IN THE MATTER OF

HARSAM DISTRIBUTORS, INC., ET AL.

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

Docket 6687. Complaint, Dec. 11, 1956—Decision, Mar. 21, 1958

Order requiring jobber-sellers in New York City of their domestically blended "White Christmas" perfume which contained some imported ingredients, to cease representing falsely in advertising and on labels that the perfume sold at nationally advertised prices far in excess of the customary prices; and, through use of French words and otherwise, that the perfume was a French product.

Mr. William R. Tincher for the Commission.

Mr. Abraham B. Hertz, of New York, N.Y., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

PRELIMINARY STATEMENT

The complaint in this proceeding alleges that Harsam Distributors, Inc., Harry Wagonfeld and Louis Wagonfeld, individually and as officers of said corporation, violated the provisions of the Federal Trade Commission Act by indulging in false advertising practices in the sale and distribution of "White Christmas" perfume, defined as a "cosmetic" under the act.

Specifically, the complaint alleges that said corporation and named individuals, through advertisements, circulars and labels, represented that "White Christmas" perfume was compounded in France and had been nationally advertised and sold at certain retail prices, whereas, such statements are misleading and deceptive and constitute "false" advertising under the act for the reason that "White Christmas" perfume was not compounded in France but was manufactured or compounded in the United States and the prices set forth in the advertisements are fictitious and in excess of the prices at which "White Christmas" usually or customarily sold at retail and were not nationally advertised prices. The complaint further alleged that there is a preference on the part of the buying public for perfumes manufactured or compounded in foreign countries and imported into the United States, especially from France.

The respondents, through their attorney, answered the complaint, denied that Louis Wagonfeld is secretary-treasury of Harsam Distributors, Inc., that he directs or controls the policies, acts and practices

of said corporate respondent, and denied the other material allegations set forth in the complaint.

Hearings were held in New York City. Proposed findings, conclusions, and order have been submitted by respective counsel. The examiner has considered the testimony and evidence received at the hearings, the proposed findings of fact, conclusions and order submitted by counsel. All proposed findings and conclusions not specifically found and concluded in this decision are rejected. Upon the basis of the entire record the undersigned hearing examiner makes the following findings of fact, conclusions, and issues the following order:

FINDINGS OF FACT

1. The respondent Harsam Distributors, Inc., is a corporation organized and doing business under the laws of the State of New York with its office and principal place of business located at 14 E. 17th Street, New York, N.Y. The respondent Harry Wagonfeld is president of said corporation and directs the acts and practices of said corporation. The respondent Louis Wagonfeld is not the secretary-treasurer of said corporation and has no part in directing the acts and practices of said corporation, as alleged in the complaint. Therefore, the complaint will be dismissed as to Louis Wagonfeld.

2. Harsam Distributors, Inc., and Harry Wagonfeld, president of said corporation, hereinafter referred to as respondents, are now and have been for more than 2 years last past, engaged in the business of selling various perfumes which are "cosmetics" as that term is defined in the Federal Trade Commission Act. Among said perfumes is one designated as "White Christmas," which is involved in this proceeding. Respondents began selling "White Christmas" perfume in 1953. At that time, respondents purchased their supplies of "White Christmas" for resale from Saravel, Inc., who owned the formula for the perfume and compounded or manufactured the product, as understood in the trade. Respondents acted in the capacity as a jobber for the perfume, selling and shipping the perfume to their own wholesale department and retail store customers in various localities throughout the United States.

3. Perfume is made, compounded, or manufactured by mixing or blending perfume concentrate with denatured alcohol.[1] Although

[1] The formula for "White Christmas" perfume is a blend of aromatic chemicals or concentrate and denatured alcohol. After the alcohol is added to and blended with the concentrate, a certain amount of aging takes place. The temperature of the liquid is lowered to below 32 degrees, and the liquid is then filtered and bottled. The concentrate is oil, is not perfume, and is never sold to the public as perfume. In concentrated form the liquid would soil any article of clothing which it might touch. The concentrate must be mixed or blended with alcohol in order to make perfume.

Saravel, Inc., appears to have been termed in the trade as the manufacturer of "White Christmas" perfume, the actual mixing or blending of the concentrate with denatured alcohol was performed by Roure-DuPont, Inc. of New York City, for and on behalf of Saravel, Inc. Roure-DuPont is a manufacturer of cosmetics, perfumes, soaps, etc. When Roure-DuPont first began blending "White Christmas" perfume for Saravel, Inc., in 1953, the concentrate was of domestic origin. Roure-DuPont did not bottle the perfume for Saravel, Inc. After blending, Roure-DuPont delivered the finished product (perfume) in drums or jugs to a company which specialized in bottling perfume and similar products. After bottling the perfume in 1 ounce bottles, each bottle of "White Christmas" perfume was placed in a small pasteboard box (respondents' exhibit No. 10). On the front of the box, near the top, were the printed words "WHITE CHRISTMAS." Near the bottom was the French word "PARFUM." Each box containing a 1 ounce bottle of "White Christmas" perfume was individually wrapped in white paper with silver stars imprinted thereon. Each end of the wrapped package, where the paper was folded, was sealed with a sticker. The sticker was glued to the folded edges of the wrapping paper at each end of the package, with the words "White Christmas by Saravel" printed thereon. Near the center of the package, at a fold of the paper wrapper, was another glued sticker, showing the tricolor of France. In the white (center) portion of the tricolor were the French words "CONCENTRÉ FABRIQUÉ AVEC ESSENCES DE FRANCE." A duplicate of this wrapped package containing a 1-ounce bottle of "White Christmas" perfume was received in evidence as Commission exhibit No. 2.

4. During the month of July or August 1953, Saravel, Inc., through its advertising agency, placed an advertisement with Vogue magazine advertising "White Christmas" perfume. The advertisement was approximately 4″ x 5½″, and appeared in September 15, 1953, issue of Vogue. A page from the September 15, 1953, issue of Vogue magazine which contained this advertisement was received in evidence as Commission exhibit No. 7. In the center of the advertisement is a reproduction of a bottle of "White Christmas" perfume with the name "White Christmas by Saravel," shown thereon. In the lower right hand corner of the advertisement there appears the legend "$18.50 the ounce at better shops," and at the bottom of the advertisement, "Saravel, Inc., New York 1, N.Y." There is no evidence of any other magazine advertising of "White Christmas" perfume, either by Saravel, Inc., or respondents.

5. Saravel, Inc., had approximately 50,000 reprints made of the "White Christmas" advertisement which appeared in Vogue magazine (Commission exhibit No. 7), some of which reprints Saravel, Inc., delivered to its customers of "White Christmas" for their use in reselling the perfume. Reprints of the advertisement were also placed inside the one gross cartons of "White Christmas" perfume for use by purchasers to promote their reselling the perfume. One of the reprints was received in evidence and marked Commission exhibit No. 3.

6. In December 1953, Roure-DuPont began importing the concentrate from France for the use in compounding or making "White Christmas" perfume. Thereafter, beginning in 1954, this imported French concentrate was mixed with domestic denatured alcohol in compounding or manufacturing "White Christmas" perfume. There was no change in the formula. During the year 1954, Saravel, Inc., discontinued its former practice of placing copies of the reprints of the Vogue magazine advertisement (Commission exhibit No. 3) in each one gross carton of "White Christmas" perfume. Also, during the year 1954 or 1955, the evidence is not clear as to the exact date, Saravel, Inc., discontinued use of the sticker on the "White Christmas" wrapper which showed the figures "$18.50." Saravel, Inc., also discontinued use of the French words "CONCENTRÉ FABRIQUÉ AVEC ESSENCES DE FRANCE" on the tricolor sticker attached to the outside of the wrapper containing the 1 ounce bottle of "White Christmas" perfume, described in paragraph 3 above, and substituted therefor the English words "PERFUME ESSENCE Compounded in FRANCE—Expressly for SARAVEL." (Commission exhibit No. 1.)

7. In the month of February 1956, the respondent Harsam Distributors, Inc., purchased the formula for "White Christmas" perfume, the trade-mark "White Christmas," and the registered trade name "Saravel" from Saravel, Inc., together with all materials, supplies, etc. which Saravel, Inc. had been using in the manufacture, bottling and distribution of "White Christmas" perfume, and also the reprints of the Vogue magazine advertisement which remained on hand. Thereafter, Harsam Distributors, Inc. became the manufacturer, sole owner, and distributor of "White Christmas" perfume. However, Harsam Distributors, Inc. continued to employ Roure-DuPont to actually blend the imported French concentrate with domestic denatured alcohol in compounding "White Christmas" perfume, using the same formula which Saravel, Inc. had formerly used and which Harsam Distributors, Inc. had purchased from Saravel, Inc. At the direction of respondents, Roure-DuPont delivered the finished

perfume in bulk drums to B. H. Krueger & Co. for bottling. After bottling the bulk "White Christmas" perfume in 1-ounce bottles, packaging, wrapping, and labelling each bottle as described in paragraph 6 hereof, B. H. Krueger & Co. then delivered the perfume to respondents in one-gross cartons. Respondents then sold, shipped, and distributed the perfume to their wholesale, department and retail store customers in various localities throughout the United States. Respondents did not include in the one-gross cartons of "White Christmas" reprints of the Vogue magazine advertisement (Commission exhibit No. 3) for use by their customers in promoting the resale of "White Christmas," as Saravel, Inc. had done originally and later discontinued, but only shipped the reprints to customers upon their specific request. In such instances, the reprints were shipped in a separate package.

8. From this evidence it is found that respondents sold, distributed, and shipped "White Christmas" perfume from their place of business in New York, N.Y., to their wholesale, department, and retail store customers located in various cities throughout the United States, which perfume bore labels with the French words "CONCENTRÉ FABRIQUÉ AVEC ESSENCES DE FRANCE," "PARFUM," and the figures "$18.50" thereon. It is further found that respondents, to assist their customers in the resale of "White Christmas" perfume, have shipped and distributed to their wholesale, department, and retail store customers located in various states throughout the United States, reprints of the Vogue magazine advertisement (Commission exhibit No. 3).

9. Although it has been found in paragraph 6 hereof that, during the year 1954 or 1955, Saravel, Inc. discontinued use of the "$18.50" sticker on the "White Christmas" wrapper, nevertheless, there is evidence in the record which shows that respondents have used the "$18.50" sticker on the pasteboard box in which the 1-ounce bottles of "White Christmas" perfume are placed (respondents' exhibit No. 10), as recently as July 26, 1956. A picture of the front show window of a retail jewelry store customer of respondents taken on July 26, 1956 (Commission exhibit No. 9), shows, among other articles of merchandise displayed for sale, approximately 20 stacked bottles of "White Christmas" perfume in wrapped packages, with four bottles in each stack. The evidence shows that this jewelry store purchased "White Christmas" perfume from respondent Harsam Distributors, Inc. in July 1956, and it is found that the perfume shown in the picture (Commission exhibit No. 9) is a part of the perfume so purchased in July 1956. On top and at one end of the stacked and

wrapped 20 bottles of "White Christmas" perfume shown in the picture is one of the pasteboard boxes described in paragraph 3 above (respondents' exhibit No. 10), in which respondents customarily place each bottle of "White Christmas" perfume before it is wrapped. On the outside of the pasteboard box, in the center, between the printed words "WHITE CHRISTMAS" at the top and "PARFUM" at the bottom, is the sticker with the figures "$18.50." Immediately to the left and adjacent to the pasteboard box, and also on top of the stacks of wrapped bottles of "White Christmas" perfume, is what appears to be a cardboard sign bearing the following inscription: "SALE—$1.00—Adv. in VOGUE at $18.50—SAVE 90%." Immediately below is a reprint of the Vogue magazine advertisement (Commission exhibit No. 3).

10. It is found that, by using and disseminating the "$18.50" sticker on boxes and wrappers containing "White Christmas" perfume and disseminating and distributing reprints of the Vogue magazine advertisement, respondents induced the purchase of "White Christmas" perfume and thereby represented that "White Christmas" perfume is a nationally advertised product which customarily and regularly sells at $18.50 per ounce.

11. The complaint alleges, in substance, that the representations as to the retail price of "White Christmas" perfume made by respondents are fictitious and in excess of the price at which "White Christmas" usually or customarily sold at retail, was not the nationally advertised price, and thereby constituted "false" advertising under the act. The respondent Harry Wagonfeld, president of respondent Harsam Distributors, Inc., testified that he did not inquire of Saravel, Inc. concerning the accuracy of the $18.50 price representation in the Vogue magazine advertisement and on the stickers which were placed on "White Christmas" perfume wrappers and did not know of a retail store in the United States which is now selling "White Christmas" perfume at $18.50 per ounce. In fact, Mr. Wagonfeld testified that he does not know just what the retail price of "White Christmas" perfume is at the present time.

12. The only evidence of sales of "White Christmas" perfume at a retail price of $18.50 per ounce offered at the hearings were four sales made during the fall of 1953 by two New York City drug stores, the Bliss Drug Co., located at 341 Park Avenue, and Wade Chemists, Inc., located at 424 Madison Avenue. This evidence was offered by counsel supporting the complaint. The operators of these drug stores testified, in substance, as follows: In September 1953, a representative of Saravel, Inc. called on each drug store and

solicited an order of three bottles of "White Christmas" perfume on a consignment basis. The salesman exhibited a copy of the "White Christmas" advertisement in the September 15, 1953, issue of Vogue magazine (Commission exhibit No. 7). Largely on the strength of the Vogue advertisement each drug store accepted three bottles of "White Christmas" on a consignment basis. The Bliss Drug Co. sold the three bottles of "White Christmas" perfume and Wade Chemists, Inc. sold one bottle. Since the time that these drug stores accepted the "White Christmas" perfume on consignment from the Saravel, Inc. salesman in September 1953, neither drug store has been solicited by a representative of Saravel, Inc. or respondents to reorder "White Christmas" perfume and neither drug store has restocked "White Christmas." Each druggist also testified that the purchasing public prefers a French perfume.

13. On the other hand, the undisputed evidence shows that retail department stores in Boston, Mass., and Chicago, Ill., and a retail jewelry store in New Orleans, La., during 1953, 1954, and 1956, sold "White Christmas" perfume at retail prices ranging from $1 to $1.15 per ounce. In October and November 1953, and during 1954, Filene's Department Store in Boston, Mass., sold "White Christmas" perfume which it had purchased from respondent Harsam Distributors, Inc. for $1.15 per 1-ounce bottle. Reprints of the Vogue magazine advertisement were used in counter displays by Filene's to promote sales of the perfume. Goldblatt Brothers, Inc. of Chicago, Ill., a retail department store, purchased "White Christmas" perfume from respondent Harsam Distributors, Inc. in 1954 for 60 cents per ounce and resold the perfume at a retail price of $1 per 1-ounce bottle. Manners Jewelry Store of New Orleans, La., purchased "White Christmas" perfume from respondent Harsam Distributors, Inc. in July 1956, for 50 cents per 1-ounce bottle and resold the perfume at $1 per 1-ounce bottle. A reprint of the Vogue magazine advertisement (Commission exhibit No. 3) and the $18.50 sticker were used by this jewelry store to promote the sale of the "White Christmas" perfume. It may be stated, in this connection, that it was stipulated by counsel that Manners Jewelry Store is not a leading or "better shop" as that term was used in the Vogue magazine advertisement (Commission exhibit No. 7).

14. The examiner finds that the four sales of "White Christmas" perfume by the two New York drugstores in the fall of 1953 at a retail price of $18.50 per 1-ounce bottle were not representative of the usual and customary retail price for said perfume. The undisputed evidence shows that, at that very time, in the fall of 1953,

Filene's Department Store was selling "White Christmas" perfume at $1.15 per ounce. Filene's had purchased this perfume from respondent Harsam Distributors, Inc. and was using reprints of the Vogue magazine advertisement to promote its resales of the perfume. From a preponderance of the reliable, probative, and substantial evidence the examiner finds that $18.50 per ounce, or any price approaching that amount, is not now, and has never been at any time in the past, the usual and customary retail price of "White Christmas" perfume, notwithstanding the four sales made by the two New York drugstores and the retail price representation made in the Vogue magazine advertisement (Commission exhibit No. 7). The examiner finds, from a preponderance of the evidence, that the $18.50 per ounce retail price representation for "White Christmas" perfume made in the Vogue magazine advertisement, used and distributed by respondents to their customers to assist said customers in the resale of said perfume, was false and greatly in excess of the usual and customary retail price of "White Christmas" perfume.

15. It is found that the purchasing public prefers a French perfume and it is further found that, by use of the French words "CONCENTRÉ FABRIQUÉ AVEC ESSENCES DE FRANCE" imprinted on the French tricolor sticker and "PARFUM" on the pasteboard box container, respondents induced the purchase of "White Christmas" perfume, and, by the use of such words, represented that "White Christmas" is a French perfume. As a matter of fact, "White Christmas" perfume is not a French perfume. The concentrate used in the compounding or manufacture of "White Christmas," although imported from France, after its importation to the United States, must be mixed or blended with domestic denatured alcohol in order to make perfume. As found in paragraph 3, *supra*, the imported French concentrate is not a perfume. The concentrate must be blended or mixed with denatured alcohol in order to achieve a perfume. Previous Federal Trade Commission decisions have decided that, under such circumstances, the finished product is a domestic, not a French perfume. This is so even though, as here, the concentrate may have been imported from France. *Chanel, Inc.*, 29 F.T.C. 1022; *Fioret Sales Co. Inc., et al.*, 26 F.T.C. 806; *Les Parfums D'Isabey, Inc.*, 26 F.T.C. 799.

