Decision

IN THE MATTER OF

# DAVID E. FISCHER ET AL. TRADING AS AMERICAN ASPHALT CO.

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

*Docket 6912. Complaint, Oct. 9, 1957—Decision—Feb. 27, 1958*

Order requiring sellers in New York City of waterproof roof coatings and specialty paints, to cease representing falsely in letters and advertising literature mailed to members of the consuming public that they had certain specified quantities of "Kantleek" asbestos roof coating "left over" from a larger shipment for sale at or near the residence of the addressee at a "substantial discount * * * 20% off * * * ", and that they were "Manufacturers of waterproofing specialties" and "Established 1909."

*Mr. Edward F. Downs* and *Mr. Thomas A. Sterner* supporting the complaint.

*No appearance* for the respondents.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

On October 9, 1957, the Federal Trade Commission issued its complaint against the above-named respondents charging them with violation of the Federal Trade Commission Act as set forth in said complaint. From the record it appears that on October 22, 1957 copies of said complaint were duly served on respondents together with copies of an order designating and appointing the undersigned as hearing examiner in this proceeding. The complaint so served contained a notice that a hearing would be held in the Federal Trade Commission office, United States Court House, Foley Square, New York, N.Y., on December 17, 1957, on the charges set forth in said complaint at which time respondents would have the right to appear and show cause why an order should not be entered requiring each of them to cease and desist from violations of the law charged in the complaint. The complaint further contained a notice that respondents were afforded an opportunity to file with the Commission an answer to the complaint on or before 30 days after service.

The record further shows that no answer to the complaint was filed within the time prescribed and that after the time for filing answer had expired, upon motion of counsel supporting the complaint calling attention to the default in the matter of filing answer, the undersigned, on December 10, 1957, issued an order cancelling the hearing set for New York, N.Y., on December 17, 1957, and in lieu

thereof scheduling a hearing in room 332, Federal Trade Commission Building, Washington, D.C., on December 17, 1957 at 10 a.m. which order was duly served on respondents on December 12, 1957.

On December 17, 1957, pursuant to the order of the hearing examiner, a hearing was held at 10 a.m. in room 332, Federal Trade Commission Building, Washington, D.C. At that hearing counsel supporting the complaint was present but neither of the respondents were present in person or by counsel and that fact was duly noted of record. Attention of the hearing examiner was called to the fact and it was noted on the record that no answer was filed by or for either of the respondents. Following section 3.7(b) of the Commission's rules of practice, the respondents David E. Fischer and Rose Berr, individuals trading and doing business as American Asphalt Co., having failed to answer the complaint within the time provided therefor and having failed to appear either in person or by attorney at the time and place fixed for hearing, after due notice thereof, were deemed to be in default and it was so stated on the record by the hearing examiner at the hearing. Also at said hearing, consideration was given to determination of the form of order to be entered herein. In view of the foregoing the hearing examiner now makes the following findings as to the facts, conclusions, and order:

## FINDINGS AS TO FACTS

PARAGRAPH 1. Respondent Rose Berr is at present sole owner trading and doing business as American Asphalt Co. and respondent David E. Fischer prior to about April 5, 1956, was sole owner of said business. Both individual respondents now formulate, control, and direct the policies and practices of said American Asphalt Co. Their office and principal place of business is located at 32 Union Square, New York, N.Y.

PAR. 2. Respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution of waterproof roof coatings and specialty paints to the consuming public. In the course and conduct of their business respondents cause said products, when sold, to be transported from the place of manufacture in various States of the United States to purchasers located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. Respondents, in the course and conduct of their business, are engaged in substantial competition in commerce with other firms,

individuals and corporations engaged in the sale of the same or similar products.

PAR. 4. In the course and conduct of said business and for the purpose of inducing the purchase of their products, it has been and is the practice of respondents to mail letters and advertising literature to prospective purchasers in various States of the United States, and therein make representations with respect to price and location of said product and with respect to the date of organization and status of respondents' business. Typical of such representations, but not all inclusive, are:

In letters to prospective customers located in or near the city therein named appears the following:

We shipped a carload of "Kantleek" asbestos roof coating to Pittsburgh recently with the understanding that any material left over could be returned to us for credit.

We are now informed that there are eight 55 gallon drums "over." Can you use these drums or any part of them? If you can cooperate with us in this matter we will allow you a substantial discount from our specification price of $1.50 per gallon. 20% off * * *

Manufacturers of waterproofing specialities.
Established 1909.

PAR. 5. Through and by means of the foregoing statements and others of similar import and meaning not specifically set out above, respondents represented and implied that certain specified quantities of "Kantleek" asbestos roof coating were available and for sale at or near the residence of the prospective purchaser, as excess from larger shipments; that the regular and customary price of "Kantleek" asbestos roof coating was $1.50 per gallon and that it was being offered for sale and would be sold at a reduced price, viz, 20 percent off; that respondents manufacture some or all of the products they sell; and that American Asphalt Co. was established in 1909.

PAR. 6. The aforesaid statements and representations were false, misleading, and deceptive. In truth and in fact, respondents did not have certain specified quantities of "Kantleek" asbestos roof coating available and for sale at or near the residence of the prospective customer, as excess from a larger shipment; the regular and customary price of "Kantleek" asbestos roof coating was not $1.50 per gallon but considerably less; and the offering price of $1.50 less 20 percent was not a reduced, special or discount price, but more closely approximated the price at which said product was usually sold. Respondents do not manufacture any of the products they sell or distribute. American Asphalt was not established in 1909, but at a much later date.

PAR. 7. There is a preference on the part of a substantial portion of

the public for purchasing from manufacturers due to the general belief that manufacturers' prices are lower and there is a preference for purchasing from sources which have been in business for a long period of time, due to the general belief that such businesses offer products of greater dependability.

PAR. 8. The use by respondents of the foregoing false and misleading representations and implications respecting their products has had and now has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that said representations and implications are true, and causes a substantial portion of the purchasing public, because of such mistaken and erroneous beliefs, to purchase said products. As a result of said practices, trade in commerce has been and is being unfairly diverted to respondents from their competitors and injury has thereby been done to competition in commerce.

CONCLUSIONS

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

The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents herein. The complaint states a cause of action against respondents under the Federal Trade Commission Act. This proceeding is in the public interest.

ORDER

*It is ordered*, That respondents David E. Fischer and Rose Berr, individually and trading and doing business as American Asphalt Co., 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, and distribution of waterproof roof coatings, specialty paints or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing directly or by implication:

1. That any quantity of roof coating or other products is available for sale in any locality at reduced prices because of an excess shipment, or for any other reason, unless such is the fact;

2. That the customary or regular price of respondents' products

is any price which is in excess of the price at which such products are regularly and customarily sold by respondents in the normal and usual course of business.

3. That the price at which respondents offer their products for sale constitutes a special, reduced or discount price, when in fact such price is the usual and customary price at which respondents sell their products in the normal and usual course of business.

4. That respondents manufacture the products sold or distributed by them.

5. That their business was started at an earlier date than it actually was or that they have been in business longer than they actually have.

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

Pursuant to section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner shall, on the 27th day of February 1958, become the decision of the Commission; and, accordingly:

*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.

IN THE MATTER OF

# INTERNATIONAL SHOE CO. AND SHOENTERPRISE CORP.

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

*Docket 6835. Complaint, July 9, 1957—Decision, Mar. 6, 1958*

Consent order requiring the world's largest manufacturer of shoes, with sales in the year ending November 30, 1955, of over $262 million, the majority of which were to family-type shoe stores in towns of less than 10,000 population, to cease engaging in exclusive-dealing arrangements with shoe dealers or prospective shoe dealers involving loans of substantial sums of money or the furnishing of special supervisory and advisory services and other special assistance to such dealers, on the condition that the dealer feature, handle, and advertise only respondent's shoes to the exclusion of any other line of shoes and merchandise not approved by it.

*Mr. Wilmer L. Tinley* and *Mr. John B. Clayton* for the Commission.

*Sullivan, Bernard, Shea & Kenney*, by *Mr. John E. Shea*, of Washington, D.C., and *Mr. Richard O. Rumer* of St. Louis, Mo., for respondents.

## INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of section 5 of the Federal Trade Commission Act (U.S.C. Title 15, sec. 45) the Federal Trade Commission on July 9, 1957, issued and subsequently served its complaint in this proceeding against respondent International Shoe Company, a corporation existing and doing business under and by virtue of the laws of the State of Delaware and respondent Shoenterprise Corp., a corporation existing and doing business under and by virtue of the laws of the State of Missouri with their office and place of business located at 1509 Washington Avenue, St. Louis, Mo.

On December 19, 1957, there was submitted to the undersigned hearing examiner an agreement between respondents and counsel supporting the complaint providing for the entry of a consent order. By the terms of said agreement, respondents admit all the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. By such agreement, respondents waive any further procedural steps before the hearing examiner and the Commission; waive the making of findings of fact and conclusions of law; and waive all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement. Such agreement further provides that it

disposes of all of this proceeding as to all parties; and that the record on which this initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement; that the latter shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint; and that the following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondents, and, when so entered, it shall have the same force and effect as if entered after a full hearing, and may be altered, modified, or set aside in the manner provided for other orders; and that the complaint may be used in construing the terms of the order.

The hearing examiner having considered the agreement and proposed order, and being of the opinion that they provide an appropriate basis for settlement and disposition of this proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued.

1. Respondent International Shoe Co. is a corporation existing and doing business under and by virtue of the laws of the State of Delaware and respondent Shoenterprise Corp. is a corporation existing and doing business under and by virtue of the laws of the State of Missouri. Both corporations have their office and place of business located at 1509 Washington Avenue, St. Louis, Mo.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents.

ORDER

*It is ordered*, That respondents International Shoe Co. and Shoenterprise Corp., corporations, and their respective officers, directors, agents, representatives, and employees, directly or through any corporate or other device, in or in connection with the offering for sale, sale and distribution of shoes in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Contracting to make loans, granting loans, or offering to grant loans, on the condition or understanding, that the recipient thereof shall not deal in, handle, or sell, shoes or other similar or related products supplied by any competitor, or competitors, not approved by respondents.

(2) Contracting to furnish, or make available, services or offering to furnish, or make available, services on the condition or understanding that the recipient thereof shall not deal in, handle, or sell, shoes or other similar or related products supplied by any competitor, or competitors, not approved by respondents.

(3) Selling, or making any contract or agreement for the sale of, shoes or other similar or related products on the condition or understanding that the purchaser thereof shall not deal in, handle, or sell, shoes or other similar or related products supplied by any competitor or competitors, not approved by respondents.

(4) Enforcing, or continuing in operation or effect, any condition or understanding in, or in connection with, any existing contract of sale, which condition or understanding is to the effect that the purchaser of said products from respondents shall not deal in, handle, or sell shoes or other similar or related products supplied by any competitor or competitors, not approved by respondents.

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

Pursuant to section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner shall, on the 6th day of March 1958, become the decision of the Commission; and, accordingly:

*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.

Decision

IN THE MATTER OF

# THOMAS J. YACENDA TRADING AS DEEP ROCK REFINING CO.

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

*Docket 6579. Complaint, June 27, 1956—Decision, Mar. 7, 1958*

Consent order requiring a reclaimer in Richmond, Va., of motor oil obtained from drainings of motor crankcases, to cease selling the oil to dealers for resale to the purchasing public with no markings on containers or otherwise to indicate that the product was reclaimed used oil.

*John W. Brookfield, Jr.*, Esq., for the Commission.
*Harold H. Dervishian*, Esq., for respondent.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on June 27, 1956, charging him with having violated the Federal Trade Commission Act by misleading the public and dealers into believing that respondent's used oil is new oil. Respondent appeared by counsel and entered into an agreement dated November 6, 1956, containing a consent order to cease and desist, disposing of all the issues in this proceeding without hearing, which agreement has been duly approved by the director of the Bureau of Litigation. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with section 3.25 of the rules of practice of the Commission.

Respondent, pursuant to the aforesaid agreement, has admitted all of the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been made duly in accordance with such allegations. Said agreement further provides that respondent waive all further procedural steps before the hearing examiner or the Commission, including the making of findings of fact or conclusions of law and the right to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, that said agreement is for settlement purposes only and does not constitute an admission by respondent that he has violated the law

as alleged in the complaint, that said order to cease and desist shall have the same force and effect as if entered after a full hearing and may be altered, modified or set aside in the manner provided for other orders, and that the complaint may be used in construing the terms of the order.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing the consent order, and it appearing that the order and agreement cover all of the allegations of the complaint and provide for appropriate disposition of this proceeding, the agreement is hereby accepted and ordered filed upon this decision and said agreement becoming part of the Commission's decision pursuant to sections 3.21 and 3.25 of the rules of practice, and the hearing examiner accordingly makes the following findings, for jurisdictional purposes, and order:

1. Respondent Thomas J. Yacenda is an individual trading and doing business as Deep Rock Refining Co., with his office and principal place of business located at Albany Avenue and East 8th Street, in the city of Richmond, Va.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent hereinabove named. The complaint states a cause of action against said respondent under the Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

*It is ordered*, That Thomas J. Yacenda, an individual, trading as Deep Rock Refining Co. or under any other trade name, and respondent's agents, representatives, or 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 lubricating oil composed in whole or in part of oil which has been previously used and reclaimed, do forthwith cease and desist from:

1. Representing, directly or by implication, that such lubricating oil is new or unused oil, or refined from virgin crude oil.

2. Advertising, offering for sale or selling any lubricating oil previously used for lubricating purposes without disclosing such prior use to the purchaser or potential purchaser in advertising, in sales promotion matter, and by a clear and conspicuous statement to that effect on the container.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission, on December 13, 1956, having issued an order extending until further order the date on which the hearing examiner's initial decision in this proceeding otherwise would have become the decision of the Commission; and

The purpose of said order having been to effectuate a condition contained in the agreement for consent order theretofore executed by the respondent and counsel in support of the complaint, which condition was that the initial decision based on the agreement should not become the decision of the Commission until and unless the Commission should issue an order to cease and desist in the matter of Mohawk Refining Corp., et al., docket No. 6588; and

The Commission, on February 14, 1958, having issued an order to cease and desist in the matter of Mohawk Refining Corp., et al., docket No. 6588:

*It is ordered*, That the hearing examiner's initial decision herein, filed November 21, 1956, be, and it hereby is, adopted as the decision of the Commission.

*It is further ordered*, That the respondent, Thomas J. Yacenda, 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 contained in the aforesaid initial decision.

IN THE MATTER OF

# ACME REFINING CORP. ET AL.

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

*Docket 6581. Complaint, June 29, 1956—Decision, Mar. 7, 1958*

Consent order requiring reclaimers in Newark, N.J., of motor oil obtained from drainings of motor crankcases, to cease selling the oil as such or blended with new oil to dealers for resale to the purchasing public with no markings on containers or otherwise to indicate that the product was reclaimed used oil.

