IN THE MATTER OF

VELOX SERVICE, INC., ET AL.

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

Docket 6622. Complaint, Aug. 28, 1956—Decision, Sept. 10, 1957

Consent order requiring a New York City family enterprise, doing business under many trade names, to cease misrepresenting in advertising the quality, properties, regular prices, etc., of a wide variety of merchandise it sold by mail order, and representing falsely that it operated its own factories; and dismissing, as not sustained by the evidence, charges relating to the use of the terms "Completely shock resistant" and "anti magnetic" with respect to watches, and the terms "importer" and "wholesaler."

Mr. Terral A. Jordan for the Commission.
Mr. George Landesman, of New York, N.Y., for respondents.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 28, 1956, issued and subsequently served its complaint in this proceeding against respondents Velox Service, Inc., a corporation existing and doing business under and by virtue of the laws of the State of New York; Caesar Torelli and Nelson Torelli, individually and as president, and vice president and secretary-treasurer, respectively, of the corporate respondent; and Charles Torelli, Hilda Torelli, Alice Jean Torelli and Marie A. Thoresen, individually. The office and principal place of business of each of the respondents is located at 352 Fourth Avenue, New York, New York.

After several hearings, at which considerable evidence in support of the complaint was introduced in the record, there was submitted to the 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, except those charges relating to the misuse of the terms "Completely shock resistant" and "anti magnetic" with respect to watches and the terms "importer" and "wholesaler" with respect to respondents' business status, which counsel supporting the complaint states he lacks evidence to prove; 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 the best and most 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 Velox Service, Inc., is a corporation existing and doing business under the laws of the State of New York, with its office and principal place of business located at 352 Fourth Avenue, New York, New York. Respondents Caesar Torelli and Nelson Torelli are individuals and are respectively, president, and vice president and secretary-treasurer of the said corporate respondent, and respondents Charles Torelli, Hilda Torelli, Alice Jean Torelli and Marie A. Thoresen are individuals. The office and principal place of business of the individual respondents 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 respondents Velox Service, Inc., a corporation, and its officers, and Caesar Torelli and Nelson Torelli, as individuals and as officers of said corporate respondent, and Charles Torelli, Hilda Torelli, Alice Jean Torelli, and Marie A. Thoresen, as indi-

viduals, or any of the aforesaid individuals as individuals, or as copartners trading and doing business as Thoresen's Direct Sales, Consumers Mart, The International Binocular Company, Thoresen's, The Honor Company, the Rocket Wholesale Company, Moto-Matic Company, Trans-Kleer Co., or under any other trade name and respondents' agents, representatives, and employees, directly or through any corporate or other device, in the advertising for sale, offering for sale, sale or distribution of binoculars, watches, dolls, plastic storm windows, automobile seat covers or other articles of general merchandise, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from directly or indirectly, representing either through words or pictorial depictions that:

1. (a) A higher proportion of the air-to-glass lens surfaces of binoculars or other optical instruments are coated or treated to increase the passage of light through the lens than are in fact so coated or treated.

(b) The power of binoculars or other optical instruments is greater than the actual power thereof.

(c) Leather carrying cases for binoculars or other optical instruments or similar kinds of products are of a finer or more valuable grade, quality, design or workmanship than they are in fact.

(d) Watches or watch cases are moisture resistant when such is not the fact.

(e) A watch movement containing less than 7 jewels, each of which serves a mechanical purpose as a frictional bearing is a jewelled movement.

(f) The finish of watch cases or jewelry is of a designated karat fineness of gold unless the gold contained therein is in fact of the stated karat fineness or that said finish is rolled gold plate unless applied in the manner and to the thickness characteristic of gold plate or otherwise representing that said finish is other than what it is in fact.

(g) Dolls or similar products are made of a material having a skin-like texture and softness unless such is the fact or otherwise misrepresenting the characteristics and composition of such material.

(h) Doll clothing or similar products is of a finer or more valuable grade, quality, design or workmanship than it is in fact.

(i) The fabric, thread or other materials used in the manufacture of automobile seat covers or similar kinds of products are of a grade, weight, composition or otherwise different from that actually used therein.

(j) Automobile seat covers or similar kinds of products will not tear or will wear for a longer period of time under normal usage than is the fact.

(k) The fabric of automobile seat covers or the fabric contained in other products has been preshrunk or preshrunk by a particular process or will not shrink more than a designated amount when such is not the fact.

(l) Plastic storm windows or other products will withstand blows or forces of greater violence than they will in fact so withstand.

(m) The material for plastic storm windows or other products was developed by a designated person, firm or corporation which did not in fact develop said product or that said product was developed for the use of governmental or private organization when such is not the fact.

(n) Binoculars or other optical instruments have a prismatic optical system or any other kind of optical system unless such optical system is actually used in the construction thereof.

2. (a) The price at which the aforesaid or other articles of merchandise are advertised for sale, offered for sale or sold by respondents is a reduced price unless such price is in fact a reduction from the price at which respondents have advertised, offered or sold said articles of merchandise in the recent regular course of their business.

(b) The aforesaid or other articles of merchandise advertised, offered or sold by respondents have a retail selling price in excess of the retail selling price of similar articles of merchandise of like grade, quality, design and workmanship advertised for sale, offered for sale and regularly selling or having been sold, contemporaneously, in the same general trade area as that supplied by respondents, by other persons, firms, or corporations engaged in the same kind of business.

(c) The price at which the aforesaid or other articles of merchandise are advertised, offered, or sold by respondents affords a saving to the purchaser where said price constitutes respondents' regular retail selling price.

3. (a) Respondents own, operate or control a factory, plant or manufacturing establishment wherein are manufactured the articles of merchandise advertised for sale, or sold by them unless and until respondents shall in fact own, operate or control such a manufacturing establishment, or that the nature of respondents business operations are other than what they are in fact.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to those charges relating to the misuse of the terms

"Completely shock resistant" and "anti magnetic" with respect to watches and the terms "importer" and "wholesaler" with respect to respondents' business status.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The hearing examiner, on July 1, 1957, having filed an initial decision in this proceeding, accepting an agreement containing an order to cease and desist executed by the respondents and counsel supporting the complaint, and the Commission, on August 22, 1957, having issued its order extending, until further order by it, the date on which said initial decision would otherwise become the decision of the Commission; and

The Commission having now determined that the initial decision is adequate and appropriate in all respects to dispose of this proceeding:

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

It is further ordered, That the respondents, Velox Service, Inc., a corporation, and Caesar Torelli and Nelson Torelli, individually and as officers of said corporation, and Charles Torelli, Hilda Torelli, Alice Jean Torelli, and Marie A. Thoresen, shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist contained in said initial decision.