16. The respondents are responsible for the representations as to price and orgin of "White Christmas" perfume as found herein, both during the time respondents were merely jobbers of "White Christmas" under Saravel, Inc., and subsequently, after respondent Harsam

Distributors, Inc., became owner and sole distributor of "White Christmas" perfume.

17. The use by respondents of the false, misleading, and deceptive statements and representations as found herein, has, and has had the tendency and capacity to mislead and deceive the purchasing public into the erroneous and mistaken belief that such representations and statements were and are true and to cause substantial numbers of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondents' "White Christmas" perfume. As a result, trade has been unfairly diverted to respondents from their competitors and substantial injury has been done and is being done to competition in commerce.

CONCLUSION

The acts and practices of respondents as found herein were and are 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 respondents, Harsam Distributors, Inc., a corporation, and Harry Wagonfeld, individually and as an officer of said corporation, their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of "White Christmas" perfume, or any other cosmetic, do forthwith cease and desist from:

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

(a) Represents that the usual or customary price of any such product is in excess of the price at which such product is regularly or customarily sold in the normal course of business, or that any price which is no lower than the price at which the same product has been regularly or customarily sold in the recent normal course of business is a reduced price;

(b) Represents that any particular figure is a nationally advertised price of such products, when such figure is in excess of the usual and customary selling price of said products;

(c) Includes the words "CONCENTRÉ FABRIQUÉ AVEC ESSENCES DE FRANCE," or "PARFUM" or a replica of the

tricolor of France, or any other word, term, symbol or depiction indicative of foreign origin, as descriptive of or in connection with products manufactured or compounded in the United States, unless it is clearly and conspicuously revealed in immediate conjunction therewith that such products are manufactured or compounded in the United States.

(d) Otherwise represents that products which are manufactured or compounded in the United States are manufactured or compounded in France, or in any other foreign country; provided, however, that in cases where certain of the ingredients of any products are imported into the United States such fact may be stated if accompanied by a clear and conspicuous statement that such ingredients were blended with domestic ingredients and that the resulting product was bottled and packaged in the United States.

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 products in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the representations prohibited in paragraph 1 of this order.

It is further ordered, That the complaint be, and it hereby is, dismissed as to respondent Louis Wagonfeld.

OPINION OF THE COMMISSION

By Gwynne, Chairman:

The complaint, filed under the Federal Trade Commission Act, charged respondents with unfair and deceptive acts and practices and unfair methods of competition. Specifically it charged that respondents represented in advertisements that their "White Christmas" perfume was a nationally advertised product which customarily and regularly sells at $18.50 per ounce and that "White Christmas" is a French perfume. Both statements were found by the hearing examiner to be false, misleading and deceptive. The initial decision dismissed the complaint as to Louis Wagonfeld and directed Harsam Distributors, Inc., a corporation, and Harry Wagonfeld, individually and as an officer of said corporation, to cease and desist from:

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

(a) That the prices at which said products are offered for sale or sold are in excess of the prices customarily and usually charged for said products.

(b) That the prices at which said products are offered for sale or sold are nationally advertised prices.

(c) That products offered for sale or sold are compounded or manufactured in France, or in any other foreign country; provided, however, that if the concentrate of said products is prepared in France, or in any other foreign country, said fact may be indicated if it is accompanied by a clear and conspicuous statement that the concentrate was blended with domestic ingredients and that the resulting perfume was bottled and packed in the U.S.A.

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 respondents' cosmetic preparations or allied products in commerce, as "commerce" is defined in the Federal Trade Commission Act, which contains any of the representations prohibited in paragraph 1 of this order.

The appeal of respondents was presented by written brief. A request for an oral argument was granted; however, on the date scheduled for the oral argument, there was no appearance on behalf of the respondents, and counsel in support of the complaint submitted the case to the Commission on the written briefs.

The respondent, Harsam Distributors, Inc., is a corporation organized in the State of New York with its office and principal place of business located at 14 E. 17th Street, New York, N.Y., and Harry Wagonfeld, as president, directs the acts and practices of said corporation.

Respondents began selling "White Christmas" perfume in 1953. They purchased the perfume from Saravel, Inc. Respondents acted in the capacity as jobber for the perfume, selling and shipping the perfume to their wholesale, department and retail store customers throughout the United States. In February 1956 respondents purchased the formula for "White Christmas" perfume, the trade-mark "White Christmas" and the registered trade name "Saravel" from Saravel, Inc., along with all the materials and supplies; including reprints of a Vogue magazine advertisement from Saravel, Inc. Since February 1956, the corporate respondent has been the sole owner and distributor of "White Christmas" perfume.

Saravel, Inc. had the perfume blended for it by Roure-DuPont, Inc. of New York City. Blending is the process of mixing of the concentrate with denatured alcohol in making perfume. In 1953, the concentrate with which the denatured alcohol was blended was of domestic origin. In December 1953, Roure-DuPont, Inc. began importing the concentrate from France, and in 1954 began mixing the imported concentrate with a domestic denatured alcohol in making

"White Christmas" perfume. It is undisputed that this formula is the same formula which the corporate respondent purchased from Saravel, Inc., and which the respondents are now using.

In July or August 1953, Saravel, Inc., through its advertising agency, placed an advertisement with Vogue Magazine which advertised "White Christmas" perfume. This advertisement appeared in the September 15, 1953, issue of Vogue. The advertisement showed a reproduction of a bottle of perfume, the name of the perfume, "White Christmas by Saravel" and at the lower right corner, the words "$18.50 the ounce at better shops."

Saravel, Inc., had a number of reprints made of the advertisement which appeared in Vogue, some of which were given to customers for use in reselling the perfume. Reprints also were placed inside the one gross cartons of "White Christmas" perfume. Some time during the year 1954, Saravel, Inc., discontinued its practice of placing the reprints in the gross cartons, and also discontinued the use of stickers on the "White Christmas" wrapper showing the figures $18.50. However, there is evidence to show that respondents placed $18.50 stickers on the pasteboard boxes in which the 1-ounce bottles of "White Christmas" are placed as late as July 1956.

When respondents purchased these names, formulas, and rights, they continued to use copies of the reprints. While the reprints of the Vogue advertisement were not included in the gross cartons, when requested by their customers, respondents sent copies of this reprint to their customers to aid them in the sale of the perfume. There is evidence in the record that such reprints of the Vogue advertisement were used by a customer of the respondents in July 1956.

While there is evidence that four sales of "White Christmas" perfume were made in 1953 by two New York City drug stores at $18.50 per bottle, there is undisputed evidence in the record that retail department stores in Boston, Mass., and Chicago, Ill., and a retail jewelry store in New Orleans, Louisiana, sold "White Christmas" perfume in 1953, 1954 and 1956 at retail prices ranging from $1 to $1.15 per ounce. It was stipulated by counsel, however, that the jewelry store in New Orleans was not a "better shop" as that term was used in the Vogue magazine advertisement. But it is significant that sales were made at Filene's in Boston and Goldblatt's in Chicago at the same price it was sold in the jewelry store in New Orleans.

From an examination of the entire record, we must agree with the hearing examiner that the price representation of " * * * $18.50 per ounce, or any price approaching that amount, is not now, and has never been at any time in the past, the usual and customary retail price of

"White Christmas" perfume * * * and that the $18.50 per ounce retail price representation for "White Christmas" perfume made in the Vogue magazine advertisement, used and distributed by respondents to their customers to assist said customers in the resale of said perfume, was false and greatly in excess of the usual and customary retail price of "White Christmas" perfume.

In 1953, "White Christmas" perfume was sold in boxes containing the French word "Parfum." The boxes were individually wrapped and on this wrapping was a sticker showing the tricolor of France. In the center portion of the tricolor appeared the French words "Concentre Fabrique Avec Essences de France." Some time during the year 1954 or 1955, Saravel, Inc., discontinued the use of the French words as shown above and substituted therefor the English words "PERFUME ESSENCE Compounded in FRANCE—Expressly for SARAVEL". After the respondents purchased the trade name, formula, etc., they continued to use the label as revised. There is evidence, however, that they continued to place bottles of perfume in boxes containing the word "Parfum" in July 1956.

Through the use of such words as "Concentre Fabrique Avec Essences de France" imprinted on the French tricolor and "Parfum" on the paper box container, respondents represented that "White Christmas" is a French perfume.

The use of French words and phrases indicates a foreign origin and creates a false impression with respect to the origin of the product. *Les Parfums D'Isabey, Inc.*, 26 F.T.C. 799; *Parfums Lengyel, Ltd.*, 29 F.T.C. 1015; *Fioret Sales Co., et al.*, 26 F.T.C. 806; *Chanel, Inc.*, 29 F.T.C. 1022.

The revised labeling in English does not correct the situation either. Even though the concentrate might be imported, it is not a perfume until it has been blended or mixed with an alcohol. As was stated in *Les Parfums D'Isabey, Inc.*, supra, "A perfume concentrate is not a perfume within the generally understood meaning of that term as used by the purchasing public. A perfume, as that term is used by the public generally and by the trade, is a compound of a perfume concentrate and an alcohol vehicle. A perfume is not made or compounded until the alcohol or other agent of application has been united with the concentrate." While the concentrate may be of French origin, the compounding or blending was done in the United States. The language of the revised label suggests that the perfume was compounded in France, which is a statement contrary to fact.

The principal contention of the respondents appears to be that the respondents are not responsible and are not chargeable for any acts

of conduct prior to their purchase in February 1956 of the formula, trade name, ets., from Saravel, Inc. With this contention, we cannot agree. The respondents, prior to February 1956, were jobbers who purchased their supplies from Saravel, Inc. They acted independently and are chargeable for their own acts and conduct. This included sending out advertising material representing that the customary and usual retail price of "White Christmas" perfume was $18.50. In addition, they represented that the perfume was of French origin when, in reality, it is composed of a concentrate from France and domestic denatured alcohol. And after February 1956, they continued to provide such advertising materials to their customers.

The respondents next contend that the use of the Vogue advertisement "did not constitute unfair competition or unfair practices, for it is inconceivable that the buying public would be so naive as to believe that it is purchasing an $18.50 item for $1."

We cannot agree with respondents' contention. The very fact of continuation of distribution of the Vogue reprint is indicative of the effect such an advertisement had on the purchasing public. And the law does not support respondents' contentions. In *P. Lorillard Co.* v. *F.T.C.*, 186 F. 2d 52, the Court stated:

> In determining whether or not advertising is false or misleading within the meaning of the statute, regard must be had, not to fine spun distinctions and arguments that may be made in excuse, but to the effect which it might reasonably be expected to have upon the general public. "The important criterion is the net impression which the advertisement is likely to make upon the general populace." *Charles of the Ritz Dist. Corp.* v. *F.T.C.*, 2 Cir., 143 F. 2d 676, 679–680 [39 F.T.C. 657; 4 S. & D. 226]. As was well said by Judge Coxe in *Florence Manufacturing Co.* v. *J. C. Dowd & Co.*, 2 Cir. 178 F. 73, 75, with reference to the law relating to trade-marks: "The law is not made for the protection of experts, but for the public—that vast multitude which includes the ignorant, the unthinking, and the credulous, who, in making purchases, do not stop to analyze, but are governed by appearances and general impressions." See also *F.T.C.* v. *Standard Education Society*, 302 U.S. 112 [25 F.T.C. 1715, 2 S. & D. 429]; *Stanley Laboratories* v. *F.T.C.*, 9 Cir. 138 F. 2d 388 [37 F.T.C. 801, 3 S. & D. 596]; *Aronberg* v. *F.T.C.* 7 Cir. 132 F. 2d 165 [35 F.T.C. 979, 3 S. & D. 647]; *Ford Motor Co.* v. *F.T.C.*, 6 Cir. 120 F. 2d 175 [33 F. T. C. 1781, 3 S. & D. 378].

Respondents further contend that the Commission must show that the practices complained of constitute an unfair method of competition as well as a showing that there is specific and substantial public interest. This contention fails to take into account the Wheeler-Lea Amendment to the Federal Trade Commission Act (52 Stat. 111). As the court said in *Parke, Austin, Lipscomb, Inc., et al.* v. *F.T.C.*, 142 F. 2d 437, certiorari denied 323 U.S. 753: "Since the amendment

of sec. 5 of the act in 1938, 52 Stat. 111, the Commission has had jurisdiction of all cases in commerce affecting the public interest whether or not competition is involved." Therefore, respondents' contention must fail.

Although not directly involved in the appeal, the form of order contained in the initial decision has also been considered. In subparagraphs (a) and (b) of paragraph 1 thereof, the order directs respondents to cease and desist disseminating advertisements which represent that the prices at which their products are sold are in excess of the prices customarily and usually charged for said products, or that such prices are nationally advertised prices. We believe the order does not conform to the findings. The complaint alleges and the hearing examiner's findings clearly show that what the respondents have falsely represented is the price at which their products are usually and customarily sold ($18.50 per ounce), thus implying an opportunity for purchasers to effect substantial savings under such price by purchasing at the advertised special or "sale" prices ($1 to $1.15 per ounce), and this, of course, is the kind of representation which should be prohibited. The order is deficient also in that while it would prohibit generally a representation that the respondents' products are compounded or manufactured in France, it should additionally inform the respondents specifically that a continuation or resumption of the unqualified use of such French terms and depictions as they have heretofore employed to create the impression of French manufacture of their products ("CONCENTRÉ FABRIQUÉ AVEC ESSENCES DE FRANCE," "PARFUM" and a replica of the tricolor of France) will not be permitted. The order contained in the initial decision is accordingly being modified in these respects.

Respondents' appeal will be denied, and the initial decision of the hearing examiner, as modified in the accompanying order, will be adopted as the decision of the Commission.

FINAL ORDER

This matter having been heard by the Commission upon respondents' appeal from the hearing examiner's initial decision, and upon briefs in support thereof and in opposition thereto; and

The Commission having determined, for the reasons appearing in the accompanying opinion, that respondents' appeal should be denied and that the order contained in the initial decision should be modified:

It is ordered, That the appeal of respondents be, and it hereby is, denied.

It is further ordered, That the order contained in the initial decision be, and it hereby is, modified to read as follows:

It is ordered, That respondents, Harsam Distributors, Inc., a corporation, and Harry Wagonfeld, individually and as an officer of said corporation, their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of "White Christmas" perfume, or any other cosmetic, do forthwith cease and desist from:

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

(a) Represents that the usual or customary price of any such product is in excess of the price at which such product is regularly or customarily sold in the normal course of business, or that any price which is no lower than the price at which the same product has been regularly or customarily sold in the recent normal course of business is a reduced price;

(b) Represents that any particular figure is a nationally advertised price of such products, when such figure is in excess of the usual and customary selling price of said products;

(c) Includes the words "CONCENTRÉ FABRIQUÉ AVEC ESSENCES DE FRANCE," or "PARFUM" or a replica of the tricolor of France, or any other word, term, symbol or depiction indicative of foreign origin, as descriptive of or in connection with products manufactured or compounded in the United States, unless it is clearly and conspicuously revealed in immediate conjunction therewith that such products are manufactured or compounded in the United States;

(d) Otherwise represents that products which are manufactured or compounded in the United States are manufactured or compounded in France, or in any other foreign country; provided, however, that in cases where certain of the ingredients of any products are imported into the United States such fact may be stated if accompanied by a clear and conspicuous statement that such ingredients were blended with domestic ingredients and that the resulting product was bottled and packaged in the United States.

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 products in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the representations prohibited in paragraph 1 of this order.

It is further ordered, That the complaint be, and it hereby is, dismissed as to respondent Louis Wagonfeld.

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

It is further ordered, That respondents, Harsam Distributors, Inc., a corporation, and Harry Wagonfeld, 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 contained in the initial decision, as modified.

IN THE MATTER OF

COYNER-EVANS CO., INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2(C) OF THE CLAYTON ACT

Docket 6969. Complaint, Dec. 4, 1957—Decision, Mar. 26, 1958

Consent order requiring a produce jobber in Miami, Fla., to cease violating section 2(c) of the Clayton Act by receiving illegal brokerage on purchases of celery and other fresh produce made for its own account through its controlled intermediary which accepted fees as an independent broker although it was acting for said jobber.

Mr. Fredric T. Suss supporting the complaint.
Respondents, pro se.

COMPLAINT

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

PARAGRAPH 1. Respondent Coyner-Evans Co., Inc., is a corporation organized and existing under the laws of the State of Florida with its principal office and place of business located at 2147 N.W. 12th Avenue, Miami, Fla. It is directed and controlled by the respondents Ed Coyner and Clyde B. Coyner, who are responsible for its acts and practices and who own and control 66 percent of its outstanding shares of stock. Respondent Coyner-Evans Co., Inc. is engaged in business as a broker in connection with the sale of celery and other fresh produce, and as a retailer of seeds, fertilizer, insecticides and crate materials. The respondent corporation is a substantial factor in the produce business in Miami. Respondent corporation had a volume of sales of approximately $200,000 for the year 1956.

Respondent Ed Coyner is an individual residing at 349 N.E. 93d Street, Miami, Fla., and is president-treasurer of respondent Coyner-Evans Co., Inc., owning 54 percent of its shares of stock and is an equal partner in Brice & Johnson.

Respondent Clyde B. Coyner is an individual residing at 1481 N.E. 104th Street, Miami, Fla., and is vice president and assistant

general manager of respondent Coyner-Evans Co., Inc., and is an equal partner in Brice & Johnson.

Brice & Johnson, located at 1140 N.W. 21st Street Terrace, Miami, Fla., with its office at 2147 N.W. 12th Avenue, Miami, Fla., is owned and controlled by the respondents Ed Coyner and Clyde B. Coyner, who are responsible for its acts and practices. Said individual respondents trading as Brice & Johnson are engaged in the business of jobbing produce, principally celery, offering for sale, selling and distributing such products to produce dealers, wholesalers and to Food Fair Stores, Inc.