*Mr. John W. Brookfield, Jr.*, for the Commission.

*Mr. Seymour Friedman*, of Washington, D.C., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint alleges that the respondents have been and are engaged in the business of reclaiming used motor oil and in selling and distributing such lubricating oil, or a blend of such oil and new oil, in commerce, and charges that in the course of said business respondents have misrepresented said product as new oil by various statements printed on their oil containers and by failing to disclose on said containers that the oil contained therein is reclaimed used oil, and have thereby also placed in the hands of dealers a means and instrumentality of misleading the purchasing public with respect to the nature of respondents' products, in violation of the Federal Trade Commission Act.

Subsequent to the issuance of the complaint, respondents, their counsel, and counsel supporting the complaint entered into an agreement containing consent order to cease and desist, which was approved by the director and the assistant director, Bureau of Litigation of the Commission, and thereafter transmitted to the hearing examiner for consideration.

The agreement identifies respondent Acme Refining Corp. as a New Jersey corporation with its office and principal place of business located at 12–34 Lister Avenue, Newark, N.J., and respondents Irving Handshuh, Laurence H. Bernstein, Archie Sandin, erroneously named in the complaint herein as Archie Sandlin, and Jacob W. Doll as individuals and officers of said corporation, located at the same address as the corporate respondent.

The agreement provides, among other things, that respondents admit all the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had

been duly made in accordance with such allegations; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, and that the effective date of the initial decision based on the complaint and agreement herein shall be stayed by the Commission, so that said initial decision shall not become the decision of the Commission unless and until the Commission issues an order to cease and desist in the matter of Mohawk Refining Corporation, et al., docket No. 6588; that the complaint herein may be used in construing the terms of the order agreed upon, which may be altered, modified or set aside in the manner provided for other orders; that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint; and that the order set forth in the agreement and hereinafter included in this decision shall have the same force and effect as if entered after a full hearing.

Respondents waive any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law, and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

The order agreed upon fully disposes of all the issues raised in the complaint, and adequately prohibits the acts and practices charged therein as being in violation of the Federal Trade Commission Act. Accordingly, the hearing examiner finds this proceeding to be in the public interest and accepts the agreement containing consent order to cease and desist as part of the record upon which this decision is based. Therefore,

*It is ordered*, That respondent, Acme Refining Corp., a corporation, and its officers, and Irving Handshuh, Laurence H. Bernstein, Archie Sandin, and Jacob W. Doll, individually and as officers of said corporation, and respondents' agents, representatives or 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 lubricating oil composed in whole or in part of oil which has been previously used and reclaimed, do forthwith cease and desist from:

1. Representing, directly or by implication, that such lubricating oil is new or unused oil, or refined from virgin crude oil;

2. Advertising, offering for sale, or selling any lubricating oil previously used for lubricating purposes without disclosing such prior

use to the purchaser or potential purchaser in advertising, in sales promotion matter and by a clear and conspicuous statement to that effect on the container.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission, on February 14, 1957, having issued an order extending until further order the date on which the hearing examiner's initial decision in this proceeding otherwise would have become the decision of the Commission; and

The purpose of said order having been to effectuate a condition contained in the agreement for consent order theretofore executed by the respondents and counsel in support of the complaint, which condition was that the initial decision based on the agreement should not become the decision of the Commission until and unless the Commission should issue an order to cease and desist in the matter of Mohawk Refining Corp., et al., docket No. 6588; and

The Commission, on February 14, 1958, having issued an order to cease and desist in the matter of Mohawk Refining Corp., et al., docket No. 6588:

*It is ordered*, That the hearing examiner's initial decision herein, filed January 25, 1957, be, and it hereby is, adopted as the decision of the Commission.

*It is further ordered*, That the respondents, Acme Refining Corp., a corporation, and Irving Handshuh, Laurence H. Bernstein, Archie Sandin and Jacob W. Doll, individually and as officers of said corporation, 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 contained in the aforesaid initial decision.

IN THE MATTER OF

# SUPREME PETROLEUM PRODUCTS, INC., ET AL.

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

*Docket 6682. Complaint, Nov. 30, 1956—Decision, Mar. 7, 1958*

Consent order requiring sellers in Philadelphia, Pa., to cease selling to dealers for resale to the purchasing public reclaimed motor oil obtained from drainings of motor crankcases, or a blend of such oil with new oil, with no markings on containers or otherwise to indicate that the product was reclaimed used oil.

*Mr. John W. Brookfield, Jr.*, for the Commission.
*Mr. Seymour Friedman*, of Washington, D.C., for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondents with violation of the Federal Trade Commission Act in connection with the sale of lubricating oil made in whole or in part from oil which has been previously used. An agreement has now been entered into by respondents and counsel supporting the complaint which provides, among other things, that respondents admit all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; and that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

The agreement further provides that the effective date of the initial decision based thereon shall be stayed by the Commission, so that such decision shall not become the decision of the Commission until and unless an order to cease and desist is issued by the Commission in the matter of *Mohawk Refining Corp.*, docket 6588.

The hearing examiner having considered the agreement and pro-

posed order and being of the opinion that they provide an adequate basis for an appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued:

1. Respondent Supreme Petroleum Products, Inc., is a Pennsylvania corporation, with its office and principal place of business located at 8215 Bartram Avenue, Philadelphia, Pa. Respondent Manuel Blasenstein is president and respondent Louis Schnabel is secretary-treasurer of said respondent corporation.

Respondents Louis Schnabel, Manuel Blasenstein, Thomas Blasenstein, Bernard Blasenstein, and Minnie Blasenstein are individuals and copartners trading as Penn City National Oil Co., with their office and principal place of business also located at 8215 Bartram Avenue, Philadelphia, Pa.

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

ORDER

*It is ordered*, That respondent Supreme Petroleum Products, Inc., a corporation, and its officers and Manuel Blasenstein and Louis Schnabel, individually and as officers of Supreme Petroleum Products, Inc., and Louis Schnabel, Manuel Blasenstein, Thomas Blasenstein, Bernard Blasenstein, and Minnie Blasenstein, individually and as copartners trading as Penn City National Oil Co., or trading under any other name, and respondents' agents, representatives 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 lubricating oil composed in whole or in part of oil which has been previously used and reclaimed, do forthwith cease and desist from:

1. Representing, directly or by implication, that such lubricating oil is new or unused oil, or refined from virgin crude oil;

2. Advertising, offering for sale or selling any lubricating oil previously used for lubricating purposes without disclosing such prior use to the purchaser or potential purchaser in advertising, in sales promotion matter and by a clear and conspicuous statement to that effect on the container.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission, on March 14, 1957, having issued an order extending until further order the date on which the hearing examiner's

initial decision in this proceeding otherwise would have become the decision of the Commission; and

The purpose of said order having been to effectuate a condition contained in the agreement for consent order theretofore executed by the respondents and counsel in support of the complaint, which condition was that the initial decision based on the agreement should not become the decision of the Commission until and unless the Commission should issue an order to cease and desist in the matter of Mohawk Refining Corp. et al., docket No. 6588; and

The Commission, on February 14, 1958, having issued an order to cease and desist in the matter of Mohawk Refining Corp. et al., docket No. 6588:

*It is ordered*, That the hearing examiner's initial decision herein, filed February 27, 1957, be, and it hereby is, adopted as the decision of the Commission.

*It is furthered ordered*, That the respondents, Supreme Petroleum Products, Inc., a corporation, and Manuel Blasenstein and Louis Schnabel, individually and as officers of Supreme Petroleum Products, Inc., and Thomas Blasenstein, Bernard Blasenstein and Minnie Blasenstein, 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 contained in the aforesaid initial decision.

528577—60——73

IN THE MATTER OF

# ALLIED PETROLEUM CORP. ET AL.

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

*Docket 6709. Complaint, Jan. 10, 1957—Decision, Mar. 7, 1958*

Consent order requiring reclaimers in Philadelphia, Pa., of motor oil obtained from drainings of motor crankcases, to cease selling such oil or a blend thereof with new oil to dealers for resale to the purchasing public with no markings on containers or otherwise to indicate that the product was reclaimed used oil.

*Mr. John W. Brookfield, Jr.*, for the Commission.
No counsel of record for Respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint alleges that the respondents have been and are engaged in the business of reclaiming used motor oil and in selling and distributing such reclaimed oil, or a blend of such oil and new oil, in commerce, and charges that in the course of said business respondents have misrepresented said product as new oil by various statements printed on their oil containers and by failing to disclose on said containers that the oil contained therein is reclaimed used oil, and have thereby also placed in the hands of dealers a means and instrumentality of misleading the purchasing public with respect to the nature of respondents' products, in violation of the Federal Trade Commission Act.

Subsequent to the issuance of the complaint, respondents and counsel supporting the complaint entered into an agreement containing consent order to cease and desist, which was approved by the director and the assistant director, Bureau of Litigation of the Commission, and thereafter transmitted to the hearing examiner for consideration.

The agreement identifies respondent Allied Petroleum Corp. as a Florida corporation, with its office and principal place of business located at 1528 Brandywine Street, Philadelphia, Pa.; respondent Super-Lube Oil Co. as a Florida corporation, with its office and place of business at the same address; and respondents Samuel Segal, Louis E. Cutler, and James T. Duffy, Jr., as individuals and officers of said corporate respondents, having the same address as the corporate respondents, and formulating, directing and being responsible for the affairs, acts, and practices of the corporate respondents.

The agreement provides, among other things, that respondents admit all the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, and that the effective date of the initial decision based on the complaint and agreement herein shall be stayed by the Commission, so that said initial decision shall not become the decision of the Commission unless and until the Commission issues an order to cease and desist in the matter of Mohawk Refining Corp., et al., docket No. 6588; that the complaint herein may be used in construing the terms of the order agreed upon, which may be altered, modified or set aside in the manner provided for other orders; that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint; and that the order set forth in the agreement and hereinafter included in this decision shall have the same force and effect as if entered after a full hearing.

Respondents waive any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law, and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

The order agreed upon fully disposes of all the issues raised in the complaint, and adequately prohibits the acts and practices charged therein as being in violation of the Federal Trade Commission Act. Accordingly, the hearing examiner finds this proceeding to be in the public interest and accepts the agreement containing consent order to cease and desist as part of the record upon which this decision is based. Therefore,

*It is ordered,* That respondents, Allied Petroleum Corp., a corporation, and Super-Lube Oil Co., a corporation, and their officers, and Samuel Segal, Louis E. Cutler, and James T. Duffy, Jr., individually and as officers of said corporations, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of lubricating oil composed in whole or in part of oil

which has been previously used and reclaimed, do forthwith cease and desist from:

1. Representing, directly or by implication, that such lubricating oil is new or unused oil, or refined from virgin crude oil;

2. Advertising, offering for sale or selling any lubricating oil previously used for lubricating purposes without disclosing such prior use to the purchaser, or potential purchaser, in advertising, in sales promotion matter and by a clear and conspicuous statement to that effect on the container.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission, on March 14, 1957, having issued an order extending until further order the date on which the hearing examiner's initial decision in this proceeding otherwise would have become the decision of the Commission; and

The purpose of said order having been to effectuate a condition contained in the agreement for consent order theretofore executed by the respondents and counsel in support of the complaint, which condition was that the initial decision based on the agreement should not become the decision of the Commission until and unless the Commission should issue an order to cease and desist in the matter of Mohawk Refining Corp., et al., docket No. 6588; and

The Commission, on February 14, 1958, having issued an order to cease and desist in the matter of Mohawk Refining Corp., et al., docket No. 6588:

*It is ordered*, That the hearing examiner's initial decision herein, filed February 28, 1957, be, and it hereby is, adopted as the decision of the Commission.

*It is further ordered*, That the respondents, Allied Petroleum Corp. and Super-Lube Oil Co., corporations, and Samuel Segal, Louis E. Cutler, and James T. Duffy, Jr., individually and as officers of said corporations, 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 contained in the aforesaid initial decision.

Decision

IN THE MATTER OF

# EMANUAL BLASENSTEIN ET AL. TRADING AS SEABOARD OIL CO. AND COASTAL OIL CO.

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

*Docket 6717. Complaint, Feb. 1, 1957—Decision, Mar. 7, 1958*

Consent order requiring reclaimers of motor oil obtained from drainings of motor crankcases, doing business in Doraville, Ga., Columbia, S.C., and Jacksonville, Fla., to cease selling such oil, or a blend thereof with new oil, to dealers for resale to the purchasing public with no markings on containers or otherwise to indicate that the product was reclaimed used oil.

*Mr. John W. Brookfield, Jr.*, for the Commission.

*Mr. Seymour Friedman*, of Washington, D.C., for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondents with violation of the Federal Trade Commission Act in connection with the sale of lubricating oil made in whole or in part from oil which has been previously used. An agreement has now been entered into by respondents and counsel supporting the complaint which provides among other things, that respondents admit all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; and that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

The agreement further provides that the effective date of the initial decision based thereon shall be stayed by the Commission, so that such decision shall not become the decision of the Commission until and unless an order to cease and desist is issued by the Commission in the matter of *Mohawk Refining Corp.*, docket 6588.

The hearing examiner having considered the agreement and proposed order and being of the opinion that they provide an adequate basis for an appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued:

1. Respondents Emanuel Blasenstein, Jack Blasenstein, Bernard Blasenstein, and Thomas Blasenstein are individuals and copartners trading as Seaboard Oil Co. with their office and principal place of business located at 5650 New Peachtree Road, in Doraville, Ga. They also trade and do business as Coastal Oil Co. with places of business located in Columbia, S.C., and Jacksonville, Fla.

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

ORDER

*It is ordered*, That respondents Emanuel Blasenstein, Jack Blasenstein, Bernard Blasenstein, and Thomas Blasenstein, individually and copartners trading as Seabord Oil Co. and Coastal Oil Co., or under any other name or names, and respondents' agents, representatives or 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 lubricating oil composed in whole or in part of oil which has been previously used and reclaimed, do forthwith cease and desist from:

1. Representing, directly or by implication, that such lubricating oil is new or unused oil, or refined from virgin crude oil.