IN THE MATTER OF

THE HALLE BROS. CO.

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

Docket 6778. Complaint, Apr. 16, 1957—Decision, Sept. 10, 1957

Consent order requiring a furrier in Cleveland, Ohio, to cease violating the Fur Products Labeling Act by falsely identifying on labels and invoices the animals producing certain furs and by failing to comply with labeling and invoicing requirements of the Act; and, in advertising, failing to disclose the name of animals producing certain furs and that certain products contained artificially colored furs, and naming other animals than those producing the same furs.

Mr. S. F. House supporting the complaint.

Henderson, Quail, Schneider & Peirce of Cleveland, Ohio, for respondent.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on April 16, 1957, charging it 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 products and the false and deceptive invoicing and advertising thereof. After being served with said complaint, respondent appeared by counsel and subsequently entered into an agreement, dated July 2, 1957, containing a consent order to cease and desist purporting to dispose of all this proceeding as to all parties. Said agreement, which has been signed by respondent, by counsel for said respondent, and by counsel supporting the complaint, and approved by the Director and Assistant Director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

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

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

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

1. Respondent The Halle Bros. Co., is a corporation existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 1228 Euclid Avenue, in the City of Cleveland, State of Ohio.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent hereinabove named. The complaint states a cause of action against said respondent under the 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 respondent The Halle Bros. Co., a corporation and its officers, and respondent's representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce of fur products, or in connection with the sale, advertising, offering for sale, transportation or distribution of fur products which have been made in whole or in part of fur which 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:

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.

(b) Failing to affix labels to fur products showing:

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

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

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

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

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

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

(c) 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 which is intermingled with non-required information;

(2) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in handwriting.

(d) Failure to show on labels attached to fur products an item number or mark assigned to fur products, in violation of Rule 40(a) of the Rules and Regulations.

2. Falsely or deceptively invoicing fur products by:

(a) Failing to furnish invoices to purchasers of fur products showing:

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

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

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

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

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

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

(b) Setting forth information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form.

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

(a) Fails to disclose 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 said Rules and Regulations;

(b) Fails to disclose that fur products are bleached, dyed, or otherwise artificially colored, when such is the fact;

(c) Contains the name or names of an animal or animals other than those producing the fur contained in the fur products.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 10th day of September 1957, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

LOUIS TARAN ET AL. DOING BUSINESS AS CERTIFIED SERVICE CO., AND EMPLOYMENT REVIEW OFFICE; AND BETTY SCHEEWE DOING BUSINESS AS NATIONAL ADVERTISING SERVICE

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

Docket 6704. Complaint, Jan. 8, 1957—Decision, Sept. 11, 1957

Consent order requiring individuals conducting a collection agency, with offices in New York City and Washington, D.C., to cease representing that their firm was an agency of the United States Government in order to get current information on delinquent debtors; and to cease placing in the hands of others, questionnaires or other collection material which failed to state its purpose clearly.

Mr. Michael J. Vitale for the Commission.

Mr. Sol H. Erstein, of New York, N.Y., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

On January 8, 1957, complaint herein was issued, charging Respondents with the use of false, misleading and deceptive representations in the conduct of a collection agency and in collecting accounts owed to others, which representations constitute unfair and deceptive acts and practices in commerce, in violation of the Federal Trade Commission Act.

On June 10, 1957, Respondents, their counsel, and counsel supporting the complaint entered into an Agreement Containing Consent Order To Cease And Desist, which was approved by the Director and the Assistant Director of the Commission's Bureau of Litigation, and thereafter submitted to the Hearing Examiner for consideration.

Respondents Louis Taran and Martin Baron are identified in the agreement as copartners trading and doing business under the names of Certified Service Co. and Employment Review Office, with their office and principal place of business located at 401 Broadway, New York, New York, and Respondent Betty Scheewe as an individual trading and doing business as National Advertising Service, with her office and principal place of business located at 1196 National Press Building, Washington, D.C.

Respondents admit all the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of

jurisdictional fact had been duly made in accordance with such allegations.

Respondents, in the agreement, waive any further procedure before the Hearing Examiner and the Commission; the making of findings of fact or conclusions of law; and all the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist as contained in the agreement shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said order; and that the agreement is for settlement purposes only and does not constitute an admission by 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 Louis Taran and Martin Baron, copartners, trading and doing business under the names of Certified Service Co. and Employment Review Office, or under any other name, and Betty Scheewe, individually and trading under the name of National Advertising Service, or under any other name, jointly or severally, their representatives, agents and employees, directly or through any corporate or other device, in connection with the business of obtaining information concerning delinquent debtors, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using or placing in the hands of others for use, any form questionnaire or other material, printed or written, which do not clearly and expressly state that the purpose for which the information is requested is that of obtaining information concerning delinquent debtors;

2. Using the name "Employment Review Office" or any other words or phrase of similar import in connection with their business;

or otherwise representing, directly or by implication, that requests for information concerning delinquent debtors are from the United States Government or any agency or branch thereof, or that their business is in any way connected with the United States Government.

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 September, 1957, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Louis Taran and Martin Baron, copartners trading and doing business as Certified Service Co. and Employment Review Office; and Betty Scheewe, an individual trading and doing business as National Advertising Service, 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

HARRY H. TOLCHINSKY TRADING AS TOLCHINSKY'S FUR SHOP

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

Docket 6739. Complaint, Mar. 8, 1957—Decision, Sept. 13, 1957

Consent order requiring a furrier in Providence, R.I., to cease violating the Fur Products Labeling Act by affixing to fur products labels bearing fictitious prices and misrepresenting their value, and falsely identifying the animal producing certain furs; failing in newspaper advertisements to disclose the names of animals producing furs and that certain furs were artificially colored, and representing usual prices falsely as reduced; and failing in other respects to conform to the labeling, invoicing, and advertising requirements of the Act.

