as well as various places in Canada, including Montreal, Vancouver, Quebec and Regina. The mink skins that are offered for sale at these auction markets are grown on various mink farms or ranches in the United States and Canada or trapped in the wild state, their pelts taken, and then such pelts shipped or otherwise transported to the various auction markets for sale.

Respondent members of respondent Association in the course and conduct of their respective businesses as dealers in mink furs or manufacturers of or dealers in various articles from mink fur purchase a substantial quantity of their requirements of mink pelts at the auction market sales held in various States of the United States other than the States in which their respective businesses are located, and in Canada, and cause such products when thus purchased to be shipped or otherwise transported to them across State lines from such market places to the respective factories, warehouses and places of business of said purchasers where they are resold either in the raw or dressed state or after having been first processed or manufactured into coats, stoles, jackets, or other fur articles and then caused to be shipped or otherwise transported from the States wherein the said member respondents maintain and have their respective places of business to purchasers thereof located in States other than the place of origin of such shipment. There has been and now continues to be a constant current and course of trade and commerce in said mink pelts and mink fur products between and among the several States of the United States and in the District of Columbia and from the Dominion of Canada into the United States.

PAR. 5. Said member respondents are in competition with each other and with other members of said respondent Association in the purchase, manufacture, sale and distribution of their said articles of merchandise in the various States of the United States and in the District of Columbia except insofar as their said competition has been hindered, lessened or restrained by the acts and practices, methods and policies of said respondents as hereinafter set forth.

There are other corporations, partnerships, firms and individuals not affiliated with said respondent Association, and which are engaged in the purchase, manufacture, sale and distribution of similar articles or products in the area in which said respondents have been doing business who are in competition with said respondents, except insofar as such competition may have been hindered, lessened or restrained by the respondents' acts and practices, methods and policies as hereinafter described.

PAR. 6. On or about September 27, 1948, representatives of the respondent members organized the respondent Association for the announced and declared purposes, among others, to provide a medium through which the program of persons engaged in the handling, marketing, manufacture, breeding, and distribution of minks, mink skins, and mink garments could be promoted; to foster trade, commerce and the interest of its members and to improve generally trade conditions in such industry, to reform and eliminate abuses and evils relative thereto; and to establish lawful uniform rules, regulations and practices in the mink division of the fur industry.

At the first meeting of the respondent Association held on October 7, 1948, the membership consisted of approximately fifty mink dealers and one-half dozen manufacturers, and a few retailers, all of them patrons of the auction companies. At this meeting a four point program was adopted as follows:

1. That the auction companies make known the expected quantities of ranch mink available for the coming season. This, so that the trade can pace itself and set its anticipated requirements over a period of a year.

2. To petition the auction sales companies and mink fur breeders requesting that the amount of sales be substantially reduced so that there will be less fluctuating in the price of mink from one week to the next and that the trade might feel more secure in patronizing such sales and buying, and anticipating requirements for a longer period of time.

3. That the auction companies put up larger lots of goods.

4. That the mutation breeders cease offering their mink as "dressed pelts," but rather offer them in the "raw state" so that the traders may be enabled to buy quantity lots of goods wihout having to meet the competition of the small retailer who is interested in only one or two bundles.

PAR. 7. On October 21, 1948, a joint meeting was held of representatives of respondent Association and the following auction companies of the United States and Canada: New York Auction Company; Lampson, Fraser & Huth of New York City, Montreal Fur Auction; Soudack Fur Auction Company, Winnipeg, Canada; American National Fur Auction Company, Milwaukee, Wisconsin; and the following Ranch Mink Associations: United Mink Products Association, (sometimes herein referred to as UMPA); Great Lakes Mink Association, Kenosha, Wisconsin; Associated Fur Farms, New Holstein, Wisconsin; and National Board of Fur Farm Organizations.

At this meeting a five point program was agreed upon as follows:

"(1) Reduction of the number of auction sales;
(2) Selling of Mink in larger lots;
(3) Cancellation of the early December sales;
(4) Selling of Mutation mink in the raw state;
(5) Announcement by Auction when lot is not sold."

Thereafter, further meetings were held between representatives of respondent Association and the two New York auction companies, and the mink breeders associations, with respect to said five point program.

PAR. 8. With respect to the first point of said program, namely, the reduction of the number of auction sales, it appears that meetings held by and between respondents and the auction companies and the mink breeders associations resulted in the following arrangement to enable the Great Lakes Mink Association to eliminate half the auction sales scheduled during December 1948:

> New York Auction Company would run its early sale of raw mutation pelts and the few standards that would be received in their warehouse by December 3rd. Great Lakes Mink Association would move its scheduled December 17th sale up to December 21st and by doing this combine its offering with the offering of the UMPA and the Mutation Mink Breeders Association. The entire collection of the three Associations would go on show on the same date and the sale of the pelts would take three days. The proportion of mink for each of the Associations would be such that the quantity would not be too heavy for the trade to absorb and considerable time would be saved by the trade in its attendance at this combination sale. Lampson, Fraser and Huth also agreed to cancel two of its four scheduled sales so that in place of eight sales, we would now be reduced to a schedule of four sales spaced so that the trade could patronize and support each of them.

The representative of the UMPA did not agree to the arrangement at the meeting and when he referred the matter to his principal the plan was not approved.

Representatives of the mink breeders associations, UMPA and Great Lakes Mink Association later (in November 1948) advised the President of the respondent Association that they were unable to cooperate in the program but were willing to do everything possible to establish some system of orderly marketing. The North Western Auction Company and the Southern Fur Exchange both agreed to cooperate in the rearrangement in sales dates. Both the New York and Lampson, Fraser & Huth auction companies agreed to hold two mink sales only during the month of December. The Seattle Fur Exchange also cooperated by reducing the number of its sales during December. In order for the Southern Fur Exchange to comply with the request of the respondent Association with respect to the reduction of the number of auction sales, it was necessary for them to cancel three of their original five sales dates for December 1948, and it was necessary for the North Western Fur Auction Company to cancel two of their fur sales scheduled for December 1948. Also the Western Canadian Raw Fur Auction Sales, located in Vancouver, B. C., combined two of its auction sales in December 1948.

Attempts were also made by respondent Association, acting through its Conference Committee, to persuade the auction companies to cancel or postpone other sales during the months of January, February and March 1949. Letters were written to the auction companies and meetings were held with the representatives of the auction companies by the Conference Committee of the respondent Association. For the most part, the auction companies cooperated in this phase of the program although the cooperation was not 100%. The following letter, dated February 24, 1949, was received by the respondent Association from the President of the Montreal Fur Sales (Canada) Ltd., Montreal, Canada:

In the short few hours that have elapsed since receiving your telegram, we learned that the Canadian Fur Auction Sales did not and does not want to announce any change in their Auction Schedule and intend to go on sale with mink on March 21st. Mr. Cantor, the President of the New York Auction Company, declared that he has no comment to make and has made no decision yet with regard to this matter. Furthermore, in the mail today, we received a notice of the Soudack Fur Auction Sales, Winnipeg, announcing their next Auction Sale which includes Mink for March 9th and 10th.

On hand of this information, as well as based on the very unsatisfactory experience at and after the meeting the writer of this attended in the fall at the Hotel New Yorker, you may understand that we cannot precipitate our decision.

As you must very well recall, we were the first at this meeting with full understanding for the problems of the trade, to pledge our full cooperation, and complied by cancelling our Mink Sale, in December, and otherwise, as well, adhered wholeheartedly to the spontaneous commitment we pledged at the meeting. Disappointment and considerable material damage was our share, however, for our full co-operation, after the other Canadian auction sales did not follow in line. By not putting up any sale until later in January we had to stand for the strong criticism of our ranchers, who justly accused us of disregarding their interests, and by their looking in consequence for the other more convenient outlets for earlier sales, we have lost great quantities of Mink and many of our regular shippers, which fact not only influences the material outcome of the seasonal business enormously but also is of very great damage to our reputation.