2. Advertising, offering for sale or selling any lubricating oil previously used for lubricating purposes without disclosing such prior use to the purchaser, or potential purchaser, in advertising, in sales promotion matter and by a clear and conspicuous statement to that effect on the container.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission, on April 25, 1957, having issued an order extending until further order the date on which the hearing examiner's initial decision in this proceeding otherwise would have become the decision of the Commission; and

The purpose of said order having been to effectuate a condition contained in the agreement for consent order theretofore executed by the respondents and counsel in support of the complaint, which condition was that the initial decision based on the agreement should not become the decision of the Commission until and unless the Commission should issue an order to cease and desist in the matter of Mohawk Refining Corp., et al., docket No. 6588; and

The Commission, on February 14, 1958, having issued an order to cease and desist in the matter of Mohawk Refining Corp., et al., docket No. 6588:

*It is ordered*, That the hearing examiner's initial decision herein, filed March 28, 1957, be, and it hereby is, adopted as the decision of the Commission.

*It is further ordered*, That the respondents, Emanuel Blasenstein, Jack Blasenstein, Bernard Blasenstein, and Thomas Blasenstein, 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 contained in the aforesaid initial decision.

IN THE MATTER OF

# THE SPECIALTY HOUSE, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND THE FLAMMABLE FABRICS ACTS

*Docket 6528. Complaint, Mar. 12, 1956—Decision, Mar. 11, 1958*

Consent order requiring importers in New York City to cease selling silk scarves manufactured in Japan which were so highly flammable as to be dangerous when worn.

*Mr. Brockman Horne* for the Commission.

*Green & Yanoff*, of Newark, N.J., for respondents.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

The complaint in this proceeding, issued March 12, 1956, charges the respondents The Specialty House, Inc., a corporation existing and doing business by virtue of the laws of the State of New York, and Samuel Davis, Mortimer L. Taylor, Philip Kures, and William Yanoff, individually and as officers of the respondent corporation with violation of the Federal Trade Commission Act and of the Flammable Fabrics Act and the rules and regulations promulgated thereunder, in connection with the importation, purchasing, sale, offering for sale and transporting, in interstate commerce, of articles of wearing apparel which articles were so highly flammable as to be dangerous when worn by individuals.

After the issuance of said complaint, respondents entered into an agreement for consent order with counsel in support of the complaint, disposing of all of the issues in this proceeding, which agreement was duly approved by the director and the assistant director of the Bureau of Litigation. It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

By the terms of said agreement, the respondents admitted all of the jurisdictional allegations of the complaint and agreed that the record herein may be taken as though the Commission had made findings of jurisdictional facts in accordance with such allegations. By said agreement the parties expressly waived a hearing before the hearing examiner or the Commission, the making of findings of fact or conclusions of law by the hearing examiner or the Commission, the filing of exceptions and oral argument before the Com-

mission, and all further and other procedure before the hearing examiner or the Commission to which the respondents may be otherwise entitled under the Federal Trade Commission Act or the rules of practice of the Commission.

By said agreement, respondents further agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as though made after a full hearing, presentation of evidence and findings and conclusions thereon, and specifically waived any and all right, power or privilege to challenge or contest the validity of such order.

It was further provided that said agreement, together with the complaint, shall constitute the entire record herein; that the complaint herein may be used in construing the terms of the order issued pursuant to said agreement, and that said order may be altered, modified or set aside in the manner provided by statute for other orders of the Commission.

Said agreement recites that respondent The Specialty House, Inc., is a corporation existing under and by virtue of the laws of the State of New York; that respondents Samuel Davis, Mortimer L. Taylor, Philip Kures, and William Yanoff are individuals and are, respectively, president, vice president, vice president, and treasurer-secretary of the corporate respondent and, as such, formulate, direct and control the policies, acts and practices of said corporation. The office and principal place of business of all respondents is located at No. 48 West 38th Street, New York, N.Y.

The hearing examiner has considered such agreement and the order therein contained, and, it appearing that said agreement and order provides for an appropriate disposition of this proceeding, the same is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with sections 3.21 and 3.25 of the rules of practice, and in consonance with the terms of said agreement, the hearing examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of all the respondents named herein; that this proceeding is in the public interest and issues the following order:

ORDER

*It is ordered*, That respondent The Specialty House, Inc., a corporation, and its officers, and respondents Samuel Davis, Mortimer L. Taylor, Philip Kures, and William Yanoff, individually and as officers of said corporation, and respondents' representatives, agents,

and employees, directly or through any corporate or other device, do forthwith cease and desist from:

(a) Importing into the United States; or

(b) Selling, offering for sale, introducing, delivering for introduction, transporting or causing to be transported, in commerce, as "commerce" is defined in the Flammable Fabrics Act; or

(c) Transporting or causing to be transported for the purpose of sale or delivery after sale in commerce;

any article of wearing apparel, which, under the provisions of section 4 of the said Flammable Fabrics Act, as amended, is so highly flammable as to be dangerous when worn by individuals.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's rules of pratice, the initial decision of the hearing examiner shall, on the 11th day of March 1958, become the decision of the Commission; and, accordingly:

*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.

IN THE MATTER OF

# A. E. LEWIS & CO. INC., ET AL.

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

*Docket 6577. Complaint, June 27, 1956—Decision, Mar. 11, 1958*

Consent order requiring sellers in New York City to cease selling cutlery, assembled by them from steel blades stamped "made in Sheffield, England" with handles made in Japan, some copied from English patterns—the word "Japan" on the end of the handle concealed by the assembling process—without disclosing the Japanese origin of the handles.

*Mr. Morton Nesmith* and *Mr. Berryman Davis* for the Commission.
*Mr. Abraham J. Efrein*, of New York, N.Y., for Respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on June 27, 1956, charging respondents with false, misleading, and deceptive practices, in that they have failed to disclose the origin of substantial parts of their cutlery, and have misrepresented such cutlery, in its entirety, as a product of England, in violation of the Federal Trade Commission Act.

On December 30, 1957, respondents, their counsel, and counsel supporting the complaint herein entered into an agreement containing consent order to cease and desist, which was approved by the director and the assistant director of the Commission's Bureau of Litigation, and thereafter submitted to the hearing examiner for consideration.

The agreement identifies Respondent A. E. Lewis & Co., Inc., as a New York corporation, with its office and principal place of business located at 304 E. 23d Street, New York, N.Y., and respondents Alexander E. Lewis, Arthur Vinecour, and Morris Goodis as officers thereof, having the same address as the corporate respondent.

Respondents admit all the jurisdictional facts alleged in the complaint, and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

Respondents waive any further procedure before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree that the record

on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist, as contained in the agreement, shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said order; and that the agreement is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint.

After consideration of the allegations of the complaint and the provisions of the agreement and the proposed order, the hearing examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the hearing examiner accepts the agreement containing consent order to cease and desist; finds that the Commission has jurisdiction over the respondents and over their acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

*It is ordered*, That respondents A. E. Lewis & Co., Inc., a corporation, and its officers, and Alexander E. Lewis, Arthur Vinecour, and Morris Goodis, individually and as officers of said corporation, and respondents' agents representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of cutlery or other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly:

1. Offering for sale or selling cutlery containing handles made in Japan, or in any other foreign country other than England, combined with other parts made in England which bear the legend "A. E. Lewis & Co., Made in Sheffield England" or any other legend indicative of English origin, without clearly disclosing the country of origin of the handles;

2. Offering for sale or selling any product, any substantial part of which was made in Japan, or in any other foreign country, without clearly disclosing the foreign origin of such part;

3. Representing by words or symbols on the containers in which cutlery or other products, made in substantial part in Japan, or in any other foreign country other than England, are shipped or displayed, or in any other manner, that such products are of English origin.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner shall, on the 11th day of March 1958, become the decision of the Commission; and, accordingly:

*It is ordered*, That respondents A. E. Lewis & Co., a corporation, and Alexander E. Lewis, Arthur Vinecour, and Morris Goodis, individually and as officers of said corporation, 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.

IN THE MATTER OF

# AWON FILM & SUPPLY CO., INC., ET AL.

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

*Docket 6920. Complaint, Oct. 24, 1957—Decision, Mar. 15, 1958*

Consent order requiring retailers in New York City to cease advertising and selling as "Fresh Movie Film," outdated film, rolls of which often did not contain the claimed footage of usable film; representing excessive amounts as the usual selling price of such "specials" as projection screens advertised for $14.95; and using the word "wholesalers" or otherwise representing falsely that they sold at wholesale prices.

*Mr. Edward F. Downs* and *Mr. Garland S. Ferguson*, for the Commission.

*Mr. Alfred F. Wachtel*, of Brooklyn, N.Y., for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondents with the making of certain misrepresentations, in connection with photograph film and photographic equipment sold by them, in violation of the Federal Trade Commission Act. An agreement has now been entered into by respondents and counsel supporting the complaint which provides, among other things, that respondents admit all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order herinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondents specifically waiving any and all rights to challange or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

The hearing examiner having considered the agreement and pro-

posed order and being of the opinion that they provide an adequate basis for an appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued:

1. Respondent Awon Film & Supply Co., Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York. Individual respondents Sam Danow, Allen Danow, and Jack Danow are officers of said corporation and formulate, direct and control the practices of the corporate respondent. The office and principal place of business of all of the respondents is located at 108 W. 29th Street, New York, N.Y.

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

ORDER

*It is ordered*, That respondents Awon Film & Supply Co., Inc., a corporation, and its officers, and Sam Danow, Allen Danow, and Jack Danow, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of photographic film or photographic equipment or any other product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication:

(a) That outdated film is fresh, or failing to clearly disclose that outdated film offered for sale, is outdated.

(b) That their rolls of film contain a certain number of feet unless such footage is the actual footage of usable film.

(c) That the regular price of any product is in excess of the price at which said product is customarily sold by respondents in their usual and normal course of business.

(d) That a specified amount is the value of a product when such amount is in excess of the price at which said product is regularly and customarily sold in the normal course of business in the same trade territory.

2. Using the word "wholesalers" or representing in any other manner that they sell at wholesale or at wholesale prices, in connection with their retail business.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner shall, on the 15th day of March 1958, become the decision of the Commission; and, accordingly:

*It is ordered*, That 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.

Decision

IN THE MATTER OF

# MILLER WOOL WASTE CO., INC., ET AL.

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

*Docket 6941. Complaint, Nov. 15, 1957—Decision, Mar. 15, 1958*

Consent order requiring sellers in Boston, Mass., to cease violating the Wool Products Labeling Act by labeling as "100% wool," woolen stocks which contained substantial quantities of reprocessed wool.

*Charles W. O'Connell*, Esq., for the Commission.
*Brown, Rudnick & Freed*, of Boston, Mass., for respondents.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

The complaint in this proceeding, issued November 15, 1957, charges the respondents Miller Wool Waste Co., Inc., a corporation, and Allen J. Miller, individually and as an officer of the corporate respondent, with violation of the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and of the rules and regulations promulgated under authority of the said Wool Products Labeling Act, in connection with the introduction into commerce, or offering for sale, sale, transportation or distribution of woolen stocks, in commerce, as "commerce" is defined in said acts.

After the issuance of said complaint respondents, on December 13, 1957, entered into an agreement for a consent order with counsel in support of the complaint, disposing of all of the issues in this proceeding, which agreement was duly approved by the acting director and assistant director of the Bureau of Litigation of the Federal Trade Commission. It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

By the terms of said agreement, the respondents admitted all of the jurisdictional allegations of the complaint and agreed that the record herein may be taken as though the Commission had made findings of jurisdictional facts in accordance with such allegations. By said agreement the parties expressly waived a hearing before the hearing examiner or the Commission, the making of findings of fact or conclusions of law by the hearing examiner or the Commission, the filing of exceptions and oral argument before the Commission, and all further and other procedure before the hearing examiner and the

Commission to which the respondents may otherwise be entitled under the Federal Trade Commission Act or the rules of practice of the Commission.

By said agreement, respondents further agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as though made after a full hearing, presentation of evidence and findings and conclusions thereon, and specifically waived any and all right, power or privilege to challenge or contest the validity of such order.

It was further provided that said agreement, together with the complaint, shall constitute the entire record herein; that the complaint herein may be used in construing the terms of the order issued pursuant to said agreement; and that the said order may be altered, modified or set aside in the manner provided by statute for other orders of the Commission.

Said agreement recites that respondent Miller Wool Waste Co., Inc., is a corporation existing under and by virtue of the laws of the State of Massachusetts, with its office and principal place of business located at 200 Summer Street, room 606, Boston, Mass.; and that respondent Allen J. Miller is an individual and treasurer of the corporate respondent; that as such he formulates, directs and controls the acts, policies and practices of the corporate respondent.

The hearing examiner has considered such agreement and the order therein contained, and, it appearing that said agreement and order provides for an appropriate disposition of this proceeding, the same is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with sections 3.21 and 3.25 of the rules of practice, and in consonance with the terms of said agreement, the hearing examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of all respondents named herein, and that this proceeding is in the interest of the public, wherefore he issues the following order:

ORDER

*It is ordered*, That respondent Miller Wool Waste Co., Inc., a corporation, and its officers, and respondent Allen J. Miller, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the offering for sale, sale, transportation or distribution in commerce as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of woolen stocks 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:

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner shall, on the 15th day of March 1958, become the decision of the Commission; and, accordingly:

*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.

IN THE MATTER OF

# SEA ISLE SPORTSWEAR, INC., ET AL.

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

*Docket 6965. Complaint, Nov. 27, 1957—Decision, Mar. 15, 1958*

Consent order requiring a manufacturer in New York City to cease violating the Wool Products Labeling Act by labeling as "100% wool," coats which did not consist entirely of wool, by failing to label certain of such products, and by failing to set forth separately on labels the fiber content of interlinings of certain coats.

*Mr. Thomas A. Ziebarth* for the Commission.

No appearance for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondents with certain violations of the Wool Products Labeling Act and the rules and regulations promulgated thereunder, and the Federal Trade Commission Act, in connection with the sale of coats and other wool products. An agreement has now been entered into by respondents and counsel supporting the complaint which provides, among other things, that respondents admit all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

The hearing examiner having considered the agreement and proposed order and being of the opinion that they provide an adequate basis for an appropriate disposition of the proceeding, the agreement

is hereby accepted, the following jurisdictional findings made, and the following order issued:

1. Respondent Sea Isle Sportswear, Inc., is a corporation organized, existing and doing business under the laws of the State of New York. The individual respondents, Charles Beer, Irving Friedland, and Leo Friedland, are officers of said corporation. The address of all respondents is 519 8th Avenue, New York, N.Y.

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

ORDER

*It is ordered*, That respondents Sea Isle Sportswear, Inc., a corporation, and its officers, and Charles Beer, Irving Friedland, and Leo Friedland, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of coats or other "wool products" as "wool products" are defined in said Wool Products Labeling Act, do forthwith cease and desist from:

A. Misbranding such products by:

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

2. Failing to securely affix to or place on each such product, a stamp, tag, label, or other means of identification 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 5 percentum or more, and (5) the aggregate of all other fibers;

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

c. The name or the registered identification number of the manufacturer of such wool product, or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, distribution or delivery for shipment there-

of in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939.