Mr. S. F. House for the Commission.

Rosenstein & Jacques, by *Mr. Aram K. Berberian*, of Providence, R.I., for respondent.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondent with violation of the Federal Trade Commission Act and of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, by misbranding and by falsely and deceptively advertising and invoicing fur products.

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 the Assistant Director of the Commission's Bureau of Litigation, and thereafter transmitted to the Hearing Examiner for consideration.

The agreement identifies respondent Harry H. Tolchinsky as an individual trading as Tolchinsky's Fur Shop, with his office and principal place of business located at 450 Winchester Street, Providence, Rhode Island.

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 the 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, the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder. 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 the respondent Harry H. Tolchinsky, an individual trading as Tolchinsky's Fur Shop, or trading under any other name or names, and respondent's representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, 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 any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur" and "fur products" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misbranding fur products by:

(a) Setting forth on labels attached thereto fictitious prices or any misrepresentations as to the value of such fur products, either directly or by implication;

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

(c) Failing to affix labels to fur products showing:

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

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

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

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

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

(d) Setting forth on labels attached to fur products:

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

(2) Information required under § 4(2) of the Fur Products Labeling Act and the Rules and Regulations thereunder which is intermingled with non-required information;

(3) Information required under § 4(2) of the Fur Products Labeling Act and the Rules and Regulations thereunder which is in handwriting;

(e) Failing to affix labels to fur products showing item numbers required under Rule 40 of the Rules and Regulations;

(f) Failing to use the terms "secondhand" and "used" fur when applicable as required by Rules 21 and 23 of the aforesaid Rules and Regulations;

2. Falsely or deceptively invoicing fur products by:

(a) Failing to show:

(1) The name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur and such qualifying statements as may be required pursuant to § 7(c) of the Fur Products Labeling Act;

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

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

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

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

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

(b) Setting forth information required under § 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations thereunder in abbreviated form;

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

(a) Fails to disclose:

(1) The name or names of the animal or animals 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;

(b) Uses the name or names of an animal or animals other than the name or names specified in the Fur Products Name Guide or prescribed by the Rules and Regulations;

(c) Fails to use the term "secondhand" and "used" fur where applicable, as required by Rules 21 and 23 of the said Rules and Regulations;

(d) Represents directly or by implication:

(1) That the regular or usual price of any fur product is any amount which is in excess of the price at which the respondent has usually and customarily sold such product in the recent regular course of his business;

4. Making use of comparative prices or percentage savings claims in advertising unless such compared prices or claims are based upon the current market value of the fur product or upon a *bona fide* compared price at a designated time;

5. Making price claims or representations of the type referred to in paragraphs 3(d) (1) and 4 above unless there is maintained by respondent full and adequate records disclosing the facts on which such claims and 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 13th day of September, 1957, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Harry H. Tolchinsky, an individual trading as Tolchinsky's Fur Shop, 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

LEAF BRANDS, INC.

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

Docket 6749. Complaint, Mar. 26, 1957—Decision, Sept. 13, 1957

Consent order requiring a manufacturer of candy and chewing gum in Chicago to cease discriminating in price in violation of Sec. 2(d) of the Clayton Act as amended by paying sums of money as compensation or allowance for advertising furnished by one chain store customer while not offering comparable allowances to all its competitors; and dismissing Counts I and II of the complaint charging violation of Secs. 2(a) and (c) of the Act.

Before *Mr. William L. Pack*, hearing examiner.

Mr. Frederic T. Suss for the Commission.

Bell, Boyd, Marshall & Lloyd, by *Mr. Mark S. Massel*, of Chicago, Ill., for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that Leaf Brands, Inc., is violating and has violated the provisions of subsections (a), (c) and (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C. Title 15, Section 13), hereby issues its complaint stating its charges with respect thereto as follows:

COUNT I

Charging violation of subsection (a) of Section 2 of the Clayton Act, as amended, the Commission alleges:

PARAGRAPH 1. Respondent Leaf Brands, Inc., hereinafter referred to as respondent, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 1155 North Cicero Avenue, Chicago, Illinois.

PAR. 2. Respondent is now and since 1946 has been engaged in the manufacture and sale of various candy and chewing gum products. Respondent sells said candy and chewing gum products through brokers to different purchasers, including jobbers and retailers located in the various States of the United States and the District of Columbia. Respondent pays to each such broker a five percent brokerage fee on all sales to customers located in the areas assigned to him by respondent.

PAR. 3. In the course and conduct of its business respondent has engaged in commerce, as "commerce" is defined in the Clayton Act as amended in that respondent ships its products, or causes them to be shipped, from its place of business to said purchasers located in States other than the State of origin of such shipments.

PAR. 4. In the course and conduct of its said business in commerce, respondent is now and has been in competition with other corporations, partnerships, individuals, and firms engaged in manufacturing, selling, and distributing candy and chewing gum products.

PAR. 5. In the course and conduct of its business as above described, respondent has sold and now sells candy and chewing gum products to some purchasers at substantially higher prices than the prices charged competing purchasers for such products of like grade and quality.

For example, respondent from time to time grants discounts of four, five and six percent on certain of its products to some of its customers but does not grant or offer such discounts to others of its customers who compete with those so favored in the sale and distribution of respondent's products.

PAR. 6. The effect of such discriminations in price made by respondent, as set forth in Paragraph Five hereof, may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondent and its purchasers are respectively engaged; or to injure, destroy, or prevent competition with respondent and with purchasers of respondent who receive the benefit of such discriminations.

PAR. 7. The acts and practices of the respondent, as alleged above, violate subsection (a) of Section 2 of the Clayton Act, as amended.

COUNT II

Charging violation of subsection (c) of Section 2 of the Clayton Act, as amended, the Commission alleges:

PAR. 8. Paragraphs 1 to 4, inclusive, of Count I hereof are hereby repeated and made a part of this count as fully and with the same force and effect as though here again set forth in full.