As a result of the activities of members of respondent Association acting for and on behalf of such Association there were only two major auction companies left in the United States and Canada who had up to this time not acceded to the request of respondent Association to cancel their scheduled March 1949 sales of mink, namely, Edmonton Fur Auction Sales, Ltd., Edmonton, Alberta, Canada, and Denver Fur Auction Company, Inc., Denver, Colorado. Respondent Liebergall addressed a telegram to both these auction houses under date of March 19, 1949, as follows:

> Have been advised that your Company has announced auction sale of mink for March 30th. All other auction companies in the United States and Canada willingly cancelled their sales of ranch & wild mink for entire month of March. Our members respectfully urge your continued cooperation by postponing your March 30th sale to any day in April 1949. The joint efforts of the ranching Association and other auction companies and our organization to improve marketing conditions for our mutual benefit dependent upon your cancellation of mink sales in March. Please answer by return wire so that we may advise all of our members.

No auction sales were held in the United States or Canada in March 1949 by those auction companies contacted by respondent Liebergall, President of respondent Association, or by other members of respondent Association.

The results of this portion of the respondent Association's program is summarized by Mr. Liebergall, President of respondent Association, in a speech he made to the members in June, 1949.

> The first, and most important reason for having fewer sales is that, frankly, gentlemen, the frequent sales are undermining our health. It is impossible for any of us to be present at all the many sales, then to intelligently examine the goods, then to sit in at the sale and buy our requirements, and then and at the same time, attend to the business of selling the goods we buy from you. Further, recent economic conditions have definitely turned for the worse. In fact, as I see it, we are in the throes of a recession. May we all hope that this recession does not turn into a depression. We must find ways and means, therefore, to market goods in a manner fitting the times. Our Mink Traders Association realizing the conditions of the trade, asked all the auction companies of the United States and Canada, at the end of February, for the best interests of everyone in the mink business, to postpone all sales scheduled for March sc as to give the market a breathing spell it so urgently needed. You know what happened and you know what the net results were. The sales during April and May were highly successful and I am sure you will agree with me, that you did far better during these months, than you would have done if your goods were put on the auction block in March.

PAR. 9. With respect to that phase of the program of respondents to increase the size of individual bundles or auction lots, the breeders associations and the auction companies were generally in accord. However, it was testified by some of the breeders that although they agreed to sell their pelts in larger bundles, it was not always possible to do so because some of the ranchers did not like to "part-lot" with other ranchers, and although selling in larger bundles would give an advantage to some shippers, in some cases large bundles would keep some of the smaller buyers off the market. The auction companies promised the respondents they would put up larger lots but they did so only on rare occasions.

PAR. 10. With respect to that phase of the program of respondents to bring about the discontinuance or at least a reduction of the number of mutation mink "dressed pelts" offered for sale by the breeders at the auction houses a joint meeting of the marketing boards of United Mink Producers Association (UMPA), Great Lakes Mink Association (GLMA), Mutation Mink Breeders Association (MMBA) and representatives of the respondent Association and of certain auction companies was held in Milwaukee, Wisconsin, in June 1949, at which the matter was discussed but no decision reached. Later, on September 8, 1949, the Secretary of MMBA notified the President of respondent Association, that in view of the requests received from buyers and part of the fur trade, they would sell certain types of mutation pelts dressed during the coming years. This action did not satisfy respondent Association, and in a letter dated September 28, 1949, addressed to the MMBA, the President of respondent Association expressed surprise and amazement at the decision of the MMBA and stated:

> In order to prove conclusively to the members of your association that our statement regarding the wishes of the buyers was a true and accurate one, we circulated a petition among the buyers of mink pelts in the city of New York and we enclosed a photostatic copy thereof. You will note that this resolution contains 73 signatures and that the individuals and firms signing this petition comprise approximately 85% to 90% of the buyers of mutation mink in this city. We trust that you will also note that the reasons given in the resolution for the sale of mutation mink in the raw state are cogent, practical and meritorious, and if followed, will inure to the benefit of the breeders, auction companies, dealers and manufacturers.
>
> We sincerely hope that in the light of this petition, you will reconsider your decision and follow the desires and recommendations of the overwhelming majority of the purchasers of mutation mink at auction sales.

Subsequently, a meeting was held in Chicago attended by the representatives of the breeders association and the respondent Association. Further discussion took place with respect to that question. The breeders were generally opposed to this phase of the program for the various reasons as testified by one witness:

> It is almost impossible to take goods from different ranches, match them together raw well enough so that when they come back from the dressers they will be usable bundles. The mink from different ranches don't dress out the same through dressing.
>
> * * * * * * *
>
> In the introduction of a new mutation, it is necessary for the goods, almost all have to be part-lotted to make usable bundles, dressing is a must. We have always dressed all goods in introducing a new mutation mink. In dressed goods sales there is probably a larger group of people who can buy dressed goods than can participate in raw goods.
>
> * * * * * * *

People with limited capital probably wouldn't be able to buy enough raw goods to make matched bundles while in the dressed goods they have an opportunity to buy a few bundles which would be made into marketable merchandise. It probably would deprive certain segments of the trade who are limited in capital from participating in that business or would force them to go to the large dealers who have bought large quantities and re-sort the goods and make matched bundles.

Finally, in December 1949, members of the respondent Association walked out of the auction sales at both auction houses in New York City when dressed pelts were offered for sale. They remained out of the auction houses until the offering of dressed pelts was completed and the sale of raw pelts took place, whereupon they returned to the auction houses and bid upon the offerings of raw pelts. Some of the members of respondent Association at that time criticized the representatives of the breeders association and others responsible for the refusal on their part to cooperate in this phase of the program of respondents.

The effect of the "walk out" at one of the auction houses was described by one mink breeder as follows:

At Lampson's when the dressed goods came up for sale, the mink traders got up and left the room. We continued to sell to people who were members of the traders' association who stayed and continued to purchase goods. The boys were a little loud in their talk but I don't think there were any threats at the time by anybody. The first few pages of the catalog wasn't much sold but before the sale was over, why, we were moving a fair percentage of the goods at market levels, or very close to market levels. The level probably wasn't quite as high as it might have been if we had had more company figures at the sale.

The "walk outs" by members of respondent Association and the rumors that accompanied them had an injurious effect generally upon the market for mutation mink pelts aside from the actual reduction in the number of pelts sold by the auction houses at the time of the walk outs.

Buyers of mutation pelts at the New York auction houses who were not members of respondent Association, including small fur manufacturers, found it a convenience to buy dressed mutation mink pelts as it was more difficult to match the raw pelts, and the small mink fur manufacturers would be compelled to buy more raw pelts than needed in order to obtain enough to make the finished garment. Furthermore, if small fur dealers who are not members of the respondent Association could not purchase dressed mutation mink pelts at the auction houses, they would be compelled to buy their requirements from members of the respondent Association who were engaged in buying raw pelts and having them dressed and in selling the same to small mink fur manufacturers as well as others in the trade. Also under such circumstances the small mink fur manufacturers would be required to pay higher prices for the mutation mink pelts than they would pay if they could buy raw mutation mink pelts direct from the breeders at the auction houses.

It was customary for the auction houses to have the raw mutation mink pelts sent them by the traders dressed by three established fur dressers in New York City, usually confining the dressing of any one particular type to one dresser so that the purchasers of such pelts could obtain uniform selections. While there was some testimony from representatives of the respondents to the effect that the pelts dressed in this manner were not so satisfactory as those dressed by the members of respondent Association, it is found that this testimony was not supported by testimony from independent and unbiased sources.