B. Failing to separately set forth on the required stamp, tag, label or other means of identification the character and amount of the constituent fibers contained in the interlinings of such wool products as provided in rule 24 of the rules and regulations promulgated under the said Wool Products Labeling Act of 1939.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner shall, on the 15th day of March 1958, become the decision of the Commission; and, accordingly:

*It is ordered*, That 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.

IN THE MATTER OF

# COLOR ART STUDIOS, INC., ET AL.

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

*Docket 6841. Complaint, July 15, 1957—Decision, Mar. 18, 1958*

Order requiring a seller in Washington, D.C., of photographs and color portraits made from color film transparencies and negatives, to cease representing falsely that his portraits were natural color, that the finished products would be equal in quality to samples exhibited, and that they were guaranteed to "look like proofs" and that if they did not, he would remake them.

*Mr. Edward F. Downs* and *Mr. Garland S. Ferguson* for the Commission.

*Mr. Francis E. Jordan*, of Washington, D.C., for respondents.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

INTRODUCTORY STATEMENT

The complaint in this case was issued July 15, 1957, against Ralph D. White, an individual trading as Color Art Studios, with his principal place of business located at 4435 Wisconsin Avenue NW., Washington, D.C. During the course of the taking of testimony, it was developed that respondent Color Art Studios, Inc. was organized under the laws of the District of Columbia and the articles of incorporation were filed December 28, 1956. On October 11, 1957, counsel in support of the complaint made a motion on the record to amend the complaint in this matter to include Color Art Studios, Inc., and Ralph D. White, individually and as an officer of Color Art Studios, Inc. No objection was made by counsel for respondents, and the Examiner ruled that the complaint be amended to that effect. Subsequently, on December 30, 1957, an order was entered amending the complaint accordingly. The present address of respondents is 5534 Connecticut Avenue NW., Washington, D.C.

Proposed findings and conclusions were submitted by counsel for both sides, oral argument was heard thereon, and the hearing examiner's rulings thereon are implicit herein.

FINDINGS OF FACT AND LAW

1. Respondent Ralph D. White, as an officer of respondent corporation, formulates, directs, and controls the policies and practices of the corporate respondent. Since December 1956, respondents have been engaged in the sale and distribution of photographs and color portraits made from color film transparencies and negatives. Although respondent White does some work in his studio, the majority of respondents' business comes from photographs taken in the homes of prospective purchasers located in the District of Columbia and in the States of Virginia and Maryland. On the average, during the past year, approximately 1,000 sittings per month have been made by respondents, who cause their portraits and photographs to be transported from their place of business to purchasers located as aforesaid. They maintain, and at all times herein mentioned have maintained, a course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

2. At all times herein mentioned, respondents have been in direct and substantial competition with individuals and firms likewise engaged in the sale and distribution of portraits and photographs in commerce in Washington, D.C., and in the States of Maryland and Virginia.

3. Said respondents, in the course and conduct of their said business, cause their agents or representatives to call prospective purchasers on the telephone and arrange for respondents' photographers to visit the homes of such prospective purchasers, where they take a number of poses of the subjects to be photographed. Usually after the exposed films have been processed into proof slides, they are exhibited to the prospective purchaser by other representatives of the respondents with special projection equipment which displays the color-film transparency on a screen or other light surface so that the picture thus viewed portrays the natural colors of the subject, including complexion, hair, and clothing. Following the exhibition of the proof slides, respondents' agent shows samples of finished prints or portraits of other subjects, and attempts to induce, and often does induce, such customer to place an order for the purchase of color prints or portraits to be made from the proof transparencies thus displayed.

4. Said respondents, by and through oral statements made by their agents or representatives soliciting by telephone as aforesaid, by the photographers and other representatives taking the original pictures,

by the agents exhibiting the proof transparencies of the subject and prints and portraits as aforesaid, and by and through the use of order blanks, receipts, and other literature used by respondents and their agents and representatives, have represented, directly or by implication, (1) that the portraits sold by them are natural-color portraits; (2) that the finished portraits sold by them will be equal in appearance, quality, and workmanship to the proof transparency and sample prints and portraits exhibited to purchasers and prospective purchasers; and (3) that the finished portraits are guaranteed to "look like proofs" and, if they do not, respondents will remake them.

5. The aforesaid representations are false, deceptive and misleading in many respects. In truth and in fact:

(1) The portraits sold by respondents are not natural-color portraits in that they do not accurately portray the true color of the eyes, hair, clothing, and complexion of the persons potographed. Thus the finished portraits do not portray the natural color that purchasers, when they view the proof transparencies, are led to believe they will receive. There is always some loss of color values and intensities in making a color print from the proof transparency. The reason for this is that in looking at the transparency the colors are portrayed with direct light and the viewer gets the full intensity and full brilliance of such colors. On the other hand, when a print is made from a transparency, there is some loss in color values and intensities for the reason that the print itself cannot be as brilliant as the transparency because of the light absorption in the process. "You hold the transparency up to the light and project it on the screen, the light goes through and projects all the colors very vividly. In the print, the print is viewed by reflected light" (Tr. 57).

(2) The portraits or prints sold by respondents are often inferoir to those which the purchasers and prospective purchasers are led to believe they will receive as a result of viewing the proof transparencies and the sample portraits or prints exhibited by agents of the respondents. Not only are the finished prints less brilliant and colorful than the samples and transparencies viewed by the purchasers, but, in many respects, there is a distortion of colors in the finished print or portrait. Often, when the transparency is processed, an attempt is made to filter out certain colors in order to obtain a more natural flesh tone. In so doing, other colors in the finished photograph are changed. It is generally conceded by experts in this industry that the printing process for color film has not yet been perfected so that natural colors can be reproduced.

(3) Many of the portraits delivered to customers of respondents are unsatisfactory in that they do not look like the proof transparencies from which they were made. In some instances respondents do not honor their guaranty by remaking such unsatisfactory portraits to the customer's satisfaction. In this connection, however, it is found that as a general policy respondent White has attempted to live up to his guaranty, and has in many respects remade pictures to meet the complaints of customers. There is also uncontradicted testimony in the record that respondent White has taken step to correct the false and misleading representations herein found, insofar as it is possible for him to do so.

6. The use by respondents of the foregoing false, misleading, and deceptive statements and representations has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and to induce the purchasing public to buy substantial quantities of respondents' products as a result of such erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors, and substantial injury has been done to competition in commerce.

CONCLUSION

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

ORDER

*It is ordered*, That respondent Color Art Studios, Inc., a corporation, and its officers, and Ralph D. White, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device in connection with the offering for sale, sale, or distribution of portraits or photographs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication,

(1) that the portraits or photographs sold by said respondents are of natural color;

(2) that the finished portraits or photographs sold by said respondents will be equal in appearance, quality or workmanship to

the proof transparencies or sample portraits exhibited to purchasers or prospective purchasers;

(3) that the photographs or portraits sold by respondents are guaranteed in any manner, unless all of the terms and conditions of such guaranty are fully set forth in connection therewith.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission having considered the initial decision of the hearing examiner filed January 30, 1958, as corrected by his order filed February 20, 1958; and

It appearing that, through inadvertance, the word "Inc." was inserted after the word "Studios" in the third line of the introductory statement in the said initial decision; and

The Commission being of the opinion that this clerical error should be corrected:

*It is ordered*, That the third line of the introductory statement in the initial decision be, and it hereby is, modified to read as follows:

Studios, with his principal place of business located

*It is further ordered*, That the initial decision as so modified shall, on the 18th day of March 1958, become the decision of the Commission.

*It is further ordered*, That the respondents, Color Art Studios, Inc., a corporation, and Ralph D. White, individually and as an officer of said corporation, 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 contained in the initial decision, as modified.

IN THE MATTER OF

# HELENE CURTIS INDUSTRIES, INC.

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

*Docket 6856. Complaint, July 26, 1957—Decision, Mar. 18, 1958*

Consent order requiring cosmetic manufacturers with principal place of business at Chicago, Ill., to cease advertising falsely in newspapers and by television and otherwise that their "Enden Shampoo" would cure dandruff.

*Mr. John T. Walker* supporting the complaint.
*Mr. Allen D. Choka*, of Chicago, Ill., for respondent.

INITIAL DECISION OF JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on July 26, 1957, charging it with the use of unfair and deceptive acts and practices in commerce, in violation of the Federal Trade Commission Act, by falsely advertising its product, Enden Shampoo, as a cure for dandruff. After being served with said complaint, respondent appeared by counsel and filed its answer thereto. Thereafter the parties entered into an agreement dated January 20, 1958, containing a consent order to cease and desist purporting to dispose of all of this proceeding as to all parties. Said agreement, which has been signed by respondent, by counsel for said respondent, and by counsel supporting the complaint, and approved by the director and assistant director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner for his consideration, in accordance with section 3.25 of the commission's rules of practice for adjudicative proceedings.

Respondent, pursuant to the aforesaid agreement, has admitted all the jurisdictional facts alleged in the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that respondent waives any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law and all of the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has been agreed that the order to cease and desist issued in accordance with said

agreement shall have the same force and effect as if entered after a full hearing and that the complaint may be used in construing the terms of said order. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, and that said agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing consent order, and it appearing that the order provided for in said agreement covers all the allegations of the complaint and provides for an appropriate disposition of this proceeding as to all parties, said agreement is hereby accepted and is ordered filed upon this decision's becoming the decision of the Commission pursuant to sections 3.21 and 3.25 of the Commission's rules of practice for adjudicative proceedings, and the hearing examiner, accordingly, makes the following jurisdictional findings and order:

1. Respondent Helene Curtis Industries, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 4401 W. North Avenue, in the city of Chicago, State of Illinois.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent hereinabove named. The complaint states a cause of action against said respondent under the Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

*It is ordered*, That Helene Curtis Industries, Inc., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of the product Enden Shampoo, or any other product of substantially similar composition and possessing similar properties, whether sold under the same name or any other name, forthwith cease and desist from:

1. Disseminating or causing to be disseminated, any advertisement, by means of television continuity broadcasts in commerce, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication:

(a) That said product will cure dandruff; or

(b) That it will have any lasting effect on dandruff or dandruff symptoms except during the regular use thereof.

2. Disseminating or causing to be disseminated, any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of said product in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any representations prohibited in paragraph 1 hereof.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner shall, on the 18th day of March 1958, become the decision of the Commission; and, accordingly:

*It is ordered*, That the respondent herein shall within sixty (60) days after service upon it of this 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.

IN THE MATTER OF

# PIEDMONT PRODUCTS CO., INC., ET AL.

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

*Docket 6886. Complaint, Sept. 11, 1957—Decision, Mar. 18, 1958*

Consent order requiring sellers in Chicago, Ill., of electric shavers, cameras, and other articles of merchandise to cease furnishing push cards or other lottery devices to operators for their use in selling the merchandise to the public.

*Mr. William A. Somers* for the Commission.

*Cole, Wishner, Epstein & Manilow*, by *Mr. Franklin A. Cole*, of Chicago, Ill., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on September 11, 1957, charging respondents with the use of a sales plan or method involving distribution of merchandise by means of chance, lottery or gift enterprise, which constitutes an unfair act and practice in violation of the Federal Trade Commission Act.

Thereafter, on January 17, 1958, respondents, their counsel, and counsel supporting the complaint herein entered into an agreement containing consent order to cease and desist, which was approved by the director and the assistant director of the Commission's Bureau of Litigation, and thereafter submitted to the hearing examiner for consideration.

The agreement identifies respondent Piedmont Products Co., Inc., as an Illinois corporation, with its office and principal place of business located at 14 N. Peoria Street, Chicago 7, Ill., and respondents Esther Kane, Roberta Layfer, and Mrs. Leslie Lanser as individuals and officers of said corporate respondent, with the same office and principal place of business as the corporate respondent.

Respondents admit all the jurisdictional facts alleged in the complaint, and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

Respondents waive any further procedure before the hearing examiner and the Commission: the making of findings of fact and conclusions of law; and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered

in accordance with the agreement. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist, as contained in the agreement, when it shall have become a part of the decision of the Commission, shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said order; and that the agreement is for settlement purposes only, and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint.

After consideration of the allegations of the complaint and the provisions of the agreement and the proposed order, the hearing examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the hearing examiner accepts the agreement containing consent order to cease and desist; finds that the Commission has jurisdiction over the Respondents and over their acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

*It is ordered*, That Respondents Piedmont Products Co., Inc., a corporation, and its officers, and Esther Kane, Roberta Layfer, and Mrs. Leslie Lanser, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of electrical appliances, cameras, or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to, or placing in the hands of others, push cards, punch boards, or any other lottery devices, either with merchandise or separately, which are designed or intended to be used in the sale or distribution of merchandise to the public by means of a game of chance, gift enterprise or lottery scheme;

2. Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise, or lottery scheme.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner shall, on the 18th day of March 1958, become the decision of the Commission; and, accordingly:

*It is ordered*, That respondents Piedmont Products Co., Inc., a corporation, and Esther Kane, Roberta Layfer, and Mrs. Leslie Lanser, individually and as officers of said corporation, 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.

528577—60——75

IN THE MATTER OF

# DURITE LEATHER GOODS CO., INC., ET AL.

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

*Docket 6897. Complaint, Sept. 27, 1957—Decision, Mar. 18, 1958*

**Consent order requiring a manufacturer in New York City to cease preticketing the men's belts it sold to wholesalers, retailers, and supermarket chains, with purported regular retail prices which were fictitiously high.**

*Mr. Franklin A. Snyder* and *Mr. Francis C. Mayer* supporting the complaint.

*Mr. Herbert Baer Brill of Brill, Bergenelf & Brill* of New York, N.Y., for respondents.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

The Federal Trade Commission issued its complaint on September 27, 1957, charging the above-named respondents with violation of the Federal Trade Commission Act as set forth in said complaint. After all respondents were duly served with said complaint, respondents Durite Leather Goods Co.,Inc. and Sol Wechsler individually and as an officer of the corporate respondent and their attorney, on January 6, 1958, entered into an agreement with counsel supporting the complaint containing a consent order to cease and desist from the practices complained of, which agreement purports to dispose of all the issues in this proceeding as to these respondents. The agreement has been duly approved by the assistant director and the acting director of the Bureau of Litigation and has been submitted to the undersigned, heretofore designated to act as hearing examiner herein, for his consideration, in accordance with rule 3.25 of the rules of practice of the Commission.

