IN THE MATTER OF

LEO O. JOHNSON DOING BUSINESS AS JOHNSON HAIR & SCALP CLINIC ET AL.

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

Docket 6497. Complaint, Jan. 18, 1956—Decision, June 10, 1958

Order requiring individuals with main office in New Orleans, La., and operating hair and scalp clinics also in several other States, to cease representing falsely in advertising that use of their hair and scalp preparations would prevent or overcome baldness or excessive hair loss or induce the hair to grow or become thicker, without clearly revealing that the great majority of cases of excessive hair fall and baldness are stages of male pattern baldness, and that in such cases the preparations would be of no value; and to cease representing that respondent Johnson was America's foremost professional authority on hair and scalp disorders, and that respondents and their agents were trichologists.

Harold A. Kennedy, Esq., for the Commission.

James I. McCain, Esq., of New Orleans, La., for respondent Leo O. Johnson.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

STATEMENT OF THE CASE

On January 18, 1956, the Federal Trade Commission issued its complaint against Leo O. Johnson, an individual doing business as Johnson Hair & Scalp Clinic, and William G. Thompson, Harry B. Hause, and Charles L. Anderson, individually (all except Hause hereinafter collectively called respondents), charging them with disseminating false advertisements in violation of sections 5 and 12 of 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 on respondents. Service was not obtained upon Harry B. Hause, and accordingly the complaint against him will be dismissed without prejudice.

The complaint alleges in substance that respondents in connection with the operation of their hair and scalp clinics in various cities of the United States, disseminated or caused to be disseminated false advertisements by the United States mails and various other means in commerce, for the purpose of inducing the purchase of cosmetic preparations used by them in the operation of their clinics. Respond-

ent Johnson appeared by counsel and filed an answer admitting the operation of the clinic in New Orleans, the sale of various cosmetics in connection therewith, and most of the advertising excerpts set forth in the complaint, but denying any false advertisements or violations of the act. Respondents Thompson and Anderson neither filed answers to the complaint nor appeared at the hearings, and accordingly are found in default and the facts with respect to them are found to be as alleged in the complaint.

Pursuant to notice, hearings were thereafter held at various times and places from September 26, 1956, to April 10, 1957, before the undersigned hearing examiner duly designated by the Commission to hear this proceeding. Prior to the commencement of the hearings, a motion to amend the complaint and a corresponding motion to amend the answer thereto were granted.

The Commission and respondent Johnson were represented by counsel, participated in the hearings and were afforded full opportunity to be heard, to examine and cross-examine the witnesses, to introduce evidence pertinent to the issues, to argue orally upon the the record, and to file proposed findings of fact, conclusions of law, and orders, together with reasons in support thereof. Counsel supporting the complaint filed proposed findings of fact, conclusions of law, and an order, together with reasons in support thereof. Counsel for Johnson did not file proposed findings of fact and conclusions of law, but in lieu thereof filed a brief, contending that the Commission lacks jurisdiction in the matter and requesting the dismissal of the complaint for that reason. Both counsel waived oral argument. All of the findings of fact proposed by counsel supporting the complaint and the conclusions of law proposed by both counsel, 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, Johnson admitted, and it is found that he is an individual doing business as Johnson Hair & Scalp Clinic with his main office and clinic located at 819 Richards Building, 837 Gravier Street, New Orleans, La., since on or about March 1, 1955. The

[1] 5 U.S.C. § 1007(b).

record further establishes, and it is found, that Johnson also had owned, operated, and/or controlled hair and scalp clinics in Detroit, Mich.; Erie, Pa.; Youngstown, Ohio; Canton, Ohio; and Rochester, N.Y. On or about January 31, 1955, respondent Anderson took over the Erie, Pa., clinic and operated it under a franchise from Johnson until it was closed in August of 1955. On or about August 14, 1954, respondent Thompson took over the Canton, Ohio, clinic and operated it under a franchise from Johnson until December 1955. On or about January 31, 1955, Harry B. Hause took over the Youngstown, Ohio, clinic and operated it under a franchise from Johnson until it was closed in December of 1955. Johnson operated the clinic in Rochester during the year 1954. Johnson also owned and operated the clinic in Detroit during 1954 and 1955 until he sold it on October 1, 1955. Respondents Thompson and Anderson operated their clinics under franchise agreements with Johnson whereby they were required to and did use and adopt Johnson's methods, procedures, preparations, advertising, and general business policies. All respondents cooperated and acted jointly in performing the acts and engaging in the practices hereinafter found.

The complaint further alleged, the record establishes, and it is found that respondent Johnson is now, and all of respondents for the past several years have been, engaged in the sale and distribution of various cosmetic preparations for external use in the treatment of conditions of the hair and scalp. Respondents had said preparations compounded for them by the Klinker Manufacturing Co. of Cleveland, Ohio, and caused said preparations to be transported from the place of their manufacture to respondents' clinics located in other States of the United States. Since March 1956, Johnson has had his cosmetic preparations compounded by J. R. Keeny Co. of New Orleans, La.* Respondents have sold their various cosmetic preparations by two methods. First, respondents through extensive newspaper advertising have invited persons to come to their clinics for examination, diagnosis and treatment, whereupon a certain series of treatments were recommended. If such treatments were agreed to, the said preparations were used in the process of such treatments. Second, respondents have sold home treatment kits containing said preparations to persons induced to visit respondents' clinics by said advertisements.

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*The Commission's opinion (see p. 1748 below) states: "To the extent that [the remainder of this paragraph] may hold that the respondents' use of preparations in the course of treatments constituted sales of such preparations, we do not adopt it as a finding of the Commission."

II. The Unlawful Practices

A. *The Issues Framed*

This proceeding is brought under sections 5 and 12 of the act, which in substance prohibit, *inter alia*, the dissemination or causing to be disseminated of any false advertisement by United States mails or in commerce by any means for the purpose of inducing, or which is likely to induce, the purchase of cosmetics.[2] The principal issues are whether respondents caused the dissemination of their advertisements by United States mails or in commerce, and whether or not such advertisements are false.

B. *The Dissemination by United States Mails and in Commerce*

As stated above, this was the only issue raised in the brief of counsel for respondent Johnson, and respondents Anderson and Thompson are in default as to all issues. The record establishes, and it is found, that respondents, in connection with the operation of their various hair and scalp clinics which sold treatments and various cosmetic preparations allegedly designed to prevent and cure baldness, loss of hair and other hair and scalp disorders, caused the insertion in various newspapers, published in the respective cities in

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[2] Section 12 of the act provides as follows:

"SEC. 12. (a) It shall be unlawful for any person, partnership, or corporation to disseminate, or cause to be disseminated, any false advertisement—

"(1) By United States mails, or in commerce by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly the purchase of food, drugs, devices or cosmetics; or

"(2) By any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce of food, drugs, devices, or cosmetics.

"(b) The dissemination or the causing to be disseminated of any false advertisement within the provisions of subsection (a) of this section shall be an unfair or deceptive act or practice in commerce within the meaning of section 5."

For the purposes of sections 12, 13, and 14, section 15 of the act defines the terms "false advertisement" and "cosmetic" as follows:

"(a)(1) The term 'false advertisement' means an advertisement, other than labeling, which is misleading in a material respect; and in determining whether any advertisement is misleading, there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which the advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the commodity to which the advertisement relates under the conditions prescribed in said advertisement, or under such conditions as are customary or usual. No advertisement of a drug shall be deemed to be false if it is disseminated only to members of the medical profession, contains no false representation of a material fact, and includes, or is accompanied in each instance by truthful disclosure of, the formula showing quantitatively each ingredient of such drug.

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"(e) The term 'cosmetic' means (1) articles to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof intended for cleansing, beautifying, promoting attractiveness, or altering the appearance, and (2) articles intended for use as a component of any such article; except that such term shall not include soap."

which such clinics were operated, of numerous advertisements concerning such treatments and cosmetic preparations. Without listing such publications in detail, the record establishes, and it is found, that respondents caused the publication of said advertisements in various of the leading newspapers in New Orleans, Detroit, Erie, Canton, and Rochester. The record further establishes that each of these leading newspapers had substantial circulation both out of State and by means of the U.S. mails.

Respondent Johnson's argument on jurisdiction is that because he had abandoned all of his operations other than New Orleans prior to the issuance of the complaint, and because he had not "caused" the dissemination of his advertisements by United States mails or in commerce, he was neither engaged in commerce within the meaning of the act, nor does the Commission have jurisdiction over him under section 12(a)(1) of the act. As noted above, section 12(a)(1) of the act prohibits the dissemination of any false advertisement by U.S. mails, or in commerce by any means, for the purpose proscribed. It is respondent Johnson's contention that, although the newspapers in which he published his advertisements were distributed by U.S. mails and in commerce by other means, he had no control over such dissemination and therefore did not "cause" it within the meaning of the act. This contention has recently been answered by the Commission in its *O-Jib-Wa* decision,[3] where exactly the same argument was made. The Commission there said:

> This contention is untenable. To accept the interpretation advanced by the respondents would impose sole responsibility for the false advertising of foods, drugs, cosmetics and therapeutic devices upon disseminating media and leave free therefrom the party primarily standing to benefit from such advertising.

The record establishes, and it is found, that respondents caused the dissemination of their advertisements by United States mails and in commerce by other means.

C. *The False Advertisements*

The other principal issue is whether or not such advertisements were false advertisements as defined in section 15(a)(1), *supra*, for the purpose of inducing or which were likely to induce, directly or indirectly, the purchase of cosmetics. As found above, respondents purchased their cosmetic preparations used in their treatments from the Klinker Manufacturing Co., except that after March of 1956, respondent Johnson purchased his cosmetic preparations from J. R.

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[3] *O-Jib-Wa Medicine Co.*, docket No. 6548 (1957).

Keeny Co. The ingredients of the preparations purchased from Klinker were stipulated to be those set forth in the complaint, and the ingredients of the preparations purchased from Keeny are listed in Commission exhibits received in evidence.[4] Without listing here all of the many ingredients of such preparations, the record establishes beyond dispute and it is found that they are cosmetics, as defined in section 15(e) of the act, *supra*. Likewise, there can be no question and it is found that respondents' advertising was for the purpose of inducing and did induce, directly or indirectly, the purchase of such cosmetics.

The complaint included excerpts from ten of respondents' advertisements dealing with representations concerning baldness, the growing of hair, and various scalp disorders. All told, some 32 different advertisements published by respondents in the various newspapers previously mentioned were received in evidence. The complaint alleged that through the various statements and representations contained in the aforesaid advertisements respondents represented, directly and by implication, that by the use of their cosmetic preparations, methods, and treatments itching of the scalp, dandruff, and irritations of the scalp would be permanently eliminated, and that in a great majority of cases, baldness and excessive hair loss would be prevented and overcome, new hair would be induced to grow, and users would be able to maintain a thicker head of hair. It was also alleged that by referring in such advertising to Johnson as "America's foremost professional authority on hair" and by other means, respondents represented, directly and by implication, that Johnson had had professional and competent training in dermatology and other branches of medicine having to do with the diagnosis and treatment of scalp disorders affecting the hair. The complaint further alleged that all of such representations were false, that such advertisements were misleading in material respects and constituted false advertisements as defined in the act, and that such advertisements also were false because of the failure to reveal facts material in the light of such representations, as also required by section 15(a)(1), *supra*.

Without encumbering this decision with numerous excerpts from respondents' advertising, suffice it to say that a careful examination of all of said advertising fairly reveals that respondents did represent in such advertising, directly and by implication, that by the use of their cosmetic preparations, methods and treatments itching of the scalp, dandruff and irritation of the scalp would be permanently

[4] Commission exhibits 35 and 37 A and B.

eliminated, and in the great majority of cases (in fact respondents advertised from 94 to 97 percent of all cases) baldness and excessive hair loss would be prevented and overcome, new hair would be induced to grow, and users would be able to maintain a thicker head of hair.

A preponderance of the reliable and substantial evidence in the entire record establishes and it is found that all of these representations are false and misleading in material respects, and constitute false advertisements as that term is defined in the act. After proving respondents' representations and the particular cosmetics used by them in their treatments, counsel supporting the complaint called two expert witnesses, highly qualified doctors of medicine specializing in dermatology, both of whom testified unequivocally that, regardless of the exact formulae or combination of cosmetic preparations and method of treatment used, respondents' preparations and treatments will not permanently eliminate dandruff, itching, or irritation of the scalp, and in the great majority of cases will not prevent or overcome baldness or excessive hair loss, will not induce new hair to grow, and will not bring about a thicker head of hair. They further testified that the great majority, 95 percent or more, of cases of baldness and excessive hair loss are the common type known as male pattern baldness, for which there is no cure or preventative, including that used by respondents, known to science or medicine.

Respondent Johnson called four witnesses who had previously taken his treatments and used his cosmetic preparations, one of whom was a doctor of medicine but not experienced in dermatology and admittedly unfamiliar with the causes and cures or preventatives, if any, for male pattern baldness. His testimony was in effect that of a user rather than that of an expert. All four of these witnesses said that Johnson's treatment had had some beneficial effect in preventing baldness and alleviating scalp disorders such as itching, dandruff, and irritation. The appearance of their scalps belied their testimony with respect to baldness and hair loss. In any event, it is well established that such testimony based upon lay experience in individual cases is of little value as compared to expert testimony based upon scientific knowledge. The courts have frequently held that such lay testimony is of slight value, and that scientific testimony is that which counts.[5]

The record establishes that respondents' advertisements represented Johnson as a trichologist and as America's foremost professional

[5] *Fulton Co.* v. *F.T.C.*, 130 F. 2d 85 (C.A. 9, 1942); *Irwin* v. *F.T.C.*, 143 F. 2d 316 (C.A. 8, 1944); *Bristol-Myers Co.* v. *F.T.C.*, 185 F. 2d 58 (C.A. 4, 1950); and cases cited therein.

authority on hair, and that a trichologist is a dermatologist, a doctor of medicine specializing in diseases and disorders of the scalp. The record establishes that Johnson is not a trichologist, and has had no training in dermatology or any other branch of medicine. It is concluded and found that by such claims respondents falsely represented, directly and by implication, that Johnson had professional and competent training in dermatology and other branches of medicine having to do with the diagnosis and treatment of scalp disorders affecting the hair, and that such representations constitute false advertisements within the meaning of the act.

It is also concluded and found that respondents' advertisements are misleading in a further material respect and constitute false advertisements because of the failure to reveal facts material in the light of such representations, as required by section 15(a)(1), *supra*. In advertising their cosmetic preparations and treatments as a cure or preventive for baldness or hair loss, respondents represented that almost every case of hair loss or baldness is caused by scalp disorders, and that their preparations would be of benefit and constitute an effective treatment for such scalp disorders. The fact of the matter is, as found above, that 95 percent or more of all cases of loss of hair or baldness is the male pattern type, having no relation to scalp disorders, for which there is no known cure or preventive and respondents' preparations will be of no value whatever. It follows that respondents' advertising is misleading because of their failure to reveal the material fact that in the vast majority of cases loss of hair or baldness is the type known as male pattern baldness, in the treatment of which respondents' preparations are of no value.

D. *The Effect of the Unlawful Practices*

The use by respondents of the foregoing false, deceptive, and misleading statements and representations, disseminated as aforesaid, and the failure to reveal material facts as found above, have had and now have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and cause them to purchase respondents' preparations because of such erroneous and mistaken belief.

CONCLUSIONS OF LAW

1. The advertisements disseminated by respondents are false advertisements, as that term is defined in the act.

2. Respondents' preparations used in their treatments are cosmetics, as that term is defined in the act.

3. Respondents have caused, and respondent Johnson is causing, the dissemination of false advertisements by United States mail and by other means in commerce, for the purpose of inducing, which have induced, and which are likely to induce, directly or indirectly, the purchase of cosmetics.

4. The acts and practices of respondents hereinabove found are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices within the intent and meaning of the act.

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

ORDER

It is ordered, That Leo O. Johnson, an individual doing business as Johnson Hair & Scalp Clinic, and respondents Charles L. Anderson and William G. Thompson individually, 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 the various cosmetic or other preparations, as set out in the findings herein, for use in the treatment of conditions of the hair and scalp, or any preparation of substantially similar composition, do forthwith cease and desist from:

1. Disseminating or causing to be disseminated by means of the U.S. mail, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or by implication, that the use of said preparations, alone or in conjunction with any method or treatment, will:

(a) Prevent or overcome baldness or excessive hair loss, unless any such representation be expressly limited to cases other than those known as male pattern baldness, and unless the advertisement clearly and conspicuously reveals the fact that the great majority of cases of excessive hair fall and baldness are the beginning and more fully developed stages of said male pattern baldness and that in such cases respondents' preparations will be of no value in preventing or overcoming baldness or excessive hair loss;

(b) Induce new hair to grow, cause the hair to become thicker or otherwise grow hair, unless any such representation be expressly limited to cases other than those arising by reason of male pattern baldness, and unless the advertisement clearly and conspicuously

reveals the fact that the great majority of cases of excessive hair fall and baldness are the begining and more fully developed stages of said male pattern baldness and that in such cases respondents' preparations will not induce the growth of hair or thicker hair;

(c) Permanently eliminate dandruff, itching or irritation of the scalp; and

2. Disseminating or causing to be disseminated by means of the United States mail, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of respondents' preparations, which advertisement represents, directly or by implication, that respondent Johnson is America's foremost professional authority, or one of America's foremost professional authorities, on hair and scalp disorders, or that respondents, their agents, representatives or employees are trichologists or have had professional or competent training in dermatology or other branches of medicine having to do with the diagnosis and treatment of scalp disorders affecting the hair.

It is further ordered, That the complaint be, and it hereby is, dismissed without prejudice as to respondent Harry B. Hause.

OPINION OF THE COMMISSION

By TAIT, Commissioner:

Respondents are charged by the complaint, as amended, with violating section 12 of the Federal Trade Commission Act by disseminating false advertisements dealing with representations concerning the prevention of baldness, the growing of hair and the elimination of various scalp disorders.