PAR. 9. In the course and conduct of its business as above described, respondent instead of following its regular practice of selling its products through and by means of brokers, has paid or granted, directly and indirectly, to some of its customers commissions, brokerage, or other compensation, or allowances, or discounts in lieu thereof, in connection with purchases of products by such customers from respondent in their own names and for their own accounts for resale.

For example, during the years 1954, 1955 and 1956, respondent granted and paid to Food Fair Stores, Inc. of Philadelphia, Pennsylvania, in connection with purchases of respondent's products made on its own account, advertising allowances of $19,249.00, part of which amount was paid in lieu of the brokerage fee customarily paid by respondent to its broker on such purchases.

PAR. 10. The acts and practices of the respondent, as alleged above, violate subsection (c) of Section 2 of the Clayton Act as amended.

COUNT III

Charging violation of subsection (d) of Section 2 of the Clayton Act, as amended, the Commission alleges:

PAR. 11. Paragraphs 1 and 2 of Count I hereof are hereby repeated and made a part of this count as fully and with the same force and effect as though here again set forth in full.

PAR. 12. In the course and conduct of its business respondent has engaged in commerce, as "commerce" is defined in the Clayton Act, as amended in that respondent ships its products, or causes said products to be shipped, from its place of business to said purchasers so located, some of whom are in competition with each other in the sale and distribution of said products.

PAR. 13. In the course and conduct of its business in the commerce, as herein described, respondent paid, or contracted to pay, something of value to or for the benefit of some of its customers as compensation or in consideration for services and facilities furnished or contracted to be furnished, by or through such customers, in connection with their offering for sale or sale of products sold to them by said respondent, and such payments were not made available on proportionally equal terms by respondent to all customers competing in the sale and distribution of its products.

For example, the respondent contracted to pay and did pay to Food Fair Stores, Inc. of Philadelphia, Pennsylvania, the amounts of $8,233.00 during the year 1956, $7,683.00 during the year 1955, and $3,333.00 during the year 1954, as compensation or as allowances for advertising furnished by or through Food Fair Stores, Inc. in connection with its offering for sale or sale of products sold to it by respondent. The terms of the contracts, under which these allowances were granted, were devised and advanced by Food Fair Stores, Inc. and have no basis on which the allowances could be made available on proportionally equal terms to competitors of Food Fair Stores, Inc. In fact such compensation or allowances were not offered or otherwise made available on proportionally equal

terms, or on any other terms, to all other customers competing with Food Fair Stores, Inc. in the sale and distribution of respondent's products.

PAR. 14. The acts and practices of the respondent, as alleged above, violate subsection (d) of Section 2 of the Clayton Act, as amended.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondent with violation of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, in connection with the sale of candy and chewing gum products. An agreement has now been entered into by counsel supporting the complaint and respondent which provides, among other things, that respondent admits all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondent specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint.

The complaint is in three counts, and the proposed order is based upon Count III. With respect to Counts I and II, it appears from the agreement that these Counts probably could not be sustained, and the agreement provides for their dismissal. In the circumstances such action seems appropriate. As to Count III, the order appears entirely adequate. The agreement and order are therefore accepted, the following jurisdictional findings made, and the following order issued:

1. Respondent, Leaf Brands, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 1155 North Cicero Avenue, Chicago, Illinois.

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

ORDER

It is ordered, That respondent, Leaf Brands, Inc., a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device, in, or in connection with, the sale of candy and chewing gum products in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

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

It is further ordered, That Count I and Count II of the complaint be, and they hereby are, 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 13th day of September, 1957, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

RAYMOND ARNOLD TRADING AS UNITED MIRROR LABORATORIES, RESEARCH DIVISION OF MAKE-UR-OWN MIRROR COMPANY

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

Docket 6732. Complaint, Feb. 21, 1957—Decision, Sept. 14, 1957

Consent order requiring a manufacturer of materials and equipment for making mirrors in Springfield, N.J., to cease misrepresenting in advertising and periodicals and circulars the labor and cost involved in making mirrors, and representing falsely by use of the words "Laboratories" and "Research" in his trade name that he owned a laboratory with scientists and technicians engaged in mirror manufacturing.

Mr. Brockman Horne for the Commission.
Mr. Bernard R. Lafer, of Newark, N.J., for respondent.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondent with violation of the Federal Trade Commission Act, by the use of grossly exaggerated, false, misleading and deceptive statements and representations with respect to machinery, equipment and materials used for manufacturing and resilvering mirrors. These products, it is alleged, are sold and shipped in interstate commerce.

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 the Assistant Director of the Commission's Bureau of Litigation, and thereafter transmitted to the Hearing Examiner for consideration.

The agreement identifies respondent Raymond Arnold as an individual, trading as United Mirror Laboratories, Research Division of Make-Ur-Own Mirror Company, his present address being 26 Irwin Street, Springfield, New Jersey.

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 Raymond Arnold, an individual trading as United Mirror Laboratories, Research Division of Make-Ur-Own Mirror Company, or under any other name or names, his agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of equipment and materials for use in manufacturing mirrors, 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 through the use of said equipment and materials:

a. A person can become a professional mirror maker in 15 minutes or in any other period of time less than the average time required by those who have used respondent's equipment and materials;

b. A person can become a professional mirror maker in four operations or any number of operations that is not in accordance with the facts;

c. $100 mirrors can be manufactured in 15 minutes or mirrors of any value can be manufactured in any specific time that is not in accordance with the facts;

d. Mirrors can be manufactured for 4¢ per square foot or for any amount that is not in accordance with the facts;

2. Using the words "Laboratories" or "Research," or any other words of the same import, as part of a trade or corporate name, or representing in any manner that respondent owns, operates, or controls a laboratory or is engaged in scientific research, when such is not in accordance with the facts.

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 14th day of September, 1957, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Raymond Arnold, trading as United Mirror Laboratories, Research Division of Make-Ur-Own Mirror Company, 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

ROYAL TRUE COLOR CORPORATION ET AL.

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

Docket 6773. Complaint, Apr. 11, 1957—Decision, Sept. 14, 1957

Order requiring a photographer in Long Island City, N.Y., to cease advertising falsely by means of post cards mailed to patrons of local post offices, a "Cutest Child Contest" with prizes awarded to winners and free portraits, sponsored by the "American Family Magazine"; and to cease misrepresenting the quality of photographs; and dismissing the charges with respect to two respondents, a dissolved corporation and a deceased individual.