On January 9, 1958, counsel supporting the complaint filed a motion, which was duly served on the parties hereto, to dismiss as to the respondent Alfred Shure (erroneously named in the complaint as Alfred Schure) both as an individual and as an officer of the corporate respondent. This motion is supported by affidavit of Alfred Shure setting forth that he was an employee only of the corporate respondent, that he held a nominal office of vice president only and had nothing to do with formulating, directing or controlling the policies, acts or practices of the corporate respondent. Counsel supporting the complaint states in said motion that there is no evidence

to the contrary. Time for answering said motion of counsel supporting the complaint has expired and no answer has been filed. Upon consideration the motion is granted.

Respondents Durite Leather Goods Co., Inc. and Sol Wechsler individually and as an officer of the corporate respondent in the aforesaid agreement have admitted all of the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been made duly in accordance with such allegations. Said agreement further provides that respondents waive all further procedural steps before the hearing examiner or the Commission, including the making of findings of fact or conclusions of law and the right to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, that said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint, that said order to cease and desist shall have the same force and effect as if entered after a full hearing and may be altered, modified, or set aside in the manner provided for other orders, and that the complaint may be used in construing the terms of the order.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing the consent order, and it appearing that the order and the agreement together with the aforesaid motion to dismiss cover all the allegations of the complaint and provide for an appropriate disposition of this proceeding, the order and the agreement are hereby accepted and ordered filed upon becoming a part of the Commission's decision pursuant to section 3.21 and 3.25 of the Commission's rules of practice. The hearing examiner accordingly makes the following findings for jurisdictional purposes and order.

1. Respondent Durite Leather Goods Co., Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 476 Broadway, New York, N.Y.

2. The individual respondent, Sol Wechsler, president of the corporate respondent, Durite Leather Goods Co., Inc., has his office and principal place of business at the same address as the corporate respondent.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the Federal Trade Commission Act. This proceeding is in the public interest.

ORDER

*It is ordered*, That the respondents Durite Leather Goods Co., Inc., a corporation, and its officers, and Sol Wechsler, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of belts or other articles of merchandise, do forthwith cease and desist from:

1. Representing, by preticketing or in any manner, that certain amounts are the usual and regular retail prices of their products when such amounts are in excess of the prices at which their products are usually and regularly sold at retail.

2. Putting into operation any plan whereby retailers or others may misrepresent the regular and usual retail price of such merchandise.

*It is further ordered*, That the complaint herein be and the same hereby is dismissed as to the respondent Alfred Shure individually and as an officer of respondent Durite Leather Goods Co., Inc.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner shall, on the 18th day of March 1958, become the decision of the Commission; and, accordingly:

*It is ordered*, That the respondents Durite Leather Goods Co., Inc., a corporation and Sol Wechsler individually and as an officer of said corporation 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.

Decision

IN THE MATTER OF

# ADMIRAL CORP.

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

*Docket 6935. Complaint, Nov. 8, 1957—Decision, Mar. 18 1958*

Consent order requiring a manufacturer with principal office in Chicago to cease misrepresenting in advertising the size of certain of its television sets as "21 inch," "24 inch," etc., without clearly disclosing that the figure was the diagonal distance from opposite corners of the picture tube rather than the horizontal measurement.

*Mr. William A. Somers* for the Commission.
*Mr. William S. Baltz*, of Chicago, Ill., for respondent.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 8, 1957, issued and subsequently served its complaint in this proceeding against respondent Admiral Corp., a corporation existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 3800 Cortland Street, Chicago, Ill.

On January 22, 1958, there was submitted to the undersigned hearing examiner an agreement between respondent and counsel supporting the complaint providing for the entry of a consent order. By the terms of said agreement, respondent admits all the jurisdictional facts alleged in the complaint and agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. By such agreement, respondent waives any further procedural steps before the hearing examiner and the Commission; waives the making of findings of fact and conclusions of law; and waives all of the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement. Such agreement further provides that it disposes of all of this proceeding as to all parties; that the record on which this initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement; that the latter shall not become a part of the official record unless and until it becomes a part of the decision of the

Commission; that the agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint; and that the following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondent, and, when so entered, it shall have the same force and effect as if entered after a full hearing, and may be altered, modified, or set aside in the manner provided for other orders; and that the complaint may be used in construing the terms of the order.

The hearing examiner having considered the agreement and proposed order, and being of the opinion that they provide an appropriate basis for settlement and disposition of this proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued.

1. Respondent Admiral Corp., is a corporation existing and doing business under the laws of the State of Delaware, with its office and principal place of business located at 3800 Cortland Street, Chicago, Ill.

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

ORDER

*It is ordered*, That respondent, Admiral Corp., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of its television receiving sets in commerce, as "commerce" is defined in the Federal Commission Act, do forthwith cease and desist from using any figure or measurement to designate the size of the picture tube with which its television receiving sets are equipped which is greater than the horizontal measurement of the viewable area of the tube on a single plane basis, unless it is conspicuously disclosed in immediate connection therewith that said figure or measurement is the diagonal measurement, when such is the fact; or an accurate specification of the viewable area of the tube, in square inches, is conspicuously disclosed in immediate connection with such figure or measurement.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner shall, on the 18th day of

March 1958, become the decision of the Commission; and, accordingly:

*It is ordered*, That the respondent herein shall, within sixty (60) days after service upon it of this 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.

IN THE MATTER OF

# BART SCHWARTZ INTERNATIONAL TEXTILES LTD. ET AL.

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

*Docket 6952. Complaint, Nov. 22, 1957—Decision, Mar. 18, 1958*

Consent order requiring sellers in New York City of fabrics, some of which were composed of rayon so made as to simulate wool, to cease selling such fabrics without making adequate disclosure of the true fiber content, and to cease placing in the hands of others for use in conjunction with said fabrics and garments made therefrom, tags, labels, and advertising matter which failed to disclose the rayon content.

*Mr. Michael J. Vitale* and *Mr. Thomas A. Ziebarth* for the Commission.

*Mr. E. Fulton Brylawski*, of Washington, D.C., for the respondents.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding issued November 22, 1957, charges the respondents Bart Schwartz International Textiles Ltd., a corporation, located at 1407 Broadway, New York, N.Y., and Bart Schwartz and Louis Rudolph, individually and as officers of said corporation, located at the same address as the corporate respondent, with violation of the provisions of the Federal Trade Commission Act in the importation, promotion, sale and distribution of certain rayon fabrics.

After the issuance of the complaint, respondents Bart Schwartz International Textiles Ltd., a corporation, and Bart Scwartz and Louis Rudolph, individually and as officers of said corporation, entered into an agreement containing consent order to cease and desist with counsel in support of the complaint, disposing of all the issues in this proceeding, which agreement was duly approved by the director and assistant director of the Bureau of Litigation. It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

By the terms of said agreement, the said respondents admitted all the jurisdictional facts alleged in the complaint and agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with the allegations.

By said agreement, the parties expressly waived any futher procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

Respondents further agreed that the order to cease and desist, issued in accordance with said agreement, shall have the same force and effect as if made after a full hearing.

It was further provided that said agreement, together with the complaint, shall constitute the entire record herein; that the complaint herein may be used in construing the terms of the order issued pursuant to said agreement; and that said order may be altered, modified or set aside in the manner prescribed by the statute for orders of the Commission.

The hearing examiner has considered such agreement and the order therein contained, and, it appearing that said agreement and order provides for an appropriate disposition of this proceeding, the same is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with sections 3.21 and 3.25 of the rules of practice, and, in consonance with the terms of said agreement, the hearing examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents named herein, that this proceeding is in the interest of the public, and issues the following order:

ORDER

*It is ordered*, That respondents Bart Schwartz International Textiles, Ld., a corporation, and its officers, and Bart Schwartz and Louis Rudolph, individually and as officers of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of fabrics composed in whole or in part of rayon, do forthwith cease and desist from:

1. Failing to set forth the rayon content thereof in a clear and conspicuous manner on invoices, labels, and in all advertising matter concerning such products.

2. Supplying to or placing in the hands of others, for use in designating or identifying respondents' said fabrics or garments made therefrom, tags, labels or advertising materials which are not in accordance with paragraph 1 above.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission having considered the hearing examiner's initial decision, filed February 11, 1958, which decision was based on an agreement containing, a consent order to cease and desist, theretofore executed by the respondents and counsel in support of the complaint; and

It appearing that, through inadvertence, the word "as" was omitted from the eighth line of the introductory paragraph of the order contained in said decision; and

The Commission being of the opinion that this clerical error should be corrected to conform the order in the initial decision with the form of order contained in the agreement of the parties:

*It is ordered*, That the order in the initial decision of the hearing examiner be, and it hereby is, modified to read as follows:

*It is ordered*, That respondents Bart Schwartz International Textiles, Ltd., a corporation, and its officers, and Bart Schwartz and Louis Rudolph, individually and as officers of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of fabrics composed in whole or in part of rayon, do forthwith cease and desist from:

1. Failing to set forth the rayon content thereof in a clear and conspicuous manner on invoices, labels, and in all advertising matter concerning such products.

2. Supplying to or placing in the hands of others, for use in designating or identifying respondents' said fabrics or garments made therefrom, tags, labels or advertising materials which are not in accordance with paragraph 1 above.

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

*It is further ordered*, That respondents Bart Schwartz International Textiles, Ltd., a corporation, and Bart Schwartz and Louis Rudolph, individually and as officers of said corporation, shall within sixty (60) days after service upon them of this decision, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the aforesaid order to cease and desist.

Decision

IN THE MATTER OF

# FIRE SAFETY SERVICES, INC., ET AL.

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

*Docket 6916. Complaint, Oct. 17, 1957—Decision, Mar. 19, 1958*

Consent order requiring distributors of home fire alarm systems in Washington, D.C., to cease representing falsely, through salesmen who gave demonstrations in the homes of prospects, that said representatives were not salesmen but demonstrators desiring only to make a fire prevention talk to specially selected prospects and to cease in such demonstrations, exhibiting newspaper clippings and horrow pictures to induce sale of the products; misrepresenting the cost of the systems and representing falsely that all or most of it could be earned by submission of names of other prospects which would be held in confidence; inducing purchasers to sign in blank, contracts and promissory notes which were later filled in with total costs and carrying charges, contrary to the representations made, and failing to reveal that the contracts and notes would be discounted.

*Mr. Edward F. Downs* and *Mr. Garland S. Ferguson* supporting the complaint.

*Mr. Milton Handler*, of New York City, for respondents.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on October 17, 1957, charging them with violation of the Federal Trade Commission Act as set forth in said complaint. After issuance and service of the complaint, all respondents on January 22, 1958, entered into an agreement for a consent order to cease and desist from the practices complained of which agreement disposes of all the issues in this proceeding without hearing. This agreement has been duly approved by the assistant director and director of the Bureau of Litigation and has been submitted to the undersigned, heretofore designated to act as hearing examiner herein for his consideration in accordance with rule 3.25 of the rules of practice of the Commission.

Respondents, pursuant to the aforesaid agreement, have admitted all of the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that respondents waive all further procedural steps before the hearing examiner or the Commission, includ-

ing the making of findings of fact or conclusions of law and the right to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, that said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint, that said order to cease and desist shall have the same force and effect as if entered after a full hearing and may be altered, modified, or set aside in the manner provided for other orders, and that the complaint may be used in construing the terms of the order.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing the consent order, and it appearing that the order and agreement cover all of the allegations of the complaint and provide for appropriate disposition of this proceeding, the agreement is hereby accepted and ordered filed upon this decision and said agreement becoming part of the Commission's decision pursuant to sections 3.21 and 3.25 of the rules of practice, and the hearing examiner accordingly makes the following findings, for jurisdictional purposes, and order:

1. Corporate respondent Fire Safety Services, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 3461 14th Street NW., Washington, D.C.

2. Individual respondent Howard Grant is an officer of said corporation and his address is the same as that of the corporate respondent.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the Federal Trade Commission Act. This proceeding is in the public interest.

ORDER

*It is ordered*, That respondents Fire Safety Services, Inc., a corporation, and its officers and Howard Grant, individually and as officer of said corporation, their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined by the Federal Trade Commission Act, of

fire detection or fire alarm systems do forthwith cease and desist from:

1. Representing, directly or by implication:

(a) That respondents' salesmen only desire to make fire prevention talks or demonstrations;

(b) That respondents' representatives are not salesmen but are only demonstrators;

(c) That prospective purchasers or their homes have been specially selected for demonstration purposes;

(d) That the total or monthly cost of respondents' fire alarm system will be reduced in any amount by the submission of names of prospective purchasers under respondents' referral program;

(e) That the identity of those supplying names of prospective purchasers will not be revealed to said prospective purchasers;

(f) That the contract or promissory note for the purchase price of the system will not be discounted or failing to reveal that such will be discounted.

(g) That carrying charges will not be added to the total cost of the system or failing to reveal that carrying charges will be added.

2. Inducing the purchase of respondents' products by employing "scare tactics" by exhibiting newspaper clippings and horror pictures calculated to unduly arouse parents emotionally as to the need to protect themselves and their children from the hazards of fire.

3. Misrepresenting in any manner the amount of money any purchaser or prospective purchaser will probably or may reasonably expect to receive from the submission of names of prospects under respondents' referral program.

4. Using any referral program in inducing the sale of their fire alarm system unless, (1) all of the terms and conditions thereof are fully explained to the purchaser or prospective purchaser prior to consummation of the sale, (2) any person submitting the name of a prospect who cannot be solicited for any reason is given the option of submitting a replacement name, and (3) the promised sum of money is actually paid to the purchaser who submitted the name of a prospect to whom a demonstration or sale of the system is made pursuant to such referral.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner shall, on the 19th day of March 1958, become the decision of the Commission; and, accordingly:

*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.

Decision

IN THE MATTER OF

# EARLE G. HASTINGS ET AL. TRADING AS DETERGEN CO.

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

*Docket 6923. Complaint, Oct. 24, 1957—Decision, Mar. 19, 1958*

Consent order requiring manufacturers in Tulsa, Okla., to cease representing falsely in advertising that their drug product "Deturge" was an effective treatment for colitis and other unhealthy conditions of the gastro-intestinal tract, and that faulty elimination or constipation results in toxic accumulations in the gastro-intestinal tract and is responsible for a large percentage of diseases.

*Mr. Michael J. Vitale* and *Mr. Thomas A. Ziebarth* for the Commission.

*Respondents, pro se.*

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

The complaint in this proceeding charges that Earle G. Hastings and Earle G. Hastings, Jr., trading under the name Detergen Co., hereinafter called respondents, have violated the provisions of the Federal Trade Commission Act by making false and misleading representations in advertisements in connection with the sale and distribution of a drug preparation known as "Deturge" which they manufacture.

After issuance and service of the complaint, respondents and counsel supporting the complaint entered into an agreement for a consent order. The order disposes of the matters complained about. The agreement has been approved by the director and the assistant director of the Bureau of Litigation.