The hearing examiner in his initial decision found that the allegations of the complaint were sustained by the weight of the evidence and prohibited the practices with an order to cease and desist. Respondent Johnson has appealed from the initial decision. This case, so far as it relates to the respondents other than Johnson, was placed on the Commission's own docket for review. The only question raised on the appeal has to do with the sufficiency of the showing of the jurisdictional requirement of commerce under section 12.

The respondents herein are Leo O. Johnson, an individual doing business as Johnson Hair & Scalp Clinic, the appellant, and William G. Thompson, Harry B. Hause, and Charles L. Anderson, individually. The complaint was dismissed as to respondent Hause because service upon him was not obtained.

The examiner's findings of fact about which no issue has been raised might be summarized as follows:

Respondent Johnson is now, and all of the respondents for the past several years have been, engaged in the sale and distribution of various preparations, cosmetics within the meaning of the Federal Trade Commission Act, for external use in the treatment of conditions of the hair and scalp. Respondents have caused the publication of advertisements relating to their preparations and their treatments in various of the leading newspapers in the cities of New Orleans, La., Detroit, Mich., Erie, Pa., Canton, Ohio, and Rochester, N.Y.[1]

In such advertisements, respondents falsely represented:

(a) That the use of their cosmetic preparations and treatments would permanently eliminate itching of the scalp, dandruff, and irritation of the scalp;

(b) That by the use of their preparations and treatments, in the great majority of cases baldness and excessive hair loss would be prevented and overcome, new hair would be induced to grow, and users would be able to maintain a thicker head of hair; and

(c) That respondent Johnson had professional and competent training in dermatology and other branches of medicine having to do with the diagnosis and treatment of scalp disorders affecting the hair.

In addition, respondents' advertisements are misleading because of the failure to reveal the material fact that the great majority of cases of baldness, including excessive hair loss, are of the type known as male pattern baldness, in which cases respondents' preparations are of no value.

Respondents' advertising was for the purpose of inducing and did induce the purchase of their cosmetic preparations.

The solitary issue raised on this appeal by respondent Johnson is whether he did "cause to be disseminated" any advertisement by United States mail or in commerce by any means when, allegedly, without his knowledge, consent, request or control, the newspapers in which advertisements were inserted did deliver some of the editions carrying such advertisements by mail and out-of-State. The main contention seems to be that appellant did not cause the methods and destinations of delivery.

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[1] The record shows that in New Orleans alone the distribution of the newspapers carrying respondents' advertising by mail and out-of-State was as follows:

Daily Times Picayune, by mail—3,937, out-of-State—17,060. Daily New Orleans States, by mail—128, out-of-State—4,163. Sunday Times-Picayune-New Orleans States, by mail—1,666, out-of-State—40,095.

The pertinent portion of section 12 reads:

It shall be unlawful for any person * * * to disseminate, *or cause to be disseminated*, any false advertisement—

"(1) By the United States mails, or in commerce by any means * * *. [Emphasis supplied.]

We believe that to cause the insertion of advertisements in newspapers is to cause the dissemination of such advertisements within the intent and meaning of section 12.[2] The dissemination so caused will necessarily be the same as that of the publications in which the advertisements appear. No doubt the newspapers would have been circulated by the means normally employed and to the usual destinations, whether or not respondents placed any advertisements therein. The *advertisements* would not have been so circulated, however, had not respondents caused them to be published. It appears to be reasonable to conclude, therefore, that so far as the advertisements were concerned, respondents did cause them to be disseminated. Such a construction of section 12 is in full accord with the intent of Congress, as illustrated by provisions contained in section 14, as follows:

(b) No publisher, radio-broadcast licensee, or agency or medium for the dissemination of advertising, except the manufacturer, packer, distributor, or seller of the commodity to which the false advertisement relates, shall be liable under this section by reason of the dissemination by him of false advertisement, unless he has refused, on the request of the Commission, to furnish the Commission the name and post-office address of the manufacturer, packer, distributor, or advertising agency, residing in the United States, *who caused him to disseminate* such advertisement. No advertising agency shall be liable under this section by reason of the *causing by it of the dissemination* of any false advertisement, unless it has refused, on the request of the Commission, to furnish the Commission the name and post-office address of the manufacturer, packer, distributor, or seller, residing in the United States, who *caused it to cause the dissemination* of such advertisement. [Emphasis supplied.]

Appellant's assertion that he had no knowledge of or control over the circulation of the papers in which he advertised does not constitute a defense under the circumstances here shown. An advertiser is on notice, constructive or otherwise, that metropolitan-sized newspapers such as the Times Picayune do or may circulate copies through the mail or in commerce, and, consequently, bears responsibility for such dissemination of his advertisement.

Appellant in his argument relies heavily upon certain decisions which interpret the word "cause" as it is used in the criminal statutes respectively involved. In our opinion, such cases are inapposite be-

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[2] *O-Jib-Wa Medicine Co., et al.*, docket No. 6548 (decided June 27, 1957), petition to review pending, C.A. 6.

cause of the differences in the purposes of the various statutes and their provisions as well as the differences in the factual circumstances.

The initial decision contains the following finding: "Respondents have sold their various cosmetic preparations by two methods. First, respondents through extensive newpaper advertising have invited persons to come to their clinics for examination, diagnosis and treatment, whereupon a certain series of treatments were recommended. If such treatments were agreed to, the said preparations were used in the process of such treatments. Second, respondents have sold home treatment kits containing said preparations to persons induced to visit respondents' clinics by said advertisements." To the extent that this may hold that the respondents' use of preparations in the course of treatments constituted sales of such preparations, we do not adopt it as a finding of the Commission. The record herein does not contain sufficient evidence to make a ruling on the question. Reference is made to the Commission's decision in the matter of *Wybrant System Products Corporation, et al.*, docket No. 6472 (May 1958), in which case we set forth our views on this subject and included therein factors to be considered in any such determination.

It is our further opinion that the order contained in the initial decision requires some modification. The prohibition concerning representations about professional standing and training should be limited in its application to practices promoting the sale of preparations. In addition, the evidence and findings justify a requirement that respondents reveal in their advertisements that the great majority of all cases of excessive hair fall and baldness are the beginning and more fully developed stages of male pattern baldness and that in such cases respondents' preparations will be of no value. The order in the initial decision will be modified accordingly.

The appeal of respondent Leo O. Johnson is denied.

Commissioner Gwynne did not participate in the decision of this matter.

FINAL ORDER

This case having come on for final consideration upon the record, including the appeal of the respondent Leo O. Johnson from the initial decision of the hearing examiner, and the Commission having rendered its decision and determined, for reasons stated in its accompanying opinion, that said initial decision should be modified:

It is ordered, That the following order be, and it hereby is, substituted for the order contained in the initial decision:

It is ordered, That Leo O. Johnson, an individual doing business as Johnson Hair & Scalp Clinic, and respondents Charles L. Anderson

and William G. Thompson, individually, 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 the various cosmetic or other preparations, as set out in the findings herein, for use in the treatment of conditions of the hair and scalp, or any preparation of substantially similar composition, do forthwith cease and desist from:

1. Disseminating or causing to be disseminated by means of the U.S. mail, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or by implication, that the use of said preparations, alone or in conjunction with any method or treatment, will:

(a) Prevent or overcome baldness or excessive hair loss, unless any such representation be expressly limited to cases other than those known as male pattern baldness, and unless the advertisement clearly and conspicuously reveals the fact that the great majority of cases of excessive hair fall and baldness are the beginning and more fully developed stages of said male pattern baldness and that in such cases respondents' preparations will be of no value in preventing or overcoming baldness or excessive hair loss;

(b) Induce new hair to grow, cause the hair to become thicker or otherwise grow hair, unless any such representation be expressly limited to cases other than those arising by reason of male pattern baldness, and unless the advertisement clearly and conspicuously reveals the fact that the great majority of cases of excessive hair fall and baldness are the beginning and more fully developed stages of said male pattern baldness and that in such cases respondents' preparations will not induce the growth of hair or thicker hair;

(c) Permanently eliminate dandruff, itching or irritation of the scalp; and

2. Disseminating or causing to be disseminated by means of the U.S. mail, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of respondents' preparations, which advertisement represents, directly or by implication, that respondent Johnson is America's foremost professional authority, or one of America's foremost professional authorities, on hair and scalp disorders, or that respondents, their agents, representatives or employees are trichologists or have had professional or competent training in dermatology or other branches of medicine having to do with the diagnosis and treatment of scalp disorders affecting the hair.

It is further ordered, That the complaint be, and it hereby is, dismissed without prejudice as to respondent Harry B. Hause.

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

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.

Commissioner Gwynne not participating.

IN THE MATTER OF

W. LANE SCHULZE ET AL. TRADING AS CHICAGO SCHOOL OF NURSING, DIVISION OF CAREER INSTITUTE

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

Docket 6515. Complaint, Feb. 20, 1956—Decision, June 10, 1958

Order requiring Chicago operators of a mail order course in auxiliary nursing to cease representing, contrary to fact, that persons completing the course were eligible for employment as practical nurses in all 48 States.

William A. Somers, Esq., for the Commission.

Edward J. Metzdorf, Esq., of Chicago, Ill., for respondents.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

STATEMENT OF THE CASE

On February 20, 1956, the Federal Trade Commission issued its complaint against W. Lane Schulze and W. C. Schulze II[1] (hereinafter collectively called respondents), copartners doing business as Chicago School of Nursing, Division of Career Institute, charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of section 5 of 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 on respondents.

The complaint alleges in substance that respondents, in conducting Chicago School of Nursing, which offers a correspondence course in auxiliary nursing, made certain false representations. Respondents appeared by counsel and filed a joint answer admitting the partnership, commerce, and competition allegations of the complaint and the advertising excerpts set forth therein, but denying any false representations or violations of the act.

Pursuant to notice, hearings were thereafter held before the undersigned hearing examiner, duly designated by the Commission to hear this proceeding, at various times and places from June 26, 1956, to April 3, 1957. At the conclusion of the case-in-chief, a motion to amend the complaint and a corresponding motion to amend the answer thereto were granted.

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[1] Incorrectly referred to as W. Lane Schultz and W. C. Schultz, III, in the caption of the complaint and other documents.

All parties were represented by counsel, participated in the hearings and afforded a full opportunity to be heard, to examine and cross-examine the 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 in support thereof. All parties filed proposed findings of fact, conclusions of law, and orders, together with reasons in support thereof, and waived oral argument thereon. All such findings of fact and conclusions of law proposed by the parties, respectively, not hereinafter specifically found or concluded are herewith specifically rejected.[2]

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

FINDINGS OF FACT

I. The Business of Respondents

The complaint alleged and respondents' original answer admitted that they were copartners trading under the name of Chicago School of Nursing, Division of Career Institute. However, respondents' amended answer, filed November 5, 1956, after the complaint was amended, alleged that the partnership had been dissolved as of July 31, 1956, and that since August 1, 1956, W. Lane Schulze had conducted Career Institute and Chicago School of Nursing, a division thereof, as an individual proprietorship. While this is now the situation, it does not change the fact that during the time of the alleged unlawful practices, W. C. Schulze II was a copartner with his father in conducting Chicago School of Nursing and Career Institute. Accordingly, it is found that, while at the present time Chicago School of Nursing is conducted individually by W. Lane Schulze, at all times pertinent to this proceeding he and W. C. Schulze II were copartners conducting said organizations. The principal office and place of business of respondents is located at 25 East Jackson Boulevard, Chicago, Ill.

II. Interstate Commerce and Competition

The complaint alleged, respondents admitted, and it is found that for more than two years preceding the issuance of the complaint they were engaged in the sale and distribution in commerce between and among the various States of the United States of a course in auxiliary nursing, including practical nursing and nursing aide, through the

[2] 5 U.S.C. 1007(b).

medium of the United States mails. Respondents have caused said courses of instruction to be transported from their place of business in the State of Illinois to purchasers thereof located in the various States of the United States other than the State of Illinois. Respondents at all times mentioned herein have maintained a substantial course of trade in commerce in said courses of instruction. In the course and conduct of their business, respondents at all times mentioned herein have been in direct and substantial competition in commerce with other individuals and with corporations and firms likewise engaged in the sale in commerce of courses of instruction in auxiliary nursing.

III. The Alleged Unlawful Practices

A. *The Issues Framed and Background Facts*

The principal issues in this case are whether respondents, in connection with the advertising of their courses of instruction in auxiliary nursing by means of newspaper and magazine advertisements and brochures sent directly to prospective purchasers through the mail, made certain representations, and if made, whether or not such representations were false and misleading.

Respondents are engaged in conducting Chicago School of Nursing, which since 1899 has been engaged in the sale of a home study course of instruction in auxiliary nursing, previously called practical nursing, through the U.S. mails. Before the issues in this case can be clarified, it is necessary to define certain personnel classifications in the field of nursing used throughout the pleadings and the hearings. In the first place, registered professional nurses have been classified as such for more than 50 years. This category refers to those who have had 3 or more years of formal hospital training, have passed a State board examination, and have then been licensed as registered professional nurses. Dating back even before this has been a category traditionally known as practical nurse. As the term implies, practical nurses are persons not formally educated or trained in the field of nursing, who by practice and actual experience in taking care of patients have become known as practical nurses. In general, it may be said that they perform simpler nursing functions in the care of the ill than those performed by professional nurses. Until recent years there were no requirements whatsoever necessary to practice practical nursing. In other words, anyone who so desired could hold himself or herself out as a practical nurse without restriction.

In recent years, most of the States have passed laws setting up a new category of nurse, generally known as a licensed practical nurse (hereinafter sometimes called LPN), but at the same time permitting the continued existence and practice of those persons called practical nurses, provided they do not hold themselves out to be licensed. Under these licensing laws, a certain period of formal education in accredited resident schools, usually 9 months to 1 year, is required, together with the passing of a State board examination. Substantially all of these laws, however, permit persons already practicing practical nursing for a certain number of years to take the examination and become licensed without any formal education. As the record establishes, it is a well-known fact that over the years there have been thousands of capable and efficient practical nurses who acquired their knowledge and ability solely through actual experience in doing the work. In addition to such so-called permissive laws for the licensure of practical nurses, a few of the States have adopted mandatory laws under the terms of which everyone practicing practical nursing must be licensed. Thus in these States the age-old category of unlicensed practical nurse has been eliminated.

Including the District of Columbia as a State for the purpose of this proceeding, there are 40 States which have permissive laws under which anyone can practice practical nursing if they do not claim to be licensed, and 3 States which have no laws governing practical nursing. Thus there are in all 43 States in which the practice of unlicensed practical nursing is permitted without any educational or experience requisites. The other 6 States, Arkansas, Idaho, Louisiana, Nevada, New York, and Rhode Island, have mandatory laws prohibiting all practical nursing without license.[3]

The fourth category of nursing personnel used in both the pleadings and throughout this proceeding is that of auxiliary nurses, which includes in general all of those persons working in the nursing field below the level of LPN's, frequently referred to as part of the nursing "team." In addition to unlicensed practical nurses, the category of auxiliary nursing includes many other titles, such as nursing aides, hospital attendants, doctor's office nurse, baby nurse, and nurse-companion. In the so-called mandatory States, as well as all of the others, all of these categories of auxiliary nurse, other than practical nurse, have no legal requisites, and anyone who so desires may seek employment in those fields. In the other 43 States all auxiliary nurses, including unlicensed practical nurses, may work as such without any requirements. Thus it is found that there are four categories

[3] However, in Rhode Island a practical nurse may work in institutions without license.

of nursing personnel, registered professional nurses, LPN's, practical nurses, and auxiliary nurses, the last including unlicensed practical nurses, nursing aides, and numerous other titles.

A considerable amount of confusion developed in this case because the complaint before amendment apparently was bottomed upon the theory that the term practical nurse meant LPN and therefore respondents' representations concerning their course having reference to practical nurses referred to LPN's. This confusion was further enhanced by the fact that many of the expert witnesses in the nursing field called in support of the complaint, all of whom were registered professional nurses in various executive capacities, testified that a practical nurse was an LPN and refused, contrary to the fact now established in the record, to recognize the existence of unlicensed practical nurses in spite of the fact that the term practical nurse was used to designate them for many years prior to the existence of any licensure laws. The fact that such laws adopted the term practical nurse as part of the title of the new category while at the same time they permitted the continuation of the prior category of practical nurses added to this confusion. Historically speaking, the term "practical nurse" applied to one who was neither formally trained nor licensed, and was developed to distinguish this group from registered professional nurses. If the licensure laws had adopted a different term, such as is the case in Texas and California where they are called "licensed vocational nurses," some of the confusion in terminology would have been obviated. The title used in most of the States is "licensed practical nurse." Wisconsin uses the term "trained practical nurse" to designate its LPN's.

Chicago School of Nursing has been using the term practical nurse for many years. In 1927, in order to conform to changes of terminology in common usage in the nursing field, the school adopted the term "trained practical nurse." Until the development of the licensure laws, such terminology caused no confusion. In 1950, because of the increase of the licensure programs, the designation by many graduates from accredited hospital training programs under such licensing laws as "trained practical nurses," and the adoption by the State of Wisconsin of the term "trained practical nurse" to designate its LPN's, respondents dropped that term and used "practical nurse" in lieu thereof. In 1954, as a result of a survey conducted by respondents concerning the various titles under which their graduates were employed, and the increasing confusion caused by the titles "licensed practical nurse" and "practical nurse," respondents adopted the term "auxiliary nursing" to describe their course. Since 1954,

respondents have referred to their course as one teaching auxiliary nursing, including practical nursing and nursing aide, having reference to practical nurse as an unlicensed practical nurse. All of this voluntary action occurred long before the complaint in this proceeding was issued.

Prior to its amendment, the complaint herein was substantially similar to that issued in *National Institute of Practical Nursing*[4] (not cited by either counsel), wherein representations substantially similar to those alleged in this proceeding were found to be false, based on a finding that the respondent therein was falsely representing its course as qualifying graduates to be licensed practical nurses, which finding necessarily rendered most of the representations therein false. In addition, the complaints in two recent cases decided by the Commission,[5] adopting initial decisions of the undersigned approving agreements for consent orders, also alleged that the respondents therein falsely represented that their respective courses qualified students for licensure, and the orders agreed to in those cases prohibited, among other things, such representation.