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

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

On April 11, 1957 the Federal Trade Commission issued its complaint against the above-named respondents charging them with violation of the Federal Trade Commission Act as set forth in said complaint. From the record it appears that copies of such complaint together with copies of an order designating and appointing the undersigned as hearing examiner in this proceeding were sent by registered mail to each respondent at the address indicated in the complaint and that copy of said complaint and copy of said order were duly served on the respondent Alton L. Hubbard. The complaint so served contained a notice that a hearing would be held on June 21, 1957 at 10:00 A.M. in the Federal Trade Commission office, U.S. Court House, Foley Square, New York, New York, on the charges set forth in the complaint, at which time and place respondents would have the right to appear and show cause why an order should not be entered requiring each of them to cease and desist from violations of the law charged in the complaint.

On June 11, 1957 the undersigned, as hearing examiner herein issued an order that the hearing then set for New York City on June 21, 1957 would be held on the same date beginning at 10:00 A.M. in the Federal Trade Commission Hearing Room, Federal Trade Commission Building, Washington, D.C. This order was duly served by registered mail on respondent Alton L. Hubbard on June 13, 1957. The reason for such order was set forth therein.

On June 21, 1957 at 10:00 A.M. in pursuant to the last mentioned order a hearing was held in Room 332, the Federal Trade Commission Hearing Room, Federal Trade Commission Building, Washing-

ton, D.C., before the undersigned a duly appointed hearing examiner of the Commission. At that hearing counsel supporting the complaint was present but respondent Alton L. Hubbard was not present either in person or by counsel. Attention of the hearing examiner was called to the fact and it was noted on the record that no answer was filed by any of the respondents.

Counsel supporting the complaint stated on the record that he desired to move that the complaint be dismissed as to the corporate respondent and as to the respondent William T. Hubbard for the following reasons:

(1) That respondent Royal True Color Corporation, a corporation was dissolved on October 18, 1956. (A photostatic copy of a certificate of dissolution issued by the Office of Secretary of State, State of Delaware, showing such dissolution was offered and received in evidence).

(2) That he had received reliable information to the effect that respondent William T. Hubbard died in Goldwater Memorial Hospital, Welfare Island, New York, New York on November 21, 1956.

The motion of counsel supporting the complaint on the record for dismissal as to these respondents was and is granted.

Following Section 3.7(b) of the Commission's Rules of Practice, the respondent Alton L. Hubbard, having failed to answer the complaint within the time provided therefor and having failed to appear either in person or by attorney at the time and place fixed for hearing was deemed to be in default and it was so stated on the record by the hearing examiner at said hearing. Also at said hearing consideration was given to determination of the form of order to be entered herein. In view of the foregoing the hearing examiner now makes the following findings as to the facts, conclusions and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Royal True Color Corporation was, prior to October 18, 1956, a corporation organized and existing under and by virtue of the laws of the State of Delaware with its home office and principal place of business located at 2713 – 41st Avenue, Long Island City, New York.

The individual respondents Alton L. Hubbard and William T. Hubbard, were President and Secretary-Treasurer, respectively, of the corporate respondent Royal True Color Corporation prior to October 18, 1956 and these individuals formulated, directed and controlled the acts, policies and practices of said corporate respondent. The address of these individual respondents was the same as that of the corporate respondent.

PAR. 2. Respondents prior to October 18, 1956 were engaged in the promotion, sale and distribution of photographs. Said photographs were sold directly to purchasers by the respondents and by their agents in various States of the United States. In the course and conduct of their business, respondents caused said photographs when sold, to be transported from the corporate respondents place of business in the State of New York to purchasers thereof located in various other States of the United States. Respondents maintained at all times mentioned herein a substantial course of trade in commerce in said photographs.

PAR. 3. Respondents at all times mentioned were in substantial competition, in commerce, with other corporations, and with individuals, firms and partnerships engaged in the sale of photographs.

PAR. 4. Respondents' method of interesting members of the public in the purchase of their photographs was by mailing post cards to patrons of certain local post offices in various States of the United States. A typical card used for this purpose is as follows:

DEAR MOTHER 55 Valuable Prizes

You are cordially invited to bring your child to GRANGE HALL (Farm Village Road) in WEST SIMSBURY, CONN. on FRIDAY, AUGUST 26th 11: A.M. till 6: P.M. to be photographed in TRUE COLOR. For our "CUTEST CHILD CONTEST". $750.00 in prizes sponsored by AMERICAN FAMILY MAGAZINE. There is no charge for this service. Each entrant will receive a Beautiful Transparency PORTRAIT FREE. Courtesy of ROYAL TRUE COLOR STUDIOS. Our COLOR CAMERA takes pictures in NATURAL COLOR. Photographing every cute smile and expression quick as a wink. All children are eligible 2 months to 12 yrs. Tell your Friends to come. IT'S FREE.

IMPORTANT: These are taken in TRUE-COLOR. If possible dress children in BRIGHT COLORS.

PAR. 5. By means of the statements appearing on said post cards respondents represented, directly or by implication, that:

(1) Respondents are and have been conducting a photographic contest, the sole and exclusive purpose of which is to select winners for a contest sponsored by a magazine published under the name of "American Family Magazine" and that the designated winning children will receive valuable prizes.

(2) Parents allowing their children to pose for respondent or "entrant" will receive a free portrait.

(3) American Family Magazine is a recognized and established magazine, independent of respondents.

(4) Pictures delivered will be in true and natural colors.

PAR. 6. The foregoing representations and implications were grossly exaggerated, false and misleading. In truth and in fact:

(1) Respondents had not been conducting a photographic contest

to select winners for a contest. Respondents' only objective in preparing and disseminating the post cards aforementioned, was to sell photographs to the parents of the children photographed. Such children as were designated by respondents as a "winner" did not receive valuable prizes but, on the contrary, received trivial toys of little or no value. The so-called contest was not sponsored by American Family Magazine.

(2) No parent whose child posed for respondent or "entrant" received a free portrait. Some of said parents received a small film slide or transparency, but not a portrait. The transparency was not free since a payment of 35 cents was required.