PAR. 11. With respect to the phase of the program of respondents to cause the discontinuance of "private treaty" sales by the auction companies, it appears that this matter was first discussed between the members of respondent Association and breeders associations at a meeting in Chicago in December 1949. Private treaty selling has been described as the practice of "offering pelts during the period of regularly scheduled auction sales." It has also been defined as the practice of the auction houses selling individually to anyone who will come into them or sell to fur buyers at the same time the auction is going on aside from the auction, that is, individual deals. The auction houses have a room where such goods are put on display and individual buyers are allowed to look at the goods and leave a bid of what they would be willing to pay, and the highest bid, if there is more than one bid, is submitted to the owner of the goods to see if he will sell at that price. If he will, the sale is made.

Some members of respondent Association were in opposition to the sale of mink pelts by private treaty. As one witness stated:

> The only opposition was that they shouldn't sell goods by private treaty at the time when they are running sales. When an auction is in progress, we asked them not to sell at that particular time, so if they have anything for offer by private treaty, some of us should be able to look at those goods and perhaps buy some of the goods that were offered by private treaty.

Very often the auction houses would call the fur dealers on the telephone and ask them if they were interested in certain goods they had for sale by private treaty. The fur pelts offered for sale at private treaty were not listed in the catalogs issued by the auction houses. However, sometimes when some of the producers buy back the goods after a sale is concluded, the auction houses may call up dealers and try to sell such pelts at private treaty.

This practice was generally condemned by the marketing boards of the fur breeders associations as a practice that was not desirable from the standpoint of either the producer or the buyer. While many of the fur breeders expressed themselves in favor of this phase of the program, the extent to which it was put into effect was limited.

The Mutation Mink Breeders Association recommended to the auction houses that no private treaty selling of *dressed goods* be made between sales "so as to protect the buyers who have protected us in our sales."

CONCLUSION

It is concluded from the foregoing facts that the respondents herein have entered into, maintained and carried out an agreement, understanding and combination between and among themselves and others to suppress, hinder and lessen competition in the purchase, manufacture, sale and distribution of mink fur pelts between and among the various States of the United States and in the District of Columbia, and that pursuant to and in furtherance of said agreement, understanding and combination, said respondents cooperatively, concertedly and collectively devised, dictated and composed methods, terms and conditions as to which those engaged in the mink fur industry, including the ranchers, breeders associations, and auction companies, were to market and distribute their mink pelts, and have persuaded, threatened, coerced, and through the use of boycott and threats to boycott, have compelled those engaged in the mink fur industry, including the ranchers, breeders associations and auction companies to conform to, comply with, and abide by said terms and conditions.

In arriving at the foregoing conclusion consideration has been given especially to the fact that the members of respondent Association in their program to eliminate so-called abuses and evils in the mink fur industry have attempted to compel and coerce, and to a certain extent have succeeded in compelling and coercing, other members of that industry, particularly the breeders and the auction houses, to change their methods of doing business and have thus hampered, suppressed and hindered the free play of competition between and among the breeders and the auction companies on the one hand and the members of respondent Association and other buyers of mink pelts on the other hand. Consideration also has been given to the fact disclosed by the record that members of respondent Association in carrying out their program have interfered with the business of their competitors who are not members of respondent Association and who have been deprived of their rights to buy in quantities most suitable for their needs, and if the program was carried out to its logical conclusion they would be deprived of buying dressed mutation mink pelts from the breeders at the auction houses.

That the members of the respondent Association acted deliberately and with full knowledge of the effect that would be created from such activities, is indicated at the first meeting of the respondent Association when it was determined that the mutation breeders would be urged to cease offering their mink as dressed pelts "so that the traders would be enabled to buy quantity lots of goods without having to meet the competition of the small retailer who is interested in only one or two bundles." While the members of respondent Association used boycott and threats of boycott only with respect to this phase of their program, it is believed that such action on their part is an indication of the lengths to which they would go in the enforcement of any part of their program unless they were curbed by Government authority.

This is not a case where the joint action of respondents had to do only with their own activities but it is a situation where if the respondents carried their joint activities to their logical conclusion they would substantially interfere with the rights of members of other segments of the mink fur industry and not only deprive breeders of their freedom of action in selling their mink pelts but also hinder and interfere with other mink buyers who are direct competitors of these respondents.

The capacity, tendency and effect of the aforesaid agreement, understanding and combination and the methods, acts and practices and things done and performed by respondents in pursuance thereof, as hereinbefore found, are and have been to unreasonably lessen, suppress and restrain competition and trade in the sale and distribution of mink fur pelts in the various States of the United States and in the District of Columbia.

The acts and practices of respondents as herein found are all to the prejudice of the public and competitors of the members of respondent Association and in the light of the decision in *Fashion Originators Guild of America, Inc.*, v. *Federal Trade Commission*, 312 U. S. 457, constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondents, Mink Traders Association, Inc., an incorporated trade association, its directors and officers individually and as such directors and officers, Joseph Liebergall, Jack Levine, Barney Wollman, Sidney Ziskind, Martin Schwartz, Al Weinig, Murray Schulman, Morris Greenbaum, Sam Cherny, Joe Feirstein, Arthur Margolyes, Henry Bild, Mannie Lederberg, Nathan Farber, Jack Klein, S. B. Levin, Philip Lieberman, Henry Mechutan, E. J. Pager, and A. S. Gold, individually and in their capacities as officers, members, representatives and agents of other respondents; Arthur B. Margolyes, Inc., a corporation, B. Wollman & Bros., Inc., a corporation, Jack Levine Fur Company, Inc., a corporation; their respective officers, representatives, agents and employees; Joseph Liebergall and Sophie Liebergall trading under the name and style of Joseph Liebergall & Company, a partnership, their representatives, agents and employees; Samuel B. Levin, Irene Levin and Edith Falick trading under the name and style of S. B. Levin Fur Company, a partnership, their representatives, agents and employees; Joseph Schwartz and Martin Schwartz trading under the name and style of Joseph Schwartz & Son, a partnership, their representatives, agents and employees; and Samuel Cherny and Joseph Cherny, trading under the name and style of Cherny Fur Company, a partnership, their representatives, agents and employees; all other members of said Association, as representatives for whom the said members named above were made respondents herein; individually and in their capacities as members, representatives and agents of other respondents in, or in connection with, the offering for sale, sale and distribution in interstate commerce of "mink fur pelts" in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, cooperating in, carrying out or continuing any planned common course of action, understanding, agreement or combination between and among any two or more of said respondents, or between any one or more of said respondents and others not parties hereto, to do or perform any of the following acts and things:

1. Holding, attending, or participating in meetings, or agreeing upon, arriving at or adopting any plan, device or program for the purpose or with the effect of reducing the number of mink pelt auction sales or postponing or cancelling any such sales;

2. Holding, attending, or participating in meetings, or agreeing upon, arriving at or adopting any plan, device or program for the purpose or with the effect of controlling the size of individual mink pelt bundles or auction lots of mink pelts;

3. Holding, attending or participating in meetings, or agreeing upon, arriving at or adopting any plan, device or program for the purpose or with the effect of eliminating dressed mink pelts from

auction sales or in any way to reduce the number of such pelts offered at such sales;

4. Holding, attending or participating in meetings, or agreeing upon, arriving at or adopting any plan, device or program for the purpose or with the effect of eliminating "private treaty" selling by mink ranchers, the members of mink breeders associations and auction houses to the members of respondent Association or others;

5. Hindering or preventing by intimidation, coercion, persuasion, withdrawal or threatened withdrawal of patronage, or custom, or by boycotting, or threatening to boycott, expressly or impliedly, the sale of mink pelts by any auction house, mink rancher or mink breeders association.