As will be seen hereinafter, most of respondents' representations alleged in the complaint unquestionably would be false if respondents were representing their course as qualifying graduates to be licensed practical nurses. However, because of respondents' answer and the facts adduced during the presentation of the case-in-chief, it became evident that respondents, as counsel supporting the complaint now concedes, not only were not representing that their course qualified graduates for licensure, but in fact specifically advised all applicants that the course did not so qualify graduates. In addition, as found above, respondents had changed their terminology in order to prevent any such confusion prior to the issuance of the complaint. After this development and at the conclusion of the case-in-chief, counsel in support of the complaint moved to amend it to substitute the term "auxiliary nurse, including practical nurse and nurse's aide," for the term "practical nurse" wherever it appeared in the complaint, which motion was granted. This, of course, changed the entire theory of the complaint and, as will be seen hereinafter, in effect destroyed the basis for alleging most of the representations to be false. While such representations would have been false if respondents had claimed that their course qualified graduates for licensure, it will be seen that

[4] *National Institute of Practical Nursing*, 48 FTC 1253 (1952).

[5] *Post Graduate Hospital School of Nursing, Inc.*, docket No. 6437 (1956); and *Wayne School, Inc.*, docket No. 6430 (1956).

in the absence of such a claim and proof of the contrary, such representations, with one exception, are in fact true and correct.

Before considering the merits of the various issues, one further point must be treated. Counsel in support of the complaint in his proposed findings of fact and conclusions of law now proposes the finding of certain representations not set forth in the complaint, not alleged in the complaint to be false, and not litigated at the hearing. Without reviewing them here in detail, a number of such proposed findings vary in substance from the issues framed by the pleadings and were not litigated at the hearing. It is, of course, an elementary principle of due process that unfair trade practices neither alleged nor litigated cannot be found. Anything less would deprive respondents of a full and fair hearing and the right to show cause why an order should not be issued, as required by the act, the Administrative Procedure Act, and the Commission's rules and regulations. This principle is too fundamental to require extended discussion. No one now could even speculate what proof respondents might have offered if they had been apprised of such allegations. In addition, although counsel supporting the complaint moved to amend the complaint at the conclusion of the case-in-chief to change the term practical nursing to auxiliary nursing, he did not move the inclusion therein of the changed representations he now proposes. For all of the above reasons, this proceeding must be and is decided upon the issues framed by the pleadings, i.e., the allegations of unfair trade practices set forth in the complaint and litigated at the hearing.

B. *The Alleged False Representations*

In substance, the complaint as amended alleges that respondents falsely represented that:

1. Their course is a complete course in auxiliary nursing, and graduates thereof are "trained auxiliary nurses" eligible for employment in hospitals and like institutions as trained auxiliary nurses;

2. There is an urgent need for trained auxiliary nurses and their graduates can help fill this need;

3. A high school education is not required in order to become a trained auxiliary nurse;

4. Doctors rely upon respondents' graduates as auxiliary nurses;

5. Graduates are assured of success as trained auxiliary nurses in homes and hospitals and may expect to receive unusually good wages;

6. Their course is endorsed by physicians; and

7. Certificates awarded by respondents to graduates will be of valuable assistance in obtaining positions as auxiliary nurses.

In addition, the complaint alleged that respondents by the use of the word "Institute" in their trade name falsely represented the existence and operation of a nonprofit resident institution of higher learning with a staff of competent, experienced, and qualified educators offering instruction in the arts, sciences, and subjects of higher learning.

Certain portions of the aforesaid allegations overlap in that they deal in effect with the same representation, that the course qualifies graduates for employment. All of the allegations are considered *seriatim*.

1. The completeness of the course and eligibility for employment

The proposed finding of counsel supporting the complaint on this subject varies in certain material respects from the representations alleged in the complaint and litigated at the hearing. For the reasons previously stated, each issue must be decided as framed and litigated. The complaint as amended alleges that respondents represented their course as a complete course in auxiliary nursing, including practical nursing and nursing aide, and that graduates thereof are trained auxiliary nurses with all the privileges and benefits associated with said title including the opportunity of employment in hospitals and like institutions as trained auxiliary nurses, including practical nurses and nurse's aides.

This first allegation is an excellent example of the effect brought about by the amendment of the complaint after the facts established that respondents do not represent their course to qualify graduates as trained or licensed practical nurses. As originally alleged, this representation if made would obviously have been false, because respondents' course does not qualify graduates as trained or licensed practical nurses. That was the basis of the findings in the *National Institute* case, *supra*, and the basis of the orders in the *Post Graduate* and *Wayne* cases, *supra*. Here, however, the record established that respondents not only voluntarily dropped the terms "trained practical nurse" and "practical nurse" from their designation of their course long before the complaint was issued, but also specifically advised all applicants that their course did not qualify for licensure.

Numerous exhibits consisting of respondents' advertisements, and pamphlets and brochures sent to persons answering such advertisements, were received in evidence. In general, the advertisements published in newspapers and magazines were relatively small in size and brief in content. Persons answering such advertisements were

not purchasing the course but merely requesting the advertised booklet and sample lessons. While the record contains a number of small pamphlets, brochures, form letters and the like which were sent to applicants expressing an interest in the course, the basic piece of literature was a brochure of some 35 pages on good quality paper entitled: "Opportunities in Auxiliary Nursing." This brochure explained the course in some detail, sought to persuade the reader of the benefits to be derived from it, included a number of testimonials from former graduates, pointed out that the course would not qualify for licensure, and, in general, might be characterized as respondents' principal advertisement and explanation of their course.

Although respondents in their proposed findings contend that they do not represent their course in auxiliary nursing to be complete, the documentary evidence in the record establishes, and it is found, that they do represent their course as a complete course in auxiliary nursing. Some of the advertising excerpts relied upon by counsel supporting the complaint appear in respondents' advertising and brochure prior to 1954. As found above, in 1954 respondents adopted the terminology "auxiliary nurse" and modified their advertising, and particularly their brochure, representations that the course qualified graduates as trained practical nurses because of the confusion in terminology. In view of this voluntary discontinuance of such terminology prior to the issuance of the complaint, it would not appear to be equitable to judge respondents' advertising in the light of representations made prior to this voluntary modification. On the other hand, the record establishes that their advertising as so modified does represent their course as a complete course in auxiliary nursing. It is also clear, and is found, that respondents' advertising represents that graduates will be able to obtain employment in hospitals, private homes, and other places as auxiliary nurses, including unlicensed practical nurses and nursing aides.

Having found that respondents make such representations, the next question for determination is whether they are false and deceptive. To start with, in 43 of the States there are no requirements whatsoever necessary for employment as an auxiliary nurse, including practical nurse, nurse's aide, and all other titles, and in the 6 other States, there are no requirements, educational or otherwise, necessary for employment as an auxiliary nurse, including nurse's aide and all the other titles used, except practical nurse. Since the record establishes that in all of the foregoing circumstances there are no requirements whatsoever for auxiliary nurses, and anyone may so designate himself and seek employment as such, obviously respond-

ents' course cannot be called incomplete. Respondents' course, consisting of 53 lessons, approximately 2,000 pages of text, 1,300 illustrations, requiring an average of 500 hours to complete, including a total of 23 examinations during the course and the necessity of attaining a passing grade, is certainly far superior to the little or no training possessed by thousands of persons who have entered the field of auxiliary nursing. By comparison with a requisite of no training, respondents' course is infinitely complete.

As found above, the original allegation was based upon the theory that respondents represented their course to be complete in, and to qualify graduates for, licensed practical nursing. Nearly all of the witnesses called in support of the complaint, who testified that in their opinion respondents' course was not complete because it was a home study course and did not include demonstration and return demonstration of nursing functions upon live patients by, and in the presence of, qualified teachers, based this conclusion upon their opinion and belief that respondents were representing their course as qualifying for licensure. Since this is no longer in issue, much of this testimony is no longer relevant.

The record establishes that the nursing functions performed by auxiliary nurses, including unlicensed practical nurses and nursing aides, are simple manual skills, relatively easy to learn and considerably below the level of the duties and functions of a registered professional nurse. No great amount of educational background or intellect is necessary to learn these simple functions. Experienced, highly-qualified educators in the field of home study education called by respondents testified that the simple skills taught in this course are easily learned by home study, and that demonstration is not necessary in order to learn such skills. The record establishes that many outstanding universities, high schools, and branches of the U.S. Government, including the U.S. Navy and the U.S. Armed Forces Institute, effectively teach, through correspondence schools by home study, manual skills of considerably greater complexity than auxiliary nursing. Some examples are industrial electricity, commercial art, mechanical drawing, arc welding, electronics, and many others of similar complexity.

The record also establishes that respondents' text material is complete, correct, and thorough in its coverage of the various functions performed by auxiliary nurses. The principal complaint of the witnesses called in support of the complaint was the lack of personal demonstration by instructors and return demonstration by the students. As noted above, most of this was claimed to be necessary in

teaching a course qualifying for licensed practical nursing and hence was not relevant to this issue. Nevertheless, some of the witnesses testified that in their belief such demonstration and return demonstration were necessary in order to teach auxiliary nursing. The record establishes that none of these witnesses had any experience in the home study field of education, did not know what if any skills could be taught by this method, and had neither completely read nor examined respondents' entire course. An additional fact controverting this contention is that in the past many of respondents' graduates, without such formal training, have become licensed practical nurses by taking and passing State examinations under the waiver clauses.

While, as respondents concede, it may be more desirable to include actual demonstration and return demonstration in a course teaching auxiliary nursing, this does not mean either that it is necessary or legally required. While it is a requisite of resident courses leading to licensure as a practical nurse in 43 States, it is definitely not required in order to qualify for auxiliary nursing, including unlicensed practical nursing and nursing aides. In view of the undisputed shortage of and need for auxiliary nursing personnel, a requirement that such personnel must take resident courses including demonstration and return demonstration before being eligible for such employment would serve to augment this shortage by eliminating from the field many of the persons now serving in it without such training. While no doubt it would be preferable that all practical nurses be licensed and have such training, it might also be argued that it would be preferable that all nurses be registered professional nurses with their requisite training. For practical reasons, it is better to have the best result possible rather than require the best possible result. The laws of the substantial majority of the States which permit the continued practice of practical nursing without such training demonstrate their recognition of this principle.

While not necessarily determinative, an additional factor is relevant in evaluating whether or not respondents' course is complete. Respondents' course of auxiliary nursing has been approved and accredited by the Accrediting Commission of the National Home Study Council, an organization established in 1926 for the purpose of promoting sound educational standards and ethical business practices among correspondence schools. The standards of evaluation applied by the Accrediting Commission are: (1) a competent faculty, (2) an educationally sound and up-to-date course, (3) the admission of only qualified students, (4) satisfactory educational experiences, (5) demonstrated student success and satisfaction, (6) reasonable

charges, (7) truthful advertisements, and (8) financial ability. The Accrediting Commission is an autonomous group of nine members completely independent of the Home Study Council, including the former U.S. Commissioner of Education and the present Undersecretary of the Department of Health, Education, and Welfare, among others. While this accreditation cannot and has not taken the place of an independent evaluation of the completeness of respondents' course, it is entitled to consideration in arriving at such an evaluation.[6]

A preponderance of the credible evidence in the entire record convinces the undersigned, and accordingly it is found, that respondents' course in auxiliary nursing is complete. Even aside from the merits of the course, as evidenced by the experts in the field of home study education called by respondents, this conclusion is almost inescapable when it is considered that no course of any kind or training whatsoever is required to qualify persons in the field of auxiliary nursing.

Substantially the same conclusion applies with respect to the allegation that respondents represented that graduates would be trained auxiliary nurses with all the privileges and benefits associated with said title, including the opportunity of employment in hospitals and like institutions. The record establishes that there is no such title as "trained auxiliary nurse" similar to the title "trained practical nurse," and accordingly the word "trained" must be considered as an adjective and not as a specific category or type of nurse. Since the record establishes that anyone may be employed in hospitals, like institutions, private homes and doctors' offices as an auxiliary nurse, including practical nurse and nursing aide, in 43 States, and as an auxiliary nurse, including nurse's aide but not practical nurse, in all 49 jurisdictions, it cannot be contended that respondents' graduates are not eligible for such employment. Actually, the record establishes, and it is found, that many of respondents' graduates have been employed as auxiliary nurses, including practical nurses and nurse's aides, in numerous hospitals, like institutions, private homes, and doctors' offices. While the record also establishes that a number of the larger hospitals in the larger cities will not employ unlicensed practical nurses as practical nurses but will employ them as nurse's aides, many other hospitals and like institutions, as well as private families and doctors, employ unlicensed practical nurses as practical nurses.

[6] Additionally, the Benton Harbor High School offers to its students respondents' course in auxiliary nursing.

2. The need for auxiliary nurses and the fulfillment thereof by respondents' graduates

Here again counsel supporting the complaint proposes finding a different representation from that alleged in the complaint. The representation alleged in the complaint and litigated at the hearing was that respondents represented that there is an urgent need for trained auxiliary nurses, and that persons who have completed respondents' course can help fill this need. This allegation is a slight although unimportant exaggeration, inasmuch as respondents did not characterize the need as urgent nor the auxiliary nurses as trained. Again the allegation collapses because of the amendment. The record establishes indisputably and it is found that there is an urgent need for all kinds of nurses, including auxiliary nurses. The record also establishes beyond dispute and it is found that graduates of respondents' course help fill this need because they are employed as auxiliary nurses, including practical nurses and nursing aides.

3. A high school education is not required

The record establishes that respondents represented that a high school education is not required to become an auxiliary nurse, including practical nurse and nursing aide. This representation is true. The evidence establishes that there are no educational prerequisites for becoming either an unlicensed practical nurse, a nursing aide or any of the other classifications of auxiliary nursing. As a matter of fact, with the exception of one State, Oregon, a high school education is not required to become a licensed practical nurse. Substantially all of the licensure laws require either 2 years of high school or an age of 25 or older, in which case no time in high school is required. A preponderance of the evidence establishes, and it is found, that a high school education is not required to become an auxiliary nurse.

4. Doctors rely upon respondents' graduates as auxiliary nurses

While not expressed precisely in the terms of the complaint, it is a fair inference from all of respondents' advertising that they represent that doctors rely upon their graduates as auxiliary nurses, including practical nurses and nursing aides. Statistical data in the record establishes that nationally there are well over 50,000 practical nurses employed in private homes, doctors' offices, clinics, and other places than hospitals. Contrary to the proposed finding of counsel supporting the complaint, the record establishes beyond dispute that many doctors have employed, and do rely upon, respondents' grad-

uates as practical nurses both in their offices and in private home duty. It is concluded and found that this representation is true and correct.

5. Graduates are assured of success as auxiliary nurses at unusually good wages

As evidenced by the proposed findings of counsel supporting the complaint, he now equates this representation as one that graduates are assured of employment as trained auxiliary nurses in hospitals and homes at unusually good wages. As pointed out above, many of the alleged false representations overlap in that they deal with the same subject, whether or not respondents' graduates are eligible for employment as auxiliary nurses. Respondents do not represent that their graduates are assured of employment nor that they may expect to receive unusually good wages. Respondents do represent that graduates will in all probability be able to secure employment as auxiliary nurses in hospitals and homes, and further represent that if so employed they may expect to earn from $50 to $60 a week. To characterize such an amount today as unusually good wages seems somewhat of an exaggeration.

Although alleged in the complaint, counsel supporting the complaint no longer proposes a finding that respondents represent that their graduates are assured of success. The record does not support the contention that respondents guarantee or assure the employment of their graduates. On the other hand, it certainly establishes that respondents represent that there are numerous employment opportunities available for their graduates, and that in all probability they can secure employment in the field of auxiliary nursing if desired. As previously found, many of respondents' graduates are employed as auxiliary nurses in both hospitals and homes. Here as in other instances the weakness of the case-in-chief brought about by the amendment to the complaint is demonstrated. The evidence further establishes that many of respondents' graduates earn $50 to $60 a week and more as auxiliary nurses. Based upon all of the evidence in the record, the respondents' choice of figures appears to be reasonable and not exaggerated. A preponderance of the credible evidence in the record establishes, and accordingly it is found, that respondents' representations concerning probable employment and earnings are true and correct.

6. Respondents' course is endorsed by physicians

The complaint alleges and the record establishes that respondents represent that their course is endorsed by physicians. Counsel sup-

porting the complaint offered no proof that this representation is false, as alleged. It is, of course, well-established that the burden of proof to sustain the allegations of the complaint is upon counsel supporting the complaint, and in the absence of any proof in support thereof such allegations must be dismissed. Nevertheless, in an excess of caution, respondents offered proof that their course was endorsed by physicians. The course was founded by a physician and at all times has had a physician as medical supervisor. The present medical supervisor is a practitioner in internal medicine and an assistant professor of medicine at Northwestern University Medical School. Dr. Lauder, a captain in the U.S. Naval Reserve at Northwestern University with specialized experience in the field, was the subject-matter specialist of the examining committee of the Accrediting Commission of the National Home Study Counsel. He approved respondents' course as to authenticity, completeness, objectives, qualification of faculty, and instructional service. The record further establishes that many doctors have recommended and endorsed the course to prospective students. All of the foregoing stands unrebutted. It is concluded and found that this representation is not false and misleading, as alleged in the complaint.

7. Certificates awarded graduates are of valuable assistance in obtaining positions as auxiliary nurses

Here again counsel supporting the complaint proposes finding a representation substantially different from that alleged in the complaint and litigated at the hearing. The record establishes, and respondents concede, that they represent that the certificates issued by them will be of assistance in obtaining employment. The complaint also alleged that such certificates are not recognized nor accepted by hospitals, institutions, or any State authority. Here, too, the amendment of the complaint after the case-in-chief substantially has affected the import of the representation. With respect to the field of auxiliary nursing, the record establishes the representation to be correct. However, if applied to licensed practical nurses, it would unquestionably be false.