PAR. 2. In the course and conduct of their business as a produce jobber respondents Ed Coyner and Clyde B. Coyner, trading as Brice & Johnson, are and have been engaged in commerce, as "commerce" is defined in the Clayton Act, as amended by the Robinson-Patman Act, purchasing products from vendors whose places of business are located in States other than Florida and causing them to be shipped to their place of business within the State of Florida.

PAR. 3. In the course and conduct of its business as a broker respondent Coyner-Evans Co., Inc., is and has been engaged in commerce, as "commerce" is defined in the Clayton Act, as amended by the Robinson-Patman Act, arranging sales of products from vendors whose places of business are located in States other than Florida and causing them to be shipped to its place of business within the State of Florida.

PAR. 4. In the course and conduct of their said business in commerce respondents are receiving and accepting something of value as a commission, brokerage or other compensation paid by said vendors to the other party to the transaction, or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of a party to the transaction other than the person by whom such compensation is so granted or paid.

PAR. 5. For example, during the years 1956 and 1957 respondents Ed Coyner and Clyde B. Coyner, trading as Brice & Johnson, have made substantial purchases of celery and other food products from their suppliers through their controlled intermediary, respondent Coyner-Evans Co., Inc., on which purchases respondent Coyner-Evans Co., Inc., and through their ownership and control of said corporate respondent, respondents Ed Coyner and Clyde B. Coyner received something of value as a commission, brokerage or other compensation, or allowance or discount in lieu thereof. In these trans-

actions respondent Coyner-Evans Co., Inc., received and accepted payments of brokerage from said suppliers as an independent broker, whereas said corporate respondent was acting, in fact, for or in behalf of, and was subject to the direct or indirect control of the buyer respondents Ed Coyner and Clyde B. Coyner trading as Brice & Johnson.

PAR. 6. The acts and practices of the respondents as above alleged are violative of subsection (c) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C. Title 15, sec. 13).

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

The complaint in this proceeding charges that Coyner-Evans Company, Inc., Ed Coyner, individually and president-treasurer of said corporation and a partner trading as Brice & Johnson; and Clyde B. Coyner, individually and vice president and assistant general manager of said Coyner-Evans Co., Inc., and a partner trading as Brice & Johnson, hereinafter called respondents, have violated the provisions of section 2(c) of the Clayton Act (U.S.C. Title 15, sec. 13), as amended by the Robinson-Patman Act.

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

The pertinent 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 undersigned 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. The respondent Coyner-Evans Co., Inc., is a corporation organized and existing under the laws of the State of Florida, with its office and principal place of business located at 2147 N.W. 12th Avenue, Miami, Fla. The individual respondent Ed Coyner resides at 349 N.E. 93d Street, Miami, Fla., and is president-treasurer of said corporation and an equal partner with respondent Clyde B. Coyner in Brice & Johnson, a partnership, located at 1140 N.W. 21st Street Terrace, Miami, Fla., with its office at 2147 N.W. 12th Avenue, Miami, Fla. The respondent Clyde B. Coyner resides at 1481 N.E. 104th Street, Miami, Fla., and is vice president and assistant general manager of respondent Coyner-Evans Co., Inc., and an equal partner with the respondent Ed Coyner in Brice & Johnson.

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

ORDER

It is ordered, That the respondents, Coyner-Evans Co., Inc., a corporation, Ed Coyner, individually and as president-treasurer of Coyner-Evans Co., Inc., and as a partner trading as Brice & Johnson, and Clyde B. Coyner, individually and as vice president and assistant general manager of Coyner-Evans Co., Inc., and as a partner trading as Brice & Johnson, and each of them and their respective representatives, agents and employees, directly or through any corporate or other device in connection with the purchase by respondents, or any of them, of celery, produce, seeds, farm supplies and equipment, or other products, in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

(a) Receiving or accepting, directly or indirectly, from any sellers, anything of value as a commission, brokerage, or other compensation or any allowance or discount in lieu thereof, upon the purchase of any of said products made by respondents for their own account.

(b) Receiving or accepting, directly or indirectly, from any seller anything of value as a commission, brokerage or other compensation, or any allowance or discount in lieu thereof, upon the purchase of any of said products where said respondent is the agent, representative or

intermediary acting for or in behalf of or is subject to the direct or indirect control of the buyer, or of any of the officers of said buyer.

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 26th 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

FIDELITY STORM SASH CO. OF D.C., INC., ET AL.

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

Docket 6804. Complaint, May 17, 1957 [1]*—Decision, Mar. 27, 1958*

Consent order requiring three associated companies located in Baltimore and Philadelphia to cease using bait advertising to sell storm windows; and to cease representing falsely that they manufactured the storm windows, that purchasers who allowed photographs of the windows installed by respondents to be taken and used for "model home" demonstration purposes would receive a price reduction, and that installation of the windows would result in savings of as much as 33 percent in fuel bills.

Mr. Michael J. Vitale and *Mr. Thomas A. Ziebarth* supporting the complaint.

Mr. Gilbert Hahn, Jr., and *Mr. Bruce G. Sundlun*, of the firm of *Amram, Hahn & Sundlun*, of Washington, D.C., for respondent.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on May 17, 1957, charging them with violation of the Federal Trade Commission Act as alleged in said complaint. After service of the complaint it appeared that there was an error in the names of the corporate respondents. On motion of counsel supporting the complaint, said error was corrected by order of the hearing examiner amending the complaint to correctly state the names of the corporate respondents. Said order of the hearing examiner so amending the complaint was duly served on respondents.

Subsequently on January 15, 1958, respondents as correctly named in the order amending the complaint and their counsel entered into an agreement with counsel supporting the complaint. Said agreement contained a consent order to cease and desist from the practices complained of and purports to dispose of all issues in this proceeding. The agreement has been duly approved by the Assistant Director and the Director of the Bureau of Litigation and has been submitted to the undersigned as hearing examiner herein for his consideration in accordance with rule 3.25 of the rules of practice of the Commission.

Respondents Fidelity Storm Sash Co. of D.C., Inc., a corporation by its duly authorized officer, Fidelity Storm Sash Co., Inc., of

[1] Amended Nov. 14, 1957.

Maryland, a corporation by its duly authorized officer, Fidelity Storm Sash Co., Inc., a corporation by its duly authorized officer and Marty Burke, Bernard Weissman and Ruth Burke individually, Marty Burke and Bernard Weissman as officers of respondent Fidelity Storm Sash Co. of D.C., Inc., Marty Burke, Bernard Weissman and Ruth Burke as officers of respondent Fidelity Storm Sash Co., Inc., of Maryland and Marty Burke and Ruth Burke as officers of respondent Fidelity Storm Sash Co., Inc., in the aforesaid agreement have admitted all of the jurisdictional facts alleged in the complaint as amended and have 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 said respondents waive all further procedural steps before the hearing examiner and 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 the said agreement. It has also been agreed that the record herein shall consist solely of the complaint as amended and said agreement, that said 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 said respondents that they have violated the law as alleged in the complaint as amended, 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 of the Commission and that the complaint as amended 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 agreement and order cover all the allegations of the complaint and provide for appropriate disposition of this proceeding, the order and agreement are hereby accepted and ordered filed upon 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, Fidelity Storm Sash Co. of D.C. Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia with its office and principal place of business located at 1733 Fleet Street, Baltimore, Md. Respondents Marty Burke and Bernard Weissman are individuals and

officers of said corporation with their office and principal place of business the same as that of the corporate respondent.

2. Respondent, Fidelity Storm Sash Co., Inc., of Md., is a corporation organized, 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 1733 Fleet Street, Baltimore, Md. Respondents Marty Burke, Bernard Weissman, and Ruth Burke are individuals and officers of said corporation with their office and principal place of business the same as that of the corporate respondent.

3. Respondent, Fidelity Storm Sash Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania with its office and principal place of business located at 6234 Bustleton Avenue, Philadelphia, Pa. Respondents Marty Burke and Ruth Burke are individuals and officers of said corporation with their office and principal place of business the same as that of the corporate respondent.

4. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint as amended 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 respondent Fidelity Storm Sash Co. of D.C. Inc., a corporation, and its officers, respondents Marty Burke and Bernard Weissman, individually and as officers of said corporation; respondent Fidelity Storm Sash Co., Inc. of Md., a corporation, and its officers, respondents Marty Burke, Bernard Weissman and Ruth Burke, individually and as officers of said corporation; respondent Fidelity Storm Sash Co., Inc., a corporation, and its officers, respondents Marty Burke and Ruth Burke, individually and as officers or 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 of storm windows and doors, or any other related products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly:

1. That said products are offered for sale when such offer is not a bona fide offer to sell the products so offered.

2. That they manufacture said products sold by them.

3. That said products are sold at any special or reduced price, unless such is the fact.

4. That any specific percentage or any specific amount of savings in fuel bills will result from the installation of storm windows.

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 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

SOUTHERN OXYGEN CO.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2(a) OF THE CLAYTON ACT

Docket 6372. Complaint, June 27, 1955—Decision, Apr. 1, 1958

Consent order requiring a company with main office in Bladensburg, Md., operating plants and maintaining warehouses in 10 States in the middle Atlantic region and as far west as Kentucky and Tennessee for the production and processing of compressed gases, both commercial or industrial and medical, to cease discriminating in price in violation of section 2(a) of the Clayton Act through charging some customers higher prices than it charged others for its products of like grade and quality and through charging some, but not all, customers "demurrage" or cylinder rental.

Mr. Donald R. Moore for the Commission.

Frost & Towers, by *Mr. G. A. Chadwick, Jr.*, for respondent.

COMPLAINT

This is a complaint issued by the Federal Trade Commission against Southern Oxygen Co., a corporation. The complaint is issued because the Commission has reason to believe the company has violated the provisions of subsection (a) of section 2 of the Clayton Act, as amended (15 U.S.C., sec. 13). The charges are as follows:

PARAGRAPH 1. Southern Oxygen Co. is a corporation organized, existing and doing business under the laws of the State of Delaware. Its corporate offices are at 100 W. 10th Street, Wilmington, Del., but its operating headquarters and principal place of business are in Bladensburg, Md. (The company will hereafter be referred to as Southern or the company.)

PAR. 2. Southern is primarily engaged in the production, processing, distribution and sale of compressed gases, both commercial (or industrial) and medical. It also sells and distributes industrial welding and cutting equipment and supplies, and medical equipment and supplies, such as oxygen tents, anesthesia machines, "iron lungs" and resuscitators.

Commercial gases, also known as industrial gases, include oxygen, carbon dioxide, nitrogen, acetylene, hydrogen, argon and helium. These gases have a variety of commercial and industrial uses.

Medical gases include therapy and medical oxygen, compressed breathing air, mixtures of oxygen with helium or carbon dioxide; nitrous oxide, cyclopropane and ethylene.

PAR. 3. Southern operates gas producing and processing plants in the States of Maryland, New Jersey, North Carolina, and Tennessee. It maintains district offices and branch warehouses in each of these States and also in Pennsylvania, Virginia, and West Virginia. In addition, it has branch warehouses in Delaware, South Carolina, and Kentucky; an export office in New York City; and a distributing agency for medical gases in Miami, Fla.

PAR. 4. Southern is now, and for many years has been engaged in commerce, as that term is defined in the Clayton Act. It transports, or causes to be transported, its compressed gases and related products from the State of manufacture or processing to purchasers located in other States and the District of Columbia, as well as to purchasers in the State of manufacture and processing. There is and has been a constant stream of trade and commerce in these products among various States and the District of Columbia.

Southern sells its products for use, consumption and resale in the various States of the United States and in the District of Columbia.

PAR. 5. In the course and conduct of its business in commerce, Southern is now, and for many years has been, in substantial competition with other corporations, individuals, partnerships and firms engaged in the manufacture, sale and distribution of compressed gases and related products.

PAR. 6. In the course and conduct of its business in commerce, Southern has discriminated in price between different purchasers of its compressed gases of like grade and quality. This it has done by selling to some purchasers at prices higher than those charged other customers.

For example, in the sale of industrial or commercial compressed gases to some customers in Charlotte, N.C., it sold oxygen at prices ranging up to $2.40 per hundred cubic feet, and acetylene at prices ranging up to $5 per hundred cubic feet. To other customers in Charlotte it sold oxygen at $1 or less per hundred cubic feet and acetylene at $3 per hundred cubic feet.

During the same period, Southern was charging customers in Kingsport, Tenn., and in many Virginia communities prices ranging from $1.20 to $2.05 per hundred cubic feet of oxygen and from $3.50 to $4.75 per hundred cubic feet of acetylene.

In Lancaster, S.C., during the same period, Southern sold oxygen at $1.65 per hundred cubic feet and acetylene at $3.65 per hundred cubic feet.

Other transactions throughout Southern's sales territories show a similar pattern of discrimination.

Indirect price discriminations were also effected by Southern through the practice of charging some customers so-called "demurrage," or cylinder rental, while permitting other customers to retain cylinders without the payment of any such charges.

PAR. 7. The effect of these discriminations in price, as alleged in paragraph 6 of this complaint, has been to divert to Southern substantial business from Southern's competitors. Likewise, these discriminations are sufficient to divert substantial business from competitors to Southern in the future. Where business was not actually diverted, competitors were required to meet the discriminatory prices of Southern, with the result, actual or potential, of substantially impairing their profits and consequently lessening their ability to compete.

Thus, the effect may be substantially to lessen competition, or tend to create a monopoly, in the line of commerce in which Southern and its competitors are engaged.

Also, the pricing practices described have had, and may have, the effect of injuring, destroying or preventing competition with Southern.

PAR. 8. Southern's pricing practices, as alleged in this complaint, are in violation of subsection (a) of section 2 of the Clayton Act, as amended.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondent with certain price discriminations among purchasers of its compressed gases, in violation of the Clayton Act as amended by the Robinson-Patman Act. An agreement has now been entered into by repondent and counsel supporting the complaint which provides, among other things, that respondent admits 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, respondent 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 respondent that it has 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 appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued:

1. Respondent Southern Oxygen Co. is 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 2900 Kenilworth Avenue, Bladensburg, Md.

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

ORDER

It is ordered, That respondent Southern Oxygen Co., a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the sale or distribution of compressed gases in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from discriminating, directly or indirectly, in the price of such products of like grade and quality:

1. By selling compressed gases to any purchaser at prices higher than the prices at which those products are sold by respondent Southern to any other purchaser where, in the sale of such products to the purchaser charged the lower price, respondent Southern is in competition with any other seller;

Provided, however, That nothing herein contained shall prohibit the classification of purchasers for pricing purposes where respondent Southern can establish that the classification and the resultant differences in price between purchasers make only due allowance for differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities in which such products are to such purchasers sold or delivered.

And provided further, That this order shall not be construed to prohibit respondent Southern from charging a purchaser in one trading area prices lower than the prices charged a purchaser in another trading area where respondent Southern can show that such lower price does not undercut the price at which the purchaser charged the lower price may purchase compressed gases of like grade and quality from another seller;

2. By extending to any purchaser of compressed gases more favorable terms or rates for cylinder use than are extended to any other purchaser where, in the sale of compressed gases to the favored purchaser, respondent Southern is in competition with any other seller.

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 1st day of April 1958, become the decision of the Commission; and, accordingly:

It is ordered, That 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

I. RUBIN, INC., ET AL.

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

Docket 6781. Complaint, Apr. 18, 1957—Decision, Apr. 1, 1958

Order requiring a furrier in Beverly Hills, Calif., to cease violating the Fur Products Labeling Act by labeling which listed fictitious prices, named animals other than those producing certain furs, and failed to name the animals producing others, to state that certain furs were artificially colored, etc., or made of cheaper parts or waste fur, to name the manufacturer or country of origin, and failed in other respects to conform to the labeling requirements; by invoicing and advertising which erred in similar respects; and by failing to maintain adequate records on which claims of reduced prices were based; and

Dismissing charges of illegal removal of required labels and unsupported claims of comparative price and percentage savings.

John J. McNally, Esq., for the Commission.

Respondents, *pro se*.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

STATEMENT OF THE CASE

On April 18, 1957, the Federal Trade Commission issued its complaint against I. Rubin, Inc., a corporation, and Sheldon R. Rubin and Irving Rubin, individually and as officers of said corporation (hereinafter collectively called respondents), charging them with misbranding and falsely and deceptively invoicing and advertising certain fur products in violation of the provisions of the Fur Products Labeling Act (hereinafter called the Fur Act), 15 U.S.C. 69(a), *et seq.*, the rules and regulations promulgated thereunder, and the Federal Trade Commission Act (hereinafter called the act), 15 U.S.C. 41, *et seq.* Copies of said complaint together with a notice of hearing were duly served upon respondents.

The complaint alleges in substance that respondents (1) misbranded certain of their fur products by not labeling them as required under the Fur Act and the rules and regulations promulgated thereunder; (2) caused or participated in the removal of required labels from such fur products in violation of the Fur Act; (3) falsely and deceptively invoiced certain fur products in violation of the Fur Act and said rules and regulations; (4) falsely and deceptively advertised certain fur products by failing to disclose the name of the

animal producing the fur, by failing to disclose that they were composed of bleached, dyed or otherwise artificially colored fur, by misrepresenting the prices as having been reduced from regular or usual prices, and by means of comparative prices and percentage savings claims not based upon current market values or setting forth any time of such comparative prices, in violation of the Fur Act and the rules and regulations; and (5) failed to maintain adequate records upon which such price and value representations were based, in violation of the rules and regulations. Respondents appeared in person without counsel and filed an answer admitting the corporate and jurisdictional allegations of the complaint but denying all alleged violations.