ORDER TO FILE REPORT OF COMPLIANCE

It is 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 the order to cease and desist [as required by said declaratory decision and order of August 28, 1952].

Syllabus

IN THE MATTER OF

BENJAMIN BIELER ET AL. DOING BUSINESS AS BIELER AND RABINOWITZ AND SEW-EASY PRODUCTS CO.

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

Docket 5891. Complaint, June 27, 1951—Decision, Aug. 28, 1952

When sewing machines are exhibited and offered for sale by retailers to the purchasing public not marked or not adequately marked showing their foreign origin, or if foreign markings are concealed, such purchasing public understands and believes them to be wholly of domestic origin.

There is among members of the purchasing public a substantial number who have a decided preference for sewing machines originating in the United States over machines originating in whole or in part in foreign countries.

Where two partners engaged in the interstate sale to wholesale and retail dealers of imported sewing machine heads which, when purchased by them from the importers or from other dealers disclosed their Japanese origin in some cases plainly on the front of the vertical arms, in others in such a way as to be distinguished only by careful inspection, and in others on the rear of said arm, to some of which heads they attached a motor which concealed the words "Made in Occupied Japan" or "Japan"—

(*a*) Failed adequately to disclose on said sewing machine heads, to which motors of domestic manufacture, as plainly indicated thereon had been attached as aforesaid, that said heads were manufactured in Occupied Japan;

(b) Falsely represented that they were the manufacturers of the sewing machine heads or sewing machines they sold through the statement in their advertising, "All machines are fully guaranteed at our factory," notwithstanding the fact that they had no factory, and thereby still further strengthened and implemented the erroneous impression engendered as aforesaid; and

(*c*) Confusingly and misleadingly represented that their said products were fully or otherwise guaranteed through use of the word "guaranteed" as above set forth, without disclosing the terms and conditions of the guarantee and clearly indicating the identity of the guarantor;

With tendency and capacity to lead a substantial number of the purchasing public into the erroneous belief that their said products were of domestic origin and manufactured by them and thereby induce purchase thereof, with the result of unfairly diverting substantial trade in commerce to them from their competitors, to the substantial injury of competition in commerce:

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

In said proceeding the fact that the acts and practices of respondents, found violative of the Federal Trade Commission Act, constituted a minor rather than a major part of respondents' business, as contended, was neither defense nor justification for that part thereof continuing to deceive and mislead, even indirectly, the substantial numbers of the public involved.

Before *Mr. Frank Hier*, hearing examiner.
Mr. William L. Taggart 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 Benjamin Bieler and Louis Rabinowitz, copartners doing business as Bieler and Rabinowitz and Sew-Easy Products Company, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Benjamin Bieler and Louis Rabinowitz are copartners doing business under the names of Bieler and Rabinowitz and Sew-Easy Products Company with their principal place of business at 565 Stone Avenue, Brooklyn, New York.

PAR. 2. Respondents are now, and have been for several years last past, engaged in the sale of imported sewing machine heads purchased by them from importers and completed sewing machines of which said heads are a part both of which are sold to retailers who in turn sell to the purchasing public. In the course and conduct of their business, respondents cause their said products, when sold, to be transported from their place of business in the State of New York to the purchasers thereof located in various other States, and maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce among and between the various States of the United States. Their volume of trade in said commerce has been and is substantial.

PAR. 3. When the sewing machine heads are received by respondents, the words "Made in Occupied Japan" or "Japan" appear on the back of the vertical arm. Before the heads are sold to the purchasing public as a part of a completed sewing machine, it is necessary to attach a motor to the head in the process of which the aforesaid words are covered by the motor so that they are not visible. In some instances, said heads when sold by respondents, are marked with a medallion placed on the front of the vertical arm upon which the words "Made in Occupied Japan" or "Japan" appear. These words are, however, so small and indistinct that they do not constitute adequate notice to the public that the heads are imported.

PAR. 4. When articles of merchandise, including sewing machines, are exhibited and offered for sale by retailers to the purchasing public and such articles are not marked or are not adequately marked showing that they are of foreign origin or if marked and the markings are covered or otherwise concealed, such purchasing public understands and believes such articles to be wholly of domestic origin.

PAR. 5. There is among the members of the purchasing public a substantial number who have a decided preference for products originating in the United States over products originating in whole or in part in foreign countries, including sewing machines.

PAR. 6. Respondents, by placing in the hands of dealers their said sewing machine heads and completed sewing machines, provide said dealers a means and instrumentality whereby they may mislead and deceive the purchasing public as to the place of origin of said heads.

PAR. 7. Respondents in their advertising make such statements as the following:

All machines are fully guaranteed at our factory.

Persons who purchase the products from respondents are led to believe by such statement that the respondents manufacture their products, when in truth and in fact respondents do not own or control a factory in which their sewing machines or sewing machine heads are manufactured. Substantial numbers of the purchasing public prefer to deal with concerns who manufacture the products sold by them. The use of the word "Guaranteed" in said advertising without disclosing the terms and conditions of the guarantee is confusing and misleading to the public and purchasers and constitutes an unfair and deceptive practice.

PAR. 8. Respondents in the course and conduct of their business are in substantial competition in commerce with the makers and sellers of domestic machines and also with sellers of imported machines, some of whom adequately inform the public as to the source of origin of their said products.

PAR. 9. The failure of respondents to adequately disclose on the sewing machine heads that they are manufactured in occupied Japan and the use of the word "factory" in their advertising have the tendency and capacity to lead a substantial number of the purchasing public into the erroneous and mistaken belief that their said product is of domestic origin and is manufactured by respondents and to induce a substantial number of the purchasing public to purchase sewing machines containing the said heads because of this erroneous and mistaken belief. As a result thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has been and is being done to competition in commerce.

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

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 August 28, 1952, the initial decision in the instant matter of hearing examiner Frank Hier, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 27, 1951, issued and subsequently served its complaint in this proceeding upon respondents Benjamin Bieler and Louis Rabinowitz, copartners doing business as Bieler and Rabinowitz and Sew-Easy Products Company, charging them with the use of unfair methods of competition and 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 respondents' answer thereto, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before the above-named hearing examiner theretofore duly designated by the Commission, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Respondents offered no witnesses in their behalf nor any other evidence except two exhibits. Thereafter, the proceeding regularly came on for final consideration by said hearing examiner on the complaint, answer thereto, testimony and other evidence and said hearing 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, conclusions drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Benjamin Bieler and Louis Rabinowitz are copartners doing business under the names of Bieler and Rabinowitz and Sew-Easy Products Company with their principal place of business at 565 Stone Avenue, Brooklyn, New York.

PAR. 2. Respondents are now, and have been for several years last past, engaged in the sale of imported sewing machine heads purchased by them from importers and completed sewing machines of which said heads are a part both of which are sold to retailers who in turn sell to the purchasing public. In the course and conduct of their business, respondents cause their said products, when sold, to be transported from their place of business in the State of New York to the purchasers thereof located in various other States, and maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce among and between the various States of the United States. Their volume of trade in said commerce has been and is substantial.