Respondents do not issue their certificates to those who successfully have completed their course, but issue them only to graduates who have fulfilled an additional requirement of demonstrating proficiency in the field by either attending respondents' 2-week resident review course or supplying written evidence of satisfactory employment for either 6 months in a hospital or 9 months in private homes, doctors' offices, and the like. Thus respondents' certificate evidence not only

that the person has completed successfully respondents' course but also has demonstrated actual proficiency in the performance of the functions included in the field of auxiliary nursing. This requirement is voluntary on the part of respondents and evidences commendable caution. There is nothing in the law which prohibits respondents from issuing certificates to their graduates. Nevertheless, they require demonstrated proficiency before doing so. They do issue a form letter to graduates which states that they have completed the course, but which also states that such graduates have yet to fulfill the additional requirement of demonstrated proficiency to obtain a certificate. Substantial evidence in the record establishes and it is found that respondents' certificates are of valuable assistance to holders thereof in securing employment as auxiliary nurses.

8. The word "institute" implies a resident institution of higher learning

The complaint alleges that by the use of the word "institute" in the name of the parent organization, Career Institute, of which Chicago School of Nursing is a division, respondents falsely represent that they conduct a nonprofit, resident institution of higher learning with a staff of competent, experienced and qualified educators offering instruction in the arts, sciences, and subjects of higher learning, with the primary object of scientific investigation and instruction. A great deal of evidence was received on this issue. The record establishes that respondents did not adopt the name "Career Institute" until 1947, when they added to their organization an English language division, offering a 10-month home study course in practical English for adults, and the Pearson School of Real Estate, offering a 10-session resident course preparing adults for Illinois licensure as real estate salesmen or brokers.

In respondents' advertising herein, the name "Chicago School of Nursing" is used throughout. The term "Division of Career Institute" appears in small print in its brochure under the large print, "Chicago School of Nursing." The record establishes that Career Institute does educational research for itself and others, including the U.S. Armed Forces Institute, and has published a 5-volume work on modern real estate practice, an auxiliary nursing dictionary, and an exhaustive text book on practical English. The text material of its English course is used by other organizations as well as Career Institute. The record further shows that more than 10 percent of the adults taking the English course hold Ph.D. and masters degrees. Respondents cite numerous leading dictionary definitions of the term "institute," and, without reviewing all of them here, in general

such definitions include an organization of the type conducted by respondent. Highly qualified experts in the educational field testified that Career Institute is an "institute" within the established use and meaning of that term. In addition thereto, there was received in evidence an exhibit showing the use of the word "institute" by various organizations throughout the United States. This exhibit reveals that of a total of some 629 organizations using the term "institute" as part of their trade name 243 were trade and technical schools, primarily proprietary and nondegree offering; 146 were trade associations and various promotional groups; 49 were correspondence and home study schools; 43 were private business schools, mostly proprietary; 29 were high schools; 26 were bible schools; 24 were engineering and technological schools; 20 were art schools; 12 were general institutions of higher learning; 10 were military schools; 10 were schools of music; 8 were Jewish folk schools; 4 were schools of embalming and mortuary science; 3 were driving schools; and 2 were collegiate business schools. It is apparent that less than 40 of such organizations would be "institutes" within the meaning of the term set forth in the complaint.

Typical of the hundreds of technical, trade, and vocational schools using the term "institute" in their trade name are the following: Acme Shoe Repair Institute, American Hair Design Institute, Columbia Institute for Child Care, Detroit Air Conditioning Institute, Fiance Hair Design Institute, Institute of Better Reading, Institute of Lettering and Design, Memory Training Institute, National Landscape Institute, Practical Trades Institute, Real Estate Institute, and Sales Training Institute. Typical of the hundreds of trade associations using the term "institute" as part of their name are the following: American Meat Institute, Asphalt Institute, Barley & Malt Institute, California Dried Fruit Institute, Carpet Institute, Inc., Hat Institute, Inc., National Institute of Dry Cleaning, Pretzel Bakers Institute, Sport Fishing Institute, and Wax Paper Institute. In addition to the foregoing, certain branches of the U.S. Armed Services use the term "institute" to designate certain agencies whose primary activity is correspondence study. Among these are U.S. Armed Forces Institute, Marine Corps Institute, and U.S. Air Force Extension Course Institute. The dictionary definition and general usage establish that "Career Institute" is an "institute" within the general meaning and application of the term.

More persuasive than any of the foregoing is the fact that in *National Institute of Practical Nursing*, *supra*, involving the same allegation concerning the use of the word "institute," the Commission

reversed the hearing examiner and dismissed the allegation, although the facts in that case justifying the use of the term are considerably less impressive than the facts herein. In that case the respondent was conducting a resident course in practical nursing and nothing else. The course, contrary to the representations made, did not qualify its graduates as licensed practical nurses. Here, as found above, Career Institute conducts a school of English and a resident school in real estate, engages in research, publishes text books, and in general more than meets the dictionary definition and general usage of the term. A preponderance of the credible evidence in the entire record convinces the undersigned, and accordingly it is found, that the use by respondents of the term "institute" in the trade name of their parent organization is not false and misleading as alleged in the complaint.

There remains for disposition only one area of alleged misrepresentation and deception. As found above, the first, fifth, and seventh, and possibly the second, representations alleged to be false include, in effect, a representation that respondents' graduates are eligible for employment in hospitals and like institutions as auxiliary nurses, including practical nurses and nursing aides. It has been found that such a representation is made. It has further been found that such graduates are eligible for employment as auxiliary nurses, including practical nurses, in all of the 43 States which permit unlicensed practical nurses. However, as found above, there are six States which have mandatory laws which require all practical nurses to be licensed and do not permit unlicensed practical nurses. It is true that in those States respondents' graduates are qualified to work as auxiliary nurses, including nursing aides, but they are not qualified for employment as practical nurses.

As previously found, respondents make clear that their course does not qualify for licensure. However, respondents also clearly represent that their graduates are eligible for employment as unlicensed practical nurses. With respect to 43 States, this is correct. With respect to the other six, it is not. Despite the otherwise overall veracity of respondents' representations, this particular one must be modified to prevent deception and misunderstanding in those six States.

Although the representation is correct in a substantial majority of the States, nevertheless counsel supporting the complaint proposed a finding that it is completely false and that no hospitals or institutions would employ such graduates (hereinabove found to the contrary), and further proposed an order prohibiting any such rep-

resentation without qualification. This form of order is proposed in spite of the fact that in the two preceding cases, *Wayne School* and *Post Graduate*, *supra*, handled by counsel supporting the complaint, where the respondents did not litigate the issues and entered into consent orders to cease and desist representing, unlike this case, that their course qualified graduates for licensure as lpn's and employment as such, nevertheless, the orders therein permitted the respondents to continue to represent that their graduates would be employed in hospitals as practical nurses, provided that it was clearly revealed that such persons would not be eligible for such employment in those States having mandatory laws. Patently, where no such representation concerning licensure and employment is made, the order should not be broader and prohibit a representation in substantial areas where true and correct. For even more cogent reasons than present in *Wayne* and *Post Graduate*, the order here should not exceed the scope of misrepresentation.

C. *The Effect of the Unlawful Practice*

The act and practice of respondents, as hereinabove found, has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to such representation and thereby induce the purchase in commerce of substantial quantities of respondents' courses of instruction. As a result, 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.

CONCLUSIONS OF LAW

1. Respondents are engaged in commerce and engaged in the above-found act and practice in the course and conduct of their business in commerce, as "commerce" is defined in the act.

2. The act and practice of respondents hereinabove found is to the prejudice and injury of the public and of respondents' competitors, and constitutes an unfair method of competition and an unfair and deceptive act and practice in commerce, within the intent and meaning of the act.

3. As a result of the above-found act and practice of respondents, substantial injury has been done to competition in commerce.

4. This proceeding is in the public interest, and an order to cease and desist the above-found act and practice should issue.

5. Respondents have not violated the act by any of the other representations alleged in the complaint.

ORDER

It is ordered, That respondents, W. Lane Schulze and W. C. Schulze II, individually and as copartners, trading under the name of Chicago School of Nursing, Division of Career Institute, their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of a course of instruction in auxiliary nursing, including practical nursing and nurse's aide, or any similar or related course of instruction in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that persons completing respondents' course of instruction are eligible for employment or will be employed as practical nurses by hospitals or institutions unless it is clearly revealed that such persons will not be eligible for employment and will not be employed as practical nurses in the States of Arkansas, Idaho, Louisiana, Nevada, or New York, or in hospitals in the State of Rhode Island, or in any other State that may now have, or may hereafter enact, a law making it mandatory for practical nurses to be licensed.

DECISION OF THE COMMISSION

Respondents, W. Lane Schulze and W. C. Schulze II, and counsel in support of the complaint having respectively appealed from the hearing examiner's initial decision herein; and

The Commission having considered the entire record, including the briefs and oral arguments of counsel, and having determined that the hearing examiner's findings and conclusions are fully substantiated on the record and that the order contained in the initial decision is appropriate in all respects to dispose of this matter:

It is ordered, That the aforesaid appeals be, and they hereby are, both denied.

It is further ordered, That the hearing examiner's initial decision filed November 18, 1957, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the respondents, W. Lane Schulze and W. C. Schulze II, 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 said initial decision.

Commissioner Anderson not participating.

IN THE MATTER OF

MASTER FURRIERS, INC., ET AL.

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

Docket 6895. Complaint, Sept. 26, 1957—Decision, June 10, 1958

Consent order requiring furriers operating a retail store in Washington, D.C., to cease violating the Fur Products Labeling Act by representing that fictitious prices on labels affixed to fur products were the regular retail selling prices; by failing to comply with invoicing requirements; by advertising in newspapers which represented falsely that fur products were being sold "below cost" and were reduced from regular prices which were in fact fictitious, and which used comparative prices and percentage savings claims not based on usual retail prices; and by failing to keep adequate records as a basis for such pricing claims.

Mr. Charles W. O'Connell supporting the complaint.

Mr. Ben Ivan Melnicoff, of Washington, D.C., for Master Furriers, Inc., and certain individual respondents.

INITIAL DECISION AS TO CERTAIN RESPONDENTS BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on September 26, 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 answers thereto. Thereafter the respondents Master Furriers, Inc., Ernest E. Marx, Erwin C. Bein, and M. J. Swartz entered into an agreement, dated March 18, 1958, containing a consent order to cease and desist purporting to dispose of all of this proceeding as to said parties. Said agreement, which has been signed by the named 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.

The signatory 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 juris-

dictional facts had been duly made in accordance with such allegations. Said agreement further provides that said 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 the signatory respondents that they have violated the law as alleged in the complaint.

Submitted with the aforesaid agreement containing consent order, and as a part thereof, is an affidavit of respondent Sally Marx, sworn February 10, 1958, and attesting to the fact that said respondent does not formulate, direct, and control the acts, policies, and practices of the corporate respondent Master Furriers, Inc. It has been agreed that the complaint may be dismissed as to respondent Sally Marx.

This proceeding having now come on for final consideration as to respondents Master Furriers, Inc., Ernest E. Marx, Erwin C. Bein, Sally Marx, and M. J. Swartz on the complaint, the aforesaid agreement containing consent order and the affidavit of Sally Marx attached to and made a part of said agreement, 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 the parties above named, said agreement and affidavit are hereby accepted and are ordered filed upon this decision's becoming the decision of the Commission pursuant to sections 3.21 and 3.25 of the Commission's rules of practice for adjudicative proceedings, and the hearing examiner, accordingly, makes the following jurisdictional findings and order:

1. Respondent Master Furiers, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maryland with its office and place of business at 227 North Howard Street, Baltimore, Md.

Respondents Ernest E. Marx and Erwin C. Bein are president and treasurer respectively, of said Master Furriers, Inc., and their office and place of business is the same as that of the corporate respondent.

M. J. Swartz is an individual with his address at 3900 Parks Lane, Baltimore, Md. He is a former officer and director of respondent Master Furriers, Inc., and has cooperated and now cooperates with the officers of respondent Master Furriers, Inc., in formulating and directing the acts, practices, and policies of said corporate respondent.

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 respondent, Master Furriers, Inc., a corporation, and its officers, and respondents Ernest E. Marx and Erwin C. Bein, individually and as officers of said corporation, and respondent M. J. Swartz, an individual, and respondents' agents, representatives 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 or received in commerce as "commerce," "fur," and "fur products" are defined in the Fur Products Labeling Act do forthwith cease and desist from:

A. Misbranding fur products by:

1. Representing on labels affixed to fur products, or in any other manner, that certain amounts are the regular and usual prices of fur products when such amounts are in excess of the prices at which respondents usually and customarily sell such products in the recent regular course of their business.

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 person issuing such invoice.

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

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

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

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. Represents directly or by implication:

(a) That retail prices of fur products are reduced or that fur products are being sold "below cost" or "below wholesale cost," when such is not the fact.

(b) That respondent's regular price of any fur product is any amount which is in excess of the price at which respondents have regularly or customarily sold fur products of similar grade and quality in the recent course of their business.

2. Makes use of comparative prices or percentage savings claims in advertisements unless such compared prices or percentage savings claims are based upon the current market value of the fur product or unless a bona fide price at a designated time is stated.

3. Makes pricing claims and representations of the types referred to in paragraphs C1 (a) and (b) and C2 hereof, 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.

It is further ordered, That the complaint herein be dismissed as to respondent Sally Marx.

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 10th day of June 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Master Furriers, Inc., a corporation, and Ernest E. Marx and Erwin C. Bein, individually and as officers of said corporation, and M. J. Swartz, an individual, 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

PIPER BRACE SALES CORP. ET AL.

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

Docket 6949. Complaint, Nov. 20, 1957—Decision, June 10, 1958

Consent order requiring sellers in Kansas City, Mo., to cease misrepresenting in newspaper advertisements the qualities and unique nature of their trusses or hernia supports, and disparaging competitive products.

Mr. Morton Nesmith and *Mr. John J. Mathias* for the Commission.
Mr. Solbert M. Wasserstrom, of Kansas City, Mo., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on November 20, 1957, charging Respondents with violation of the provisions of the Federal Trade Commission Act by the dissemination of false advertisements relating to certain devices consisting of trusses designated "Rupture-Easer," "Rupture-Gard," and "PiPeer Golden Crown Truss."

Thereafter, on March 20, 1958, Respondents Piper Brace Sales Corp., by Henry G. Nelkin, its president; Henry G. Nelkin, individually; Nedwyn R. Nelkin, individually; Eugene Goldstein, individually; their attorney, and counsel supporting the complaint herein entered into an agreement containing consent order to cease and desist, which was approved by the Director and an Assistant Director of the Commission's Bureau of Litigation, and thereafter submitted to the hearing examiner for consideration.

In the agreement it is recommended that the complaint herein be dismissed, insofar as it relates to respondents Anne R. Nelkin, Cecil Nelkin, and Marie H. Dinger, for reasons set forth in an affidavit executed by respondent Henry G. Nelkin, and attached to and made a part of said agreement. Respondent Henry G. Nelkin, in said affidavit, sets forth that respondents Anne R. Nelkin, Cecil Nelkin, and Marie H. Dinger, stockholders in the respondent corporation, have not been, and will not in the future be, consulted concerning the lay-out, wording, or content of the respondent corporation's advertising or display materials. The agreement then sets forth the recommendation that the complaint be dismissed as to these three respondents, and the order contained therein provides for such dismissal without prejudice.

The agreement identifies respondent Piper Brace Sales Corp. as a Missouri corporation; respondents Henry G. Nelkin and Nedwyn R. Nelkin as officers and Eugene Goldstein as a stockholder thereof; and states that these three individuals dominate, control, and direct the policies, acts, and practices of the corporate respondent, all having the same address, 811 Wyandotte Street, Kansas City, Mo.

Respondents signatory to the agreement 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.

Said respondents 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 respondents signatory thereto that they have violated the law as alleged in the complaint.

It is specifically set forth in the agreement that no provision is made in the order contained therein respecting the charge in the complaint based upon the representation "That the devices cannot slip." Counsel supporting the complaint state in the agreement, however, that they are satisfied that because of the design of these devices and the manner in which they are worn, it is impossible to prove that they will slip; and said counsel recommend that said charge of the complaint be dismissed. They further state "that prohibiting the representation 'That the rupture cannot "come out" while an individual is wearing said devices' is adequate."

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 Piper Brace Sales Corp., and its officers, and Henry G. Nelkin and Nedwyn R. Nelkin, individually and as officers of said corporation, and Eugene Goldstein, individually and as a stockholder 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 devices designated as Rupture-Easer, Rupture-Gard, and Piper Golden Crown Truss, or any product or device of substantially similar construction or design; whether sold under the same names or any other name or names, do forthwith cease and desist from, directly or indirectly:

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

(a) That the rupture cannot "come out" while an individual is wearing said devices;

(b) That the devices are the most effective trusses or hernia supports devised;

(c) That the devices operate upon a different principle from other trusses in common use, that is, the principle of closing the opening of the inguinal canal by means of external pressure; or that the control of rupture upon such principle is new;

(d) That competitive devices are old-fashioned, outmoded, torturing, or binding, or otherwise inferior to said devices;

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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said devices, which advertisement contains any of the representations prohibited in paragraph 1 hereof;

3. Placing in the hands of wholesalers, or retailers or others, a means and instrumentality by and through which they may deceive and mislead the purchasing public concerning said devices in the respects set out in paragraph 1 above.

It is further ordered, That the complaint herein, insofar as it relates to respondents Anne R. Nelkin, Cecil Nelkin, and Marie H. Dinger, be, and the same hereby is, dismissed without prejudice to the right

of the Commission to take such action in the future as the facts may then warrant.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to the following allegation of paragraph 7(a) thereof:

"The pad on such devices can slip * * *."

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 10th day of June 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Piper Brace Sales Corp., a corporation, and Henry G. Nelkin and Nedwyn R. Nelkin, individually and as officers of said corporation, and Eugene Goldstein, individually and as a stockholder 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

GOLDMAN JEWELRY CO. ET AL.