The material provisions of said agreement are as follows: Respondents admit all jurisdictional facts; the complaint may be used in construing the terms of the order; the order shall have the same force and effect as if entered after a full hearing and the said agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission; the record herein shall consist solely of the complaint and the agreement; respondents waive the requirement that the decision must contain a statement of findings of fact and conclusion of law; respondents waive further procedural steps before the hearing examiner and the Commission, and the order may be altered, modified or set aside in the manner provided by

statute for other orders; respondents waive any right to challenge or contest the validity of the order entered in accordance with the agreement; and the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

The hearing examiner having considered the agreement and proposed order and being of the opinion that the acceptance thereof will be in the public interest, hereby accepts such agreement, makes the following jurisdictional findings, and issues the following order:

JURISDICTIONAL FINDINGS

1. Respondents Earle G. Hastings and Earle G. Hastings, Jr., are individuals trading under the name Detergen Co. Their office and principal place of business is located at 1316 E. 36th Place, Tulsa 5, Okla.

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

ORDER

*It is ordered*, That respondents Earle G. Hastings and Earle G. Hastings, Jr., trading as Detergen Co. or trading under any other name, or names, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of the preparation designated as "Deturge," or any other preparation of substantially the same composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from:

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

(a) A large percentage of diseases and disorders have their origin in the gastro-intestinal tract, or result from faulty elimination or constipation;

(b) Faulty elimination or constipation results in the formation of toxic accumulations of mucus or putrefaction in the gastro-intestinal tract;

(c) Abnormal accumulations of putrefaction or waste in the gastro-intestinal tract are toxic or poison the body by absorption into the

blood or otherwise or retard the assimilation of essential minerals from the diet;

(d) Deturge is an effective treatment for unhealthy conditions of the gastro-intestinal tract, including colitis.

2. Disseminating, or causing to be disseminated, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said preparation, any advertisement which contains any of the representations prohibited in paragraph 1 of this order.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner shall, on the 19th day of March 1958, become the decision of the Commission; and, accordingly:

*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.

IN THE MATTER OF

# MODERN SALES & SUPPLY CO. ET AL.

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

*Docket 6932. Complaint, Nov. 8, 1957—Decision, Mar. 19, 1958*

Consent order requiring sellers in Minneapolis, Minn., to cease representing falsely in advertising for purchasers of their automatic coin machines for vending cigarettes, that they were making offers of employment, that purchasers' investment was secured, that specified high earnings were assured and guaranteed, that they would grant purchasers exclusive territory and relocate machines or refund the cost if purchasers were dissatisfied, that they paid a bonus or promotional fee for featuring their particular brand of cigarettes in or on the machines, etc.

*Mr. William A. Somers* for the Commission.
*Mr. John J. Remes*, Minneapolis, Minn., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) issued its complaint herein, charging the above-named respondents, Modern Sales & Supply Co., a corporation, and James K. Sorenson, individually and as an officer of said corporation, with having violated the provisions of the Federal Trade Commission Act in certain particulars. Respondents were duly served with process and in due course filed their joint answer. The initial hearing was canceled pending negotiations of counsel for a consent agreement.

On January 30, 1958, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an "agreement containing consent order to cease and desist," which had been entered into by and between the respondent corporation and James K. Sorenson, both individually and as an officer of the corporate respondent, and attorneys for both parties, under date of January 29, 1958, subject to the approval of the Bureau of Litigation of the Commission. Such agreement had been thereafter duly approved by that Bureau.

On due consideration of the said "agreement containing consent order to cease and desist," the hearing examiner finds that said agreement, both in form and in content, is in accord with § 3.25 of the

Commission's rules of practice for adjudicative proceedings and that by said agreement the parties have specifically agreed that:

1. Respondent Modern Sales & Supply Co. is a corporation existing and doing business under and by virtue of the laws of the State of Minnesota. Respondent James K. Sorenson is an individual and officer of said corporate respondent. Said corporate and individual respondents have their office and principal place of business located at 5620 West Broadway, Minneapolis, Minn.

2. Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 8, 1957, issued its complaint in this proceeding against the respondent and a true copy was thereafter duly served on the respondents.

3. The respondents admit all the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

4. This agreement disposes of all this proceeding as to all parties.

5. The respondents waive:

(a) Any further procedural steps before the hearing examiner and the Commission;

(b) The making of findings of fact or conclusions of law; and

(c) All the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

6. The record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement.

7. This agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

8. This agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

Upon due consideration of the complaint filed herein, and the said "agreement containing consent order to cease and desist," the latter is hereby approved, accepted and ordered filed, the same not to become a part of the record herein, unless and until it becomes a part of the decision of the Commission. The hearing examiner finds from the complaint and the said "agreement containing consent order to cease and desist" that the Commission has jurisdiction of the subject matter of this proceeding and of the person of the respondents signatory to said agreement; that the complaint states a legal cause for complaint under the Federal Trade Commission Act both generally and in each

of the particular charges alleged therein; that this proceeding is in the interest of the public; that the following order as proposed in said agreement is appropriate for the full disposition of all the issues in this proceeding, such order to become final only if and when it becomes the order of the Commission; and that said order, therefore, should be, and hereby is, entered as follows:

ORDER

*It is ordered*, That respondents Modern Sales & Supply Co., a corporation, and its officers, James K. Sorenson, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of vending machines in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

1. Employment is offered by respondents when, in fact, the real purpose of the advertisement is to obtain purchasers for respondents' products;

2. The amount invested in respondents' products is secured;

3. The earnings or profits derived from the operation of respondents' machines are any amounts in excess of those which have been, in fact, customarily earned by operators of their machines;

4. Respondents have established routes or will establish routes for their machines which will produce earnings or profits in any specific amount;

5. That earnings derived from the operation of respondents' machines are guaranteed;

6. Respondents grant exclusive territory in which machines purchased by them may be located;

7. Respondents refund the purchase price of vending machines sold by them or resell them to another person, in case the purchaser is dissatisfied;

8. Respondents obtain satisfactory and profitable locations for the vending machines purchased from them or that they will relocate such machines if the location is not profitable or satisfactory;

9. Purchasers of respondents' machines must have special qualities or are especially selected;

10. Cigarette manufacturers pay a specific bonus or promotional fee to the purchasers of its vending machines.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner shall, on the 19th day of March 1958, become the decision of the Commission; and, accordingly:

*It is ordered*, That respondents Modern Sales & Supply Co., a corporation, and its officers, James K. Sorenson, individually and as an officer of said corporation, 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.

IN THE MATTER OF

# DUPLER'S ART FURS, INC., ET AL.

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

*Docket 6937. Complaint, Nov. 8, 1957—Decision, Mar. 19, 1958*

Consent order requiring furriers in Salt Lake City, Utah, to cease violating the Fur Products Labeling Act by failing to comply with the invoicing and labeling requirements; by advertising in newspapers which failed to disclose that furs in certain products were artificially colored, contained names of animals other than those producing certain fur, and used comparative prices not based on the usual retail prices: and by failing to keep adequate records disclosing the facts upon which the pricing claims were based.

*Ross D. Young*, Esq., for the Commission.
*Respondents, pro se.*

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on November 8, 1957, charging them with having violated the Fur Products Labeling Act, the rules and regulations issued thereunder, and the Federal Trade Commission Act by misbranding, falsely advertising and falsely invoicing their fur products. Respondents entered into an agreement, dated December 24, 1957, containing a consent order to cease and desist, disposing of all the issues in this proceeding without hearing, which agreement has been duly approved by the assistant director and the director of the Bureau of Litigation. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with section 3.25 of the rules of practice of the Commission.

Respondents, pursuant to the aforesaid agreement, have admitted all of the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been made duly in accordance with such allegations. Said agreement further provides that respondents waive all further procedural steps before the hearing examiner or the Commission, including the making of findings of fact or conclusions of law and the right to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has also been agreed that the record herein shall consist solely of the complaint and said agreement,

that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, that said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint, that said order to cease and desist shall have the same force and effect as if entered after a full hearing and may be altered, modified, or set aside in the manner provided for other orders, and that the complaint may be used in construing the terms of the order.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing the consent order, and it appearing that the order and agreement cover all of the allegations of the complaint and provide for appropriate disposition of this proceeding, the agreement is hereby accepted and ordered filed upon this decision and said agreement becoming part of the Commission's decision pursuant to sections 3.21 and 3.25 of the rules of practice, and the hearing examiner accordingly makes the following findings, for jurisdictional purposes, and order:

1. Dupler's Art Furs, Inc., is a corporation duly organized and doing business under and by virtue of the laws of the State of Utah. Individual respondent Joseph H. Dupler is president of said corporate respondent. Both the individual respondent and corporate respondent have their office and principal place of business located at 137 South Main Street, Salt Lake City, Utah.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the Fur Products Labeling Act and the Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

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

A. Misbranding fur products by:

1. Failing to affix labels to such fur products showing:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur product as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations;

(b) That the fur product contains or is composed of used fur, when such is the fact;

(c) That the fur product contains or is composed of bleached, dyed or otherwise artificially colored fur, when such is the fact;

(d) That the fur product is composed in whole or in substantial part of paws, tails, bellies or waste fur, when such is the fact;

(e) The name, or other identification issued and registered by the Commission, of one or more persons who manufactured such fur product for introduction into commerce, introduced it into commerce, sold it in commerce, advertised or offered it for sale in commerce, or transported or distributed it in commerce;

(f) The name of the country of origin of any imported furs in the fur product;

(g) All the information required under section 4(2) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder on one side of such labels.

2. Setting forth on labels attached to fur products information required under section 4(2) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder mingled with non-required information.

B. Falsely or deceptively invoicing fur products by:

1. Failing to furnish invoices to purchasers of fur products showing:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur product, as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations;

(b) That the fur product contains or is composed of used fur, when such is the fact;

(c) That the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;

(d) That the fur product is composed in whole or in substantial part of the paws, tails, bellies, or waste fur, when such is the fact;

(e) The name and address of the person issuing such invoice;

(f) The name of the country of origin of any imported furs contained in a fur product.

2. Using on invoices the name or names of any animal or animals other than the name or names provided for in paragraph B(1)(a) above.

3. Abbreviating on invoices information required under section 5(b)(1) of the Fur Products Labeling Act and the rules and regulations promugated thereunder.

C. Falsely or deceptively advertising fur products through the use of any advertisement, representation, public announcement, or notice which is intended to aid, promote, or assist, directly or indirectly, in the sale or offering for sale of fur products, and which:

1. Fails to disclose that the fur product contains or is composed of bleached, dyed or otherwise artificially colored fur when such is the fact.

2. Contains the name or names of any animal or animals other than those producing the fur contained in the fur product.

3. Fails to set forth the information required under section 5(a) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder in close proximity with each other and in type of equal size and conspicuousness.

4. Makes use of comparative pricing claims in advertisements unless such compared prices are based on the regular and usual retail prices charged by respondents for fur products or similar grade and quality in the recent regular course of their business.

5. Makes pricing claims or representations of the type referred to in paragraph 4 above unless there are maintained by respondents full and adequate records disclosing the facts upon which such claims or representations are based.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner shall, on the 19th day of March 1958, become the decision of the Commission; and, accordingly:

*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.

IN THE MATTER OF

# L. L. BERGER, INC.

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

*Docket 6948. Complaint, Nov. 19, 1957—Decision, Mar. 19, 1958*

Consent order requiring a furrier in Buffalo, N.Y., to cease violating the Fur Products Labeling Act by falsely labeling certain fur products with names of animals producing the fur contained therein, failing to label other furs, and failing in other respects to comply with the labeling and invoicing requirements of the act; and by failing in advertising in newspapers to disclose the names of animals producing certain furs or the country of origin of imported furs.

*Mr. John T. Walker* for the Commission.

*Jaeckle, Fleischmann, Kelly, Swart & Augspurger*, of Buffalo, N.Y., for respondent.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, the Federal Trade Commission on November 19, 1957, issued and subsequently served its complaint in this proceeding against respondent L. L. Berger, Inc., a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 514 Main Street, Buffalo, N.Y.

On January 27, 1958, there was submitted to the undersigned hearing examiner an agreement between respondent and counsel supporting the complaint providing for the entry of a consent order. By the terms of said agreement, respondent admits all the jurisdictional facts alleged in the complaint and agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. By such agreement, respondent waives any further procedural steps before the hearing examiner and the Commission; waives the making of findings of fact and conclusions of law; and waives all of the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement. Such agreement further provides that it disposes of all of this proceeding as to all parties; that the record on which this initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement; that the latter

shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint; and that the following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondent, and, when so entered, it shall have the same force and effect as if entered after a full hearing, and may be altered, modified, or set aside in the manner provided for other orders; and that the complaint may be used in construing the terms of the order.

The hearing examiner having considered the agreement and proposed order, and being of the opinion that they provide an appropriate basis for settlement and disposition of this proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued.

1. Respondent L.L. Berger, Inc., is a corporation existing and doing business under the laws of the State of New York, with its office and principal place of business located at 514 Main Street, Buffalo, N.Y.

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

ORDER

*It is ordered*, That L. L. Berger, Inc., a corporation, and its officers, and respondent's representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, offering for sale, transportation or distribution of fur products in commerce, or in connection with the sale, advertising, offering for sale, transportation or distribution of fur products which have been made, in whole or in part, of fur which has been shipped and received in commerce, as "commerce," "fur," and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misbranding fur products by:

A. Falsely or deceptively labeling or otherwise identifying any such product as to the name of the animal or animals that produced the fur from which such product was manufactured;

B. Failing to affix labels to fur products showing:

(1) The name or names of the animal or animals producing the fur or furs contained in the fur product as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations;

(2) That the fur product contains or is composed of used fur, when such is the fact;

(3) That the fur product contains or is composed of bleached, dyed, or artificially colored fur, when such is the fact;

(4) That the fur product is composed, in whole or in substantial part, of paws, tails, bellies, or waste fur, when such is the fact;

(5) The name, or other identification issued and registered by the Commission, of one or more persons who manufactured such fur product for introduction into commerce, introduced it into commerce, sold it in commerce, or transported or distributed it in commerce;

(6) The name of the country of origin of any imported furs used in the fur product;

(7) All of the information required under section 4(2) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder on one side of such label;

(8) The information required under section 4(2) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder where a fur product is composed of two or more sections containing different animal furs;

(9) The item number or mark assigned to a fur product.

2. Setting forth on labels affixed to fur products information required under section 4(2) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder which is abbreviated, handwritten or mingled with non-required information.