PAR. 3. Respondents do not import sewing machines or machine heads, but they buy sewing machines which have been imported from Japan, from the importers or from other dealers. Respondents resell to dealers, both wholesale and retail, but not to the using public. Whatever markings are on the machines purchased by respondents, showing the country of origin, whether by plaque, printing or decalcomania, are left unchanged by them. Some of the foreign made machines purchased and resold by respondents have a plaque on the front of the vertical arm, reading in raised letters of $\frac{1}{4}$ to $\frac{3}{8}$ of an inch, "Japan" or "Made in Occupied Japan"; others have a decalcomania to the same effect on the rear of the vertical arm, some have both. Respondents purchase Japanese made and imported sewing machines, as above described, with and without attachments already on the sewing machine head (such as light, motor, foot pedal) and these purchases are sometimes resold in the same condition by respondents after inspection and stitching off; in other instances, respondents attach a motor and other accessories before resale, and in still other instances, sell therewith portable sewing machine cases, cabinets, etc., in addition to the machine itself.

PAR. 4. When a motor is attached to the imported sewing machine head, the decalcomania marking "Japan" or "Made in Japan" or "Made in Occupied Japan" on the rear of the vertical arm is completely concealed from even careful inspection, short of removing the motor or turning the machine into a position, imposed by the desire to see that particular spot but entirely unlikely to ensue from ordinary or normal use of the machine. There is abundant and substantial evidence in the record, both testimonial and stipulated, that purchaser-users never saw or suspected their sewing machine's foreign origin until this concealed decalcomania was exhibited to them. The finding is that such marking is for practical purposes, and to the ordinary user or purchaser, completely and effectively obliterated.

PAR. 5. Some of the medallions riveted to the front of the vertical arms of some of these imported machines sold by respondents plainly and visibly state "Japan" or "Made in Occupied Japan" without more, in such a way that even casual inspection would apprize the purchaser of country of manufacture, although casual view might not. Others of these medallions on respondents' sewing machines are in bright gold color, in raised letters only, with no background coloring to emphasize the raised letters, and with other lettering, such as a brand or trade name of similar size and protrusion, so that the words "Japan" or "Made in Japan" are indistinct, difficult to read, unemphasized, and distinguishable only by careful inspection. There is ample and substantial evidence, both testimonial and stipulated in the record, that users and purchasers did not see, or seeing, did not comprehend, such markings, and in one or more instances, although seen and comprehended, was misunderstood to mean simply a foreign sales office of a domestic manufacturer. The finding on this point is, that such markings are not adequate notice to the public that the machines to which they are riveted are imported.

PAR. 6. There is a conflict in the evidence as to whether using purchasers of respondents' machines were, in fact, made aware of their foreign origin by their immediate vendor. Only one such dealer, who bought from respondents, and resold to the public testified. His purchases were both assembled (with attachments) and stripped; some were marked as to country of origin, others were not. He knew they were imported machines and testified he uniformly and personally informed each purchaser of that fact. The latter statement is corroborated by one of his customers, who bought two of them, the only marking thereon being a decalcomania on the rear of the vertical arm completely concealed by the attached motor, as hereinbefore described. This "personal marking" testimony is however contradicted directly and testimonially by two of this dealer's customers, and impliedly by the stipulated testimony of five other housewives. In addition, respondents' invoices to the dealer and the latter's sales "cards" given the customer upon purchase bore the abbreviation "Imp" thereon in front of the brand name. However, this was taken to mean "improved" rather than "imported" by the only witness to testify about it. Two of such invoices however plainly state "imported." On this point, the weight of the evidence is against the "warning" or "advice" by the dealer to the purchaser-user, both quantitatively and qualitatively. The finding is that although the purchaser from respondents knew the sewing machines were imported from Japan, using customers of such purchaser were unaware of that fact and purchased in the belief that such machines were manufactured in the United States.

Par. 7. When sewing machines are exhibited and offered for sale by retailers to the purchasing public and such articles are not marked or are not adequately marked showing that they are of foreign origin, or, if marked and the markings are covered or otherwise concealed, such purchasing public, on the evidence in the record herein, understands and believes such articles to be wholly of domestic origin.

Par. 8. There is, according to the record herein, among the members of the purchasing public, a substantial number who have a decided preference for sewing machines originating in the United States over such products originating in whole or in part in foreign countries.

Par. 9. The erroneous impression of domestic origin, created by inadequate or inconspicuous marking as to foreign origin, or adequate marking either concealed or obliterated, the public belief that an unmarked article is of domestic origin and the preference of a substantial part of the public for sewing machines of domestic origin is furthered and strengthened by the fact that the motor, attached to these sewing machine heads, sometimes by respondents, other times by their vendees, is, on this record, uniformly of domestic manufacture, plainly indicated by markings on its top, either with the name of a manufacturer associated in the public mind with domestic manufacture, or with such name plus the name of a city where such company is located.

Par. 10. This erroneous impression is still further strengthened and implemented by the fact that respondents in their advertising make such statements as the following:

All machines are fully guaranteed at our factory

Persons who purchase sewing machines from respondents are led to believe by such statement that the respondents manufacture their products, when in truth and in fact respondents do not own or control a factory in which their sewing machines or sewing machine heads are manufactured. The use of the word "Guaranteed" in said advertising without disclosing the terms and conditions of the guarantee, and without clearly indicating the identity of the guarantor, is confusing and misleading to the public and purchasers and constitute an unfair and deceptive practice.

Par. 11. Respondents in the course and conduct of their business are in substantial competition in commerce with the makers and sellers of domestic machines and also with sellers of imported machines, some of whom adequately inform the public as to the source of origin of their said products.

Par. 12. The failure of respondents adequately to disclose on the sewing machine heads that they are manufactured in Occupied Japan and the use of the word "factory" in their advertising have the tendency and capacity to lead a substantial number of the purchasing public into the erroneous and mistaken belief that their said product is of domestic origin and is manufactured by respondents and to induce a substantial number of the purchasing public to purchase sewing machines containing the said heads because of this erroneous and mistaken belief. As a result thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has been and is being done to competition in commerce.

CONCLUSIONS

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

2. The fact that the acts and practices of respondents, hereinabove found to be violative of the Federal Trade Commission Act, constitute a minor rather than a major part of their business, as contended, is neither defense nor justification for that part continuing to deceive and mislead, even indirectly, the substantial numbers of the public shown by the record herein.

ORDER

It is ordered, That the respondents, Benjamin Bieler and Louis Rabinowitz, individually and as copartners doing business as Bieler and Rabinowitz and as Sew-Easy Products Company, or trading under any other name, and their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of sewing machine heads or sewing machines in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale, selling or distributing foreign made sewing machine heads, or sewing machines of which foreign made heads are a part, without clearly and conspicuously disclosing on the heads, in such a manner that it will not be hidden or obliterated, the country of origin thereof.

2. Representing, directly or by implication, that their sewing machine heads or sewing machines are fully guaranteed, or that they are otherwise guaranteed, unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

3. Representing, through the use in advertising of the word "factory," or any other word or term of similar import or meaning, or in any other manner, that said respondents are the manufacturers of the sewing machine heads or sewing machines sold by them, unless and until such respondents actually own and operate, or directly and absolutely control, a factory wherein said products are manufactured by them.

ORDER TO FILE REPORT OF COMPLIANCE

It is 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 the order to cease and desist [as required by said declaratory decision and order of August 28, 1952].