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

Docket 7054. Complaint, Jan. 28, 1958—Decision, June 10, 1958

Consent order requiring sellers of jewelry and other merchandise in Kansas City, Mo., to cease representing falsely in newspaper advertisements and otherwise that their commodities such as bone china cups and saucers, binoculars, and laprobes were being offered at reduced prices.

Mr. Thomas A. Ziebarth for the Commission.

Mr. Jules E. Kohn, of Kansas City, Mo., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on January 28, 1958, charging respondents with violation of the Federal Trade Commission Act by falsely and deceptively advertising the customary and regular prices of their jewelry and other commodities, and the savings to purchasers resulting therefrom.

Thereafter, on April 15, 1958, respondents, their counsel, and counsel supporting the complaint herein entered into an agreement containing consent order to cease and desist, which was approved by the Director and an Assistant Director of the Commission's Bureau of Litigation, and thereafter submitted to the hearing examiner for consideration.

The agreement identifies corporate respondent Goldman Jewelry Co. as a Missouri corporation, with its office and principal place of business located at 211 Altman Building, Kansas City, Mo.; individual respondents Fred Goldman, Sr., and George L. Goldman as president and secretary-treasurer, respectively, of the corporate respondent; and individual respondents Fred Goldman, Jr., and Richard A. Goldman as substantial stockholders in the corporate respondent and active in its management; the individual respondents having the same address as the corporate respondent.

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

Respondents waive any further procedure before the hearing examiner and the Commission: the making of findings of fact and

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

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

It is ordered, That Respondents Goldman Jewelry Co., a corporation, and its officers; and respondents Fred Goldman, Sr., and George L. Goldman, individually and as officers of said corporation, and Fred Goldman, Jr., and Richard A. Goldman, individually, 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 commodities in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that the regular prices of respondents' commodities are any amounts in excess of the prices at which such commodities have been sold by respondents in their recent regular course of business;

2. Representing, directly or by implication, that any savings are afforded from respondents' regular prices unless the amount for which they are offered constitutes a reduction from the price at which said commodities had been sold by respondents in their recent regular course of business.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner shall, on the 10th day of June 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondents named in the caption hereof 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

CARL M. STEPHAN ET AL. TRADING AS THE FASHION

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

Docket 6956. Complaint, Nov. 25, 1957—Decision, June 11, 1958

Consent order requiring furriers in San Antonio, Tex., to cease violating the Fur Products Labeling Act by failing to comply with the labeling, invoicing, and advertising requirements, and specifically by advertising in newspapers which failed to disclose the names of animals producing the furs in certain products or the country of origin, or that some products contained artificially colored or cheap or waste fur.

Mr. John T. Walker supporting the complaint.
Respondents, pro se.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

On November 25, 1957, the Federal Trade Commission issued a complaint charging Carl M. Stephan, Earl Marcus, Gladys Stephan, Murray Marcus, Carol Marcus and Janet Marcus, individually and as copartners, trading as The Fashion, hereinafter referred to as respondents, with misbranding, falsely and deceptively invoicing and advertising fur products in violation of the Federal Trade Commission Act and the Fur Products Labeling 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 conclusions 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 con-

test 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 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. Respondents Carl M. Stephan, Earl Marcus, Gladys Stephan, Murray Marcus, Carol Marcus and Janet Marcus, are individuals and copartners trading as The Fashion. Their office and principal place of business is located at 230 East Houston Street, San Antonio, Tex.

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 Carl M. Stephan, Earl Marcus, Gladys Stephan, Murray Marcus, Carol Marcus and Janet Marcus, individually and as copartners, trading as The Fashion or under any other trade name or names, and respondents' representatives, agents, and employees, directly or indirectly 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 offering for sale, sale, advertising, transportation or distribution of 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 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 in commerce, or transported it for distribution in commerce;

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

(g) The item numbers or mark assigned to a fur product.

2. Setting forth on labels affixed to fur products:

(a) Information required under section 4(2) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder mingled with nonrequired information.

(b) Information required under section 4(2) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder in handwriting.

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 a fact;

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

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

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

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

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

C. Falsely or deceptively advertising fur products through the use of any notice, advertisement, representation or public announcement, 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. Fails to disclose that fur products contain or are composed of bleached, dyed, or otherwise artificially colored fur when such is a fact;

3. Fails to disclose that fur products are composed in whole or in substantial part, of paws, tails, bellies, or waste fur, when such is the fact;

4. Fails to disclose the name of the country of origin of the imported furs contained in fur products;

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner shall, on the 11th day of June 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

SURPLUS TIRE CO., INC., ET AL.

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

Docket 7004. Complaint, Dec. 23, 1957—Decision, June 11, 1958

Consent order requiring sellers of automotive tires in Chicago, largely by use of post cards offering "FACTORY SURPLUS," to cease selling cleaned, repainted, and, in some instances, repaired used tires as new ones—frequently not of the brand or size ordered but concealing that fact by wrappings until after delivery by the carrier—and failing to make guaranteed shipments and refunds to dissatisfied customers and offering instead an unprofitable exchange deal.

Mr. William C. Somers for the Commission.

Mr. Jerome J. Nudelman, of Chicago, Ill., for respondents.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on December 23, 1957, served its complaint in this proceeding against respondents Surplus Tire Co., Inc., a corporation existing and doing business under and by virtue of the laws of the State of Illinois, Jacob (Jack) Roth and Seymour Roth, individually and as president and secretary-treasurer, respectively, of the corporate respondent. The office and principal place of business of said respondents is located at 3929 West Grand Avenue, Chicago, Ill.

On April 22, 1958, there was submitted to the undersigned hearing examiner an agreement between respondents and counsel supporting the complaint providing for the entry of a consent order. By the terms of said agreement, respondents admit all the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. By such agreement, respondents waive any further procedural steps before the hearing examiner and the Commission; waive the making of findings of fact and conclusions of law; and waive all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement. Such agreement further provides that it disposes of all of this proceeding as to all parties; that the record on which this initial decision and the decision of the Commission shall be based shall consist solely of the complaint and

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

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

1. Respondent Surplus Tire Co., Inc., is a corporation existing and doing business under the laws of the State of Illinois. Respondents Jacob (Jack) Roth and Seymour Roth are individuals and officers of corporate respondent. Said corporate and individual respondents have their office and principal place of business located at 3929 West Grand Avenue, Chicago, Ill.

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 Surplus Tire Co., Inc., a corporation, and its officers, and Jacob (Jack) Roth and Seymour Roth, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of tires or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly:

1. That merchandise which has been used, in any respect, is new.

2. That respondents will ship the brand or size of merchandise ordered, unless such is the fact.

3. That a refund of the purchase price of merchandise will be made in case the merchandise is not as represented, unless refunds are in fact made.

4. That merchandise is guaranteed unless the extent of the guarantee and the manner in which the guarantor will perform are clearly and conspicuously disclosed.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner shall, on the 11th day of June 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

ACCURATE STYLE MANUFACTURING CO., INC., ET AL.

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

Docket 7015. Complaint, Dec. 30, 1957—Decision, June 11, 1958

Consent order requiring a concern engaged in Freeport, Long Island, N.Y., in the mail order sale of precut fabrics for making dresses at home, to cease representing falsely in "Help Wanted" advertisements in newspapers that it was offering to employ persons to sew ready-cut housecoats in their homes and would pay "from $17.40 to $26.16 dozen" for such services.

Mr. Michael J. Vitale and *Mr. Alvin D. Edelson* for the Commission.

Mr. Joseph F. Soviero, Jr., of Jamaica, N.Y., for respondents.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on December 30, 1957, charging them with the dissemination in commerce of advertisements containing false representations with respect to distribution through the mails of precut fabrics for the making of dresses in the home, and alleging that the use of such advertisements constituted unfair and deceptive acts and practices and unfair methods of competition in commerce within the meaning and intent of the Federal Trade Commission Act. In lieu of submitting answer to said complaint, all of the respondents, except Joseph Soviero as an individual, entered into an agreement for consent order with counsel supporting the complaint disposing of all the issues in this proceeding in accordance with section 3.25 of the rules of practice and procedure of the Commission, which agreement has been duly approved by the Bureau of Litigation. It was recommended in the agreement and the affidavit, which was attached to said agreement and made a part thereof, that the complaint to be dismissed as to respondent Joseph Soviero for the reason that he played no part in formulating the corporate policies. All references to respondents hereinafter made include all respondents except Joseph Soviero.

By the terms of said agreement, the respondents admitted all the jurisdictional facts alleged in the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been

duly made in accordance with such allegations. Respondents in the agreement 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 they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

It was further provided in said agreement 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 said agreement. It was further agreed that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, and that 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 agreement also provided 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; 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 agreement for consent order, and it appearing that said agreement provides for an appropriate disposition of this proceeding, the aforesaid agreement 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 makes the following jurisdictional findings and order:

1. Respondent Accurate Style Manufacturing Co., Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 22 Pine Street, Freeport, Long Island, N.Y.

Respondent Mrs. D. T. Ruhl is president of the respondent corporation and maintains a business address at the same address as the corporate respondent.

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 Federal Trade Commission Act and this proceeding is in the interest of the public.

ORDER

It is ordered, That respondents, Accurate Style Manufacturing Co., Inc., a corporation, and its officers, and Mrs. D. T. Ruhl, 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 precut fabrics, or any other article of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that respondents are offering employment or payment for services to be rendered, when, in fact, the offer is to sell merchandise.

It is further ordered, That the complaint, insofar as it relates to respondent Joseph Sovierio, be, and the same hereby is, dismissed.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

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

It is ordered, That respondents Accurate Style Manufacturing Co., Inc., a corporation, and Mrs. D. T. Ruhl, 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

SAUL FRISCH TRADING AS SYLVETTE WATCH CO.

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

Docket 7033. Complaint, Jan. 14, 1958—Decision, June 11, 1958

Consent order requiring an importer in New York City to cease selling watches of simulated gold or gold alloy without disclosing clearly that the cases were composed of base metal; and to cease representing falsely by the words "Sylvette of Switzerland" on the cardboard boxes packaging the watches that he maintained a place of business in Switzerland, and representing falsely on counter display cards widely distributed to jobbers and dealers that the watches were "guaranteed."

Mr. Harry E. Middleton, Jr., for the Commission.

Linkin & Kase, by *Mr. Aaron A. Linkin*, of New York, N.Y., for respondent.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges that respondent has violated the Federal Trade Commission Act by making false and misleading representations relative to imported watches sold and distributed by respondent in commerce, to various retailers and distributors.

After the issuance of the complaint, respondent, his counsel, and counsel supporting the complaint entered into an agreement containing consent order to cease and desist, which was approved by the Director and an Assistant Director of the Commission's Bureau of Litigation, and thereafter transmitted to the hearing examiner for consideration.

The agreement identifies respondent Saul Frisch as an individual trading as Sylvette Watch Co., with his office and principal place of business located at 101 West 31st Street, New York, N.Y.

The agreement provides, among other things, that 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 respondent that he 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 he may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

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

It is ordered, That respondent Saul Frisch, an individual trading as Sylvette Watch Co., or under any other name, and his agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale or selling watches, the cases of which are composed of base metal, manufactured or otherwise processed to simulate or have the appearance of precious metal, without marking such cases so as to disclose clearly the true metal composition thereof;

2. Representing in any manner that respondent maintains an office and place of business in Switzerland;

3. Representing that merchandise is guaranteed, unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

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

It is ordered, That Saul Frisch, an individual trading as Sylvette Watch Co., shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with the order to cease and desist.

IN THE MATTER OF

LA FLORIDANA CIGAR FACTORY, INC., ET AL.

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

Docket 7048. Complaint, Jan. 22, 1958—Decision, June 11, 1958

Consent order requiring manufacturers of cigars in Tampa, Fla., to cease representing falsely, by use of the words "Havana" and "Habana" on boxes and bands of cigars containing large amounts of non-Cuban tobacco, that the cigars were composed entirely of tobacco grown in Cuba; and to disclose to the purchasing public their practice of using a processed paper as the binder for certain of their cigars.

Charles W. O'Connell, Esq., for the Commission.

George W. Ericksen, Esq., *Macfarlane, Ferguson, Allison & Kelly*, of Tampa, Fla., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (hereinafter referred to as the Commission) on January 22, 1958, issued its complaint herein under the Federal Trade Commission Act against the above-named respondents.

On April 10, 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 April 4, 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 an 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 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 La Floridana Cigar Factory, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 1607 17th Street, in the city of Tampa, State of Florida.

Respondents Faustino Casares, William E. Diaz and Violet C. Diaz are president, vice president, and secretary-treasurer, respec-

tively, of said corporation. Their office and place of business is the same as that of the corporate respondent.

2. Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on January 22, 1958, 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.

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, if and when it shall have become a part of the Commission's decision. 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 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; and that said order therefore should be, and hereby is, entered as follows:

ORDER

It is ordered, That respondent La Floridana Cigar Factory, Inc., a corporation, and its officers, and respondents Faustino Casares, William E. Diaz and Violet C. Diaz, individually and as officers of said corporation and their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of cigars in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the terms "Havana" or "Habana" or any other term or terms indicative of tobacco grown on the island of Cuba, either alone or in conjunction with any other terms, to describe, designate or refer to cigars not made entirely from tobacco grown on the island of Cuba; except that cigars containing a substantial amount of tobacco grown on the island of Cuba may be described, designated or referred to as "blended with Havana" or by any term of similar import or meaning, provided that the qualifying words are clearly and conspicuously set out in immediate connection with the word "Havana" or other term indicative of tobacco grown on the island of Cuba.

2. Failing to disclose in the labeling and advertising that their cigars contain a paper binder, when such is 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 11th day of June 1958, become the decision of the Commission; and, accordingly:

It is ordered, That the above named 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.

IN THE MATTER OF

ADELL CHEMICAL CO., INC.

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

Docket 7056. Complaint, Feb. 7, 1958—Decision, June 11, 1958

Consent order requiring a concern in Holyoke, Mass., to cease selling its household detergent "Lestoil" without warning purchasers that it was a combustible mixture and should not be used near an open flame or extreme heat, and to cease representing in television broadcasts that it could be used safely in such situations.

Mr. John T. Walker for the Commission.

Hale & Dorr, by *Mr. James D. St. Clair*, of Boston, Mass., for respondent.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on February 7, 1958, issued and subsequently served its complaint in this proceeding against respondent Adell Chemical Co., Inc., a corporation existing and doing business under and by virtue of the laws of the State of Massachusetts, with its office and principal place of business located at 51 Garfield Street, Holyoke, Mass.

On April 10, 1958, there was submitted to the undersigned hearing examiner an agreement between respondent and counsel supporting the complaint providing for the entry of a consent order. By the terms of said agreement, respondent admits all the jurisdictional facts alleged in the complaint and agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. By such agreement, respondent waives any further procedural steps before the hearing examiner and the Commission; waives the making of findings of fact and conclusions of law; and waives all of the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement. Such agreement further provides that it disposes of all of this proceeding as to all parties; that the record on which this initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement; that the latter shall not become a part of the official record unless and until it becomes

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

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

1. Respondent Adell Chemical Co., Inc., is a corporation existing and doing business under the laws of the State of Massachusetts, with its office and principal place of business located at 51 Garfield Street, Holyoke, Mass.

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

ORDER

It is ordered, That the respondent Adell Chemical Co., Inc., a corporation, and its officers, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of any detergent having the same composition or possessing substantially similar properties as the detergent now designated as "Lestoil," do forthwith cease and desist from:

1. Offering for sale, selling or distributing such product unless an adequate warning notice is clearly and conspicuously displayed on such product disclosing that such product is a combustible mixture and that purchasers thereof should avoid using it near an open flame or extreme heat.

2. Representing pictorially or by any other means, directly or indirectly, that such product is not a combustible mixture or that such product is safe to use near an open flame or extreme heat.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

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

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

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IN THE MATTER OF

PACIFIC AMERICAN FISHERIES, INC., ET AL.

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

Docket 6942. Complaint, Nov. 18, 1957—Decision, June 12, 1958

Consent order requiring a packer of canned salmon and other sea food products and its corporate sales agent in Bellingham, Wash., to cease discriminating in price in violation of section 2(c) of the Clayton Act by making direct sales to certain favored customers at prices lower than those paid by buyers purchasing through brokers, the reduced prices reflecting in whole or in part the brokerage paid on the sales to the nonfavored customers.

Mr. Cecil G. Miles and *Mr. John J. McNally* for the Commission.

Kerr, McCord, Greenleaf & Moen, by *Mr. R. A. Moen* and *Mr. Howard L. Scott*, of Seattle, Wash., for respondents.

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, as amended hereby ssues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. The respondent Pacific American Fisheries, Inc., hereinafter sometimes referred to as Pacific American, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 401 Harris Avenue, Bellingham, Wash.

Respondent Deming & Gould Co., hereinafter sometimes referred to as Deming & Gould, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its office and principal place of business also located at 401 Harris Avenue, Bellingham, Wash. Respondent Deming & Gould is a wholly owned subsidiary of respondent Pacific American and operates as its sales agent.

PAR. 2. Respondent Pacific American is now, and for the past several years has been, engaged in the business of packing and distributing canned salmon and other seafood products, hereinafter sometimes referred to as seafood products to buyers located throughout the United States. Sales of its seafood products are generally made by its sales subsidiary, respondent Deming & Gould, through brokers located in the various marketing areas in which the buyers are located.

However, Pacific American either directly or through its wholly owned sales subsidiary, Deming & Gould, has made and continues to make numerous and substantial sales direct to certain favored buyers, principally large retail chains, without utilizing the services of brokers in the particular transactions. When respondent utilizes the services of brokers, said brokers are compensated for their services at the rate of 2½ percent of the net selling price of the merchandise.

Respondent Deming & Gould is now, and for the past several years has been, engaged in business as sales agent for respondent Pacific American, selling and distributing its seafood products to buyers located throughout the United States. Respondent Deming & Gould generally sells and distributes said seafood products through brokers located in the various marketing areas of the United States in which the buyers are located. However it does sell said seafood products to certain favored buyers, principally large chains or large buying groups, without utilizing the services of brokers. This type of selling is done with the knowledge, consent and authority of respondent Pacific American. When selling through brokers respondent usually compensates them for their services in making the sale at the rate of 2½ percent of the net selling price of the merchandise.