Pursuant to notice, hearing was thereafter held on August 14, 1957, in Los Angeles, Calif., before the undersigned hearing examiner duly designated by the Commission to hear this proceeding. All parties participated in the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence pertinent to the issues, to argue orally upon the record, and to file proposed findings of fact, conclusions of law and orders, together with reasons therefor. Pursuant to leave granted, both parties filed proposed findings of fact, conclusions of law and orders, together with reasons in support thereof. All such findings of fact and conclusions of law proposed by the parties, respectively, not hereinafter specifically found or concluded are herewith specifically rejected.[1]

Upon the entire record in the case and from his observation of the witnesses, the undersigned makes the following:

FINDINGS OF FACT

I. The Business of Respondents

The complaint alleged, respondents admitted, and it is found that I. Rubin, Inc., is a corporation organized and existing under and by virtue of the laws of the State of California, with its principal office and place of business located at 9516 Wilshire Boulevard, Beverly Hills, Calif. Sheldon R. Rubin and Irving Rubin are president and secretary-treasurer, respectively, of said corporation. These individuals, acting in cooperation with each other, formulate, direct and control the acts, policies and practices of the corporation. Their addresses are the same as that of the corporation.

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[1] 5 U.S.C. § 1007(b).

II. Interstate Commerce

The complaint alleged, respondents admitted, and it is found that respondents are now and have been since August 9, 1952, the effective date of the Fur Act, engaged in the introduction into commerce and in the sale, advertising and offering for sale in commerce, and in the transportation and distribution in commerce, of fur products, and have sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce, as "commerce," "fur," and "fur products" are defined in the Fur Act.

The record establishes that respondents advertised their fur products in commerce, sold fur products to customers from outside the State of California and subsequently delivered such products to such customers outide the State of California, purchased and had shipped to them in the State of California fur products from the State of New York, and sold, advertised for sale, transported and distributed fur products made in whole or in part of fur which had been shipped and received in commerce.

III. The Unlawful Practices

A. *Misbranding of Fur Products*

The complaint alleged that respondents misbranded certain fur products by not labeling them as required under the provisions of sections 4(1) and 4(2) of the Fur Act and rules 29 (a) and (b) of the rules and regulations.

The first such allegation of misbranding was that respondents falsely and deceptively labeled certain fur products with respect to the name of the animal that produced the fur, in violation of section 4(1) of the Fur Act. The record reveals and respondents admitted at least two instances of false labeling with respect to the name of the animal which produced the fur. In one instance, respondents' label referred to a product as sable when it was in fact American sable, [2] a less valuable and desirable fur and a different species, as demonstrated by the Fur Products Name Guide. [3] In another instance, respondents labeled a fur product as dyed black fox and admitted that the garment was made of a red fox fur. These two animal names are distinguished in the Fur Products Name Guide and do not include

[2] See Commission exhibit 36.

[3] Section 7 of the Fur Act requires the Commission to promulgate the Fur Products Name Guide, and sections 4 and 5 of the Fur Act require the use of such names in labeling, advertising and invoicing fur products.

all of the same species. It is concluded and found that respondents misbranded fur products in violation of section 4(1).

The complaint also alleged that respondents misbranded fur products in violation of section 4(1) by labeling them with "regular" price tickets which prices were in fact false and fictitious. This allegation will be considered hereinafter in connection with the alleged false advertising by the use of fictitious prices, inasmuch as substantially the same facts and law are applicable to both.

With respect to the alleged misbranding in violation of section 4(2), the record reveals and respondents admitted that they misbranded certain fur products by not labeling them as required under subsections (a), (c), and (f) thereof, which require, respectively, labels showing (1) the name of the animal as set forth in the Fur Products Name Guide; (2) that the fur is bleached, dyed, or otherwise artificially colored; and (3) the country of origin of any imported fur.[4] As alleged in the complaint, the record further reveals and respondents admitted that certain of their fur products were misbranded in violation of the Fur Act in that they were not labeled in accordance with rules 29 (a) and (b), respectively, in that nonrequired information was mingled with required information,[5] and required information was set forth in handwriting.[6] Accordingly, it is concluded and found that respondents misbranded fur products in violation of section 4(2) and rules 29 (a) and (b).

B. *Removal of Required Labels*

The complaint alleged that respondents caused or participated in the removal of required labels from fur products in violation of section 3(d) of the Fur Act. There is no proof in support of this allegation, as counsel supporting the complaint now concedes in his proposed findings, and accordingly no such finding is made.

C. *False Invoicing of Fur Products*

The complaint alleged that respondents falsely invoiced certain fur products in violation of section 5(b)(1) of the Fur Act and rules 4, 19(e), and 40(a). With respect to section 5(b)(1), the record reveals and respondents admitted that they falsely invoiced certain fur products by failing to show, as required under subsections (a), (c), and (f), respectively, the name of the animal as set forth in the

[4] See Commission exhibits 6, 37, 5, 8 and 9.
[5] See Commission exhibits 2, 3, 4, 5, 8 and 9.
[6] See Commission exhibits 2 through 9, inclusive.

Fur Products Name Guide; that the fur was bleached, dyed, or otherwise artificially colored; and the country of origin of imported furs contained in fur products.[7]

The record also reveals and respondents admitted that certain of their fur products were falsely invoiced in violation of rules 4, 19(e), and 40(a) in that required information was set forth in abbreviated form, the term "blended" was used to describe a fur product which had in fact been dyed, and required item numbers or marks were not set forth.[8] Accordingly, it is concluded and found that respondents falsely invoiced fur products in violation of section 5(b)(1) and rules 4, 19 (e), and 40 (a).

D. *False Advertising of Fur Products*

The complaint alleged that respondents falsely and deceptively advertised fur products in violation of sections 5(a)(1) and (3) of the Fur Act, rule 44(a) of the rules and regulations, section 5(a)(5) of the Fur Act and rule 44(b). The record establishes, respondents admitted, and it is found that they caused the dissemination in commerce of a removal sale advertisement on February 8, 1956, in the *Los Angeles Times*, a newspaper published daily and Sundays in the city of Los Angeles, having a wide and general circulation throughout the State of California and extending into adjacent States of the United States, which advertisement was intended to aid and did aid, promote, and assist, directly or indirectly, in the sale and offering for sale of respondents' fur products. This was the only newspaper advertisement disseminated by respondents.[9]

1. The failure to disclose the proper name of the fur and that certain fur products were dyed

Respondents' advertisement of February 8, 1956, specifically described a number of the fur products offered in their removal sale. The record establishes, respondents admitted, and it is found that one of such descriptions did not show the correct name, as set forth in the Fur Products Name Guide, of the animal that produced the fur, in violation of section 5(a)(1), and that five of such product descriptions failed to disclose that the fur products were bleached, dyed, or otherwise artificially colored, in violation of section 5(a)(3).

2. The fictitious pricing

The complaint alleged that in said newspaper advertisement respondents falsely represented the prices of fur products as having been

[7] See Commission exhibits 12, 14, 16, and 18.
[8] See Commission exhibits 10, 20, and 23 through 26, inclusive.
[9] Commission exhibit 1.

reduced from regular or usual prices, when such so-called regular or usual prices were in fact fictitious. The advertisement of February 8, 1956, described the sale as a removal sale and stated that all of respondents' fur products were being offered "¼ to ½ off our regular prices." At the foot of the advertisement, respondents listed three columns of fur products, each column followed by two columns of prices with the headings: "Regular" and "Sale." It is these so-called "Regular" prices which are alleged to be fictitious in that they were not the prices at which said merchandise was usually sold by respondents in the recent regular course of their business. As referred to hereinabove in section III-A, it was also alleged that respondents attached to said fur products regular price tickets or labels which were also in fact fictitious. This allegation is considered here in conjunction with the alleged advertised fictitious prices inasmuch as it involves substantially the same facts and law.

Respondents are engaged in the sale of fur products principally at retail and occasionally at wholesale. While they purchase most of their fur products, they also do some manufacturing, primarily of mink fur products. Mr. Irving Rubin does most of the buying, which includes both furs for manufacturing and fur products for resale. Respondents maintain a stock record book. At the time fur products are purchased or manufactured by them, the cost is entered in the stock record book. At the time the fur products are put into stock for sale, respondents enter in their stock record book the retail selling price for which they hope to sell each product. The record reveals that this "regular" selling price entered in the stock record book was substantially in excess of the usual and regular prices at which respondents sold their fur products. Respondents normally averaged from 30 to 35 percent gross profit computed on the selling price. The retail selling prices contained in respondents' stock record book and received in evidence averaged substantially higher than 35 percent gross profit. Thus it can be seen that even these so-called "regular" prices, which are not alleged in the complaint as fictitious and were substantially below the alleged fictitious prices, were in fact substantially higher than the usual and regular prices at which respondents sold their products.

Respondents' sale commenced February 8, 1956, and ran through either March 21 or April 8, 1956, as will be seen hereinafter. On February 21, during the sale, Mr. Anderson, a Commission investigator, visited respondents' place of business and secured from respondents' records and stock certain information concerning some of the products listed in the newspaper advertisement and others not specifically listed

but tagged with sale prices. Many of the garments in stock bore two labels or price tags, a white one and a red one. The white tag purported to be the garment's usual and regular price, and the red tag, the garment's reduced or sale price. Mr. Anderson made a random tabulation of some 28 garments bearing such tags, 9 of which by chance were also specifically listed in the newspaper advertisement.[10] Mr. Anderson included in his tabulation the item number, the regular price shown on the white tag, the reduced price shown on the red tag, the retail selling price shown in the stock record book, the cost of the fur product shown in the stock record book, and the actual selling price of the garments which were sold, together with certain computations concerning gross profit based on the various different prices. With respect to the nine garments included in the tabulation which were specifically listed in the newspaper advertisement, the prices appearing upon the white tickets and those listed in the newspaper advertisement as the regular price were identical. The sale included respondents' entire stock of fur products.

Other tabulations received in evidence established that before, during, and after the sale respondents averaged from 30 to 35 percent gross profit computed on selling price. The tabulation of the 28 garments selected at random reveals that if respondents had sold such products at the so-called "regular" price listed on the white tickets and set forth in the advertisement they would have averaged 59.3 percent gross profit on such selling prices. In addition thereto, every one of the garments actually sold was sold at a price less than the so-called "sale" price listed on the red ticket, but nevertheless resulted in a total gross profit of 31.9 percent, exactly the same gross profit realized by respondents during the entire month of December preceding the "sale."

However, it is unnecessary to rely upon gross profit comparisons to establish that respondents' "regular" prices, listed in their advertisement and set forth on the white tickets attached to the garments, were in fact fictitious and greatly in excess of their usual and regular selling prices. Of the 28 items contained in the random tabulation, all but two had "regular" prices listed on the white tickets far in excess of the retail selling price listed in the stock record book by respondents. Of the remaining two, one had no selling price listed in the stock record book and the other, the least expensive item included in the list, had a retail selling price in the book $5 in excess of the price listed on the white ticket. Thus it can be seen that the

[10] Commission exhibits 27–A and B.

vast majority of the items selected at random had tagged "regular" prices far in excess of respondents' stock record selling prices, which latter prices were in excess of respondents' usual and regular prices. The same conclusion applies to the advertised regular prices, since each of the nine items included in the tabulation contained the same price on the white tag as listed in the newspaper advertisement, greatly in excess of the stock record book selling price. In addition to the foregoing, 17 of the 28 garments had red tags with so-called "reduced" prices which were exactly the same as the retail selling price shown in the stock record book. Of the remaining 11, some had "reduced" red tag prices in excess of the retail selling price shown in the stock record book and some had red tag prices less than such retail selling price. The conclusion is inescapable that the "regular" prices listed in respondents' advertisement and attached to the garments by the white tickets were in fact fictitious and that respondents never sold their garments at such prices. Accordingly it is concluded and found that respondents, by the above advertisement and the "regular"-price white labels, falsely and deceptively advertised and misbranded such products with respect to their usual and regular prices, in violation of rule 44(a) and section 4(1) of the Fur Act, respectively.

3. The alleged comparative prices

The complaint alleged that respondents in said advertising used comparative prices and percentage savings claims which were not based upon current market values and which failed to give a designated time of a *bona fide* compared price in violation of section 5(a)(5) of the Fur Act and rule 44(b). As found above, the only price references in respondents' advertisement were their "regular" and "sale" prices, and that all of their "regular" prices were reduced one-fourth to one-half. These price references, as found above, clearly were representations by respondents concerning their regular and usual prices. However, counsel supporting the complaint advances a novel and ingenious argument that such advertised prices also constitute the use of comparative prices and percentage savings claims not based upon current market values. He argues that, based upon the decisions of the hearing examiner, the Commission, and the Court in the *Pelta Furs* case,[11] the listing of regular and sale prices constitutes a use of comparative prices within the meaning of rule 44(b).

[11] *Pelta Furs* v. *F.T.C.*, 244 F. 2d 270 (C.A. 9, 1957), affirming Commission decision, May 11, 1956, docket No. 6297.

The decisions of the Commission as well as rules 44 (a) and (b) demonstrate the invalidity of this argument. Rule 44 (a) deals with fictitious prices or a claimed reduction from usual and regular prices and has nothing to do with value, whereas rule 44(b) deals with comparative prices and percentage savings claims based upon current market value, or a compared price at some other designated time, and has nothing to do with the question of usual and regular prices. The decisions of the Commission in *Rudin & Roth*, *Ma-Ro* and *Neuville* [12] establish beyond doubt that the question of "value" has nothing to do with the question of fictitious prices, which involves only whether or not respondents truthfully represented their usual and regular prices. Conversely, as demonstrated by the provisions of rule 44(b), the question of comparative pricing concerns "value" and has nothing to do with usual or regular prices. Rule 44(b) clearly authorizes comparative pricing where based upon true current market values. It is clear from the reasoning of the decisions referred to above as well as the decision of the Commission in the *Mandel* case [13] that comparative pricing deals with the question of current or designated market values or prices.

Counsel's reliance on the *Pelta* case, *supra*, is misplaced. The excerpted advertisements in that decision reveal that the respondent therein used both fictitious prices and comparative price claims. Although not elucidated in that decision, apparently because there was no issue or controversy concerning the point, the quoted advertisements refer to prices in one instance as "were" and "now," and in another as "values up to" and "now." It is clear that the former constitutes a representation concerning "usual and regular" prices whereas the latter constitutes a representation as to current market value and is comparative pricing as referred to in rule 44(b). Because the decision referred to such advertising as both fictitious pricing and comparative pricing, counsel concludes that the comparative pricing refers to the usual and regular prices listed, as well as the comparative prices. Obviously such a conclusion is unsound inasmuch as the reference was to advertisements containing both fictitious pricing and comparative pricing. The very quotation relied upon by counsel demonstrates that the fictitious prices therein were *not* the prices found to be comparative prices by the Commission. The quotation reads:

In summary, by affixing to fur products price tags showing plainly marked price values containing fictitious prices and by the aforesaid reductions in

[12] *Rudin & Roth*, docket No. 6419 (1956); *Ma-Ro Hosiery Co., Inc.*, docket No. 6436 (1957); and *Neuville, Inc.*, docket No. 6405 (1956).

[13] *Mandel Bros., Inc.*, docket No. 6434 (1957).

price, such as one-half off, *and by comparative pricing*, * * * respondents are found to have engaged in false, misleading and deceptive practices. [Emphasis supplied.]

If fictitious pricing constitutes comparative pricing then there would be no need for rule 44(a). Logical construction of the language demonstrates the contrary: representations with respect to "usual" and "regular" prices have nothing to do with value, whereas "comparative" prices deal with market value or price and have nothing to do with the "usual" and "regular" prices of the person making the representation. Counsel's reliance upon the representation in the advertisement of one-fourth to one-half off is also misplaced inasmuch as it clearly dealt with regular prices and not with current market values.

However, even assuming *arguendo* that respondents' representation was one of comparative pricing, counsel supporting the complaint has failed to prove that such prices were not the current market values of the product. Apparently counsel seeks the reversal of the recent decision of the Commission in *Mandel*, *supra*, deciding this issue to the contrary. Counsel seeks to distinguish the *Mandel* decision by contending that it required affirmative proof of the actual market value in order to establish the falsity of the represented market value, whereas in this case he contends that it is necessary only to establish that the comparative prices are not based upon current market values—a negative rather than an affirmative showing. This appears to be a distinction without a difference, in view of the holding of the Commission that it is not possible to find that a respondent misrepresented the amount of savings to be effectuated by purchasers by means of market prices or other statements as to value without first finding what the actual market value or price in fact was.

Actually, counsel here seeks to prove that respondents' "comparative" prices were not based upon current market values by proof of the same kind as that rejected by the Commission in the *Mandel* case, *supra*. Counsel argues that because the fictitious prices would have almost doubled respondents' usual markup, based upon the cost of the products, and greatly exceeded respondents' actual selling prices, such prices could not have been based upon current market values. Substantially stronger proof than this was rejected by the Commission in the *Mandel* case. There the record established that the comparative prices used represented a markup of 400 to 500 percent over respondents' costs, that the highest markup customarily used in the industry in that area was 70 percent, yet the Commission held that this did not establish that respondent misrepresented the current market

value of its products. After considering the aforesaid facts, the Commission said:

This reasoning of the hearing examiner, while cogent, does not establish to the satisfaction of the Commission that the respondent misrepresented, by means of comparative prices and other statements as to "value," the amount of savings to be effectuated by purchasers. In order to make such a finding, it is obviously necessary to first find what the actual market value, or price, of the fur product involved in this proceeding in fact was. There is no evidentiary basis on the record here to make such a determination. All that this record does show is what respondent's costs were, the usual and customary trade mark-up in the Chicago area and the retail prices at which respondent sold fur products. In view of the lack of evidence establishing actual market value, the Commission cannot accept the reasoning of the initial decision as establishing the conclusion that respondent did, in fact, misrepresent savings to be effectuated by prospective purchasers of fur products advertised and sold by it. It follows that the charge in the complaint to the effect that respondent misrepresented, by means of comparative prices and other statements as to "value" not based on current market values, the amount of savings to be effectuated by purchasers of respondent's fur products has not been substantiated. The initial decision will be modified accordingly.