IN THE MATTER OF

U. S. PRINTING & NOVELTY CO., INC. ET AL.

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

Docket 5647. Complaint, Apr. 1, 1949—Decision, Sept. 4, 1952

Where a corporation and its two officers, engaged in the manufacture and interstate sale and distribution of push cards and punchboards, which, bearing explanatory legends or space therefor, were designed and used only for the sale of other merchandise by ultimate purchasers by lot or chance under a plan whereby purchasers who, by chance, selected specified numbers received articles of merchandise without additional cost at much less than their normal retail price and others received nothing for their money other than the privilege of a push or punch—

Sold and distributed such devices to dealers who made them up with assortments of candy, cigarettes, clocks, razors, cosmetics, clothing, and other articles which were exposed and sold by direct or indirect retail purchasers to the public by means of said devices; and thereby supplied to and placed in the hands of others the means of conducting lotteries, games of chance, or gift enterprises in the sale or distribution of their merchandise, contrary to established public policy of the United States Government; and supplied to and placed in their hands means for engaging in unfair acts and practices;

With the result that many members of the purchasing public, because of the element of chance involved, were induced to trade or deal with retail dealers who thus sold or distributed their merchandise; many retailers were thereby induced to deal with suppliers of said merchandise packed with said push cards and punchboards; and gambling among members of the public was taught and encouraged, all to the injury of the public:

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

Before *Mr. Clyde M. Hadley* and *Mr. Abner E. Lipscomb*, hearing examiners.

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

Nash & Donnelly, of Washington, D. C., 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 U. S. Printing & Novelty Co., Inc., a corporation, and Benjamin Blush, Jack Blush, and Hyman Abramowitz, individuals, officers, and directors of said U. S. Printing & Novelty Co., Inc., hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in regard thereto would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent U. S. Printing & Novelty Co., Inc., is a corporation organized and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 195–197 Chrystie Street, in the city of New York, New York. Respondents Benjamin Blush, Jack Blush and Hyman Abramowitz are officers and directors of respondent corporation U. S. Printing & Novelty Co., and said corporation is owned, dominated and controlled by the individual respondents Benjamin Blush, Jack Blush, and Hyman Abramowitz. All of said respondents have cooperated and acted together in the performance of the acts and practices hereinafter alleged.

Respondents are now and for more than three years last past have been engaged in the manufacture of devices commonly known as push cards and punchboards, and in the sale and distribution of said devices to manufacturers of and dealers in various articles of merchandise in commerce between and among the various States of the United States, and in the District of Columbia, and to dealers in various articles of merchandise located in the various States of the United States, and in the District of Columbia.

Respondents cause and have caused said devices when sold, to be transported from their place of business in the State of New York to purchasers thereof at their points of location in the various States of the United States other than New York, and in the District of Columbia. There is now and has been for more than three years last past a course of trade in such devices by said respondents in commerce between and among the various States of the United States, and in the District of Columbia.

PAR. 2. In the course and conduct of their said business as described in paragraph one herein, respondents sell and distribute, and have sold and distributed, to said manfacturers of and dealers in merchandise, push cards and punchboards so prepared and arranged as to involve games of chance, gift enterprises or lottery schemes when used in making sales of merchandise to the consuming public. Respondents sell and distribute, and have sold and distributed many kinds of push cards and punchboards, but all of said devices involve the same chance or lottery features when used in connection with the sale or distribution of merchandise and vary only in detail.

Many of said push cards and punchboards have printed on the faces thereof certain legends or instructions that explain the manner in which said devices are to be used or may be used in the sale or distribution of various specified articles of merchandise. The prices of the sales on said push cards and punchboards vary in accordance with the individual device. Each purchaser is entitled to one punch or push from the push card or punchboard, and when a push or punch is made a disc or printed slip is separated from the push card or punchboard and a number is disclosed. The numbers are effectively concealed from the purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified numbers entitle purchasers to designated articles of merchandise. Persons securing lucky or winning numbers receive articles of merchandise without additional cost at prices which are much less than the normal retail price of said articles of merchandise. Persons who do not secure such lucky or winning numbers receive nothing for their money than the privilege of making a push or punch from said card or board. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Others of said push card and punchboard devices have no instructions or legends thereon but have blank spaces provided therefor. On those push cards and punchboards the purchasers thereof place instructions or legends which have the same import and meaning as the instructions or legends placed by the respondents on said push card and punchboard devices first hereinabove described. The only use to be made of said push card and punchboard devices, and the only manner in which they are used, by the ultimate purchasers thereof, is in combination with other merchandise so as to enable said ultimate purchasers to sell or distribute said other merchandise by means of lot or chance as hereinabove alleged.

PAR. 3. Many persons, firms and corporations who sell and distribute, and have sold and distributed, candy, cigarettes, clocks, razors, cosmetics, clothing, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia, purchase and have purchased respondents' said push card and punchboard devices, and pack and assemble, and have packed and assembled, assortments comprised of various articles of merchandise together with said push cards and punchboard devices. Retail dealers who have purchased said assortments either directly or indirectly have exposed the same to the purchasing public and have sold or distributed said articles of merchandise by means of said push cards and punchboards in accordance with the sales plan as described in paragraph two hereof. Because of the element of chance involved in connection with the sale and distribution of said merchandise by means of said push cards and punchboards, many members of the purchasing public have been induced to trade or deal with retail dealers selling or distributing said merchandise by means thereof. As a result thereof many retail dealers have been induced to deal with or trade with manufacturers, wholesale dealers and jobbers who sell and distribute said merchandise together with said devices.

PAR. 4. The sale of merchandise to the purchasing public through the use of, or by means of, such devices in the manner above alleged, involves a game of chance or the sale of a chance to procure articles of merchandise at prices much less than the normal retail price thereof and teaches and encourages gambling among members of the public, all to the injury of the public. The use of said sales plan or methods in the sale of merchandise and the sale of merchandise by and through the use thereof, and by the aid of said sales plan or method is a practice which is contrary to an established public policy of the Government of the United States and in violation of criminal laws, and constitutes unfair acts and practices in said commerce.

The sale or distribution of said push cards and punchboard devices by respondents as hereinabove alleged supplies to and places in the hands of others the means of conducting lotteries, games of chance or gift enterprise in the sale or distribution of their merchandise. The respondents thus supply to, and place in the hands of, said persons, firms and corporations the means of, and instrumentalities for, engaging in unfair acts and practices within the intent and meaning of the Federal Trade Commission Act.

PAR. 5. The aforesaid acts and practices of respondents as hereinabove alleged are all to the prejudice and injury of the public and constitute unfair 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 April 1, 1949, issued and subsequently served its complaint in this proceeding upon the respondents U. S. Printing & Novelty Co., Inc., a corporation, and Benjamin Blush, Jack Blush, and Hyman Abramowitz, individuals, officers, and directors of said corporate respondent, charging them with the use of unfair acts and practices in commerce in violation of the provisions of said Act. On April 27, 1949, respondents filed an answer to said complaint. Thereafter, on June 23, 1950, upon respondents' motion the hearing examiner of the Commission duly designated herein permitted respondents to withdraw the answer previously filed herein and to substitute therefor an answer admitting all the material allegations of fact and waiving the taking of testimony and other procedure, but reserving the right to appeal from any decision and order issued herein by the hearing examiner or the Commission. Said answer was filed upon the condition that no action would be taken in this proceeding until after the final determination by the Commission had been made in the matter of Superior Products, a corporation, et al., Docket No. 5561. Said matter having been terminated by the Commission's order to cease and desist issued January 29, 1952, the above-entitled proceeding regularly came on for final consideration by said hearing examiner upon the complaint and substitute answer; and the said hearing examiner, on February 15, 1952, filed his initial decision.

Within the time permitted by the Commission's Rules of Practice, counsel for respondents filed with the Commission an appeal from said initial decision and thereafter this proceeding regularly came on for final consideration by the Commission upon the record herein, including briefs in support of and in opposition to the appeal (respondents' application for oral argument of counsel before the Commission having been denied); and the Commission, having issued its order granting said appeal in part and denying it in part 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 and order, the same to be in lieu of the initial decision of the hearing examiner.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Repondent U. S. Printing & Novelty Co., Inc., is a corporation organized and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 195–197 Chrystie Street, in the City of New York, New York. Respondents Benjamin Blush and Jack Blush are officers and directors of respondent corporation U. S. Printing & Novelty Co., and said corporation is owned, dominated and controlled by the individual respondents Benjamin Blush and Jack Blush. All of said respondents have cooperated and acted together in the performance of the acts and practices hereinafter found. Respondent Hyman Abramowitz, being now deceased, is not included in the term respondents as used hereinafter.