PAR. 3. These respondents are substantial factors in the sale and distribution of canned seafood, particularly canned salmon, and sell and distribute such seafood products to buyers throughout the United States. In the course and conduct of their business, as aforesaid, respondents and each of them, directly or indirectly, have shipped or transported said seafood products, or caused the same when sold to be shipped or transported, from the canning plants or warehouses of respondents to buyers located in the various states of the United States other than the state or territory of origin of such shipments. Thus, the respondents are now, and for the past several years have been, engaged in a continuous course of trade in commerce, as "commerce" is defined in the aforesaid Clayton Act as amended.

PAR. 4. In the course and conduct of their business of selling and distributing canned seafood in commerce as aforesaid, the respondents and each of them, have made direct sales thereof to certain favored buyers at prices lower than those paid by buyers purchasing through respondents' brokers. These reduced prices to the favored buyers buying directly from respondents reflect either in whole or in part the customary and usual brokerage paid to brokers for their services in making sales to respondents' non-favored customers.

Thus respondents, and each of them, in the course and conduct of their business as hereinabove described have paid, granted or allowed,

and are now paying, granting or allowing, something of value as a commission, brokerage, or other compensation, or an allowance or discount in lieu thereof, in connection with the sale and distribution of their canned seafood, to buyers who were and are purchasing for their own account for resale, or to agents or intermediaries who were and are acting for or in behalf of, or who were and are subject to the direct or indirect control of said buyers.

PAR. 5. The acts and practices of respondents as hereinbefore alleged and described constitute a violation of the provisions of subsection (c) of section 2 of the Clayton Act as amended.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on November 18, 1957, charging respondents with violation of the provisions of section 2(c) of the Clayton Act, as amended, by paying, granting, or allowing something of value as a commission, brokerage, or other compensation, or an allowance or discount in lieu thereof, to buyers purchasing respondents' canned seafood for their own account for resale, or to agents or intermediaries acting for or in behalf of said buyers or subject to the direct or indirect control thereof.

Thereafter, on April 11, 1958, respondents, their counsel, and counsel supporting the complaint herein entered into an agreement containing consent order to cease and desist, which was approved by the Director and an Assistant Director of the Commission's Bureau of Litigation, and thereafter submitted to the hearing examiner for consideration.

The agreement identifies Respondents Pacific American Fisheries, Inc. and Deming & Gould Co. as Delaware corporations, with their offices and principal places of business located at the same address, to wit, 401 Harris Avenue, Bellingham, Wash.

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

Respondents waive any further procedure before the hearing examiner and the Commission; the making of findings of fact and conclusions of law; and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist ,as contained in the agreement, when it shall have become a part of the decision of the Commission, shall have the same force

and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said order; and that the agreement is for settlement purposes only, and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint.

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

It is ordered, That Pacific American Fisheries, Inc., a corporation, and Deming & Gould Co., a corporation, and Respondents' officers, directors, agents, representatives or employees, directly or through any corporate or other device, in connection with the sale of their seafood products in commerce as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Paying, granting, or allowing, directly or indirectly, to any buyer, or to anyone acting for or in behalf of, or who is subject to the direct or indirect control of such buyer, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any sale of their seafood products to such buyer for his own account.

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 12th day of June 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Pacific American Fisheries, Inc., a corporation, and Deming & Gould Co., a 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

MERCANTILE STORES CO., INC., ET AL.

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

Docket 6999. Complaint, Dec. 18, 1957—Decision, June 12, 1958

Consent order requiring a furrier in Seattle, Wash., and its parent corporation to cease violating the advertising, invoicing, and labeling requirements of the Fur Products Labeling Act.

Mr. John J. McNally, Jr., supporting the complaint.

Mr. Clarence U. Carruth, Jr., of the firm of *Curtis, Mollet-Prevost, Colt & Mosle* of New York, N.Y., for respondents.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on December 18, 1957, charging them with having violated the Fur Products Labeling Act, the rules and regulations issued thereunder, and the Federal Trade Commission Act by misbranding, falsely invoicing, and falsely advertising certain fur products. After being served with the complaint respondents entered into an agreement dated March 12, 1958, containing a consent order to cease and desist, disposing of all the issues in this proceeding without hearing, which agreement has been duly approved by the Assistant Director and the Director of the Bureau of Litigation. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with section 3.25 of the rules of practice of the Commission.

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

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

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

1. Respondent Mercantile Stores Co., 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 100 West 10th Street, Wilmington, Del.

2. The MacDougall & Southwick Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington with its office and principal place of business located at Second Avenue and Pike Street, Seattle, Wash.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the 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 the respondents, Mercantile Stores Co., Inc., a corporation, and the MacDougall & Southwick Co., a corporation, and their officers, 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 name or names of the animal or animals that produced the fur from which such product was manufactured.

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 a fact;

3. That the fur product contains or is composed of bleached, dyed, or 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 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;

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

b. Setting forth on labels attached to fur products:

1. Information required under section 4(2) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder in abbreviated form.

2. The term "blended" to describe the pointing, bleaching, dyeing or tip-dyeing of fur products.

3. Information required under section 4(2) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder in an illegible or inconspicuous manner.

4. Information required under section 4(2) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder mingled with nonrequired information.

5. Information required under section 4(2) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder with pencil or in handwriting.

c. Failing to affix labels to fur products which comply with the minimum size requirements of 1¾ inches by 2¾ inches.

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 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 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.

b. Using on invoices the name or names of any animal or animals other than the name or names provided for in paragraph 3(a)(1) above, or furnishing invoices which misrepresent the country of origin of imported furs contained in fur products or which contain any form of misrepresentation or deception directly or by implication with respect to such fur products.

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

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

a. Fails to disclose:

1. The name or names of the animal or animals which produced the fur or furs contained in the fur products as set forth in the Fur Products Name Guide.

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

3. That the fur products are composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the fact;

b. Contains the name or names of an animal or animals other than the name or names specified in the Fur Products Name Guide or prescribed under the rules and regulations;

c. Contains the term "blended" to describe the pointing, bleaching, dyeing or tip-dyeing of fur products.

d. 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.

e. Represents directly or by implication through percentage savings claims that the regular or usual retail prices charged by respondents for fur products in the recent regular course of their business are reduced in direct proportion to the amounts of savings stated, when contrary to fact.

5. Making price claims or representations of the types referred to in paragraphs 4 (d) and (e) above unless there are maintained by respondents full and adequate records disclosing the facts upon which such claims or representations are based.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner shall, on the 12th day of June, 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 FABRICANT TRADING AS LE CHARME AND FRENCH PERFUME AGENCY

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

Docket 7024. Complaint, Jan. 10, 1958—Decision, June 17, 1958

Consent order requiring a distributor in New York City to cease representing falsely in advertising, circulars, price lists, by brand names, etc., that domestically made perfumes were French imports; misrepresenting the retail price or value of the perfumes; claiming falsely that the filigree on perfume bottles was jeweled or gold-plated, that the perfume in such bottles did not deteriorate but improved with age, and that it had been advertised in the New York Times as a "$10.00 value."

Mr. Kent P. Kratz for the Commission.
Mr. Peter J. Unger, of New York, N.Y., for respondent.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondent with making certain misrepresentations in advertising his perfume products. An agreement has now been entered into by respondent 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 he 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 Maurice Fabricant is an individual trading as Le Charme and French Perfume Agency with his office and principal place of business located at 220 West 42d Street, New York, N.Y.

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

ORDER

It is ordered, That respondent Maurice Fabricant, individually and trading as Le Charme or French Perfume Agency, or trading under any other name, his agents, representatives, or employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of perfumes or any other related product, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement by means of the U.S. mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said products, which advertisement:

a. Contains or lists prices, amounts, or values when such prices, amounts, or values are in excess of the prices at which said products are usually and customarily sold at retail.

b. Uses the words "French Formula Perfume," "Originally created in France, This Exotic Perfume," or "Paris-New York," or any other French name, word, term, or depiction in connection with any product not manufactured or compounded in France, or otherwise representing, directly or by implication, that such products are manufactured or compounded in France.

c. Uses any French name or word as a corporate, trade, or brand name or as a part thereof in connection with products manufactured or compounded in the United States, unless it is clearly and conspicuously revealed in immediate connection and conjunction therewith that such products are manufactured or compounded in the United States.

d. Represents, directly or by implication that the filigree on his perfume bottles is jeweled or gold plated.

e. Represents, directly or by implication, that his perfume products do not deteriorate or that they improve with age.

f. Represents, directly or by implication, that his perfume products have been advertised in the New York Times or any other advertising medium as being of a certain value, when such is not a fact.

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.

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 17th day of June 1958, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

OXFORD FILING SUPPLY CO., INC.

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

Docket 7052. Complaint, Jan. 27, 1958—Decision, June 17, 1958

Consent order requiring a leading manufacturer of filing systems and filing supplies with principal place of business in Garden City, N.Y., and with nationwide distribution of its products, to cease maintaining, in areas not having so-called fair trade laws, uniform resale prices for its well-known "Pendaflex" line of products, and, in making effective such policy, requiring dealers, as a condition precedent to selling such "Pendaflex" line, to execute franchise agreements to cooperate in maintaining its retail list prices, and canceling franchises of dealers violating the agreement; and to cease discriminating in price by selling to some of its dealer customers at 40 plus 10 percent off its published list prices while selling to their competitors at the "Trade Discount" of only 40 percent off list price, and by further requiring some dealer customers to purchase $10,000 of its products in order to qualify for the extra 10 percent discount while requiring others to purchase only $5,000 to so qualify.

Mr. Leslie S. Miller for the Commission.

Chamberlain, Kafer, Wilds & Jube, by *Mr. John J. Jansen*, of New York, N.Y., for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated and is now violating the provisions of section 5 of the Federal Trade Commission Act (15 U.S.C. 45), and the provisions of section 2(a) of the Clayton Act (15 U.S.C. 13), as amended by the Robinson-Patman Act, approved June 19, 1936, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges with respect thereto as follows:

CHARGES UNDER SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT

Count I

PARAGRAPH 1. Respondent Oxford Filing Supply Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal place of business located on Clinton Road, Garden City, N.Y. It has one subsidiary, Imperial Methods Co., Chicago, Ill. It also has branch

plants and warehouses in St. Louis, Mo., and Los Angeles, Calif., and an additional warehouse in Chicago, Ill.

PAR. 2. Respondent Oxford Filing Supply Co., Inc., hereinafter sometimes referred to as Oxford or as respondent, is engaged in the manufacture, sale and distribution of filing systems and filing supplies which are divided into two classifications of products:

(1) The Oxford "General Line" which consists of about 1,500 items of cards, forms folders, guides, index cards, and related products and supplies for use in offices generally for keeping records and files.

(2) The "Pendaflex" line of products which consists of about 100 separate items, the basic one being the Pendaflex hanging folder. All other Pendaflex products are related to and used in connection with this hanging folder.

Oxford was the first company in the United States to design and sell commercially a hanging folder. The Pendaflex hanging folder is, and for some time past has been, the dominant product of its kind, and has been the leading seller in the hanging folder market. By reason of the general use, popularity and customer acceptance of and demand for the Pendaflex hanging folders, the name "Pendaflex" has become a generic term for hanging folders. The handling, sale and distribution of the Pendaflex line of products has therefore become a valuable business and trade asset for the dealers and distributors throughout the United States that stock and sell these items, particularly the Pendaflex hanging folder.

For the fiscal year ending March 31, 1957, respondent's total sales amounted to $7,849,209, of which $2,906,900 were sales of Pendaflex products, between 60 and 80 percent of which were Pendaflex hanging folders.

PAR. 3. In the course and conduct of its business, as aforesaid, respondent sells its products through approximately 30 wholesalers and approximately 5,400 dealers, about 3,800 of which have been franchised as Pendaflex dealers. Only dealers which have been approved and franchised by respondent Oxford through the execution of a written "Pendaflex Price Maintenance Agreement" are permitted to sell the Pendaflex line of products. Respondent has virtually nationwide distribution and sale of its products, but does not sell direct to consumers. Respondent also has approximately 20 sales representatives who call upon individual Oxford customers, taking merchandise orders, adjusting difficulties, and generally keeping in touch with market conditions concerning Oxford's products and competing products in their respective territories. Substantial responsibility rests upon respondent's salesmen with respect to the franchising

and disfranchising of respondent's wholesalers and dealers of Pendaflex products.

PAR. 4. In the course and conduct of its business, as aforesaid, respondent is now engaged, and for a number of years past has been engaged in commerce, as "commerce" is defined in the aforesaid Federal Trade Commission Act, having sold and now selling its several products from its plants located in the States of New York, Missouri, and California, and transferred or caused the same to be transferred from its plants or other places of business to wholesalers or dealers of such products located in other States of the United States, or in other places under the jurisdiction of the United States.

PAR. 5. In the course and conduct of its business as aforesaid, respondent Oxford is now and for a number of years past has been in substantial competition with others engaged in the manufacture, sale and distribution of products similar in purpose and use, in commerce, between and among the various States of the United States, or other places under the jurisdiction of the United States.

PAR. 6. In the course and conduct of its business as aforesaid, respondent Oxford has sold and now sells its products to wholesaler purchasers who are in competition with each other, and also to retailer purchasers who are in competition with each other in the resale of respondent's Pendaflex products.

PAR. 7. Respondent Oxford, in the course and conduct of its business as aforesaid, in order to fix, stabilize, and make uniform the resale prices of its Pendaflex products, adopted, established, and has maintained a system or policy of merchandising whereby it fixes specified, standard, and uniform resale prices in its designated selling zones at which said Pendaflex products should be resold by its wholesalers and retail dealers, and solicited and secured their active support and agreement in the maintenance of said resale prices. In order to carry out and make effective said system or policy, said respondent has entered into agreements and understandings with its wholesalers and retail dealers purporting to bind them to the maintenance of said retail prices, and solicited and obtained their cooperation in the maintenance of such prices. Pursuant to such agreements and understandings, this respondent has undertaken to prevent and has prevented wholesalers from selling Pendaflex products at prices less than respondent's established wholesale prices, and retail dealers from selling said products at prices less than said minimum resale prices fixed by respondent as aforesaid.

In further carrying out and making effective said system or policy, respondent instituted and does presently carry out the following acts and practices:

(1) Requires, as a condition precedent to selling any dealer Pendaflex products, the execution of a franchise agreement whereby the dealer agrees with respondent that it will not offer for sale or sell any Pendaflex products at other than the retail list prices as provided by respondent Oxford.

(2) Requires of the franchised Pendaflex dealer that it will notify all of said dealer's salesmen that Pendaflex list prices must not be cut.

(3) Requires the franchised Pendaflex dealer to agree not to defend an infraction of the "Pendaflex Price Maintenance Agreement" on the grounds of error.

(4) Requires the franchised Pendaflex dealer to forego any profit whatsoever on any transaction involving an infraction of the "Pendaflex Price Maintenance Agreement." Pursuant thereto, the dealer is required to pay respondent the full retail price for such Pendaflex merchandise as may be sold by the dealer at less than the minimum resale price fixed by respondent.

(5) Requires its wholesalers of Pendaflex products to sell said products to dealers at prices and according to discounts established by respondent Oxford.

(6) Requires Oxford salesmen to check and constantly be on the alert for any infractions of the "Pendaflex Price Maintenance Agreement" and to enforce said agreement.

(7) Reserves the right to cancel and in some instances has cancelled, the franchise of a dealer who has violated any of the terms of the "Pendaflex Price Maintenance Agreement."

PAR. 8. In the District of Columbia and in some of the several States of the United States valid statutes authorizing agreements prescribing minimum or stipulated resale prices have not been enacted, and interstate transactions involving such areas do not come within the exemptions granted by the Federal Trade Commission Act, as amended by the McGuire Act. Some of the agreements hereinabove alleged were between respondent and purchasers located in such areas.

PAR. 9. In furtherance of the system and policy of respondent Oxford to maintain the resale prices fixed and established by it with respect to Pendaflex products, respondent requires that none of its wholesalers or dealers sell such products to any dealer that is not franchised pursuant to its "Pendaflex Price Maintenance Agreement," under penalty of cancellation of the franchise entered by respondent Oxford with such wholesaler or dealer.

In pursuance of the foregoing policy, said wholesalers and dealers have entered verbal agreements or understandings with respondent Oxford that said policy will be observed and adhered to. Cancellation of the wholesaler's or dealer's franchise has in fact occurred in

some instances wherein infraction of this understanding or agreement has taken place.

Pendaflex products are movables, the title to which passes from respondent Oxford to its franchised wholesalers or retail dealers, and the aforesaid restraints upon alienation of the said Pendaflex products, in the District of Columbia and in the several States of the United States wherein valid statutes authorizing agreements prescribing minimum or stipulated resale prices have not been enacted, are unfair methods of competition in violation of section 5 of the Federal Trade Commission Act.

PAR. 10. The effects of the aforesaid unlawful agreements and understandings, and of the acts and practices done by respondent pursuant thereto, have been and are the tendency to suppress and hinder, and the suppression and hindrance of, competition between wholesalers and between retail dealers in the sale of Pendaflex products; the causing of such purchasers to sell such products at prices fixed and established by respondent; the preventing of said purchasers, and each of them, from selling said products at such lower prices as they might deem adequate and warranted by their respective costs, their respective methods of doing business, and by trade or market conditions generally; and the depriving of purchasers of the advantages in price which otherwise they would or might obtain in and through a natural and unobstructed flow of commerce in said products, all of which constitute unfair acts and practices and unfair methods of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act, and in violation thereof.

THE CHARGES UNDER SECTION 2(a) OF THE CLAYTON ACT, AS AMENDED

Count II

Paragraphs 1 to 3, inclusive, appearing in count I of this complaint are hereby incorporated in this count II by the Commission to the same extent as if each of them were set forth in full and repeated in this count II.