(3) American Family Magazine was not a recognized or established magazine. The magazine was owned and published by the respondents.

(4) Pictures delivered by respondents were not in true and natural color but were of unnatural and inferior color.

PAR. 7. When parents, in response to the aforementioned postal cards brought their children to the location respondents designated, and at subsequent times thereafter, they were told in certain instances, or it was implied in other instances, by respondents or their agents that:

(1) Photographs purchased by the parents will be in true and natural color, and will be similar in quality to photographs exhibited to the parents or to the color transparencies viewed by them.

(2) Photographs purchased by parents will be delivered promptly and workmanship and materials used by respondents are guaranteed.

(3) American Family Magazine is recognized and established magazine of nation-wide circulation similar to magazines published for and distributed by supermarkets, and is published monthly and the subscriber will receive the new issue each month during the subscription period.

PAR. 8. The foregoing representations and implications were grossly exaggerated, false and misleading. In truth and in fact:

(1) Photographs sold by respondents were not in true and natural color but were of unnatural and inferior color. Said photographs were greatly inferior in quality to photographs which were exhibited to parents and to the colored transparencies viewed by them at the time they placed their orders.

(2) In some cases photographs ordered by parents were never delivered. In other instances the photographs were delivered only after extended delay. In many instances parents received photographs which were of poor quality in color or workmanship, and upon notification thereof, the respondents failed or refused to reprint such photographs or to make monetary adjustment therefor.

(3) American Family Magazine was not a magazine similar to magazines of nation-wide circulation published for and distributed by supermarket chains in form, composition or appearance. Said alleged magazine was not published monthly but published quarterly. In many instances the subscribing parent did not receive any issues of the said alleged magazine.

PAR. 9. The use by the respondents of the foregoing false, deceptive and misleading statements, representations and practices in connection with the sale and distribution of their photographs had the tendency and capacity to mislead and deceive a substantial portion of the purchasers and prospective purchasers of said photographs into the erroneous and mistaken belief that such statements and representations were true and into the purchase of substantial quantities of photographs. As a result thereof trade in commerce was unfairly diverted to respondent from their competitors and injury done to competition in commerce.

PAR. 10. Respondent, Royal True Color Corporation, a corporation, was dissolved on October 18, 1956.

CONCLUSIONS

The aforesaid acts and practices as hereinabove set forth were all to the injury of the public and of respondents' competitors and constituted unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent Alton L. Hubbard. The complaint herein states a cause of action against respondent Alton L. Hubbard under the Federal Trade Commission Act and this proceeding against him is in the public interest.

ORDER

It is ordered, That respondent Alton L. Hubbard, his agents, representatives and employees, directly, or through any corporate or other device, in connection with the offering for sale, sale or distribution of photographs in commerce, as "commerce" is defined in the Federal Trade Commission Act do forthwith cease and desist from representing, directly or by implication:

(1) That American Family Magazine or any other publication owned by him or by any other individual for whom he is a representative, agent or employee, or by any partnership in which he is a partner or for which he is a representative, agent or employee or by any corporation with which he is connected in any official capacity or for which he is agent, representative or employee is a recog-

nized or established magazine, or is an independent publication; or is similar to magazines of nation-wide circulation; or that said magazine will publish and furnish a new issue to each subscriber each month during the life of his or her subscription;

(2) That said respondent or any individual for whom he is a representative, agent or employee, or any partnership in which he is a partner or for which he is a representative, agent or employee or any corporation with which he is connected in any official capacity or for which he is a representative, agent or employee,

(a) is conducting a photographic contest the purpose of which is to select a winner or winners for a contest sponsored by a magazine; or for any other purpose;

(b) will award valuable prizes to the winner or winners of such contest;

(c) will give free portraits to parents of children who pose for pictures;

(d) will furnish pictures in true or natural color;

(e) will guarantee the workmanship and materials in photographs;

(f) will promptly deliver photographs purchased;

(g) will furnish photographs similar in quality to demonstration photographs or to color transparencies viewed by prospective purchasers.[1]

It is further ordered, That the complaint be and the same hereby is dismissed as to respondents Royal True Color Corporation and William T. Hubbard.

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 14th day of September, 1957, 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.

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[1] The Commission's order may prohibit variations of the basic theme used in causing the deception and prohibit such practices by respondent through the use of other vehicles than the one used. An order forbidding the making of representations which are false need not be qualified by a provision permitting them if in the future they can be truthfully made. *P. Lorillard Co.* v. *F.T.C.*, 186 F. 2d 52, 59; *Consumers Sales Corp.* v. *F.T.C.*, 198 F. 2d 404, 408.

IN THE MATTER OF

McCORMICK & COMPANY, INC.

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

Docket 6470. Complaint, Nov. 21, 1955—Decision, Sept. 17, 1957

Consent order requiring a seller in Baltimore, Md. of spices, extracts, teas, coffees, and condiments on a nation-wide basis, with sales for 1954 approaching $44,000,000, to cease violating Sec. 2(d) of the Clayton Act through such practices as payment of a sum of money to a Philadelphia chain of food stores as compensation for advertising respondent's products, while not offering proportionally equal allowances to all competitors of the favored customer.

Before *Mr. Frank Hier*, hearing examiner.

Mr. Andrew C. Goodhope and *Mr. Fredric T. Suss* for the Commission.

Anderson, Barnes & Coe, by *Mr. G. C. A. Anderson*, of Baltimore, Md., and *Mr. James W. Cassedy*, of Washington, D.C., for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly described, has violated the provisions of subsection (d) of Section 2 of the Clayton Act (U.S.C. Title 15, Sec. 13), as amended by the Robinson-Patman Act, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, McCormick & Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located in Baltimore, Maryland.

PAR. 2. Respondent is now and has been engaged in the business of producing and selling food products. Respondent's principal products are spices, extracts, teas, coffees and condiments. Respondent sells such products to the retail grocery trade through grocery wholesalers, and, in addition, respondent sells direct to retail chain store organizations. Respondent sells spices and extracts in the eastern part of the United States under the trade name "McCormick," and sells spices, extracts and coffees in the western part of the United States under the trade name "Schilling." Sales made by respondent of its products are substantial, amounting in the fiscal year ended November 30, 1954, to $43,764,725.