Respondents are now and for more than three years last past have been engaged in the manufacture of devices commonly known as push cards and punchboards, and in the sale and distribution of said devices to manufacturers of and dealers in various articles of merchandise in commerce between and among the various States of the United States, and in the District of Columbia, and to dealers in various articles of merchandise located in the various States of the United States, and in the District of Columbia.

Respondents cause and have caused said devices, when sold, to be transported from their place of business in the State of New York to purchasers thereof at their points of location in the various States of the United States other than New York, and in the District of Columbia. There is now and has been for more than three years last past a course of trade in such devices by said respondents in commerce between and among the various States of the United States, and in the District of Columbia.

PAR. 2. In the course and conduct of their said business as described in Paragraph One herein, respondents sell and distribute, and have sold and distributed, to said manufacturers of and dealers in merchandise, push cards and punchboards so prepared and arranged as to involve games of chance, gift enterprises or lottery schemes when used in making sales of merchandise to the consuming public. Respondents sell and distribute, and have sold and distributed many kinds of push cards and punchboards, but all of said devices involve the same chance or lottery features when used in connection with the sale or distribution of merchandise and vary only in detail.

Many of said push cards and punchboards have printed on the faces thereof certain legends or instructions that explain the manner in which said devices are to be used or may be used in the sale or distribution of various specified articles of merchandise. The prices of the sales on said push cards and punchboards vary in accordance with the individual device. Each purchaser is entitled to one punch or push from the push card or punchboard, and when a push or punch is made a disc or printed slip is separated from the push card or punchboard and a number is disclosed. The numbers are effectively concealed from the purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified numbers entitle purchasers to designated articles of merchandise. Persons securing lucky or winning numbers receive articles of merchandise without additional cost at prices which are much less than the normal retail price of said articles of merchandise. Persons who do not secure such lucky or winning numbers receive nothing for their money other than the privilege of making a push or punch from said card or board. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Others of said push card and punchboard devices have no instructions or legends thereon, but have blank spaces provided therefor.

On those push cards and punchboards the purchasers thereof place instructions or legends which have the same import and meaning as the instructions or legends placed by the respondents on said push card and punchboard devices first hereinabove described. The only use to be made of said push card and punchboard devices, and the only manner in which they are used, by the ultimate purchasers thereof, is in combination with other merchandise so as to enable said ultimate purchasers to sell or distribute said other merchandise by means of lot or chance as hereinabove found.

PAR. 3. Many persons, firms and corporations who sell and distribute, and have sold and distributed, candy, cigarettes, clocks, razors, cosmetics, clothing, and other articles of merchandise in commerce between and among the various States of the United States, and in the District of Columbia, purchase and have purchased respondents' said push card and punchboard devices, and pack and assemble, and have packed and assembled, assortments comprised of various articles of merchandise together with said push card and punchboard devices. Retail dealers who have purchased said assortments either directly or indirectly have exposed the same to the purchasing public, and have sold or distributed said articles of merchandise by means of said push cards and punchboards in accordance with the sales plan as described in Paragraph Two hereof. Because of the element of chance involved in connection with the sale and distribution of said merchandise by means of said push cards and punchboards, many members of the purchasing public have been induced to trade or deal with retail dealers selling or distributing said merchandise by means thereof. As a result thereof many retail dealers have been induced to deal or trade with manufacturers, wholesale dealers and jobbers who sell and distribute said merchandise together with said devices.

PAR. 4. The sale of merchandise to the purchasing public through the use of, or by means of, such devices in a manner above described, involves a game of chance or the sale or a chance to procure articles of merchandise at prices much less than the normal retail price thereof and teaches and encourages gambling among members of the public, all to the injury of the public. The use of said sales plan or method in the sale of merchandise and the sale of merchandise by and through the use thereof, and by the aid of said sales plan or method, is a practice which is contrary to an established public policy of the Government of the United States.

The sale or distribution of said push cards and punchboard devices by respondents as hereinabove found supplies to and places in the hands of others the means of conducting lotteries, games of chance or gift enterprises in the sale or distribution of their mechandise. The respondents thus supply to, and place in the hands of, said persons, firms and corporations the means of, and instrumentalities for, engaging in unfair acts and practices within the intent and meaning of the Federal Trade Commission Act.

CONCLUSION

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

ORDER

It is ordered, That respondent U. S. Printing & Novelty Co., Inc., a corporation, its officers, and respondents Benjamin Blush and Jack Blush, individually and as officers and directors of said corporate respondent, U. S. Printing & Novelty Co., Inc., and their respective representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Selling or distributing in commerce, as "commerce" is defined in the Federal Trade Commission Act, push cards, punchboards, or other lottery devices which are to be used, or which, due to their design, are suitable for use in the sale or distribution of merchandise to the public by means of a game of chance, gift enterprise or lottery scheme.

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

It is further ordered, That the complaint herein be, and it hereby is, dismissed as to respondent Hyman Abramowitz.

IN THE MATTER OF

MURRAY EPSTEIN ET AL. DOING BUSINESS AS SEAWOL SEWING SUPPLIES

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

Docket 5894. Complaint, June 27, 1951—Decision, Sept. 4, 1952

When articles of merchandise, including sewing machines, are exhibited and offered for sale by retailers to the purchasing public not marked or not adequately marked showing that they are of foreign origin, or if foreign markings are concealed, such public understands and believes the articles to be wholly of domestic origin.

There is among the members of the purchasing public a substantial number who have a decided preference for products originating in the United States over products originating in whole or in part in foreign countries, including sewing machines.

The names "Majestic" and "Admiral" are parts of the name of corporations doing business in the United States, which are and have been well and favorably known to the purchasing public and long established in various industries, and some of them use said words as a trade name, mark or brand for their products.

Where four partners engaged in importing sewing machine heads displaying on the back of the vertical arm the words "Made in Occupied Japan" or "Japan," which became concealed when they attached a motor thereto, and in the competitive interstate sale and distribution to distributors and retailers of the complete sewing machines of which such heads were a part—

(*a*) Failed adequately to disclose on said sewing machine heads that they had been manufactured in Japan; and

(*b*) Falsely represented, through the adoption of the words "Majestic" and "Admiral" as a trade or brand name for their said products and the conspicuous display thereof on the front horizontal arm and use thereof in advertising, that the machines were manufactured by the well and favorably known firms with which said names were associated;

With the result of placing in the hands of dealers a means whereby they might deceive the purchasing public in the aforesaid respects and with tendency and capacity so to mislead members thereof and thereby induce purchase of their said products and of unfairly diverting trade to them from their competitors, including makers and sellers of both the domestic and imported product, of whom some adequately informed the public of the origin thereof, to the substantial injury of competition in commerce:

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. Webster Ballinger*, hearing examiner.
Mr. William L. Taggart for the Commission.
Mr. Samuel D. Robbins, of Los Angeles, Calif., 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 Murray Epstein, Lou Seaman, Ben Lander and Richard Wolochow, copartners, doing business as Seawol Sewing Supplies, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

Paragraph 1. Respondents Murray Epstein, Lou Seaman, Ben Lander and Richard Wolochow are copartners doing business under the name of Seawol Sewing Supplies with their office and principal place of business located at 2736 West Pico Boulevard, Los Angeles, California.