PAR. 11. In the course and conduct of its business as aforesaid, respondent is now engaged, and for a number of years past has been engaged in commerce, as "commerce" is defined in the Clayton Act, as amended, having sold its several products from its plants located in the States of New York, Missouri, and California, and transferred or caused the same to be transferred from is plants or other places of business to purchasers of such products located in other States of

the United States, or in other places under the jurisdiction of the United States.

PAR. 12. In the course and conduct of its business as aforesaid, respondent Oxford has sold and now sells its general line products in commerce to purchasers who have been and are now in substantial competition with each other in the resale, some in commerce, of such products.

PAR. 13. In the course and conduct of its business in commerce as aforesaid, respondent Oxford has been and is now discriminating in price between different purchasers of its general line of products by selling such products to some purchasers at higher prices than it sells such products of like grade and quality to other purchasers, and some of the favored purchasers are engaged in active and open competition with the less favored purchasers in the resale of such products within the United States.

Such discriminations in price result from one or more or a combination of the following enumerated practices:

(1) Respondent sells its general line products to some of its dealer customers at 40 and 10 percent off the published list prices, whereas it sells to other of its competing dealer customers at the "Trade Discount" of only 40 percent off list price. The 40 and 10 percent discount is designated a "Special Sales Arrangement" with respect to the favored dealers. The extra 10 percent is applicable only on general line products. To qualify therefor, a dealer must have purchased (in other than the metropolitan New York City area) $10,000 or more of Oxford's general line, Pendaflex products, or both, the preceding fiscal year. Thereafter during the period the extra 10 percent is applicable, the favored dealer receives such extra discount on all purchases of general line products, regardless of the quantity purchased.

(2) The same arrangement prevails in the metropolitan New York City area except that the dealer's total purchases from respondent Oxford during the preceding fiscal year in order to qualify for the extra 10 percent need be only $5,000.

(3) In requiring the dealers in the metropolitan New York City area to purchase a total of $5,000 of Oxford's general line, Pendaflex products, or both, during the preceding fiscal year as a prerequisite for receiving the "Special Sales Arrangement" extra 10 percent discount thereafter, competing Oxford dealers in the geographical areas adjacent to the metropolitan New York City area are placed at a competitive disadvantage by being required to have purchased

$10,000 of such products during the same period in order to qualify for such extra 10 percent discount.

(4) In order for unfavored dealers receiving only the Trade Discount of 40 percent to qualify for any further discount, they are required to purchase Oxford products in quantities specified in respondent's catalog and price book covering general line products. The quantity discounts provided therein vary from 5 percent to 7½ percent to 10 percent depending upon the type and quantity of general line products purchased in a single order for a single shipment.

The price concession through the granting of an extra 10 percent discount to respondent's favored dealer customers has been extremely harmful and injurious to respondent's unfavored dealer customers who are in competition with such favored customers. Also, the requirement for some dealer customers having to purchase $10,000 of respondent's general line, Pendaflex products, or both, in order to qualify for the extra 10 percent discount places them at a competitive disadvantage in relationship to other dealers being required to purchase only $5,000 of such products in order to so qualify.

PAR. 14. The effects of respondent's said discriminations in price has been and may be substantially to lessen competition in the line of commerce in which the purchasers receiving the benefit of such discriminatory price are engaged. Said practices of respondent also have a dangerous tendency unduly to hender competition, or to injure, destroy or prevent competition between those purchasers receiving the benefit of such discriminatory prices and those to whom they are denied, and tend to create a monopoly in those purchasers who receive the benefit of said discriminatory prices.

PAR. 15. The discriminations in price, as hereinabove alleged and described, are in violation of subsection (a) of section 2 of the aforesaid Clayton Act, as amended by the Robinson-Patman Act.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of section 5 of the Federal Trade Commission Act (15 U.S.C. 45), and the provisions of section 2(a) of the Clayton Act (15 U.S.C. 13), as amended by the Robinson-Patman Act, approved June 19, 1936, the Federal Trade Commission on January 27, 1958, issued and subsequently served its complaint in this proceeding against respondent Oxford Filing Supply Co., Inc., a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located on Clinton Road, Garden City, N. Y.

On April 23, 1958, there was submitted to the undersigned hearing

examiner an agreement between respondent and counsel supporting the complaint providing for the entry of a consent order. By the terms of said agreement, respondent admits all the jurisdictional facts alleged in the complaint and agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. By such agreement, respondent waives any further procedural steps before the hearing examiner and the Commission; waives the making of findings of fact and conclusions of law; and waives all of the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement. Such agreement further provides that it disposes of all of this proceeding as to all parties; that the record on which this initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement; that the latter shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint; and that the following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondent, and, when so entered, it shall have the same force and effect as if entered after a full hearing, and may be altered, modified, or set aside in the manner provided for other orders; and that the complaint may be used in construing the terms of the order.

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

1. Respondent Oxford Filing Supply Co., Inc., is a corporation existing and doing business under the laws of the State of New York, with its office and principal place of business located on Clinton Road, Garden City, N.Y.

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

ORDER

It is ordered, That respondent Oxford Filing Supply Co., Inc., a corporation, its officers, 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 respondent's Pendaflex or other products, do forthwith cease and desist from:

1. Entering into, continuing, enforcing, or maintaining any agreement or understanding, express or implied, with any wholesaler or retail dealer concerning the price at which such products are to be resold by such wholesaler or retail dealer or any of their customers.

2. Entering into, continuing, enforcing, or maintaining any agreement or understanding, express or implied, with any wholesaler or retail dealer which prohibits said wholesaler or retail dealer from selling any said product to purchasers who have not agreed to maintain or who do not maintain resale prices established or suggested by respondent on said product:

Provided, however, That nothing herein shall be interpreted as prohibiting respondent from establishing and maintaining resale prices on its products in any manner exempted from the prohibitions of the Federal Trade Commission Act by the McGuire Act.

It is further ordered, That respondent Oxford Filing Supply Co., Inc., a corporation, its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of respondent's "general line" of filing systems and supplies or any other 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 such products of like grade and quality:

By selling such products to any purchaser thereof at prices lower than the prices charged other purchasers who in fact compete with the favored purchasers in the sale or distribution of such products.

The term "price" as used in this order takes into account discounts, rebates, allowances and other terms or conditions of sale.

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 17th day of June 1958, become the decision of the Commission; and, accordingly:

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

Decision

IN THE MATTER OF

MUNTZ TV, INC., ET AL.

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

Docket 6928. Complaint, Nov. 6, 1957—Decision, June 18, 1958

Consent order requiring a Chicago manufacturer to cease exaggerating, in newspaper advertising and by markings on sets and otherwise, the size of the picture tubes of its television sets, and representing falsely that its TV sets were sold directly to the consumer from "factory outlets."

The individual respondent accepted the same consent settlement on July 15, 1958, 55 F.T.C.——.

Before *John B. Poindexter*, Hearing Examiner.

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

Mr. Arthur J. Bernstein, of Chicago, Ill., for Muntz TV, Inc.

INITIAL DECISION AS TO RESPONDENTS MUNTZ TV, INC., A CORPORATION, AND EARL W. MUNTZ AS AN OFFICER THEREOF

On November 6, 1957, the Federal Trade Commission issued a complaint charging Muntz TV, Inc., a corporation, and Earl W. Muntz, individually and as an officer of said corporation with having violated the provisions of the Federal Trade Commission Act by the dissemination in commerce of advertisements and statements exaggerating the size of the picture tubes in the television receivers manufactured by said respondent corporation and misrepresenting that the receivers were sold directly to the consumer from the factory. After issuance and service of the complaint, the respondent corporation Muntz TV, Inc., filed an answer in which it denied, for the most part, the allegations set forth in the complaint and stated, among other things, that Earl W. Muntz, named in the complaint as an officer of said corporation, was not, in fact, an officer of said corporation, but that one Wallace J. Keil was the president thereof.

Thereafter, the corporate respondent Muntz TV, Inc., its counsel and counsel supporting the complaint entered into an agreement for consent order. In said agreement it is recommended that the complaint be dismissed as to Earl W. Muntz in his capacity as an officer of the corporate respondent Muntz TV, Inc., for the reason that Mr. Muntz relinquished his office as president of Muntz TV, Inc., effective January 30, 1957, and is no longer an officer of said corporation.

The order disposes of the matters complained about with respect to Muntz TV, Inc., a corporation. The agreement has been approved

by the Director and Assistant Director of the Bureau of Litigation.

The pertinent provisions of said agreement are as follows: The respondent Muntz TV, Inc., a corporation, admits all jurisdictional fact; 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; the corporate respondent Muntz TV, Inc., waives the requirement that the decision must contain a statement of findings of fact and conclusions of law; said corporate respondent waives 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; said corporate respondent also waives any right to challenge or contest the validity of the order in accordance with the agreement and the signing of said agreement is for settlement purposes only and does not constitute an admission by the corporate respondent that it has violated the law as alleged in the complaint.

Upon 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 proper disposition of this proceeding insofar as it relates to the respondent Muntz TV, Inc., a corporation. Accordingly, the hearing examiner finds that the acceptance of such agreement will be in the public interest and hereby accepts such agreement, makes the following jurisdictional findings and issues the following order:

JURISDICTIONAL FINDINGS

1. The respondent Muntz TV, Inc., is a corporation organized and doing business under and by virtue of the laws of the State of Delaware, with its office and place of business located at 1000 Grey Avenue, Evanston, Ill.

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

ORDER

It is ordered, That respondent, Muntz TV, Inc., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of television receiving sets in commerce,

as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using any figure or measurement to designate or describe, directly or by implication, the size of the picture tube with which their television receiving sets are equipped which is greater than the horizontal measurement of the viewable area of the tube on a single plane basis, unless it is conspicuously disclosed in immediate connection therewith that said figure or measurement is the diagonal measurement, when such is the fact; or an accurate specification of the viewable area of the tube, in square inches, is conspicuously disclosed in immediate connection with such figure or measurement;

2. Authorizing or permitting others to represent or placing into the hands of others means and instrumentalities whereby they may represent, directly or by implication, that the retailers selling respondent's television sets are factory outlets or have any relationship to respondent other than that of buyers from respondent.

It is further ordered, That the complaint against Earl W. Muntz in his capacity as an officer of Muntz TV, Inc., be dismissed.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

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

It is ordered, That the respondent Muntz TV, 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

VOLK BROS. CO. ET AL.

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

Docket 6990. Complaint, Dec. 16, 1957—Decision, June 18, 1958

Consent order requiring a furrier in Dallas, Tex., to cease violating the Fur Products Labeling Act by advertising in newpapers which failed to disclose the names of animals producing the fur in certain products, that some furs were artificially colored, and the country of origin of imported furs, and failed to set forth other required information; which falsely represented sale prices as reduced from regular prices which were, in fact, fictitious, and made percentage savings claims while failing to maintain adequate records as a basis therefor.

Mr. S. F. House supporting the complaint.

Turner, Rodgers, Winn, Scurlock & Terry, of Dallas, Tex., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

On December 16, 1957, the Federal Trade Commission issued a complaint against Volk Bros. Co., a corporation, and Harold F. Volk, individually and as an officer of said corporation, charging them with having violated the Fur Products Labeling Act, the rules and regulations issued thereunder, and the Federal Trade Commission Act, by falsely and deceptively advertising the prices of their fur products, failing to keep records to substantiate pricing claims and with irregularities in labeling and invoicing their fur products.

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

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 conclusions 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. Respondent Volk Bros. Co., is a corporation existing and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 1806 Elm Street, Dallas, Tex. Respondent Harold F. Volk is president and treasurer of said corporation and formulates, directs, and controls the acts, policies and practices of said corporation. His address is the same 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 respondent Volk Bros. Co., a corporation, and its officers and Harold F. Volk, 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 the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. 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:

(a) The name or names of the animal or animals producing the fur

or furs contained in the fur products, as set forth in the Fur Products Name Guide and as prescribed by the rules and regulations;

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

(c) All of the information required under section 5(a) of the Fur Products Labeling Act and the rules and regulations thereunder in type of equal size and conspicuousness and in close proximity with each other;

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

2. Represents directly or by implication that:

The regular or usual price of any fur product is in an 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.

3. Represents directly or by implication through percentage savings claims that the regular or usual retail prices charged by respondents for fur products in the recent regular course of their business are reduced in direct proportion to the amounts of savings stated when contrary to the fact.

B. Making price claims and representations of the types referred to in subparagraphs A2 and A3 above unless there are maintained by respondents full and adequate records disclosing the facts upon which such claims or representations are based.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

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

AUTOMATIC CANTEEN CO. OF AMERICA

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SECTION 7 OF THE CLAYTON ACT

Docket 6820. Complaint, June 14, 1957—Decision, June 24, 1958

Consent order requiring the Nation's largest operator of vending machines, with main office in Chicago, to divest itself within 1 year of vending machine subsidiaries acquired in 1955 from a major competitor in New York City, at that time the largest operator of cigarette vending machines in the United States; to refrain from acquiring any interest in any competing vending machine manufacturer for 10 years; and not to take for its own use, for a 10-year period, more than 50 percent of the total annual production of each type machine from the facilities of the manufacturing corporation subject to divestiture unless all machines over that percentage were first made available to all other purchasers.

Mr. L. E. Creel, Mr. W. J. Boyd, Mr. D. T. Coughlin and *Mr. A. J. Hessbury* for the Commission.

Gravelle, Whitlock & Markey, of Washington, D.C., and *Freidlund, Levin & Freidlund*, of Chicago, Ill., for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated and described, has violated and is now violating the provisions of section 7 of the Clayton Act (U.S.C., title 15, section 18) as amended and approved December 29, 1950, hereby issues its complaint, charging as follows:

PAR. 1. Respondent, Automatic Canteen Co. of America, hereinafter sometimes referred to as Automatic, is a corporation organized in July 1931 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 222 West North Bank Drive, Chicago 54, Ill.

Respondent is engaged in the business of purchasing candy, gum, nuts and other confections, cigarettes, beverages, ice cream and other related merchandise from the producers thereof, and in the resale of these products directly through company-owned and franchised distributors, which merchandise and dispense said products through automatic vending machines. These vending machines are hereinafter sometimes referred to as machines. The distributors lease said

machines from respondent pursuant to a franchise and distributors lease and agreement, which provides, among other things, that said machines will be used in the reselling and dispensing of said products to the public and that said machines will be operated by each distributor in clearly defined exclusive territories in various parts of the United States. Each distributor is responsible for installing, maintaining, operating and servicing said machines within its exclusive territory at locations such as industrial plants, offices, terminals, commercial establishments and other places, generally referred to in the industry and hereinafter sometimes referred to, as locations.

Locations are essential for the merchandising and dispensing of products vended through said machines. Commissions are usually paid by the distributor to the location owner or proprietor for the privilege of installing and operating said machines on their premises. The commissions are generally related to the volume of sales for each machine placed at that location.

Respondent is also engaged in the business of developing, acquiring, owning, and leasing vending machines from manufacturers, and in leasing and subleasing said machines exclusively to its distributors.

Respondent operates and does business through two categories of distributors, those which are company-owned and those which are referred to by respondent as independent. The company-owned distributor is directly controlled by respondent, or, it is one in which one or more officers or employees of respondent own an aggregate interest of 25 percent or more. In 1954, respondent had 46 company-owned and 98 other distributors.

Respondent, through said distributors, operates and does business in approximately 150 separate sales territories and maintains offices in various cities located in 42 States and the District of Columbia. Under the provisions of the aforementioned lease and agreement, each distributor is required to comply with the rules and regulations issued by respondent, from time to time, relative to the installation, maintenance, repair and servicing of vending machines leased from respondent. Each distributor is also required to submit regular reports giving complete information concerning its operations for the preceding period. Provision is made, also, for financial statements to be furnished biannually by each distributor, or from time to time, as respondent might request. The operations of each distributor are governed by instructions contained in a manual referred to as "Standard Practice of the Company," which is published and issued by respondent.

Respondent supervises the activities of said distributors by, among other things, assigning a force of field supervisors to examine the efficiency of their operations, by disseminating suggestions for increasing sales and improving operating methods, by the establishment of required standardized mechanical, accounting, and sales practices, and by assisting distributors in securing locations for machines. Each distributor is expected to cooperate fully in the promotion, protection, and maintenance of respondent's machines and its goodwill. Each distributor is expected to lease and use that number of machines which respondent may determine should be used in that distributor's territory. Respondent determines the retail prices at which products are sold by distributors through said machines.

The close supervision and substantial control exercised by respondent over the business of said distributors, under the aforesaid lease and agreement, create such a binding relationship that the operations, acts, and practices of the distributors have a material effect upon, and constitute a vital part of, the business of respondent. Therefore, references to respondent hereinafter made in this complaint, as they may pertain to the operation of vending machines and the merchandising of products, will be expressed as respondent-distributors.

Prior to September 30, 1955, respondent-distributors was the largest operator of automatic vending machines in the United States. As of 1954, respondent, had on location and in operation approximately 377,654 vending machines, of which approximately 15,786, or 4.2 percent, were cigarette vending machines. As of this same date, the merchandise sales volume of all products sold through respondent's vending machines totaled approximately $67,702,000, of which approximately $14,003,000, or 20.7 percent were cigarette sales.

During the 9-year period from on or about October 1, 1946, to September 30, 1954, Automatic's merchandise sales increased from $12,639,854 to $46,792,310, an increase of 270 percent, and its machine rentals and other income increased from $665,882, to $2,512,210, an increase of 277 percent. During this same period, its total assets increased from $5,313,620 to $14,470,086, an increase of 172 percent.

The history of Automatic indicates a continuing pattern of acquisitions, in that since January 1, 1951, respondent increased its dominant market position through the acquisition of the assets or share capital of concerns engaged in the operation and manufacture of vending machines, such as the following:

Name and address	Date acquired	Description
The Candimat Co., Baltimore, Md.	Oct. 1, 1952 to May 15, 1953.	Operated candy and confection vending business.
Dresko Machine Corp., Chicago, Ill.	Dec. 23, 1953	Operated vending machines, but at the time of the acquisition, said corporation was inactive.
Sterling Vending, Inc., Sterling Food Service, Newark, N.J.	Jan. 3, 1955	General vending business.
Mechanical Merchants, Inc., Chicago, Ill.	Apr. 1954	General vending business.
Navenco Manufacturing Co., Dallas, Tex.	Unknown	Operated vending machines, but at the time of the acquisition said company was inactive.
Transit Sales, Service, Inc., Chicago, Ill.	Jan. 2, 1955	Operated candy vending machines, principally.