Counsel supporting the complaint also argues that current market value should be determined by the usual and regular prices at which a respondent sells its products. Patently, this contention is invalid. If it were correct, no one could represent that his prices were below current market values and represented savings even when such representation was true in fact, if the prices used were his usual and regular prices, consistently below current market prices, such as in the case of discount and cut-rate houses.

For all of the foregoing reasons, it is concluded and found that the evidence in the record fails to establish that respondents used comparative prices and percentage savings claims not based upon current market values, as alleged in the complaint.

D. *The Failure to Maintain Records Concerning Pricing Claims and Representations*

The complaint alleged that respondents failed to maintain full and adequate records disclosing the facts upon which the advertised pricing claims and representations discussed above were based, in violation of rule 44(e). Because there has been no finding of comparative pricing, this allegation is necessarily limited to the above-found fictitious pricing. The only record which respondents maintained which disclosed any regular and usual selling prices was their stock record book. As found above, eight of the nine advertised items tabulated by Mr. Anderson in Commission Exhibit 27 had a listed

selling price in respondents' stock record book substantially below that found in the newpaper advertisement, and the other had no selling price entered in the stock record book. It was thus demonstrated that respondents did not maintain "full and adequate records" upon which their pricing representations were based. One exmple, item No. 1141, showed a cost price of $575 and a retail selling price listed in the stock record book of $925, yet was included in the advertisement as regularly priced at $1,525, with a reduced sale price of $925.

It was demonstrated at the hearing that respondents altered their stock record book between the time of the investigation and the hearing. Mr. Anderson's tabulation listed the retail selling prices as contained in the stock record book at the time of the investigation. Respondents produced the original stock record book at the hearing. A number of the original retail selling prices obviously had been altered to conform the price to that listed in the advertisement and found on the white price ticket as the usual and regular price. At the request of counsel, the undersigned examined the original stock record, and the alterations, as well as the original figures in conformity with those in Mr. Anderson's tabulation were readily apparent. For example, the first item on Mr. Anderson's tabulation, No. 112, which was included in respondents' newspaper advertisement, was entered in the tabulation as having a stock record book selling price of $300 and a white price tag of $495, the same price used in the newspaper advertisement as the regular price. An examination of the stock record book at the hearing revealed that the figure of $495 had been written over the figure of $300. This was evident to the naked eye. The record establishes, and it is found, that respondents failed to maintain full and adequate records disclosing the facts upon which their pricing claims and representations were based, in violation of rule 44(e)

CONCLUSIONS OF LAW

1. Respondents are engaged in commerce and engaged in the above-found acts and practices in the course and conduct of their business in commerce, as "commerce" is defined in the Fur Act.

2. The acts and practices of respondents hereinabove found are in violation of the Fur Act and rules and regulations promulgated thereunder, and constitute unfair and deceptive acts and practices in commerce under the act.

3. This proceeding is in the public interest, and an order to cease and desist the above-found acts and practices should issue against respondents.

4. There is no evidence in the record that respondents have, as alleged in the complaint, violated the Fur Act or the rules and regulations by advertising their fur products with comparative prices and percentage savings claims which were not based upon current market values or which failed to give a designated time of a *bona fide* compared price.

ORDER

It is ordered, That respondent I. Rubin, Inc., a corporation, and its officers, and respondents Sheldon R. Rubin and Irving Rubin, as individuals 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, transporation 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 fur products by:

A. Falsely or deceptively labeling or otherwise indentifying any such product as to the name or names of the animal or animals that produced the fur from which such products were 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 a fact;

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

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

(5) The name, or other indentification 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;

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

C. Falsely or deceptively labeling or otherwise identifying any such products as to the regular prices or values thereof by any representation

that the regular or usual price of such product is any amount in excess of the price at which respondents have usually and customarily sold such products in the recent regular course of business.

D. Setting forth on labels attached to fur products:

(1) Required information in handwriting;

(2) Nonrequired information mingled with required information.

2. 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 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 a fact;

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

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

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

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

B. Setting forth required information in abbreviated form.

C. Using the term "blended" to refer to or to describe bleached, dyed, or otherwise artificially colored fur products.

D. Failing to set forth the item number or mark assigned to such products.

3. 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:

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) That the fur products contain or are composed of bleached, dyed or otherwise artificially colored fur, when such is the fact;

B. Represents directly or by implication that the regular or usual price of any fur product is any amount which is in excess of the price at which respondents have usually and customarily sold such products in the recent regular course of business.

C. Makes pricing or savings claims or representations of the type referred to in paragraph 3(B) above unless there are maintained by

respondents full and adequate records disclosing the facts upon which such claims or representations are based.

It is further ordered, That the allegations of the complaint that respondents caused or participated in the removal of required labels from fur products and advertised their fur products with comparative prices and percentage savings claims which were not based upon current market values or which failed to give a designated time of a *bona fide* compared price be and hereby are dismissed.

OPINION OF THE COMMISSION

By Secrest, Commissioner:

Respondents here are charged in the complaint with engaging in labeling, invoicing, and advertising practices in violation of the Fur Products Labeling Act [1] which, in turn, constitutes a violation of the Federal Trade Commission Act.[2] The hearing examiner's initial decision containing an order to cease and desist was filed December 31, 1957. The order presented questions as to its proper scope and the Commission on February 27, 1958, placed the case on its own docket for review, no notice of intention to appeal having been filed.

For the reasons stated below, the Commission has concluded that the order should be modified and that, as modified, the initial decision should be adopted as the decision of the Commission.

In addition to its charges pertaining to alleged misbranding and false invoicing, the complaint in this proceeding alleged that the respondents' advertising was in violation of section 5(a)(1) of the Fur Products Labeling Act through their failure to disclose in such advertising the names of the animals producing the constituent furs of the fur products offered; and it further charged violation of section 5(a)(3) through failure to disclose that the fur products were composed of bleached, dyed, or otherwise artificially colored fur. While the complaint also contains additional charges relating to alleged departures in the advertising from the requirements of the Rules and Regulations promulgated under the Act, which charges were properly sustained in part and dismissed in part by the hearing examiner, these matters are not material to the issues discussed here and are not further referred to.

The main question presented on this review of the initial decision pertains to the scope of its order to cease and desist relevant to the violations of section 5(a) found by the hearing examiner. As we have

[1] 15 U.S.C. 69, et seq.
[2] 15 U.S.C. 41, et seq.

noted above in this regard, the complaint alleges only that respondents have violated sections 5(a) (1) and (3); and the proof and findings go only to those allegations. The complaint makes no charges with regard to sections 5(a) (2), (4), (5) or (6)[3] nor are there any findings or proof with regard thereto. The order to cease and desist contained in the initial decision, however, contains prohibitions covering the items of information enumerated in sections 5(a) (1), (2), (3), (4) and (6) of the Act.[4] The broad form of order contained in the initial decision apparently is based on the rationale of our decision in the matter of *Mandel Brothers, Inc.*, Docket No. 6434 (decided July 5, 1957), which related, however, not to the appropriate scope of orders in proceedings instituted under section 5(a), but to those directed against misbranding and false invoicing practices respectively proscribed under subsection (2) of section 4 and subsection (1) of section 5(b) of the act.

In instances of proved violations of subsection (2) of section 4 and subsection (1) of section 5(b) of the act, it is the Commission's policy to issue an order requiring cessation of the misbranding or the false invoicing by failing to attach to the products labels or to issue to purchasers invoices containing all of the required information. This is because the violations with which these subsections are concerned consist of the failure to attach to the product an adequate label as prescribed in subsection (2) of section 4 or to deliver to the purchaser an adequate invoice as prescribed in subsection (1) of section 5(b), and it is the recognized duty of the Commission to so frame its order as to fully correct the practices found to be unlawful. (In the matter of *Mandel Brothers, Inc., supra.*)

As distinguished from subsection (2) of section 4 and subsection (1) of section 5(b), making labeling and invoicing in the manner there prescribed mandatory, section 5(a) of the act imposes no similar requirement with respect to advertising. It is only when a seller of furs or fur products elects to advertise or otherwise resort to public announcements or notices intended to assist in the sale of his wares that section 5(a) imposes upon him any legal obligation whatsoever, and then only to the extent necessary to avoid confusion and deception. It is apparent, therefore, that violation of section 5(a) consists not in a failure to advertise or to advertise in a specified manner, but rather in the use of advertising which is deceptive. Thus, the Commission, in proceeding under this section, is seeking merely to prohibit advertising

[3] These provisions of the act relate respectively to failure to disclose that fur is used fur; that fur products are composed of paws, tails, bellies or waste fur; to the use of names of animals other than those specified in the Fur Products Name Guide; and lastly, to failure to disclose the country of origin.

[4] The order contains no inhibition pertaining to the matters enumerated in section 5(a)(5), however.

practices which are false or misleading, and its orders, to be effective, need only prohibit the practices which are found to be so and other similar practices, the threat of which in the future is indicated because of their similarity to those engaged in in the past.

It follows that the proscriptions contained in paragraph 3A of the initial decision's order should have been limited to requiring the respondents to comply with sections 5(a)(1) and 5(a)(3) of the act, and that subparagraphs A(2), A(4) and A(5) are unjustified. On the other hand, paragraph 1B of the order is deficient in that it fails to require a disclosure on labels of the information specified in subsection (F) of section 4(2) of the act, namely, the country of origin of any imported furs contained in the respondents' garments. Paragraphs 1B and 3A of the order are being modified accordingly.

FINAL ORDER

This matter having come on for review of the hearing examiner's initial decision by the Commission in regular course, and the Commission having concluded for the reasons stated in the accompanying opinion that the initial decision is an appropriate and adequate disposition of the proceeding except that the order to cease and desist should be modified in certain respects:

It is ordered, That paragraph 1B of the order to cease and desist be, and it hereby is, modified by adding to it a sixth subparagraph reading as follows: "The name of the country of origin of any imported furs used in the fur product."

It is further ordered, That paragraphs 3A (2), (4) and (5) of the order to cease and desist be, and they hereby are, deleted.

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

It is further ordered, That respondent I. Rubin, Inc., a corporation, and respondents Sheldon R. Rubin and Irving Rubin 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

LURKIS 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 6917. Complaint, Oct. 17, 1957—Decision, Apr. 1, 1958

Consent order requiring a furrier in Newark, N.J., to cease violating the Fur Products Labeling Act by removing required labels from fur products prior to delivery to the ultimate consumer; failing to comply with the invoicing and labeling requirements; and advertising fur products falsely as being from the stock of a liquidating business.

Mr. S. F. House for the Commission.

Parsonnet, Weitzman & Oransky, by *Mr. Samuel Weitzman*, of Newark, N.J., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents with removal of labels from certain of its fur products, and with misbranding and falsely and deceptively invoicing and advertising said products, in violation of the Fur Products Labeling Act and the rules and regulations promulgated thereunder, and of the Federal Trade Commission Act.

After 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 of the Commission's Bureau of Litigation, and thereafter transmitted to the hearing examiner for consideration.

The agreement states that respondent Lurkis Furs, Inc. is a corporation existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 106 Halsey Street, Newark, N.J., and that respondent Jacob Lurkis is president of said corporation and formulates, directs and controls the acts, policies and practices thereof, his address being the same as that of the corporate respondent.

The agreement provides, among other things, that 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; 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; that the complaint 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 Fur Products Labeling Act and the rules and regulations promulgated thereunder, and 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 Lurkis Furs, Inc., a corporation, and its officers and Jacob Lurkis, 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:

1. Removing, or causing the removal, or participating in the removal of labels required to be affixed to fur products, prior to the time fur products are sold and delivered to the ultimate purchaser of such products;

2. Misbranding fur products by:

(a) 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 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, 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;

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

(b) Failing to show on labels attached to fur products the item numbers or marks assigned to fur products as required by rule 40(a) of the rules and regulations;

(c) Setting forth on labels affixed to fur products:

(1) Information required under § 4(2) of the Fur Products Labeling Act and the rules and regulations thereunder, in abbreviated form;

(2) Information required under § 4(2) of the Fur Products Labeling Act and the rules and regulations thereunder, which is intermingled with nonrequired information;

(3) Information required under § 4(2) of the Fur Products Labeling Act and the rules and regulations thereunder, in handwriting;

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 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 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 of the country of origin of any imported furs contained in a fur product;

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

4. 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:

(a) Represents that any of such fur products are from the stock of a business in the state of liquidation, when such is not the fact.

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 1st day of April 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Lurkis Furs, Inc., a corporation, and Jacob Lurkis, 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

CHELSEA SPORTSWEAR, INC., ET AL.

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

Docket 6951. Complaint, Nov. 22, 1957—Decision, Apr. 1, 1958

Consent order requiring a concern in New York City to cease selling rayon fabrics made to simulate wool, without adequately disclosing 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 respondents.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding issued November 22, 1957, charges the respondents Chelsea Sportswear, Inc., a corporation, located at 525 Seventh Avenue, New York, N.Y., and Nat Cohen, individually and as an officer 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 manufacture, promotion, sale and distribution of garments made of certain rayon fabrics.

After the issuance of the complaint, respondents Chelsea Sportswear, Inc., a corporation, and Nat Cohen, individually and as an officer 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 further 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 Chelsea Sportswear, Inc., a corporation, and its officers, and Nat Cohen, 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 garments made from 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 advertising matter concerning such products;

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

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 1st day of April 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

MAURICE COHEN ET AL. TRADING AS MASTER FURRIERS

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

Docket 6918. Complaint, Oct. 17, 1957—Decision, Apr. 2, 1958

Consent order requiring furriers in Duluth, Minn., to cease violating the Fur Products Labeling Act by failing to invoice and label fur products as required; by advertising in newspapers which failed to name the animal producing certain furs, represented prices as reduced from regular prices which were in fact fictitious, and failed to give a designated time of comparative prices; and by failing to maintain adequate records disclosing the facts on which such pricing claims were based.

Mr. Thomas A. Ziebarth supporting the complaint.

Mr. Robert J. Karon, of Duluth, Minn., for respondents.

INITIAL DECISION OF JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on October 17, 1957, charging them with having violated the Fur Products Labeling Act and the rules and regulations issued thereunder, and the Federal Trade Commission Act, through the misbranding of certain fur products and the false and deceptive invoicing and advertising thereof. After being served with said complaint, respondents appeared by counsel and filed their answer thereto. Thereafter the parties entered into an agreement, dated January 31, 1958, containing a consent order to cease and desist purporting to dispose of all this proceeding as to all parties. Said agreement, which has been signed by both respondents, by counsel for said respondents, 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.

Respondents, pursuant to the aforesaid agreement, have admitted all 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 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 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 respondents that they have 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. Respondents Maurice Cohen and Eugene Cohen, are individuals and co-partners trading as Master Furriers with their office and principal place of business located at 15 W. Superior Street, Duluth, Minn.

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 respondents, Maurice Cohen and Eugene Cohen, individually and as copartners trading as Master Furriers, or under any other name, 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:

1. Misbranding fur products by:

A. Falsely or deceptively labeling or otherwise identifying any such product as to the geographic origin of the animal 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 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, 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;

(6) The name of the country of origin of any imported furs used in the 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 mingled with nonrequired 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 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 otherwise artificially colored fur, when such is the fact;

(4) 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;

(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;

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

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 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. Represents, directly or by implication, that the regular or usual price of any fur product is any amount which is in excess of the price at which the respondents have usually and customarily sold such products in the recent regular course of their business.

C. Makes use of comparative prices unless such compared prices are based upon the current market value of the fur product or upon a bona fide compared price at a designated time.

D. Makes price claims and representations of the types referred to in paragraphs B and C above, unless there are maintained by respondents full and adequate records disclosing the facts upon which such claims and representations are based as required by rule 44(e) of the rules and regulations.

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 2d day of April 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

H. LIEBES & CO. ET AL.

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

Docket 6960. Complaint, Nov. 25, 1957—Decision, Apr. 2, 1958

Consent order requiring furriers in San Francisco to cease violating the Fur Products Labeling Act by failing to invoice and label fur products as required; by advertising in newspapers which contained the names of animals other than those producing certain furs, set forth comparative prices without designating the time of the original prices, and represented that the selling prices were reduced from regular prices without maintaining adequate records disclosing the facts on which such pricing claims were based.

Mr. John J. McNally for the Commission.

McKinstry, Haber and Coombes, by *Mr. Peirce Coombes*, of San Francisco, Calif., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on November 25, 1957, charging respondents with misbranding, falsely and deceptively invoicing, and falsely and deceptively advertising certain of their fur products, in violation of the Fur Products Labeling Act and the rules and regulations promulgated thereunder; such violations also constituting unfair and deceptive acts and practices in commerce, in violation of the Federal Trade Commission Act.

On January 24, 1958, 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 of the Commission's Bureau of Litigation, and thereafter submitted to the hearing examiner for consideration.