PAR. 3. In the course and conduct of its business, respondent has engaged in commerce, as "commerce" is defined in the Clayton Act, as amended. Respondent ships its products, or causes them to be transported, from its principal place of business in the State of Maryland to customers located in the same and in other States of the United States and the District of Columbia.

PAR. 4. In the course and conduct of its business in commerce, respondent has paid, or contracted for the payment of, something of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished by or through such customers in connection with their offering for sale or sale of products sold to them by respondent, and such payments were not made available on proportionally equal terms to all other customers competing in the distribution of respondent's products.

PAR. 5. For example, during the year 1955, respondent contracted to pay and did pay the sum of $3,750.00 to the Food Fair Stores, Inc., of Philadelphia, Pennsylvania, as compensation or as an allowance for advertising or other service or facility furnished by or through such customer in connection with its offering for sale or sale of products sold to it by the respondent. Such compensation or allowance was not offered or otherwise made available by respondent on proportionally equal terms to all other customers competing in the sale and distribution of respondent's products with Food Fair Stores, Inc.

PAR. 6. The acts and practices of the respondent, as alleged above, violate subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of subsection (d) of Section 2 of the Clayton Act (U.S.C. Title 15, Sec. 13), as amended by the Robinson-Patman Act, the Federal Trade Commission on November 21, 1955, issued and subsequently served its complaint in this proceeding against respondent McCormick & Company, Inc., a corporation existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at Baltimore, Maryland.

One hearing was held after which there was, on August 2, 1957, 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 com-

plaint 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.

Respondent McCormick & Company, Inc., is a corporation existing and doing business under the laws of the State of Maryland, with its office and principal place of business located at Baltimore, Maryland.

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

ORDER

It is ordered, That respondent McCormick & Company, Inc., a corporation, its officers, employees, agents, and representatives, directly or through any corporate or other device, in or in connection with the sale of spices, extracts, teas, coffees, condiments and other products in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, do forthwith cease and desist from:

Making or contracting to make, to or for the benefit of any customer, any payment of anything of value as compensation or in

consideration for any advertising or other services or facilities furnished by or through such customer, in connection with the handling, offering for resale, or resale of spices, extracts, teas, coffees, condiments and other products sold to him by respondent, unless such payment is affirmatively offered or otherwise made available on proportionally equal terms to all other customers competing in the distribution or resale of such spices, extracts, teas, coffees, condiments and other products.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 17th day of September, 1957, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

KRASNOW BELT CO., INC., ET AL.

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

Docket 6742. Complaint, Mar. 15, 1957—Decision, Sept. 17, 1957

Consent order requiring a manufacturer in Long Island City, N.Y., to cease attaching to men's and boys' belts, labels carrying fictitious and exaggerated prices, thereby placing in the hands of retailers a means of deceiving the purchasing public as to the usual retail price.

Mr. Morton Nesmith and *Mr. John J. Mathias* supporting the complaint.

Mr. Erwin L. Corwin, of New York City, for respondents.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the respondents herein on March 15, 1957 charging them with violation of the Federal Trade Commission Act as set forth in said complaint. After service of the complaint, respondents and their attorney entered into an agreement with counsel supporting the complaint for a consent order to cease and desist from the practices complained of, which agreement purports to dispose of all the issues in this proceeding. This agreement has been duly approved by the Assistant Director and the Director of the Bureau of Litigation and has been submitted to the undersigned, heretofore designated to act as hearing examiner herein for his consideration in accordance with Rule 3.25 of the Rules of Practice of the Commission.

It is noted that Morton Nesmith and John J. Mathias have both signed the agreement as counsel supporting the complaint, whereas only John J. Mathias is named as counsel supporting the complaint in the body of the agreement. This irregularity is not believed to affect the validity of the agreement.

Respondents Krasnow Belt Company, Inc., a corporation, and Kenneth I. Krasnow and David Krasnow individually and as officers of the corporate respondent in the aforesaid agreement have admitted all the jurisdictional facts alleged in the complaint and have agreed that the record may be taken as if findings of the jurisdictional facts had been duly made in accordance with such allegations. Said agreement provides further 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 into accordance with the 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 of the Commission 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 agreement and order cover all the allegations of the complaint and provide for appropriate disposition of this proceeding, the order and agreement are hereby accepted and ordered filed upon becoming part of the Commission's decision pursuant to Sections 3.21 and 3.25 of the Rules of Practice and the hearing examiner accordingly makes the following finds for jurisdictional purposes and order:

1. Respondent Krasnow Belt Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business at 33-00 Northern Boulevard, Long Island City, New York.

2. Respondent Kenneth I. Krasnow is president of the corporate respondent, and respondent David Krasnow is vice-president, treasurer, and secretary of the corporate respondent. The address of these respondents is the same as that of the corporate respondent. These individual respondents formulate, direct and control the policies, acts and practices of the corporate respondent.

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

ORDER

It is ordered, That respondents Krasnow Belt Co., Inc., a corporation, and its officers, and Kenneth I. Krasnow, and David Krasnow, 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 men's and boys' belts or other merchandise in com-

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

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

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

ORDER DENYING RESPONDENTS' MOTION TO VACATE, AND DECISION OF THE COMMISSION

The hearing examiner, on June 13, 1957, having filed an initial decision in this proceeding accepting an agreement containing an order to cease and desist theretofore executed by respondents and counsel in support of the complaint, and the Commission, on July 23, 1957, having extended, until further order by it, the date on which said initial decision would otherwise become the decision of the Commission; and

Respondents, on July 31, 1957, having filed a request in the nature of a motion seeking to vacate the initial decision and to remand the proceeding for the reception of further evidence of economic harm to respondents, or in the alternative, praying that compliance by respondents with the order to cease and desist contained in the initial decision be stayed until such time as all of respondents' competitors shall be proceeded against by the Commission and be governed by similar orders; and

The Commission being of the opinion that the respondents have failed to make an adequate showing on the law and facts to justify vacating and setting aside the initial decision as prayed, and having further concluded that it would be contrary to the public interest to stay compliance with the order to cease and desist contained in the initial decision:

It is ordered, That respondents' motion be, and it hereby is, denied.