3. Falsely or deceptively invoicing fur products by:

A. Failing to furnish invoices to purchasers of fur products showing:

(1) The name or names of the animal or animals producing the fur contained in the fur products as set forth in the Fur Products Name Guide and as permitted under the rules and regulations;

(2) That the fur product contains or is composed of used fur, when such is the fact;

(3) That the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;

(4) That the fur product is composed, in whole or in substantial part, of paws, tails, bellies, or waste fur, when such is the fact;

(5) The name and address of the person issuing such invoice;

(6) The name of the country of origin of any imported furs contained in a fur product.

B. Setting forth information required under section 5(b)(1) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder in abbreviated form.

4. Falsely or deceptively advertising fur products through the use of any advertisement, public announcement, or notice which is intended to aid, promote, or assist, directly or indirectly, in the sale or offering for sale of fur products, and which:

A. Fails to disclose:

(1) The name or names of the animal or animals producing the fur or furs contained in the fur product as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations;

(2) The name of the country of origin of any imported furs contained in a fur product.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner shall, on the 19th day of March 1958, become the decision of the Commission; and, accordingly:

*It is ordered*, That the respondent herein shall, within sixty (60) days after service upon it of this 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.

IN THE MATTER OF

# IRIE MANUFACTURING CO., INC., ET AL.

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

*Docket 6984. Complaint, Dec. 13, 1957—Decision, Mar. 19, 1958*

Consent order requiring importers in New York City to cease violating the Wool Products Labeling Act by labeling as "50% reprocessed wool, 50% cotton and artificial fibers," blankets which contained substantially less wool than so claimed, and by failing in other respects to comply with the requirements of the act.

*Charles W. O'Connell, Esq.*, for the Commission.
*Arthur I. Winard, Esq.*, of New York, N.Y., for respondents.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

The complaint in this proceeding, issued December 13, 1957, charges the respondents Irie Manufacturing Co., Inc., U.S. Blanket Corp., corporations, and Nat Nasshorn, David Nasshorn, and Larry Curtis, individually and as officers of said corporations, with violation of the provisions of the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, and of the rules and regulations promulgated under authority of the said Wool Products Labeling Act, in connection with the introduction into commerce, or offering for sale, sale, transportation or distribution of blankets, in commerce, as "commerce" is defined in said acts.

After the issuance of said complaint respondents, on January 27, 1958, entered into an agreement for a consent order with counsel in support of the complaint, disposing of all of the issues in this proceeding, which agreement was duly approved by the director and assistant director of the Bureau of Litigation of the Federal Trade Commission. It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

By the terms of said agreement, the respondents admitted all of the jurisdictional allegations of the complaint and agreed that the record herein may be taken as though the Commission had made findings of jurisdictional facts in accordance with such allegations. By said

agreement the parties expressly waived a hearing before the hearing examiner or the Commission, the making of findings of fact or conclusions of law by the hearing examiner or the Commission, the filing of exceptions and oral argument before the Commission, and all further and other procedure before the hearing examiner and the Commission to which the respondents may otherwise be entitled under the Federal Trade Commission Act or the rules of practice of the Commission.

By said agreement, respondents further agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as though made after a full hearing, presentation of evidence and findings and conclusions thereon, and specifically waived any and all right, power or privilege to challenge or contest the validity of such order.

It was further provided that said agreement, together with the complaint, shall constitute the entire record herein; that the complaint herein may be used in construing the terms of the order issued pursuant to said agreement; and that the said order may be altered, modified or set aside in the manner provided by statute for other orders of the Commission.

Said agreement recites that respondents Irie Manufacturing Co., Inc. and U.S. Blanket Corp., are corporations existing under and by virture of the laws of the State of New York. The individual respondents are Nat Nasshorn, president of corporate respondent U.S. Blanket Corp. and secretary-treasurer of corporate respondent Irie Manufacturing Co., Inc.; David Nasshorn, vice president of both corporate respondents; and Larry Curtis, president of corporate respondent Irie Manufacturing Co., Inc., and secretary-treasurer of corporate respondent U.S. Blanket Corp. The office and principal place of business of all respondents is located at No. 30 Bleecker Street, New York, N.Y.

The hearing examiner has considered such agreement and the order therein contained, and, it appearing that said agreement and order provides for an appropriate disposition of this proceeding, the same is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with sections 3.21 and 3.25 of the rules of practice, and in consonance with the terms of said agreement, the hearing examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of all respondents named herein, and that this proceeding is in the interest of the public, wherefore he issues the following order:

ORDER

*It is ordered*, That respondents Irie Manufacturing Co., Inc., and U.S. Blanket Corp., corporations, and their officers, and respondents Nat Nasshorn, David Nasshorn and Larry Curtis, individually and as officers of said corporations, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of blankets 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 contained therein;

2. Failing to securely affix to, or 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 nonfibrous loading, filling, or adulterating matter;

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner shall, on the 19th day of March 1958, become the decision of the Commission; and, accordingly:

*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.

528577—60——77

IN THE MATTER OF

# BLACK MANUFACTURING CO.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SECS. 2(a) AND 2(d) OF THE CLAYTON ACT

*Docket 6710. Complaint, Jan. 11, 1957—Decision, Mar. 20, 1958*

Order requiring a manufacturer with principal place of business in Seattle, Wash.—a substantial factor in the work clothes and sportswear industry in the Pacific Northwest and Alaska—to cease discriminating in price in violation of section 2(d) of the Clayton Act by paying allowances for cooperative advertising to some, but not all, of its customers, which payments, additionally followed no particular pattern but were determined by personal negotiation; and

Dismissing charges of violation of section 2(a) of the Clayton Act for failure to sustain them.

*Mr. John J. McNally* for the Commission.

*Jones & Grey*, of Seattle, Wash., by *Mr. Hargrave Garrison*, for respondent.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

This proceeding is before the undersigned hearing examiner for final consideration upon the complaint, answer thereto, testimony and other evidence, proposed findings of fact and conclusions submitted by counsel supporting the complaint, opening brief of respondent, reply to opening brief filed by counsel supporting the complaint, and reply brief of respondent. The hearing examiner has given consideration to the proposed findings of fact and conclusions and briefs in support thereof submitted by all parties, and all findings of fact and conclusions of law proposed by the parties, respectively, not hereinafter specifically found or concluded, are herewith rejected, and the hearing examiner, having considered the record herein and being now duly advised in the premises, makes the following findings of fact and conclusions drawn therefrom and order:

1. This proceeding involves alleged violations of sections 2(a) and 2(d) of the Clayton Act, as amended by the Robinson-Patman Act. Count I of the complaint charges that the respondent has discriminated in price in violation of section 2(a) of the Clayton Act: (1) Through the use of an annual volume user discount program under which the respondent granted a rebate equal to 5 percent of the purchase price to customers whose annual volume of purchases exceeded $35,000; and (2) The payment of freight charges on shipments to

purchasers located at certain favored areas. Count II of the complaint charges that the respondent has violated the provisions of section 2(d) of the Clayton Act by making payments or allowances for cooperative advertising which were available to some, but not to all, customers competing in the resale of respondent's products.

2. Respondent Black Manufacturing Co. is a corporation organized under the laws of the State of Washington with its principal place of business located at 1130 Rainier Avenue, Seattle, Wash.

3. Respondent is now and for many years last past has been engaged in the manufacture and in the sale and distribution in interstate commerce of work clothes and sportswear, including jackets and trousers of whipcord and denim. A substantial portion of said work clothes and sportswear are sold under respondent's brand name "Black Bear." Respondent sells said products directly and through salesmen principally to retailers located in the States of Washington, Idaho, Montana, Oregon, and California. Many of such purchasers are in competition with each other in reselling respondent's products to the general public in the same competitive trade area. Respondent has been, and is now, in substantial competition in interstate commerce with corporations, individuals, and partnerships likewise engaged in the manufacture, sale and distribution of work clothes and sportswear.

4. The principal competitors of the respondent are Day's Tailor-d Clothing, Inc., of Tacoma, Wash. (hereinafter referred to as Day), and Men's Wear, Inc., of Seattle, Wash. It was estimated by the respondent that in the trading area where respondent sold and distributed its products, Day sells 50 percent of all types of whipcords, respondent 40 percent, and Men's Wear 10 percent.

5. During the years 1954 and 1955, the wholesale price of respondent's whipcord trousers was approximately $1 below the wholesale price of Day and Men's Wear, and the retail price on such trousers during the same period was $2 below that of Day and Men's Wear. The retail price of respondent's wool whipcord trousers was $12.95 and its nylon whipcord was $6.95.

6. In the distribution of its products, the respondent prepays freight to the cities of Spokane, Wash.; Portland, Oreg.; San Francisco, Calif.; and Los Angeles, Calif. To customers in the vicinity of such cities, except Portland, Oreg., the respondent prepays the freight to such cities and charges freight from said cities to point of destination. Respondent does not prepay charges on parcel post shipments. Respondent's competitors, Day and Men's Wear, do not prepay freight on purchases by customers except that Day, which has warehouses

in San Francisco and Los Angeles, charges 15 cents a pair extra for woolen and 10 cents for cotton over and above the charges made in Tacoma, Wash., to purchasers in said cities.

7. It was estimated that about 50 pairs of trousers made up a shipment of 100 pounds, and 25 cruisers made about 100 pounds. The weight of the jackets would be slightly heavier than the trousers. On a 100-pound shipment to Spokane the freight costs on wool whipcords would run approximately ¾ of 1 percent to 1 percent of the wholesale value. On the lower cost nylon blend, the percentage would run from 1¼ percent to 1½ percent of the wholesale value. The other lines would run from ½ percent to something under 2 percent. The percentages to Portland would be about 25 percent lower. The approximate freight cost for shipping to San Francisco is between $4 and $4.25 per hundredweight, as opposed to $3 and $3.25 per hundredweight to Spokane, or about one-third greater percentage than shipments from Seattle to Spokane. In considering the possible effect upon competition for the allowance of freight, particularly to San Francisco and Los Angeles, there must be taken into consideration warehouse charge by Day of 15 cents a pair for woolen and 10 cents for cotton trousers over and above the charges made in Tacoma.

8. For several years prior to 1954 and subsequent thereto, the respondent has used what has been termed an "annual volume user discount program" under which the respondent granted a rebate equal to 5 percent of the purchase price to customers whose annual volume of purchases exceeded $35,000. As far as can be ascertained from the record, only two customers, The Bon Marche and Frederick & Nelson, department stores in Seattle, purchased in sufficient quantities to qualify for this 5-percent discount prior to 1954.

9. At the beginning of the year 1954, respondent instituted its work clothes discount, in lieu of cash discounts, which was in effect a retroactive volume discount based upon the volume of purchases during the course of a year. This work clothes discount applied to work clothes only, including rainwear, work hosiery, heavy socks, whipcords, work pants and shirts, and was made available to all customers who purchased the required quantities. The work clothes discount, or rebate, allowed in 1954 and 1955 was as follows:

| *Year's Purchases* | |
|---|---|
| $0–$1,499 | 0% |
| $1,500–$2,999 | 1% |
| $3,000–$4,999 | 2% |
| $5,000–$7,499 | 3% |
| $7,500–$9,999 | 4% |
| $10,000–and up | 5% |

In December 1955 respondent eliminated rainwear, whipcords and work socks from their work clothes volume discount schedule and allowed the following discount or rebate, on work denims, bibs and coveralls, Chinos (Army twill pants and shirts), Klondike type 9 ounce sateen pants, and work shirts:

| *Year's purchases* | *Year end discount* |
|---|---|
| $0–$999 | --- |
| $1,000–$1,999 | 1% |
| $2,000–$2,999 | 2% |
| $3,000–$3,999 | 3% |
| $4,000–$4,999 | 4% |
| $5,000–and up | 5% |

The charges of the complaint do not include the work clothes discount, and the legality of the discounts or rebates paid thereunder is not an issue in this proceeding.

10. In April 1954, the respondent entered into an agreement with M. Alexander, Inc., a department store having outlets in eight various towns in Idaho, which agreement was confirmed by respondent's letter of April 7, 1954 (CX 31A–B). By the terms of this agreement it was provided, among other things, that M. Alexander, Inc., would be eligible for respondent's volume work clothes discount of 5 percent on all work clothes purchased, if its purchases exceeded $10,000, and if the total volume of all purchases exceeded $35,000 in a fiscal year, M. Alexander, Inc., would be eligible for respondent's annual volume user discount of 5 percent of all items purchased other than the work clothes previously covered by the clothes discount. Excepted therefrom were items distributed by respondent for other manufacturers which were fair traded, such as specific underwear items.

11. During the remainder of 1954, the purchases of M. Alexander, Inc., from respondent amounted to $21,237.75 upon which it received a 5-percent discount or rebate of $1,061.89, although approximately $2,000 of this amount covered items other than work clothes. In 1955, M. Alexander, Inc., purchased a total of $35,223.44 of which $28,831.73 was subject to the work clothes discount. As a result, M. Alexander, Inc., received a rebate of $1,441.59 on work clothes and $327.14 under the volume user discount.

12. In support of the charges of the complaint with reference to violations of section 2(d) of the Clayton Act contained in count II of said complaint, evidence was introduced concerning the practices of the respondent in connection with advertising allowances. The granting of advertising allowances by the respondent to its customers did not follow any particular pattern, but such allowances were made to

various customers on the basis of negotiation with respondent and its salesmen in soliciting business. Typical of such practices is the following:

(a) In 1954, respondent paid The Emporium, a department store in San Francisco, an advertising allowance of $380.80 on the basis of 100 percent participation. In 1955, it granted The Emporium an advertising allowance of $283.90, covering two advertisements at 100 percent participation, and one advertisement at 50 percent participation. There were customers of the respondent in the San Francisco trade area who were in competition with The Emporium who did not receive any advertising allowance during the years 1954 and 1955, or received an allowance less than that received by The Emporium.

(b) In the Sacramento trade area, the respondent gave an advertising allowance to Weinstock, Lubin & Co. of $142.29 in 1954 on a 50 percent participation basis, and $262.56 in 1955 on the basis of 100 percent cooperation on two advertisements and 50 percent cooperation on a third. There were other customers of the respondent located in the Sacramento trading area who were in competition with Weinstock, Lubin & Co. who did not receive any advertising allowance, or an allowance less than that received by Weinstock, Lubin & Co.

In other trading areas the respondent gave various advertising allowances to certain of its customers ranging from 100-percent participation to 2-percent allowance based upon volume purchased. In no trade area covered by the testimony in this proceeding did respondent give equal participation to competing customers in the particular trading area.