Respondent H. Liebes & Co. is identified in the agreement as a California corporation, and respondents Sidney Liebes and Lloyd Liebes as individuals and as president, and vice president and secretary-treasurer, respectively, of the corporate respondent, all respondents having their offices and principal place of business at Geary and Grant Avenues, San Francisco, Calif.

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, in the agreement, waive any further procedure 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. 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 H. Liebes & Co., a corporation, and its officers, and Sidney Liebes and Lloyd Liebes, as individuals 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, advertising, or offering for sale, in commerce, or the transportation or distribution in commerce, of fur products, 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 affiix labels to 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, or transported or distributed it in commerce;

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

2. Setting forth on labels attached to fur products information required under §4(2) of the Fur Products Labeling Act and the rules and regulations thereunder, mingled with nonrequired information;

B. Falsely or deceptively invoicing fur products by:

1. Failure 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 paws, tails, bellies, or waste fur, when such is the fact;

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

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

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. Sets forth the name of an animal other than the name of the animal or animals producing the fur or furs contained in the fur product;

2. Represents, directly or by implication, that the regular or usual price of any fur product is any amount which is in excess of the prices at which such products, in the recent regular course of business, has been usually and customarily sold by the respondents;

3. Makes use of comparative prices or savings claims unless such are based upon current market values or unless a bona fide price at a designated time is stated;

4. Makes pricing claims and representations of the type referred to in subparagraphs 2 and 3 above, unless there are maintained by respondents full and adequate records disclosing the facts upon which such claims or representations are based, as required by rule 44(e) of the rules and regulations.

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 2d day of April 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondents H. Liebes & Co. a corporation, and Sidney Liebes and Lloyd Liebes, 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

SHELL OIL CO., PREMIER CAB ASSOCIATION, INC., AND WASHINGTON CAB ASSOCIATION, INC.

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

Docket 6698. Complaint, Dec. 26, 1956—Decision, Apr. 2, 1958

Consent order requiring an oil company with principal office in New York City to cease violating section 2(a) of the Clayton Act by granting user discounts to two cab association customers in Washington, D.C., on gasoline resold to the public generally, and requiring the two cab associations to cease violating section 2(f) of the same act by knowingly inducing and receiving the user discounts on gasoline they resold to the public in competition with retail filling stations.

Mr. Brockman Horne and *Mr. Leslie S. Miller* for the Commission.

Mr. William F. Kenney and *Mr. George S. Wolbert, Jr.*, of New York, N.Y., and *Mr. William Simon*, of Washington, D.C., for respondent Shell Oil Co.;

Hollowell, Pitts & Martin, by *Mr. R. Logan Hollowell* and *Mr. Vaden S. Pitts*, of Washington, D.C., for respondent Premier Cab Association, Inc.;

Sedgwick & Livingstone, by *Mr. Paul J. Sedgwick* and *Mr. Frederick H. Livingstone*, of Washington, D.C., for respondent Washington Cab Association, Inc.

COMPLAINT

Pursuant to the provisions of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" (The Clayton Act—U.S.C. Title 15, sec. 13), as amended, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the Shell Oil Co. has violated the provisions of subsection (a) of section 2 of said Clayton Act, as amended, and that the Premier Cab Association, Inc., a corporation, and the Washington Cab Association, Inc., a corporation, have violated the provisions of subsection (f) of section 2 of said Clayton Act, as amended, hereby issues its complaint stating its charges in this respect as follows:

Count I

PARAGRAPH 1. Respondent Shell Oil Co. is a corporation organized existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office located at 50 W. 50th

Street, New York, N.Y. Said respondent is engaged in the business of producing, manufacturing, distributing, and selling gasoline and other petroleum products in various states of the United States and in the District of Columbia. The Shell Oil Co. sells two grades of gasoline, premium and regular. Gasoline sold and delivered by said respondent to gasoline stations in the District of Columbia is transported in tank wagons from said respondent's bulk plants in the State of Virginia and delivered from said tank wagons. In the course and conduct of its business as aforesaid, respondent is now engaged and for the past several years has been engaged in commerce, as "commerce" is defined in the aforesaid Clayton Act and the sales involved in the discrimination in price hereinafter alleged were in interstate commerce.

PAR. 2. Respondent Premier Cab Association, Inc., is a nonprofit corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 2337 Sherman Avenue NW., Washington, D.C. Said respondent provides mutual facilities for the benefit of its members and, among other things, operates a gasoline station at the above-mentioned location at which station it engages in the business of selling "Shell" gasoline at retail to its member taxicab operators and to the public.

PAR. 3. Respondent Washington Cab Association, Inc., is a nonprofit corporation organized, existing, and doing business under and by virtue of the laws of the District of Columbia with its principal office and place of business located at 26th and E Streets NW., Washington, D.C. Said respondent provides mutual facilities for the benefit of its members and, among other things, operates a gasoline station at the above-mentioned location, at which station it engages in the business of selling gasoline at retail to its member taxicab operators and to the public.

PAR. 4. On or about June 30, 1955, respondent Shell Oil Co. entered into two contracts for the sale of gasoline to the respondents Premier Cab Association, Inc., and Washington Cab Association, Inc.

The contract with the Premier Cab Association, Inc., provides for the sale of "Shell" gasoline at ¾ cents per gallon under the prevailing tank wagon price of gasoline in the District of Columbia. However, on June 30, 1955, the contract was amended to provide for the sale of gasoline at 2½ cents per gallon under the prevailing tank wagon price of gasoline in the District of Columbia and said contract has been so understood and treated by both parties thereto.

The contract with the Washington Cab Association, Inc. provides for the sale of "Shell" gasoline at ¾ cents per gallon under the prevailing tank wagon price, but on July 1, 1955, was amended to provide for the sale of said gasoline at 2½ cents per gallon under the prevailing tank wagon price of gasoline in the District of Columbia and said contract has been so understood and treated by both parties thereto.

PAR. 5. Subsequent to the execution of said contracts the Shell Oil Co. has sold and delivered large quantities of "Shell" gasoline at the prices heretofore alleged, to both the Premier Cab Association, Inc., and to the Washington Cab Association, Inc. The gasoline so purchased by the Premier Cab Association, Inc., and the Washington Cab Association, Inc., has been sold by them to their member taxicab operators and to the public generally. The fact of such resale to the public generally has been well known to the respondent Shell Oil Co., although both of said contracts provide that the products purchased thereunder were not intended for resale.

PAR. 6. By selling its "Shell" gasoline in the District of Columbia to respondents Premier Cab Association, Inc., and the Washington Cab Association, Inc., at the prices stated in paragraph 4 hereof, which prices are substantially lower than the prices charged by it in the sale of gasoline of like grade and quality to other retail gasoline dealers in the District of Columbia who are in competition with respondent cab associations in the resale of said gasoline, respondent Shell Oil Co. has discriminated and is discriminating in price between respondent cab associations and said other retail gasoline dealers.

PAR. 7. The effect of such discrimination in price by the respondent Shell Oil Co., as hereinabove set forth, may be substantially to lessen competition in the sale and distribution of gasoline in the District of Columbia between the purchasers who receive and those who are denied the benefits of such discriminatory prices, and to injure, destroy or prevent competition between purchasers receiving the benefits of said discriminatory prices, and the purchasers from whom such discriminatory prices are withheld.

PAR. 8. The aforesaid discriminations in price by the respondent Shell Oil Co., as hereinabove alleged and described, constitute violations of subsection (a) of section 2 of the aforesaid Clayton Act, as amended.

Count II

PARAGRAPH 1. The allegations of this paragraph are the same as the allegations made in paragraphs 1, 2, 4, 5, 6 and 7 of count I.

PAR. 2. The respondent Premier Cab Association, Inc., at the time

of the execution of the contract referred to in paragraph 4 of count I hereof, and at all times since that date, has well known that the prices for "Shell" gasoline fixed in said contract and the amendment thereto, and therafter paid by said respondent to the Shell Oil Co. for said gasoline, as hereinbefore set forth, were and are some 2½ cents per gallon lower than the prices at which "Shell" gasoline has been sold by the Shell Oil Co. during the same period to other retail gasoline dealers in the District of Columbia, including many such dealers competing in the sale of "Shell" gasoline with the station operated by the Premier Cab Association, Inc. Respondent Premier Cab Association, Inc. also knew that it bought gasoline in approximately the same quantities as its competitors and that the respondent Shell Oil Co. sold it gasoline from the same trucks that Shell Oil Co. used to deliver gasoline to the competitors of respondent Premier Cab Association, Inc.

PAR. 3. Said discriminations in price were knowingly induced, and at all times herein mentioned have knowingly been received, by respondent Premier Cab Association, Inc., and as such constitute violations of subsection (f) of section 2 of the aforesaid Clayton Act, as amended.

Count III

PARAGRAPH 1. The allegations of this paragraph are the same as the allegations made in paragraphs 1, 3, 4, 5, 6 and 7 of count I.

PAR. 2. The respondent Washington Cab Association, Inc., at the time of the execution of the contract referred to in paragraph 4 of count I hereof, and at all times since that date, has well known that the prices for "Shell" gasoline fixed in said contract and the amendment thereto, and therafter paid by said respondent to the Shell Oil Co. for said gasoline, as hereinbefore set forth, were and are some 2½ cents per gallon lower than the prices at which "Shell" gasoline has been sold by the Shell Oil Co. during the same period to other retail gasoline dealers in the District of Columbia, including many such dealers competing in the sale of "Shell" gasoline with the stations operated by the Washington Cab Association, Inc. Respondent Washington Cab Association, Inc., also knew that it bought gasoline in approximately the same quantities as its competitors and that the respondent Shell Oil Co. sold it gasoline from the same trucks that Shell Oil Co. used to deliver gasoline to the competitors of respondent Washington Cab Association, Inc.

PAR. 3. Said discriminations in price were knowingly induced, and at all times herein mentioned have knowingly been received, by respondent Washington Cab Association, Inc., and as such constitute

violations of subsection (f) of section 2 of the aforesaid Clayton Act, as amended.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above named respondents on December 26, 1956, charging the Shell Oil Co., a corporation, with having violated the provisions of subsection (a) of §2 of the Clayton Act, as amended, by discriminating in the price of gasoline sold to the two respondent cab associations; and charging the Premier Cab Association, Inc., a corporation, and the Washington Cab Association, Inc., a corporation, with having violated the provisions of subsection (f) of §2 of said Clayton Act, as amended, by knowingly inducing and receiving the said discriminatory price. After the issuance of said complaint and the filing of their answers thereto, the respondents entered into separate agreements with counsel supporting the complaint, providing for the entry of a consent order disposing of all the issues in this proceeding, which agreements were duly approved by the director and the assistant director of the Bureau of Litigation.

By the terms of said agreements, the respondents admitted all the jurisdictional facts alleged in the complaint, and each of them agreed that the record herein may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Respondents, in the agreements, 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 of the rights that they and each of them may have to challenge or contest the validity of the order to cease and desist entered in accordance with the said agreements

By said agreements the record on which the initial decision and the decision of the Commission are to be based shall consist solely of the complaint and the said agreements. It was further agreed that the agreements shall not become a part of the official record unless and until they become a part of the decision of the Commission, and that said agreements are for settlement purposes only and do not constitute admissions by the respondents or any of them that they have violated the law as alleged in the complaint. The agreements also provided that the order to cease and desist issued in accordance with said agreements shall have the same force and effect as if entered after full hearings; that it 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 by the hearing examiner on the complaint and the aforesaid agreements for consent order, and it appearing that said agreements provide for an appropriate disposition of this proceeding, the aforesaid agreements are hereby accepted and are ordered filed upon becoming part of the the Commission's decision in accordance with §3.21 and §3.25 of the rules of practice, and in consonance with the terms of said agreements, the hearing examiner makes the following jurisdictional findings and order:

1. Respondent Shell Oil Co. is 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 50 W. 50th Street, New York, N.Y.

Respondent Premier Cab Association, Inc., is 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 2337 Sherman Avenue NW., Washington, D.C.

Respondent Washington Cab Association, Inc., is a corporation existing and doing business under and by virtue of the laws of the the District of Columbia, with its office and principal place of business located at 26th and E Streets NW., Washington, D.C.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding, which is in the public interest, and of the respondents hereinabove named; the complaint herein states a cause of action against said respondents under the provisions of the Clayton Act, as amended.

ORDER

It is ordered, That respondent Shell Oil Co., a corporation, its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the sale or distribution of petroleum products in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from discriminating, directly or indirectly, in the price of automotive petroleum products of like grade and quality:

By selling to any user or organization of users any of such products, which are resold, at a lower price than respondent's price to any other purchaser who competes with such user or organization of users in the resale of such products.

The terms "resold" and "resale," as used in this order, shall not include sales to an affiliate of a buyer from respondent Shell Oil Co. solely for use by such affiliate, or sales by an organization for use in vehicles identified by its trade name, such as sales by a cooperatively-

owned taxicab company of such products for use in the taxicabs of its members.

The term "selling to any user," as used in this order, does not include sales for delivery to a business location which is primarily a reseller operation with respect to petroleum products and where only an insubstantial percentage of such deliveries are used by the purchaser.

It is further ordered, That respondent Premier Cab Association, Inc., a corporation, its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the purchase in commerce, as "commerce" is defined in the Clayton Act, of petroleum products which it resells for use in vehicles other than the taxicabs of its members, do forthwith cease and desist from knowingly inducing or receiving from respondent Shell Oil Co., or from any other seller, prices for such products which are lower than the prices at which such seller sells such products of like grade and quality to any other purchaser competing with respondent Premier Cab Association, Inc., in the resale of petroleum products.

It is further ordered, That respondent Washington Cab Association, Inc., a corporation, its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the purchase in commerce, as "commerce" is defined in the Clayton Act, of petroleum products which it resells for use in vehicles other than the taxicabs of its members, do forthwith cease and desist from knowingly inducing or receiving from respondent Shell Oil Co., or from any other seller, prices for such products which are lower than the prices at which such seller sells such products of like grade and quality to any other purchaser competing with respondent Washington Cab Association, Inc., in the resale of petroleum products.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission, on March 6, 1958, having placed this case on its own docket for review; and

Counsel in support of the complaint and counsel for respondent, Shell Oil Co., by motion filed March 25, 1958, having jointly requested the Commission to modify the hearing examiner's initial decision in certain designated respects; and

The Commission having considered the matter and being of the opinion that said request should be granted and, further, that the initial decision as modified in accordance therewith will be appropriate to dispose of this proceeding:

It is ordered That the initial decision of the hearing examiner be, and it hereby is modified by striking the last paragraph on page 3 and the first paragraph on page 4 thereof, and substituting for said paragraphs the following:

The terms "resold" and "resale," as used in this order, shall not include sales to an affiliate of a buyer from respondent Shell Oil Co. solely for use by such affiliate, or sales by an organization for use in vehicles identified by its trade name, such as sales by a cooperatively-owned taxicab company of such products for use in the taxicabs of its members.

The term "selling to any user," as used in this order, does not include sales for delivery to a business location which is primarily a reseller operation with respect to petroleum products and where only an insubstantial percentage of such deliveries are used by the purchaser.

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, Shell Oil Co., Premier Cab Association, Inc., and Washington Cab Association, Inc., shall, within sixty (60) days after service of this order upon them, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order contained in the aforesaid initial decision as modified.

IN THE MATTER OF

RANSOHOFF'S, INC.

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

Docket 6851. Complaint, July 25, 1957—Decision, Apr. 3, 1958

Consent order requiring a furrier in San Francisco 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 the names of animals producing the fur in certain products, represented prices as reduced from regular prices which were in fact fictitious, and used comparative prices and percentage savings claims not based on current market values; and by failing to maintain adequate records as the basis for such purported pricing claims.

Mr. John J. McNally for the Commission.

Livingston & Borregard, by *Mr. Lawrence Livingston*, of San Francisco, Calif., for respondent.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondent with misbranding and falsely and deceptively invoicing and advertising certain of their fur products, in violation of the Fur Products Labeling Act and the rules and regulations promulgated thereunder, and in violation of the Federal Trade Commission Act.

After the issuance of the complaint, respondent, its 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 of the Commission's Bureau of Litigation, and thereafter transmitted to the hearing examiner for consideration.

The agreement states that respondent Ransohoff's, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 259 Post Street (incorrectly spelled in the complaint as Host), San Francisco, Calif.; that during the times material to the charges of the complaint herein, respondent's fur department was leased to Teitelbaum Furs, a California corporation with its office and principal place of business located at 414 North Rodeo Drive, Beverly Hills, Calif.; that said lessee, as the operator or concessionaire of said fur department, hired its own employees, purchased, invoiced, labeled, tagged and sold all fur products, prepared all advertisements and

generally conducted said fur department as if it were its own retail business, with full responsibility for the operation thereof, subject to compliance with respondent's merchandising and other store policies; and that said lease was terminated on June 18, 1956.

The agreement provides, among other things, that the 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; 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; that the complaint 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 the respondent that it has 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.

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 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 Fur Products Labeling Act and the rules and regulations promulgated thereunder, and 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 Ransohoff's, Inc., a corporation, and its officers, and its representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale, in commerce, or the transportation or distribution in commerce, of fur products, 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 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, or transported or distributed it in commerce;

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

2. Setting forth on labels attached to fur products:

(a) Information required under section 4(2) of the Fur Products Labeling Act and the rules and regulations thereunder, in abbreviated form or in handwriting;

(b) Information required under section 4(2) of the Fur Products Labeling Act and the rules and regulations thereunder mingled with non-required information;

B. Falsely or deceptively invoicing fur products by:

1. Failure 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 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 fur contained in a fur product;

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

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 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. Represents, directly or by implication, that the regular or usual price of any fur product is any amount which is in excess of the prices at which such products, in the recent regular course of business, have been usually and customarily sold by the respondent;

3. Makes use of comparative prices or percentage savings claims unless such comparative prices or percentage savings are based upon current market values or unless a bona fide price at a designated time is stated;

4. Makes pricing claims and representations of the type referred to in paragraphs 2 and 3 above, unless there are maintained by respondent full and adequate records disclosing the facts upon which such claims or representations are based, as required by rule 44(e) of the rules and regulations.