Par. 2. Respondents are now, and have been for some time last past, engaged in the sale of sewing machine heads imported by them from Japan, and complete sewing machines of which said heads are a part, to distributors and also to retailers, who in turn sell to the purchasing public. In the course and conduct of their business respondents cause their said products, when sold, to be transported from their place of business in the State of California to the purchasers thereof located in various other States and maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce among and between the various States of the United States. Their volume of trade in said commerce has been and is now substantial.

Par. 3. When the sewing machine heads are imported by respondents the words "Made in Occupied Japan" or "Japan" appear on the back of the vertical arm. Before the heads are sold to the purchasing public as a part of a complete sewing machine it is necessary to attach a motor to the head in the process of which the aforesaid words are covered by the motor so that they are not visible.

Par. 4. When articles of merchandise, including sewing machines, are exhibited and offered for sale by retailers to the purchasing public and such articles are not marked or are not adequately marked showing that they are of foreign origin or if marked and the markings are covered or otherwise concealed, such purchasing public understands and believes such articles to be wholly of domestic origin.

There is among the members of the purchasing public a substantial number who have a decided preference for products originating in the United States over products originating in whole or in part in foreign countries, including sewing machine heads.

PAR. 5. Respondents have adopted the use of the words "Majestic" and "Admiral" as a trade or brand name for their said machine heads and completed sewing machines which words are printed on the front horizontal arm of the head in large conspicuous letters and use such trade names in their advertising matter. The names "Majestic" and "Admiral" are parts of the name of a number of corporations transacting and doing business in the United States which are and have been well and favorably known to the purchasing public and which are and have been long established in various industries. Some of these corporations use the words "Majestic" or "Admiral" as a trade name, mark or brand for their products.

PAR. 6. By using said trade names "Majestic" and "Admiral" respondents represent to the purchasing public that their product is manufactured by the well and favorably known firms with which said names have long been associated, which is contrary to the fact.

PAR. 7. Respondents by placing in the hands of dealers their said sewing machine heads and completed sewing machines, provide said dealers a means and instrumentality whereby they may mislead and deceive the purchasing public as to the place of origin of said heads and the maker thereof.

PAR. 8. Respondents in the course and conduct of their business are in substantial competition in commerce with the makers and sellers of domestic sewing machines as well as the sellers of imported sewing machines, some of whom adequately inform the public as to the source of origin of their said products.

PAR. 9. The failure of respondents to adequately disclose on the sewing machine heads that they are manufactured in Japan and the use of the words "Majestic" and "Admiral" has the tendency and capacity to lead members of the purchasing public into the erroneous and mistaken belief that their said product is of domestic origin, and is manufactured by the well and favorably known domestic manufacturers with which said names have long been associated, and to induce members of the purchasing public to purchase sewing machines of which these heads are a part because of such erroneous and mistaken belief. As a result thereof, trade has been unfairly diverted to respondents from their competitors and substantial injury has been and is being done to competition in commerce.

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

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 27, 1951, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging said respondents with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. Respondents filed their answer admitting all of the material facts alleged in said complaint and waived all intervening procedure. Thereafter, the proceeding regularly came on for final consideration by a hearing examiner of the Commission duly designated by it, on the complaint and answer thereto, and said hearing examiner, on March 6, 1952, filed his initial decision.

Within the time permitted by its Rules of Practice, the Commission, having reason to believe that said initial decision did not constitute an adequate disposition of the proceeding, issued an order placing this case on its docket for review, served on all parties its tentative decision herein and granted to them permission to file with the Commission any objections they might have to said tentative decision. Respondents not having filed any objections to said tentative decision, this proceeding regularly came on for final consideration before the Commission upon the aforesaid complaint and respondents' answer thereto; 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 being of the opinion that the hearing examiner's initial decision does not constitute an adequate disposition of this proceeding, makes this its findings as to the facts, conclusion and order to cease and desist, the same to be in lieu of the initial decision of the hearing examiner.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Murray Epstein, Lou Seaman, Ben Lander and Richard Wolochow are copartners doing business under the name of Seawol Sewing Supplies, with their office and principal place of business located at 2736 West Pico Boulevard, Los Angeles, California.

PAR. 2. Respondents are now, and have been for some time last past, engaged in the sale of sewing machine heads imported by them from Japan, and complete sewing machines of which said heads are a part, to distributors and also to retailers, who in turn sell to the purchasing public. In the course and conduct of their business respondents cause their said products, when sold, to be transported from their place of business in the State of California to the purchasers thereof located in various other States and maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce among and between the various States of the United States. Their volume of trade in said commerce has been and is now substantial.

PAR. 3. When the sewing machine heads are imported by respondents the words "Made in Occupied Japan" or "Japan" appear on the back of the vertical arm. Before the heads are sold to the purchasing public a motor is attached thereto, making a complete sewing machine, and in the process of attaching the motor the aforesaid words are covered so that they are not visible.

PAR. 4. When articles of merchandise, including sewing machines, are exhibited and offered for sale by retailers to the purchasing public and such articles are not marked or are not adequately marked showing that they are of foreign origin or if marked and the markings are covered or otherwise concealed, such purchasing public understands and believes such articles to be wholly of domestic origin.

There is among the members of the purchasing public a substantial number who have a decided preference for products originating in the United States over products originating in whole or in part in foreign countries, including sewing machine heads.

PAR. 5. Respondents have adopted the use of the words "Majestic" and "Admiral" as a trade or brand name for their said machine heads and completed sewing machines, which words are printed on the front horizontal arm of the head in large conspicuous letters, and use such trade names in their advertising matter. The names "Majestic" and "Admiral" are parts of the name of a number of corporations transacting and doing business in the United States which are and have been well and favorably known to the purchasing public and which are and have been long established in various industries. Some of these corporations use the words "Majestic" or "Admiral" as a trade name, mark or brand for their products.

PAR. 6. By using said trade names "Majestic" and "Admiral" respondents represent to the purchasing public that their product is manufactured by the well and favorably known firms with which said names have long been associated, which is contrary to the facts.

PAR. 7. Respondents, by placing in the hands of dealers their said sewing machine heads and completed sewing machines, provide said dealers a means and instrumentality whereby they may mislead and deceive the purchasing public as to the place of origin of said heads and the maker thereof.

PAR. 8. Respondents in the course and conduct of their business are in substantial competition in commerce with the makers and sellers of domestic sewing machines as well as the sellers of imported sewing machines, some of whom adequately inform the public as to the source of origin of their said products.

PAR. 9. The failure of respondents to adequately disclose on the sewing machine heads that they are manufactured in Japan and the use of the words "Majestic" and "Admiral" has the tendency and capacity to lead members of the purchasing public into the erroneous and mistaken belief that their said product is of domestic origin, and is manufactured by the well and favorably known domestic manufacturers with which said names have long been associated, and to induce members of the purchasing public to purchase sewing machines of which these heads are a part because of such erroneous and mistaken belief. As a result thereof, trade has been unfairly diverted to respondents from their competitors and substantial injury has been and is being done to competition in commerce.

CONCLUSION

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

ORDER

It is ordered, That the respondents, Murray Epstein, Lou Seaman, Ben Lander and Richard Wolochow, individually and as copartners doing business as Seawol Sewing Supplies, or trading under any other name, and their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of sewing machine heads or sewing machines in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale, selling or distributing foreign made sewing machine heads, or sewing machines of which foreign made heads are a part, without clearly and conspicuously disclosing on the heads, in

such a manner that it will not be hidden or obliterated, the country of origin thereof.

2. Using the words "Majestic" or "Admiral," or any simulations thereof, as brand or trade names to designate, describe or refer to their sewing machines or sewing machine heads; or representing through the use of any other words or in any other manner that sewing machines or sewing machine heads are made by anyone other than the actual manufacturers.

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