Automatic purchases vending machine products including candy, gum, nuts and other confections, cigarettes, beverages, ice cream and other related merchandise, and purchases and leases vending machines, in commerce, as "commerce" is defined in the Clayton Act, and offers to sell, sells and distributes said products, and leases said vending machines to distributors, in said commerce in various of the States of the United States.

PAR. 2. Prior to September 30, 1955, the Rowe Corp. was a corporation organized in July 1929 under and by virtue of the laws of the State of New York, with its office and principal place of business located at 31 East 17th Street, New York, N.Y. The name, the Rowe Corp., was adopted in 1946, having succeeded to the original corporation, Rowe Cigarette Service Co., Inc., and to a prior partnership founded in 1928 as the Rowe Cigarette Vending Co.

The Rowe Corp. was engaged in the business of purchasing cigarettes, cigars, candy, ice cream, beverages and other related merchandise from the producers thereof, and in reselling these products through vending machines and to its merchandising companies, which also resold said products through said machines. The Rowe Corp. and its merchandising companies, all of which were company-owned, are hereinafter sometimes referred to as Rowe. Rowe installed, maintained, operated and serviced said machines, which were located in commerical establishments such as restaurants, theaters, taverns, and in industrial plants, offices, terminals and other places in various parts of the United States.

Rowe, through two wholly-owned subsidiaries, Rowe Manufacturing Co., Inc., and Rowe Spacarb, Inc., was also engaged in the business of designing, developing, manufacturing, and selling vending machines for the automatic merchandising of cigarettes, beverages, candy, ice cream, sandwiches, cakes and pastries, together with accessory equipment.

Rowe Manufacturing Co., Inc., hereinafter referred to as Rowe Manufacturing, was organized in 1932, under and by virtue of the laws of the State of New York. The machines produced by Rowe Manufacturing were sold, or leased, to Rowe, and respondent, as well as to other vending machine operators throughout the United States. Rowe Manufacturing originally developed and produced machines designed to merchandise cigarettes, but its production was later expanded to include other types of automatic machines for the merchandising of beverages, candy, ice cream, sandwiches, and cakes and pastries. Rowe Manufacturing was one of the largest producers of vending machines, particularly of cigarette vending machines, in the United States.

Rowe Spacarb, Inc., a Delaware corporation, one of the oldest manufacturers of beverage dispensers, was acquired by Rowe in September 1954. At the time of its acquisition, this subsidiary was engaged in the production of automatic beverage merchandising machines of a type supplementary to those produced by Rowe Manufacturing and, in addition, it was a national distributor of vending machines produced by other manufacturers.

The Rowe Corp., through its wholly owned machine rental companies, was also engaged in the business of leasing machines to vending machine operators throughout the United States.

Prior to September 30, 1955, Rowe was the largest operator of cigarette vending machines in the United States. In the operation of its cigarette and other vending machines, the principal areas served by Rowe included the States of California, Colorado, Illinois, Kentucky, Louisiana, Maryland, Massachusetts, New Jersey, New York, Ohio, Oregon, Pennsylvania and West Virginia.

As of 1954, Rowe owned, had on location and in operation approximately 39,798 vending machines, of which approximately 36,543, or 91.8 percent were cigarette vending machines. As of this same date, the merchandise sales volume of all products sold through its machines totaled approximately $35,558,000, of which approximately $34,689,000, or 97.6 percent were cigarette sales.

During the 9-year period from on or about January 1, 1946, to December 31, 1954, the sales of Rowe and its subsidiaries increased from $17,858,698, to $36,997,411 an increase of 107 percent. Merchandising sales of vended products by Rowe represented approximately 90 percent of said sales and the remaining 10 percent consisted of vending machines sales and rentals, realized, in part, through Rowe Manufacturing and the machine rental companies. During the aforementioned 9-year period, the total assets of Rowe and its

subsidiaries increased from $4,515,340, to $13,652,758, an increase of 202 percent.

Rowe purchased vending machine products including cigarettes, cigars, candy, ice cream, beverages and other related merchandise, and vending machines, in commerce, as "commerce" is defined in the Clayton Act, and offered to sell, sold and distributed said products and sold and leased vending machines to vending machine operators in said commerce in various of the States of the United States.

PAR. 3. For several years prior to September 30, 1955, substantial competition, and substantial potential competition, existed between respondent-distributors and Rowe, and between each of them and others, in all phases of the operation of automatic vending machines in interstate commerce.

(a) Respondent and Rowe purchased substantial quantities of vending machine products, such as cigarettes, candy, ice cream, beverages and other related merchandise from common sources of supply in various parts of the United States and were among the largest, if not the largest, vending machine purchasers of some, or all, of said products.

(b) Respondent and Rowe sold substantial quantities of said vending machine products in competition with one another and others in the following 20 cities located in various sections of the country:

Los Angeles, Calif.	Boston, Mass.
Oakland, Calif.	Newark, N.J.
San Diego, Calif.	Trenton, N.J.
San Jose, Calif.	New York, N.Y.
Denver, Colo.	Syracuse, N.Y.
Peoria, Ill.	Akron, Ohio
Louisville, Ky.	Cleveland, Ohio
Baton Rouge, La.	Portland, Oreg.
New Orleans, La.	Philadelphia, Pa.
Baltimore, Md.	Pittsburgh, Pa.

(c) Respondent-distributors and Rowe installed, maintained, serviced and operated vending machines at like locations in the aforementioned cities and competed, or were in potential competition, with one another and others for these as well as all other vending machine locations in said cities.

In 1954, total merchandise sales for the vending machine industry amounted to approximately $636,096,000, of which the merchandise sales of respondent-distributors totaled approximately $67,802,000, or 10.7 percent, and the merchandise sales of Rowe totaled approximately $35,558,000, or 5.6 percent. During this same year, the in-

dustry had a total of approximately 1,729,920 vending machines on location, exclusive of bottled soft drink, postage stamp and weighing machines, of which respondent owned 377,654, or 21.8 percent, and Rowe owned 39,798, or 2.3 percent.

In 1954, cigarette vending sales for the industry totaled approximately $332,856,000, of which the cigarette vending sales of respondent-distributors amounted to approximately $14,003,000, or 4.2 percent, and the cigarette vending sales of Rowe amounted to approximately $34,689,000, or 10.4 percent. During this same year, the industry had a total of approximately 460,000 cigarette vending machines on location, of which the respondent owned 15,786, or 3.4 percent, and Rowe owned 36,543, or 8 percent.

Respondent, Rowe and others utilized Rowe Manufacturing as a major source of supply of automatic vending machines. In 1954, Rowe Manufacturing produced and sold 12 percent of said machines to respondent, 12 percent to Rowe and the remainder of its production to other vending machine operators in the industry. Rowe Manufacturing accounted for 18.4 percent of the cigarette vending machines, 19.5 percent of the ice cream vending machines, and 5.1 percent of the packaged food and confection vending machines, manufactured and shipped by the vending machine manufacturing industry in 1954. The total vending machine production of Rowe Manufacturing in 1954, in said categories amounted to approximately 14,305, or 12.2 percent of the approximately 117,151 vending machines of those types manufactured and shipped by this industry that year.

PAR. 4. The vending machine industry had, in 1954, approximately 5,700 operators of various description, such as those which lease, rent, or purchase machines or operate one type or multi-type machines on either a full-time or part-time basis and which may be either independent or a subsidiary of a larger vending company. Of this figure, approximately two-thirds were operations owned by one person employing fewer than three people, including the owner. In this same year, only three operators, two of which were respondent-distributors and Rowe, could be regarded as conducting operations on a national scale.

PAR. 5. On or about December 22, 1954, respondent entered into an agreement to purchase 262,500 shares of common stock of Rowe at $15 per share, or $3,937,500, in the aggregate. This agreement was consummated on or about February 17, 1955, and respondent thereby acquired 52 percent of the then issued and outstanding shares of common stock of Rowe. Thereafter, on or about September 30, 1955, respondent acquired the remaining outstanding shares of

common stock of Rowe at the exchange ratio of four shares of respondent's common stock for five shares of Rowe's common stock. By said action, the assets and business of Rowe were fully merged into respondent.

PAR. 6. The effect of the aforesaid acquisition by respondent of Rowe may be substantially to lessen competition or to tend to create a monopoly in the lines of commerce, as "commerce" is defined in the Clayton Act, in which respondent and Rowe were engaged.

More specifically, the aforesaid effects include, among others, the actual or potential lessening of competition or a tendency to create a monopoly in that the acquisition by respondent of Rowe:

(a) Has combined, consolidated and merged the largest purchaser, user and operator of vending machines with one of the largest manufacturers of said machines, thus for the first time placing respondent in a position to produce a substantial quantity of its vending machine requirements and has, or may, substantially lessen or foreclose competition in the production, purchase, sale or distribution of vending machines in that respondent may discontinue or decrease the acquisition of said machines from its former suppliers.

(b) Has substantially increased and enhanced the present bargaining power and dominant position of respondent in the vending machine industry by placing respondent in control of a plant and facilities capable of producing 12.2 percent of the total cigarette, ice cream, packaged food and confection machines manufactured and shipped in 1954, which included 18.4 percent of the cigarette vending machines, 19.5 percent of the ice cream vending machines, and 5.1 percent of the packaged food and confection vending machines produced and shipped that year.

(c) Has removed and eliminated, or may remove and eliminate, Rowe Manufacturing, one of the largest manufacturers of vending machines, as a source of supply of said machines for many vending machine operators and may cause such other enterprises to become largely dependent on respondent, which is, or may be, one of their principal competitors.

(d) Has combined and consolidated in respondent, one of the largest purchasers, users and operators of cigarette vending machines, the manufacturing plant and facilities of one of the largest, if not the largest, manufacturers of cigarette vending machines, thus increasing and enhancing respondent's competitive advantage over other cigarette vending machine operators to the detriment of actual or potential competition.

(e) May divert to respondent for its own uses, or may enable respondent to channel or manipulate for its own purposes, the supply

of vending machines which formerly were available from Rowe Manufacturing to competitors of respondent.

(f) May deny to other vending machine purchasers, users and operators, access to the machines formerly produced by Rowe Manufacturing.

(g) Has combined, consolidated, and merged respondent-distributors as the largest most dominant operator and merchandiser of products sold through vending machines with one of its largest competitors, thus eliminating competition between respondent-distributors and a principal competitor and has or may lessen or eliminate substantial competition in the operation and merchandising of products through vending machines.

(h) Has placed respondent in the position of owning 24.1 percent of the vending machines, exclusive of bottled soft drink, postage stamp, and weighing machines, on location in the United States and controlling 16.3 percent of the sales of products made through said machines, thus substantially increasing respondent-distributors' share of said market and causing an appreciable segment of the market to be under the control and domination of respondent-distributors.

(i) Has further substantially increased the size and scope of respondent-distributors' operations and merchandising of products through vending machines to such an extent that the resulting combination has given, or may give, respondent a decisive competitive advantage, in the acquisition of machines, the vending of products, and the obtaining of locations, over other vending machine operators, particularly the numerous nonintegrated and nondiversified operators, who conduct small operations on a local level.

(j) Has substantially increased respondent's purchase requirement of vended products to such an extent, that the resulting additional distributional facilities, under respondent's control, have enhanced further the dominant position respondent already enjoyed in the acquisition and purchase of vended products from sellers and suppliers of such products.

(k) Has been, or may be, to lessen or eliminate actual or potential competition between respondent and Rowe in the operation of vending machines in 20 cities in various sections of the country.

(l) Has combined, consolidated, and merged Rowe, the largest operator of cigarette vending machines (in terms of machines and sales), with respondent, one of the largest operators of such machines, causing respondent to own 11.4 percent of the cigarette vending machines and to control, through its distributors, 14.6 percent of the sales of cigarettes sold through such machines, thus substantially increasing respondent-distributors' share of the vended cigarette market and

making respondent-distributors the largest operator of cigarette vending machines in the United States.

(m) Has, or may, substantially lessen competition or tend to create a monopoly by the substantial increase in domination and control of vending machine operations which have been vested in respondent-distributors.

PAR. 7. The foregoing acquisition, acts, and practices of respondent, as hereinbefore alleged and set forth, constitute a violation of section 7 of the Clayton Act (U.S.C., title 15, sec. 18) as amended and approved December 29, 1950.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of the Clayton Act, section 7 (U.S.C., title 15, sec. 18) as amended and approved December 29, 1950, the Federal Trade Commission on June 14, 1957, issued and subsequently served its complaint in this proceeding against respondent Automatic Canteen Co. of America, 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 222 West North Bank Drive, Chicago 54, Ill.

After a number of hearings for the reception of evidence in support of the allegations of the complaint, all counsel jointly moved for a suspension of further hearings under the provisions of 3.25 of the rules of practice, which motion was granted for 2 weeks and thereafter, on April 17, 1958, there was submitted to the undersigned hearing examiner an agreement between respondent and counsel supporting the complaint providing for the entry of a consent order. By the terms of said agreement, respondent admits all the jurisdictional facts alleged in the complaint and agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. By such agreement, respondent waives any further procedural steps before the hearing examiner and the Commission; waives the making of findings of fact and conclusions of law; and waives all of the rights it may have to challenge or contest the validity of the order to divest and to cease and desist entered in accordance with this agreement. Such agreement further provides that it disposes of all of this proceeding as to all parties; that the record on which this initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement; that the latter shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the agreement is for settlement

purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint.

Such agreement provides that the following order may be entered in this proceeding by the Commission without further notice to respondent. When so entered it shall have the same force and effect as if entered after a full hearing, and may be altered, modified, or set aside in the manner provided for other orders, and that the complaint may be used in construing the terms of the order.

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

1. Respondent Automatic Canteen Co. of America, is a corporation existing and doing business under the laws of the State of Delaware, with its office and principal place of business located at 222 West North Bank Drive, Chicago 54, Ill.

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

ORDER

It is ordered, That respondent, Automatic Canteen Co. of America' shall divest itself absolutely, in good faith, of the following vending machine operating branches, subsidiaries, or affiliates, including machine locations, and vending machines owned by each and the contracts relating thereto, which branches, subsidiaries, or affiliates were formerly operated by the Rowe Corp. prior to the merger:

Rowe Service Co., Inc., Downtown Los Angeles Operations, Los Angeles, Calif.

California Cigarette Concessions, Inc., Los Angeles, Calif.

Rowe Cigarette Service Corp., San Diego, Calif.

San Jose Cigarette Service, Inc. (Campbell), San Jose, Calif.

Cigarette Service Co., Inc., Denver, Colo.

Wagg Cigarette Service Co., Louisville, Ky.

Syracuse Cigarette Service Co., Inc., Syracuse, N.Y.

Allegheny Cigarette Service Co. (Wilkinsburg), Pittsburgh, Pa.

Ace Cigarette Service Co., Inc., Brackenridge, Pa.

Ace Wheeling Cigarette Service Co., Wheeling, W. Va.

Acme Cigarette Service Co., Greensburg, Pa.

Acorn Cigarette Service Co., Aliquippa, Pa.

Uniontown Cigarette Service Co., Uniontown, Pa.

The Downtown Los Angeles Operations of Rowe Service Co., Inc., as used hereinabove, is defined as that part of the operating branch known as the downtown section of Rowe Service Co., Inc., Los Angeles, Calif. ,which is located in the city of Los Angeles, Calif., and is bounded on the west by Alvarado Street, on the south by Washington Boulevard, on the north by a straight line running east from the intersection of Alvarado and Avalon Streets, approximately 4 miles to Valley Boulevard, and on the east by a straight line from Valley Boulevard to Washington Boulevard, containing 16 square miles, more or less.

Such divestiture shall be completed within 1 year from the date of this order and shall consist of the sale of all stock and assets, real and personal, of said branches, subsidiaries, or affiliates, which stock and assets are owned by respondent, or its subsidiaries. Respondent shall not sell any such stock, or such assets, directly or indirectly, to any officer, director, employee, distributor, agent or subsidiary of, or anyone otherwise directly or indirectly under the control or influence of, respondent or any of its officers or directors.

It is further ordered, That since the Syracuse Cigarette Service Co., Inc., Syracuse, N.Y., has been dissolved, all assets formerly belonging thereto shall be divested in like manner as other divestitures required by this order, except that vending machines, not exceeding 40 in number, located in industrial plants, may be retained.

It is further ordered, That for a period of 10 years from the date of the issuance of this order by the Federal Trade Commission, respondent shall cease and desist from acquiring, directly or indirectly, through subsidiaries or otherwise, by merger, consolidation, purchase of physical assets, or acquisition of stock or other share capital, any interest in any corporation engaged in the business of manufacturing vending machines whose product has competed or competes to any extent with any vending machine manufactured or assembled by respondent, its subsidiaries, or affiliates.

It is further ordered, That for a period of 10 years from the date of the issuance of this order by the Federal Trade Commission, respondent shall cease and desist from taking for its own use, or selling, to respondent's subsidiaries, franchised distributors or the former merchandising companies of the Rowe Corp., more than 50 percent of the total annual production of each type vending machine from the facilities now operated as the Rowe Manufacturing Co., Inc., unless said machines in excess of that percentage have been made available in good faith to all other prospective purchasers at respondent's regular prices and terms and conditions of sale.

It is further ordered, That after the date of the issuance of this order by the Federal Trade Commission, respondent shall cease and desist from acquiring, directly or indirectly, the whole or any part of the stock or other share capital, or the whole or any part of the assets of another corporation engaged in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.

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 24th day of June 1958,become the decision of the Commission; and accordingly:

It is ordered, That respondent, Automatic Canteen Co. of America, a corporation, shall, within 1 year 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 contained in said initial decision.