13. Count I of the complaint charged both primary and secondary injury resulting from respondent's price discriminations, but no evidence was introduced in this proceeding with reference to secondary injury involving competing customers of the respondent, and consideration of competitive injury on the basis of this record must be limited to such injury as may have been suffered by respondent's competitors. Two witnesses were called to testify as to injury—Mindy J. Slikas, director and treasurer of Day, and Paul R. Bergman, president of Men's Wear. Slikas testified to loss of business with The Bon Marche and Frederick & Nelson in Seattle; M. Alexander, Inc., in Boise, Idaho; and The Emporium in San Francisco. Bergman did not testify as to any injury resulting from respondent's practices in the State of Washington, but testified principally to loss of business in the State of Oregon, including the city of Portland. It was the testimony of Slikas that the loss of business by Day was

due to respondent's aggressive package program of discounts, advertising allowances, freight and price. Bergman based loss of business upon the high-pressure selling conducted by respondent, including advertising allowances, discounts, trade allowances and consignments. Witness stated that the lower price of respondent's products had no effect upon competition.

CONCLUSION

1. The charges of the complaint in count I involving violations of section 2(a) of the Clayton Act are limited to the use of the annual volume users discount and freight allowances. The witness testifying on injury did not specify either one or both of these practices as causing the loss of business, but placed such loss generally on these and other practices of the respondent which are not at issue in this proceeding. So far as the testimony involves Frederick & Nelson and The Bon Marche, they claimed loss of business beginning sometime in 1953. It is impossible for the hearing examiner to disregard the lower price feature and say that a volume discount in existence for many years suddenly became oppressive in 1953. Furthermore, there is no evidence of any interstate shipments by the respondent or its two competitors to either Frederick & Nelson or The Bon Marche, and it must be concluded that the transactions with these two customers were in intrastate commerce with no effect on interstate commerce. The question of freight allowances is not involved as to these two customers as both the respondent and the customers are located in Seattle.

2. The third customer of the respondent who received the annual volume user discount was M. Alexander, Inc., of Boise, Idaho. The agreement entered into between respondent and M. Alexander, Inc., at the inception of their relationship provided that respondent would pay a work clothes discount of 5 percent on purchases over $10,000, and in the event the purchases reached $35,000, an additional 5 percent would be allowed upon all purchases of merchandise other than work clothes. Since the work clothes discount was not attacked in the complaint, it remains for determination whether or not the discount paid M. Alexander, Inc., on merchandise other than work clothes is sufficient to have an adverse effect upon competition. It is the opinion of the hearing examiner that the "annual volume user discount" in the amount of $100 on purchases of $21,237.75 in 1954, and $327.14 on purchases of $35, 223.44 in 1955 does not constitute a discount or rebate of sufficient amount to have any effect upon competition. In considering these discounts, it must be noted that both the work

clothes discount and the "annual volume user discount" were given in lieu of a 1-percent and 2-percent cash discount previously allowed by the respondent. Immediately after taking on respondent's products there was a marked increase in sales of M. Alexander, Inc., of respondent's products as compared with the previous volume of sales of Day's products which was attributed by respondent to the lower retail price of respondent's products. It is impossible on the basis of this record to find that the cause of loss of business by competitors of respondent was due to the annual volume user discount and not due to the lower price of respondent's products or due to other factors not charged in the complaint.

3. On the issue as to whether price discriminations existed in sales to customers other than The Bon Marche, Frederick & Nelson, and M. Alexander, Inc., the annual volume user discount was not granted to purchasers in the other areas. As the work clothes discount is not an issue under the complaint, this leaves only freight allowances as a basis for discriminatory prices. The witness from Day testified that the competitive effect of a freight allowance is not due to the amount, which is small, but due to the fact that prepaid freight is preferred by the purchaser as it eliminates bookkeeping and other inconveniences involved in paying freight on shipments. This, in the opinion of the hearing examiner, might be an excellent argument for prepaying freight, but hardly serves as a basis for considering the small amount of freight allowed as having injurious effect upon competition such as to constitute a violation of section 2(a) of the Clayton Act.

4. The advertising allowances granted by the respondent to certain of its customers were made to such customers on the basis of negotiation and were not made available on proportionally equal terms to all other customers competing in the distribution of respondent's products. This practice of the respondent in making advertising allowances was in violation of section 2(d) of the Clayton Act as amended by the Robinson-Patman Act.

5. It is further concluded that on the basis of the record in this proceeding there has been a total failure to sustain the charges of the complaint set out in count I thereof.

ORDER

*It is ordered*, That respondent Black Manufacturing Co., a corporation, its officers, employees, agents and representatives, directly or through any corporate or other device in, or in connection with, the

sale of work clothes and sportswear, including jackets and trousers of whipcord and denim, or any other similar products in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Making or contracting to make, to or for the benefit of any customer, any payment of anything of value as compensation or in consideration for any advertising or other services or facilities furnished by or through such customer, in connection with the handling, offering for resale, or resale of products sold to him by respondent, or its successors and assigns, unless such payment is affirmatively offered or otherwise made available on proportionally equal terms to all other customers competing in the distribution or resale of such products.

*It is further ordered*, That the charges of the complaint set out in count I thereof be, and the same are hereby, dismissed.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner shall, on the 20th day of March 1958, become the decision of the Commission; and, accordingly:

*It is ordered*, That the respondent herein shall, within sixty (60) days after service upon it of this 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.

IN THE MATTER OF

# EDWARD EARL McGOWAN, JR., TRADING AS TRANSI-MITE LABS, ETC.

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

*Docket 6735. Complaint, Feb. 28, 1957—Decision, Mar. 20, 1958*

Order dismissing, for lack of evidence that he was still in business, complaint charging an individual operating in Virginia and North Carolina with false advertising in connection with the sale of miniature radio kits and parts therefor.

*Mr. Edward F. Downs* and *Mr. Garland S. Ferguson* supporting the complaint.

No appearance for respondent.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

On February 28, 1957, the Federal Commission issued a complaint in this proceeding alleging that Edward Earl McGowan, Jr., trading and doing business as Transi-Mite Labs, Transi-Mite Laboratories, Transi-Mite Radio Lab, Electronic Miniature Labs, and Electronic Miniatures, had violated the provisions of the Federal Trade Commission Act in the advertising and sale of miniature radio kits.

A copy of the complaint was mailed to respondent at his last known address by registered mail, but the envelope containing said complaint was returned by the postmaster undelivered. Subsequently, personal service of the complaint was effected on respondent but not until after the date specified in the complaint for the initial hearing. All attempts to serve respondent with orders rescheduling the initial hearing, both by mail and personal service, were unsuccessful.

On January 9, 1958, counsel supporting the complaint filed a motion with the hearing examiner in this proceeding setting out the matter recited above and the further circumstance that there is no indication that respondent is presently engaged in the business which led to the issuance of the complaint herein. Wherefore, counsel requested that the complaint be dismissed.

Upon consideration, the hearing examiner is of the opinion that the motion to dismiss should be granted. Accordingly,

*It is ordered*, That the complaint herein be, and it hereby is, dismissed, without prejudice to the right of the Federal Trade Com-

mission to take such further action in the future against respondent as the facts and circumstances may warrant.

DECISION OF THE COMMISSION

Pursuant to section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner shall, on the 20th day of March 1958, become the decision of the Commission.

IN THE MATTER OF

# MASONEK & BLOOM, INC., ET AL.

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

*Docket 6930. Complaint, Nov. 6, 1957—Decision, Mar. 20, 1958*

Consent order requiring furriers in San Francisco to cease violating the Fur Products Labeling Act by false advertising, invoicing, and labeling, in connection with the sale of fur products at auction by others pursuant to arrangements under which they furnished price lists and other invoice memoranda and affixed labels to fur products containing purported insurance valuations greatly in excess of their usual prices, which were used as the basis of public announcements and other forms of advertising.

*Mr. John J. McNally* for the Commission.

*O'Connor, Moran, Cohn & Hall*, by *Mr. David D. Ring*, of San Franciso, Calif., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on November 6, 1957, charging respondents with misbranding and falsely and deceptively advertising and invoicing certain of their fur products, in violation of the Federal Trade Commission Act and of the Fur Products Labeling Act and the rules and regulations promulgated thereunder.

Thereafter, on January 13, 1958, respondents, their counsel, and counsel supporting the complaint herein entered into an agreement containing consent order to cease and desist, which was approved by the Director and the Assistant Director of the Commission's Bureau of Litigation, and thereafter submitted to the hearing examiner for consideration.

The agreement identifies respondent Masonek & Bloom, Inc., as a California corporation, with its office and principal place of business located at 140 Geary Street, San Francisco, Calif., and individual respondents Sanford Masonek and Charles L. Bloom as president, and as secretary and treasurer, respectively, of the corporate respondent. The agreement states that respondents Masonek and Bloom formulate, direct and control the acts, policies, and practices of the corporate respondent, and have the same business address as the corporate respondent.

Respondents admit all the jurisdictional facts alleged in the complaint, and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

Respondents waive any further procedure before the hearing examiner and the Commission; the making of findings of fact and conclusions of law; and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist, as contained in the agreement, when it shall have become a part of the decision of the Commission, shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said order; and that the agreement is for settlement purposes only, and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint.

After consideration of the allegations of the complaint and the provisions of the agreement and the proposed order, the hearing examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the hearing examiner accepts the agreement containing consent order to cease and desist; finds that the Commission has jurisdiction over the respondents and over their acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

*It is ordered*, That respondents, Masonek & Bloom, Inc., a corporation, and its officers, and Sanford Masonek and Charles L. Bloom, individually and as officers of said corporation, and Respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertisement, offer for sale, transportation, or distribution in commerce of any fur product, or in connection with the sale, advertisement, offer for sale, transportation, or distribution of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur," and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misbranding and falsely or deceptively advertising and invoicing fur products through the use of any label, advertisement, public an-

nouncement, notice, invoice, or other memorandum, which is intended to aid, promote or assist, directly or indirectly, in the sale, or offering for sale of fur products, and which contains any representation as to value in excess of the price at which such products are usually sold by respondents in the regular course of their business;

2. Making use of any pricing claims or representations of the type referred to in paragraph (1) above unless there are maintained by respondents full and adequate records disclosing the facts upon which such claims are based;

3. Falsely or deceptively invoicing fur products by failing to furnish invoices to purchasers of fur products showing:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur product, as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations;

(b) That the fur product contains or is composed of used fur, when such is a fact;

(c) That the fur product contains or is composed of bleached, dyed or otherwise artificially colored fur, when such is a fact;

(d) That the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is a fact;

(e) The name and address of the person issuing such invoice;

(f) The name of the country of origin of any imported fur contained in a fur product;

(g) The item number or mark assigned to such products.

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

Pursuant to section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner shall, on the 20th day of March 1958, become the decision of the Commission; and, accordingly:

*It is ordered*, That respondents Masonek & Bloom, Inc., a corporation; Sanford Masonek, individually and as president of said corporation; and Charles L. Bloom, individually and as secretary and treasurer of said corporation, 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.

IN THE MATTER OF

# NELS IRWIN TRADING AS SCREEN-PRINT PRODUCTS CO.

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

*Docket 6924. Complaint, Oct. 24, 1957—Decision, Mar. 21, 1958*

Consent order requiring an individual in Los Angeles, Calif., engaged in the sale of screen-printing kits together with an instruction course in screen-printing, to cease making a variety of false representations in advertising to induce sale of his products, as to demand, opportunities and potential profits for screen-printers, special offers, prices, "approval," etc.

*Mr. Edward F. Downs* and *Mr. Garland S. Ferguson* for the Commission.

*Mr. Henry Junge*, of Chicago, Ill., for respondent.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding issued October 24, 1957, charges the respondent Nels Irwin, individually and trading and doing business as Screen-Print Products Co., located at 15133 South Broadway, Los Angeles, Calif., with violation of the provisions of the Federal Trade Commission Act in the sale and distribution of Screen-printing kits, together with an instruction course in screen-printing.

After the issuance of the complaint, respondent Nels Irwin, individually and trading and doing business as Screen-Print Products Co., entered into an agreement containing consent order to cease and desist with counsel in support of the complaint, disposing of all the issues in this proceeding, which agreement was duly approved by the director and assistant director of the Bureau of Litigation. It was expressly provided in said agreement that the signing therof is for settlement purposes only and does not constitute an admission by respondent that he has violated the law as alleged in the complaint.

By the terms of said agreement, the said respondent admitted all the jurisdictional facts alleged in the complaint and agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with the allegations.

By said agreement, the respondent expressly waived any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all the

rights he may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

Respondent further agreed that the order to cease and desist, issued in accordance with said agreement, shall have the same force and effect as if made after a full hearing.

It was further provided that said agreement, together with the complaint, shall constitute the entire record herein; that the complaint herein may be used in construing the terms of the order issued pursuant to said agreement; and that said order may be altered, modified or set aside in the manner prescribed by the statute for orders of the Commission.

The hearing examiner has considered such agreement and the order therein contained, and, it appearing that said agreement and order provides for an appropriate disposition of this proceeding, the same is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with sections 3.21 and 3.25 of the rules of practice, and, in consonance with the terms of said agreement, the hearing examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent named herein, that this proceeding is in the interest of the public, and issues the following order:

ORDER

*It is ordered*, That respondent Nels Irwin, individually and trading and doing business as Screen-Print Products Co., or under any other name, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of screen-printing kits and courses designed to teach or instruct in the screen-printing process, or any other products, in commerce, as "commerce" is defined in Federal Trade Commission Act, do forthwith cease and desist from:

Representing, directly or by implication that:

1. Screen-printing is a new or secret process or that it is revolutionizing the printing industry.

2. Screen-printing can be carried on effectively without any special equipment.

3. A demand exists for screen-printers everywhere or that the area, in which the solicited customer lives is critically short of screen-printers unless such is the fact.

4. Earnings that may be made from screen-printing by persons completing respondent's course are greater than the earnings customarily or regularly made by persons completing respondent's course.

5. No selling is required by a customer on completion of respondent's course in screen-printing to secure screen-printing business of jobs.

6. Respondent's screen-printing kits contain such a complete inventory of equipment and materials that purchasers will be able to start their own screen-printing business, on other than a limited scale, upon completion of respondent's course without additional purchases.

7. That any savings accrue to purchasers of respondent's course and kit, unless based upon the price at which respondent sells such merchandise in the usual and regular course of business.

8. Prospective customers may examine respondent's course and kits at home without any cost to said prospective customers.

9. On the payment of a deposit or down payment the entire course and kit will be sent to the prospective customers.

10. Respondent's screen-printing course and "Trace Art" book have been approved unless they have been officially approved by some reputable independent person or business concern, and the name of such person or concern is so designated.

11. Charges made for respondent's screen-printing equipment and materials are wholesale prices unless such is the fact.

12. That the past or current annual membership charges or fees in the United Screen-Printers International amounted to or now amounts to any figure which is in excess of the actual cost of said past or current charges or fees.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner shall, on the 21st day of March 1958, become the decision of the Commission; and, accordingly:

*It is ordered*, That 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.