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 3d day of April 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Ransohoff's, Inc., a corporation, 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

NEL-KAYE RECORD CO., INC., ET AL.

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

Docket 7012. Complaint, Dec. 27, 1957—Decision, Apr. 3, 1958

Order dismissing without prejudice, for failure to obtain service on respondents, complaint charging sellers in New York City with representing falsely in advertising that they had complete stocks of long-playing phonograph records always available and that purchasers of their records were afforded substantial savings.

Mr. Floyd O. Collins supporting the complaint.
No appearance for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

On December 27, 1957, the Federal Trade Commission issued a complaint in this proceeding alleging that Nel-Kaye Record Co., Inc., a corporation, Jack Nelson and Eugene Kestenbaum, individually and as officers of Nel-Kaye Record Co., Inc., have violated the provisions of the Federal Trade Commission Act in the advertising and sale of phonograph records.

Copies of the complaint were sent to the respondents by registered mail and were returned to the Commission by the postal authorities with the notation "Removed—Left No Address."

Subsequently, representatives of the Commission have attempted to obtain personal service on respondents but were unable to locate any of the individual respondents. The respondent corporation is reported to be in bankruptcy.

On February 27, 1958, counsel supporting the complaint filed a motion addressed to the hearing examiner in this proceeding setting out the facts recited above and requesting 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 Commission to take such further action in the future against the respondents or either of them 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 did, on the 3d day of April 1958, become the decision of the Commission.

IN THE MATTER OF

FURS BY KODA, INC., ET AL

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

Docket 6846. Complaint, July 22, 1957—Decision, Apr. 4, 1958

Consent order requiring a furrier in New York City to cease violating the Fur Products Labeling Act by failing to label certain fur products as required, and by invoicing which did not set forth the terms "second-hand" and "used fur" where applicable, and which failed in other respects to conform to requirements of the Act.

Mr. John T. Walker for the Commission.
Mr. Jack Siskel, of New York, N.Y., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (hereinafter referred to as the Commission) on July 22, 1957, issued its complaint herein under the Federal Trade Commission Act, and the Fur Products Labeling Act against the above-named respondents Furs by Koda, Inc., a corporation, and Albert Gershberg, individually and as president of said corporation. The complaint charges respondents with having violated in certain particulars the provisions of said acts and the rules and regulations promulgated under the Fur Products Labeling Act. The respondents were duly served with process.

On February 7, 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 respondents, their counsel, and counsel supporting the complaint, under date of February 1, 1958, and subject to the approval of the Bureau of Litigation of the Commission. Such agreement had been thereafter duly approved by the director and assistant director of 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 Furs by Koda, 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 111 West 29th Street, New York, N.Y.

Respondent Albert Gershberg is president of said corporate respondent. His office and principal place of business is that of the corporate respondent.

2. Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, the Federal Trade Commission on July 22, 1957, issued its complaint in this proceeding against respondents, and a true copy was thereafter duly served on respondents.

3. Respondents admit all the jurisdictiomal 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 of this proceeding as to all parties.

5. Respondents waive:

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

b. The making of findings of fact or conclusions of laws; and

c. 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.

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.

The parties have further specifically agreed that the proposed order to cease and desist included in said agreement may be entered in this proceeding by the Commission without further notice to respondents; that when so entered it shall have the same force and effect as if entered after a full hearing; that it 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.

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, however, unless and until it becomes 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 persons of each of the respondents herein; that the complaint states a legal cause for complaint under the Federal Trade Commission Act and the Fur Products Labeling Act and the rules and regulations promulgated by the Commission under the latter act, against each of the respondents both generally and in each of the particulars 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 just disposition of all of 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 Furs by Koda, Inc., a corporation, and its officers and Albert Gershberg, individually and as an officer of said corporation, and their representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or manufacture for introduction into commerce, or the sale, or offering for sale, in commerce, or the transportation or distribution in commerce of any fur product, or in connection with the manufacture for sale, sale, advertising, offering 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:

A. Misbranding fur products by:

1. Failing to affix labels to 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, or transported or distributed it in commerce.

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

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 paws, tails, bellies, or waste fur when such is the fact.

(e) The name and address of the persons issuing such invoice.

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

(g) That the fur products contain secondhand used fur when such is the fact.

(h) The item number or mark assigned to 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 4th day of April 1958, become the decision of the Commission; and, accordingly:

It is ordered, That Furs by Koda, Inc., a corporation, and its officers and Albert Gershberg, 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

ROYAL OIL CORP. ET AL.

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

Docket 6702. Complaint, Jan. 8, 1957—Decision, Apr. 7, 1958

Order requiring a concern in Baltimore, Md., engaged in reclaiming used oil obtained from drainings of motor crankcases and in selling it, as such or blended with new oil, to dealers for resale to the purchasing public in containers similar to those used for new oil with the single word "Re-Processed" to indicate its nature, to cease selling reclaimed oil without disclosing such prior use in advertising and sales promotional material and by a clear and conspicuous statement on the containers.

Mr. John W. Brookfield, Jr., supporting the complaint.

Mr. Harry D. Kaufman and Mr. Joseph S. Kaufman of Baltimore, Md., for respondents.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

Commission complaint, issued January 8, 1957, charged respondents with the violation of the Federal Trade Commission Act through the sale of reclaimed used motor oil without disclosure that the oil had been previously used. The complaint further alleges that the oil is sold in containers of the same general size, kind and appearance as those used for new oil; that while the containers are labeled "Re-Processed" the use of this term does not constitute a disclosure that the oil is reclaimed, used oil.

The answer admits the corporate setup and that the corporate respondent is engaged in "commerce" in the sale and distribution of used reprocessed lubricating oil. Little else is admitted.

Hearings were held in Baltimore, Md., Raleigh and Salisbury, N.C., for the purpose of hearing evidence in support of the allegations of the complaint. Counsel supporting the complaint rested his case-in-chief at the end of the hearing in Salisbury. Respondents then filed motion to dismiss with supporting brief, which was opposed by counsel supporting the complaint who filed answering brief. The motion to dismiss was denied. Respondents then rested their case without offering any additional evidence. The matter is now before the hearing examiner for an initial decision upon the record including proposed findings as to the facts, conclusions of law and order filed by both sides. All proposed findings and conclusions not found or adopted herein are hereby specifically rejected.

FINDINGS OF FACT AND CONCLUSIONS

1. Respondent Royal Oil Corp. is a corporation organized and existing under the laws of the State of Maryland and having its

principal place of business located at 2100 Gable Avenue, Baltimore, Md. Respondents Alden C. Jocelyn (called Jocelin in the complaint), Joseph A. Inciardi, and Irving H. Weil are individuals and the officers of the corporate respondent. Respondents Jocelyn and Inciardi devote their full time to the business and are responsible for the policies, acts and practices of the corporate respondent, but respondent Irving H. Weil is not responsible for such policies, acts, or practices.

2. The corporate respondent for more that 2 years last past has, among other things, been engaged in the business of buying previously used motor oil, drained from the crankcases of automobiles, treating it at their plant in Baltimore, Md. and selling and distributing such oil to dealers in other states for resale to the purchasing public. The corporate respondent sells and has sold and shipped such oil from its plant in Baltimore, Md. to dealers in North and South Carolina, Virginia, and Georgia. Sales of the corporate respondent of such oil to dealer customers in other states during each of the years 1954, 1955, and 1956 was approximately $120,000 per year.

3. In the course and conduct of its business the corporate respondent is engaged in competition with other concerns selling and distributing motor oil in commerce between and among the states named.

4. The corporate respondent sells said oil in sealed cans under two brand names, "Jet" and "Lubex." It is put up and sold in quart cans bearing the following wording on the cans of lubex oil:

RE-PROCESSED MOTOR OIL (In letters ½ inch high)
1 U.S. Quart
Lubex Motor Oil
The Royal Oil Corporation
Baltimore 30, Maryland

Lubex's Protection
*
High Viscosity Index
*
Sludge Free
*
Longer Wear
*
Less Carbon
*
Gas Saving
*
Faster Starting
S.A.E. 30

5. The cans of Jet Oil bear the following wording:

Contents 1 U.S. Quart

JET RE-PROCESSED MOTOR OIL (In letters ½ inch high)

Jet Motor Oil
Refinery Sealed
For Your
Protection

*

High heat resistance,
low cold test and
fast starting
makes Jet Motor Oil
economical, safe and
dependable

*

Royal Oil Corporation
Baltimore 30, Maryland
S.A.E. 30

6. There is no difference between "Jet" and "Lubex" oil. The contents of the cans are identical. The cans themselves are not distinctive in shape from cans in which motor oil made from crude oil that has not been previously used, is sold.

7. In Raleigh and Salisbury, N.C., witnesses were called who testified that they preferred new oil over oil made from previously used motor oil that had been reprocessed or reclaimed. There was no testimony to the contrary. This testimony is sufficient to establish a prima facie case of public preference for new oil over oil made from previously used oil that has been reprocessed or reclaimed. Respondents do not challenge its sufficiency for that purpose.

8. The quality of "Jet" and "Lubex" oil is not an issue in the case. If there is a public preference for new oil over oil made from previously used oil the public is entitled to get what it chooses, regardless of the reasons for the choice.[1]

9. This case therefore turns on the question of whether the labeling on the cans of "Jet" and "Lubex" oil has the capacity and tendency to deceive a substantial portion of the purchasing public into thinking that the oil was made from oil that had not been previously used. Respondents contend that the word "Re-Processed" on each can of oil is sufficient to apprise purchasers and prospective purchasers that the oil is made from previously used oil.

10. Counsel supporting the complaint, over the objection of respondents, introduced testimony of witnesses at the hearings in Raleigh and Salisbury to show that the word "Re-Processed" on the cans of

[1] *F.T.C. v. Algoma Lumber Co., et al*, 291 U.S. 67.

"Jet" and "Lubex" oil was not sufficient to apprise them of the fact that the oil was made from previously used motor oil. Such testimony was not necessary.[2]

11. The State of North Carolina, one of the States into which the corporate respondent ships its "Jet" and "Lubex" oil has a statute passed in 1953 defining re-refined and reprocessed oil as lubricating oil for use in internal combustion engines which has been re-refined or reprocessed in whole or in part from previously used lubricating oil. This same statute makes it a misdemeanor to offer for sale, sell, or deliver in the State of North Carolina re-refined or reprocessed oil as above defined in a sealed container unless the container bears a label on which shall be expressed the brand or trade name of the oil and the words "Re-Processed Oil" in letters at least one-half inch high; the name and address of the person, firm, or corporation who has re-refined or reprocessed said oil or placed it in the container; the S.A.E. viscosity number and the net contents of the container.

12. Prior to the passage of the North Carolina Act mentioned above, the corporate respondent had been selling its "Jet" and "Lubex" oil in North Carolina and elsewhere without the cans being labeled "Re-Processed." Immediately after the act became effective the corporate respondent recalled from North Carolina all its cans of oil and replaced them with cans labeled "Re-Processed Oil" in letters one-half inch high. Said respondent in its new labeling of its cans made every effort to comply with the North Carolina statute and has continued to sell in North Carolina with no complaint from the North Carolina authorities.

13. From the effective date of the North Carolina statute all "Jet" and "Lubex" oil sold by the corporate respondent in other states has been sold in containers labeled like those in which the oil is sold in North Carolina.

14. Respondents contend that because the statute of North Carolina defines "Re-Processed" oil and how it shall be labeled, the Commission has no power to pass on the question of whether such labeling reveals that "Jet" and "Lubex" oil is made from previously used oil.

15. If respondents' oil was made in and sold only in North Carolina and did not cross State lines the Commission would have no power to inquire as to whether it was properly labeled. The fact that the oil is sold and shipped from one state to another gives the Commission the authority for the present inquiry. The fact that North Carolina has such statute is merely a circumstance to be considered, along with other circumstances in determining whether respondents' label-

[2] *Zenith Radio Corp.* v. *F.T.C.*, 143 F. 2d 29.

ing has the capacity and tendency to deceive. Respondent also sells in South Carolina, Virginia, and Georgia. While it is not decisive of this case the State of Georgia has a statute requiring such oil to be labeled "used and reclaimed." Some other States have statutes on the subject and some do not. These are all circumstances to be considered by the Commission.

16. Respondents however challenge the right of the Commission to consider any statute on the subject not in evidence claiming it to be contrary to the Federal rules of civil procedure. This challenge was also made during the hearing. Of course the Commission is not bound by the Federal rules of civil procedure. However research indicates that the courts of the United States take judicial notice of the laws of any state of the Union whether depending upon *statute* or judicial opinion.[3] Since no Federal rule has been cited in support of the position taken and some of the court decisions taking judicial notice of the statute of a State have been since the adoption of the current Federal rules of civil procedure, the point is decided against respondents. As stated above the statutes of other states are not decisive of the case, but may be considered by the Commission.

17. In the passage of the Wool Products Labeling Act of 1939, Congress did not think that the term "re-processed" should be used to describe wool made from fibers that were part of a wool product that had been previously used. The term "reused wool" is required to describe such product.

18. The hearing examiner has been unable to find a dictionary that gives the definition of re-processed as a separate word. "Process" is defined by Webster's New International Dictionary, 2d edition, unabridged, as "a series of actions, motions or occurrences; progressive act or transaction; continuous operation or treatment; as the process of vegetation or decomposition; a chemical process * * *." There are also other definitions but the definition of a chemical process is one that seems most applicable to the question presented. Similarly, while there are other definitions of the word "re" the only applicable one is that of a prefix illustrated as follows: "Again, used chiefly to form words, especially verbs of action, denoting in general repetition (of the action of the verb) or restoration (to a previous state) * * *." From these definitions, "reprocessed" as applied to oil may mean oil that has been put through a chemical process again, which we know without resorting to the dictionary. For all the labeling on the can tells us the product may have been used in between the two processings or it may not. Advertisements which are capable of two

[3] *Lamar* v. *Micou* 114 U.S. 218, 223; *Southern Ry.* v. *O'Dell* 252 F. 540, 543; *Jackman* v. *Union Pac. R. Co.* 4 F.R.D. 172 (1944); *Fleming et al.* v. *Wabash R. Co.*, 8 F.R.D. 419 (1948)

meanings, one of which is false, are misleading.[4] With public knowledge of the extra refining of gasoline to increase its power "re-processed" oil may mean to some purchasers and prospective purchasers that this oil had had extra processing without ever having been used.

19. The Commission has in previous cases insisted upon a form of advertising clear enough so that in the words of the prophet Isaiah "Wayfaring men though they be fools, shall not err therein." Further, that the law was made "for the protection of the public—that vast multitude which includes the ignorant, the unthinking, and the credulous." [5] Respondents' labeling of their cans does not meet this standard of clarity.

20. Another defense raised by respondents is that an order to cease and desist from the practices complained of would be inconsistent with the findings of the hearing examiner in the *Pennsylvania Oil Terminal* case, reported in 48 F.T.C. decisions at page 356 and the initial decision in the matter of *Mohawk Refining Corp., et al.*, docket No. 6588. In neither of those cases did the cans of oil have any labeling different from the labeling on cans of oil made from crude oil that had not been previously used.

21. The orders to cease and desist in each of those cases required labeling on the cans to disclose to purchasers and prospective purchasers that the oil was made from previously used oil. Here the finding is that the word "Re-Processed" on the cans of oil in this case is not sufficient to disclose to a substantial portion of purchasers and prospective purchasers that the oil was made from previously used oil. In a recent initial decision by Hearing Examiner Pack, he found that the labeling of such cans of oil with the words "Guaranteed Re-Refined" was not sufficient to apprise the public that the oil was made from previously used oil.[6]

22. The aforesaid acts and practices of the corporate respondent and of the individual respondents Alden C. Jocelyn and Joseph A. Inciardi, who control the acts and practices of the corporate respondent, and their failure to adequately disclose that their oil has been reclaimed from previously used lubricating oil, have had and now have the tendency and capacity to mislead and deceive a substantial number of members of the purchasing public into the erroneous and mistaken belief that their said oil was made from new and unused oil and to induce the purchasing public to purchase substantial quantities of respondents' said product because of such erroneous and mistaken

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[4] *Rhodes Pharmacal Co.* v. *F.T.C.* 208 F. 2d 382, 387; *U.S.* v. *95 Barrels of Vinegar* 265 U.S. 438, 442.

[5] *Charles of the Ritz* v. *F.T.C.*, 143 F. 2d 676–680; *General Motors Corp.* v. *F.T.C.*, 114 F. 2d 33.

[6] In the Matter of *Salyer Refining Co., Inc., et al.*, docket No. 6339, initial decision issued September 3, 1957

belief. As a result thereof substantial trade in commerce has been and is being unfairly diverted to respondents from their competitors and substantial injury has been and is being done to competition in commerce. Furthermore, the said acts of said respondents serve to place in the hands of dealers a means and instrumentality whereby such persons may mislead the purchasing public with respect to the nature and origin of respondents' said product.

23. The aforesaid acts and practices of said respondents as hereinabove set forth 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.[7]

ORDER

It is ordered, That respondent Royal Oil Corp., a corporation, and its officers, and respondent Irving H. Weil as an officer of said corporate respondent, and respondents Alden C. Jocelyn (erroneously referred to in the complaint as Alden C. Jocelin) and Joseph A. Inciardi, individually and as officers of said corporate respondent, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of lubricating oil, do forthwith cease and desist from:

(1) Advertising, offering for sale or selling, any lubricating oil which is composed in whole or in part of oil which has been reclaimed or in any manner processed from previously used oil, without disclosing such prior use to the purchaser or potential purchaser in advertising and in sales promotion material, and by a clear and conspicuous statement to that effect on the container;

(2) Representing in any manner that lubricating oil composed in whole or in part of oil that has been manufactured, reprocessed, or re-refined from oil that has been previously used for lubricating purposes, has been manufactured from oil that has not been previously used.

It is further ordered, That this proceeding be, and the same hereby is, dismissed as to respondent Irving H. Weil in his individual capacity.

[7] For other related Commission cases, see: *Westville Refining Inc.*, docket No. 4370; 36 F.T.C. decisions 402; *Penn Lube Oil Products Co.*, docket No. 4524; 34 F.T.C. decisions 1049; *Dabrol Products Corp., et al.*, docket No. 5656; 47 F.T.C. decisions 791; *High Penn Oil Co., Inc.*, docket No. 6492, not yet in bound volume; *Double Eagle Refining Co., et al.*, docket No. 6432, not yet in bound volume.

OPINION OF THE COMMISSION

By Anderson, Commissioner:

This is an appeal by the respondents from an initial decision of the hearing examiner holding that the respondents named in that decision's order to cease and desist have violated the Federal Trade Commission Act by failing to disclose that the motor oil which they distribute in commerce is oil made from previously used oil.

The respondents purchase crankcase drainings discarded by motorists at service stations when changing their oil. These and other waste oils are subjected to processing for removing their impurities at the respondents' plant in Baltimore. The oil then is sold to dealers and others under the brand names Jet and Lubex, which products are identical, and shipped in commerce in metal cans similar in size and shape to those customarily used for displaying virgin or new oils to the public at filling stations and garages. Respondents have been selling substantial amounts of oil to purchasers located in North Carolina; and after that State enacted legislation in 1953 pertaining to the marketing of oils made from previously used lubricants, the respondents added the text "Re-processed Motor Oil" to letters one-half inch high to the containers for their Jet product and "Re-processed Oil" in the like sized lettering was imprinted on the Lubex containers. The foregoing matters are not in dispute. All oil currently shipped by the respondents carries these labels; and those for Lubex oil include the words "Longer Wear," "Less Carbon," "Gas Saving." Those for Jet oil state it is "Refinery Sealed For Your Protection."

The hearing examiner held that, notwithstanding the labels' inclusion of the word "re-processed," such labels are ambiguous and confusing in their import and have not served to adequately disclose to the public that the respondents' lubricants are made from previously used oil. In excepting thereto and to the initial decision's related findings that the containers have the capacity and tendency to induce purchasers of respondents' product under mistaken beliefs that it is new or virgin oil, respondents argue that a clear understanding as to the nature of respondents' oil was evinced by members of the public called by counsel supporting the complaint. One of the public witnesses testified to his belief that the word "re-processed" signified used oil which has been reworked. On the other hand, it is equally clear that others had not shared in that understanding and their confusion as to the meaning of "re-processed" as descriptive

for a motor oil is plainly evident from the record. The appeal's contention that the overall import of the testimony of those witnesses attested to a clear understanding as to the nature of respondents' oil is not tenable.

Included among the record matters supporting the hearing examiner's findings that the labeling practices have the capacity to mislead and deceive is the record's clear showing that a marked preference exists among a substantial segment of the purchasing public for oils refined from crude over those processed from waste lubricants. Oils refined from crude have long been accepted by the consuming public. The public's awareness that great technological advances are being achieved in the fields of the applied sciences, including that dealing with the refining and treating of petroleum products for meeting the demands of today's high compression motors, is, of course, common knowledge. Hence the labels may serve to suggest and imply that respondents' oil is new oil which has been subjected to additional processing for enhancing its performance and lubricating qualities. We think that the record supports informed determinations that the containers reasonably represent and imply to a substantial segment of the consuming public that respondents' oil is oil processed from crude instead of oil made from waste lubricants. Respondents' contentions that the hearing examiner erred in reaching conclusions similar to those noted above are without merit; and it is our view also that the hearing examiner was correct in additionally holding that the respondents have placed in the hands of dealers a means and instrumentality whereby they may mislead the purchasing public with respect to the nature and origin of the product.

The appeal also argues that public interest is lacking in this proceeding inasmuch as the respondents' product affords excellent lubrication. The quality of that oil is not an issue here. Substitution is unlawful, even though a qualitative equivalence be shown, and the consumer is prejudiced if on giving an order for one thing he is supplied with something else. *Federal Trade Commission* v. *Royal Milling Co.*, 288 U.S. 212, 216 (1933); *Federal Trade Commission* v. *Algoma Lumber Co.*, 291 U.S. 67, 77 (1934). Furthermore, where the appearance of a product is such that the consuming public is unable to or finds it difficult to distinguish it from competing merchandise which is the subject of marked consumer preference, the public interest requires that such simulative wares be properly labeled by producers to prevent distributors from exercising deception in their resale. *Mary Muffet, Inc.* v. *Federal Trade Commission*, 194 F. 2d 504, 505 (C.A. 2, 1952).

Respondents have shipped their products to purchasers located in North Carolina, South Carolina, Virginia, and Georgia.[8] Respondents contend that the fact that their labeling is in conformity with the requirements of the North Carolina statute forecloses determinations that they have not adequately disclosed the nature of their oil. The hearing examiner held, however, that the standard approved under that act was but one circumstance to be considered. Deemed relevant and considered by him also was the fact that the States of South Carolina and Virginia have not legislated on the subject and that the State of Georgia has enacted a statute [9] requiring oil derived from previously used oil to be labeled "used and reclaimed." We think the hearing examiner correctly held that the standards of local North Carolina law and respondents' conformity thereto, while relevant, were not necessarily controlling, and that decision here as to impressions reasonably engendered by respondents' containers was to be made with due regard to all relevant record facts.

Respondents further argue that approval of the hearing examiner's order would impose regulatory requirements contrary to the laws of a sovereign state and, hence, would be erroneous. While the several states have plenary power to regulate interstate commerce within their boundaries, it is established constitutional doctrine that Congress has exclusive jurisdiction over interstate commerce. *Gibbons* v. *Ogden*, 9 Wheat. 1; *Robbins* v. *Taxing District*, 120 U.S. 489. Under the organic act, Congress has empowered the Commission to prevent the use in commerce of unfair methods of competition and unfair and deceptive acts and practices; thus, the Commission has authority to act in this proceeding. Furthermore, the initial decision's order would not preclude the respondents' continued use of the word "reprocessed" on their containers if clear disclosure were otherwise made as to the oil being processed from previously used oil. The

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[8] Respondents contend a failure of proof respecting sales in Georgia, but the hearing examiner's conclusions as to such sales have sound record basis. Respondent Alden C. Jocelyn, president of the corporate respondent, testified that sales had been made in Georgia and subsequently explained that the company had customers in Georgia, although selling to no brokers there; and respondent Joseph A. Inciardi, vice president of the corporate respondent, testified that both Lubex and Jet oil had been sold in that State and named Georgia Oil Co., Atlanta, as a customer.

[9] The appeal urges error by the hearing examiner in recognizing the existence of the Georgia enactment inasmuch as no documentary or oral evidence relating to it was introduced into the record. This exception has no merit. The courts of the United States may take judicial notice of the laws of any State of the Union. *Lamar* v. *Miscou*, 114 U.S. 218, 223 (1885); *Fleming, et al.* v. *Wabash R. Co.*, 8 F.R.D. 419 (1948). Furthermore, respondents' brief contains no showing that the interpretation accorded by the hearing examiner to the Georgia law was erroneous or showing of other prejudice to them.

exceptions [10] presented under this aspect of the appeal are without merit.

Rejected also is respondents' contention that the initial decision must be regarded as erroneous because inconsistent with the Commission's decision in the matter of *Pennsylvania Oil Terminal, Inc.*, 48 F.T.C. 356 (decided Oct. 4, 1951). The appeal construes that case to hold that the word "re-processed" constitutes an adequate disclosure as to the nature of the reclaimed products being distributed there. Assuming the appeal's interpretation to be correct, decisions subsequently issued by the Commission do not reflect that view. Furthermore, the orders adopted in them nowise countenance "re-processed" as an adequate designation of oil made from previously used lubricants. In the matters of *High Penn Oil Co., Inc., et al.*, docket No. 6492 (decided Sept. 14, 1956); and *Salyer Refining Co., Inc., et al.*, docket No. 6339; *Frank A. Kerran, et al.*, docket No. 6432; and *Mohawk Refining Corp., et al.*, docket No. 6588 (all decided Feb. 14, 1958).

We also have considered the order contained in the initial decision. Its requirement that a disclosure be set forth on the respondents' containers as to their oil being processed in whole or part from previously used oil is appropriate and has sound record basis. We deem it deficient, however, in failing to require that the facts in that respect be similarly disclosed in advertising and promotional matter additional to that appearing on the containers, if used in the future conduct of respondents' business. In the matters of *Salyer Refining Co., et al.*; *Frank A. Kerran, et al.*; and *Mohawk Refining Corp., et al., supra.*

The respondents' appeal is denied and the initial decision, modified as noted above, is adopted as the decision of the Commission.

Commissioner Kern did not participate in the decision herein.

FINAL ORDER

This matter having been heard by the Commission upon the respondents' appeal from the initial decision of the hearing examiner and the Commission having determined, for reasons stated in the accompanying opinion, that said appeal should be denied and that the order contained in the initial decision should be modified:

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[10] A related argument, likewise based on North Carolina's having adopted legislation, asserts error by the hearing examiner in permitting citizens of that State to testify in alleged attempted impeachment of that statute's definition. That enactment imposes criminal penalties for its violation. That a statute invoking civil sanctions and a criminal statute bearing on a related subject may impose different standards of conduct does not impugn the legislative standards of either. The testimony of the challenged witnesses was relevant to the issues of this proceeding; and being members of the public of the United States, their testimony was competent and properly received.

It is ordered, That the appeal from the initial decision be, and it hereby is, denied.

It is further ordered, That the order contained in the initial decision be, and it hereby is, modified to read as follows:

It is ordered, That respondent Royal Oil Corp., a corporation, and its officers, and respondent Irving H. Weil as an officer of said corporate respondent, and respondents Alden C. Jocelyn (erroneously referred to in the complaint as Alden C. Jocelin) and Joseph A. Inciardi, individually and as officers of said corporate respondent, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of lubricating oil, do forthwith cease and desist from:

(1) Advertising, offering for sale or selling, any lubricating oil which is composed in whole or in part of oil which has been reclaimed or in any manner processed from previously used oil, without disclosing such prior use to the purchaser or potential purchaser in advertising and in sales promotion material, and by a clear and conspicuous statement to that effect on the container;

(2) Representing in any manner that lubricating oil composed in whole or in part of oil that has been manufactured, reprocessed or re-refined from oil that has been previously used for lubricating purposes, has been manufactured from oil that has not been previously used.

It is further ordered, That this proceeding be, and the same hereby is, dismissed as to respondent Irving H. Weil in his individual capacity.

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

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

Commissioner Kern not participating.

IN THE MATTER OF

MERRILL HAIR & SCALP CONSULTANTS, INC., ET AL.

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

Docket 6803. Complaint, May 16, 1957[1]*—Decision, Apr. 11, 1958*

Order dismissing—for the reason that the two principal respondents had moved to Australia and were not available as witnesses and the two remaining had not been associated with the corporate respondents for many months, and such corporations were no longer operating—complaint charging two affiliated companies with misrepresenting the benefits of their hair and scalp preparations.

Mr. Harold A. Kennedy and *Mr. Thomas F. Howder* for the Commission.

Mr. Richard M. Welling, of Charlotte, N.C., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

Counsel in support of the complaint have filed a motion to dismiss the complaint in the above-entitled proceeding, and, in support of said motion, state that:

1. The two principal individual respondents, William L. Keele and Jimmie Merrill Keele, have moved to Australia and are not available as witnesses;

2. Only one of the two principal respondents, William L. Keele, was served with the complaint;

3. The one principal respondent served with the complaint in this matter, William L. Keele, was also named in docket 6589 involving substantially the same charges, and will undoubtedly be subject to any cease-and-desist order issued in such case;

4. It appears that the two remaining individual respondents, Glenn O. Abbott and John Benton Saunders, have not been associated with either of the corporate respondents for many months; and

5. Counsel supporting the complaint are now advised that the two corporate respondents named in this proceeding are not now operating in the United States.

No evidence having been presented in this proceeding, and it appearing that said motion is reasonable and proper under the circumstances stated,

It is ordered, That the complaint herein be, and the same hereby is, dismissed without prejudice to the right of the Commission to take such further action as circumstances may warrant.

[1] Amended September 12, 1957.

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 11th day of April 1958, become the decision of the Commission.

IN THE MATTER OF

BOSTWICK LABORATORIES, INC., ET AL.

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

Docket 6853. Complaint, July 26, 1957—Decision, Apr. 15, 1958

Consent order requiring a concern in Bridgeport, Conn., to cease representing falsely in advertising that use of its product "Hep Oven Cleaner" would enable a housewife to clean her oven with just a wipe of a damp cloth.

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

Weil, Gotshal & Manges, of New York, N.Y., by *Mr. Ira M. Millstein*, 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 through the making of certain representations regarding an oven-cleaning preparation sold by them. 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 appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued:

1. Respondent Bostwick Laboratories, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its office and principal place of business located at 706 Bostwick Avenue, Bridgeport, Connecticut. Individual respondents A. O. Samuels and Jack Schenberg are president and vice president, respectively, of the corporate respondent and have the same address as that of the corporate respondent.

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 Bostwick Laboratories, Inc., a corporation, and its officers, and A. O. Samuels and Jack Schenberg, 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 of the product "Hep Oven Cleaner" or any other products containing substantially the same ingredients or possessing substantially the same properties, whether sold under the same or any other name, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that after spraying respondents' product on the surfaces of household ovens said ovens can be effectively cleaned without hard scrubbing, or by wiping off with a damp cloth, sponge, or any like material, unless it is clearly and conspicuously disclosed that steel wool, scouring pads or like abrasive products must be used in cases of heavy, stubborn or baked-on soil.

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 did, on the 15th day of April 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.

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IN THE MATTER OF

INTERNATIONAL STITCH-O-MATIC CORP. ET AL.

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

Docket 6929. Complaint, Nov. 6, 1957—Decision, Apr. 15, 1958

Consent order requiring a distributor of sewing machines in Chicago to cease representing falsely, mainly by means of advertising mats placed in the hands of resellers of its products or by itself placed directly with newspapers, that highly exaggerated amounts were the usual retail price for their machines, that their sale price afforded large, or any, savings to purchasers, that the machines were nationally advertised in McCall's Magazine, and that they were backed by a "money-back" guarantee purportedly lasting 25 years but actually for only the few hours of the sale, and by a 25-year guarantee on the entire machine when in fact no parts were guaranteed at all except the motor and motor accessories, and they were guaranteed for 1 year.

Mr. Alvin D. Edelson for the Commission.

Froelich, Grossman, Teton, and *Tabin,* by *Mr. Seymour Tabin,* of Chicago, Ill., 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, International Stitch-O-Matic Corp., a corporation, and Seymour Ratner, 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.

On Feb. 19, 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 Seymour Ratner, both individually and as an officer of the corporate respondent, and attorneys for both parties, under date of February 13, 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 section 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 International Stitch-O-Matic Corp. is a corpora-

tion, organized and existing under and by virtue of the laws of the State of Illinois, with its offices and principal place of business at 657 West Randolf Street, Chicago, Ill.

The individual respondent, Seymour Ratner, is president of the aforesaid corporate respondent and maintains his business address at the same address as the corporate respondent.

2. Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on November 6, 1957, issued its complaint in this proceeding against respondents, and a true copy was thereafter duly served on respondents.

3. 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 of this proceeding as to all parties.

5. 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 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.

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 International Stitch-O-Matic Corp., a corporation, and its officers, and Seymour Ratner, 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 sewing machines, or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing in any manner that certain amounts are the regular and usual retail prices of their sewing machines, or other merchandise, when such amounts are in excess of the price at which the respondents themselves, or their distributors, dealers, or others regularly and usually sell said sewing machines or other merchandise at retail;

2. Representing in any manner that a purchaser will effectuate a savings by buying respondents' sewing machines, or other merchandise, from respondents, themselves, or from particular dealers, or distributors, or others who sell respondents' products at retail, unless such is the fact;

3. Representing in any manner that their sewing machines, or other merchandise, has been or is being advertised in certain magazines, or in, or through other specific advertising media, when such is not the fact;

4. Representing, directly or by implication, that their machines are guaranteed for a specific period, or are entirely or fully guaranteed, without affirmatively and clearly disclosing any significant limitations upon such guarantees;

5. Placing in the hands of their distributors, dealers, or others who retail their sewing machines or other merchandise, the means of carrying out any misrepresentations as outlined in the foregoing four paragraphs, or putting into operation any plan whereby dealers, distributors, and others who sell respondents' sewing machines, or other merchandise at retail, may make misrepresentations as outlined in the foregoing four paragraphs.

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 did, on the 15th day of April 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondents International Stitch-O-Matic Corp., a corporation, and Seymour Ratner, 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.