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

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

IN THE MATTER OF

SWIFT & ANDERSON, INC., ET AL.

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

Docket 6818. Complaint, June 14, 1957—Decision, Sept. 17, 1957

Consent order requiring a firm in Boston, Mass., importing lenses from Japan and movements for weather instruments from England and Germany which they fitted into frames and cases, respectively, for sale to the purchasing public, to cease failing to properly label such products to show the place of origin of the component parts, falsely representing them to be of domestic manufacture, and misrepresenting all air-to-glass lens surfaces of their binoculars as "coated".

Mr. Floyd O. Collins for the Commission.

Mr. Joseph F. Knowles, of *Goodwin, Procter & Hoar*, of Boston, Mass., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

The complaint in this proceeding charges that Swift & Anderson, Inc., a corporation, Robert W. Swift, Jr., Humphrey H. Swift, Clifford O'Brien, and Charles H. Kent, individually and as officers of said corporation, hereinafter called respondents, violated the provisions of the Federal Trade Commission Act while engaged in their business of importing, assembling, offering for sale, selling and distributing magnifiers, reading glasses, binoculars and weather instruments.

After issuance and service of the complaint, counsel supporting the complaint and respondents, with their counsel, 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 order disposes of the matters complained about.

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

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

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

JURISDICTIONAL FINDINGS

1. The respondent Swift & Anderson, Inc., is a corporation organized and doing business under the laws of the State of Massachusetts, with its office and principal place of business located at 952 Dorchester Avenue, Boston, Massachusetts. The respondent Robert W. Swift, Jr., is president and secretary of said corporation; the respondent Humphrey H. Swift is a vice president of said corporation; Clifford O'Brien is a vice president of said corporation; and the respondent Charles H. Kent is chairman of the board of directors and treasurer of said corporation. The office and principal place of business of each individual respondent is the same as that of the corporation.

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 the respondents Swift & Anderson, Inc., a corporation, and its officers and Robert W. Swift, Jr., Humphrey H. Swift, Clifford O'Brien and Charles H. Kent, 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 and distribution of binoculars, reading glasses, magnifiers and weather instruments in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale or selling reading glasses or magnifiers containing imported lenses without affirmatively disclosing thereon or in immediate connection therewith such foreign origin.

2. Representing in any manner that their reading glasses or magnifiers containing lenses imported from foreign countries are of domestic manufacture.

3. Offering for sale or selling weather instruments containing movements imported from foreign countries without affirmatively disclosing thereon or in immediate connection therewith such foreign origin.

4. Representing in any manner that their weather instruments containing movements imported from foreign countries are domestic made.

5. Representing directly or by implication that all the air-to-glass surfaces of the lenses of their binoculars are coated, unless such is a 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 17th day of September 1957, become the decision of the Commission; and, accordingly:

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

Decision

IN THE MATTER OF

NEW HAVEN QUILT & PAD CO., INC., ET AL.

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

Docket 6760. Complaint, Apr. 3, 1957—Decision, Sept. 18, 1957

Consent order requiring a manufacturer in New Haven, Conn., to cease violating the Wool Products Labeling Act by labeling as "All new material consisting of wool battling," bed comforters which contained substantial amounts of fibers other than wool, by failing to label some of the comforters, and by furnishing false guaranties that their wool products were not misbranded; and to cease representing falsely that some of the comforters were mothproofed for five years by "Westinghouse Ultra-Violet" process, contained all new wool and "chlorophyll," and sold regularly at retail at the fictitious price of $24.95, all on streamers enclosed in individual containers, thereby placing in the hands of retailers a means for deceiving the purchasing public.

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

Mr. Edward Gallagher, of Washington, D.C., for respondents.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on April 3, 1957, charging them with having violated the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and the Federal Trade Commission Act, through misbranding certain wool products, furnishing false guarantees that they were not misbranded, falsely representing that certain bed comforters were moth proofed and treated with chlorophyll, and using fictitious prices greatly in excess of the usual and regular retail price of such comforters. After being served with said complaint, respondents appeared by counsel and entered into an agreement containing a consent order to cease and desist, dated June 4, 1957, purporting to dispose of all of this proceeding as to all parties. Said agreement, which has been signed by all 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 considera-

tion, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Respondents, pursuant to the aforesaid agreement, have admitted all the jurisdictional facts alleged in the complaint, and have agreed that the record may be taken as if findings of jurisdictional facts had been made in accordance with such allegations. Said agreement further provides that respondents waive any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law, and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with said 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 aforesaid agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

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

1. Respondent New Haven Quilt & Pad Co., Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Connecticut, with its office and principal place of business located at 80-86 Franklin Street, in the City of New Haven, State of Connecticut.

Respondents David H. Levine, Paul B. Levine, and Edward I. Levine are individuals and officers of said corporation. The address and principal place of business of these respondents is the same 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 Wool Products Labeling Act of 1939 and the Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

It is ordered, That respondents, New Haven Quilt & Pad Co., Inc., a corporation, and its officers, and David H. Levine, Paul B. Levine and Edward I. Levine, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation or distribution, in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of bed comforters or other "wool products," as such products are defined in and subject to said Wool Products Labeling Act, which products contain, purport to contain, or in any way are represented as containing, "wool," "reprocessed wool," or "reused wool" as those terms are defined in said Act, do forthwith cease and desist from:

A. Misbranding such products by:

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

2. Failing to securely affix to or place on each such product a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner:

(a) The percentage of the total fiber weight of such wool product, exclusive of ornamentation not exceeding five percentum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber is five percentum or more, and (5) the aggregate of all other fibers;

(b) The maximum percentage of the total weight of such wool product, of any non-fibrous loading, filling, or adulterating matter;

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

B. Furnishing false guaranties that bed comforters, or other wool products are not misbranded under the provisions of the Wool Products Labeling Act, when there is reason to believe that the wool products so guaranteed may be introduced, sold, transported or distributed in commerce.

It is further ordered, That New Haven Quilt & Pad Co., Inc., a corporation, and its officers, and David H. Levine, Paul B. Levine

and Edward I. Levine, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of bed comforters or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, that bed comforters or other products are mothproof, when such is not the fact.

2. Representing, directly or indirectly, that bed comforters or other products have been treated with chlorophyll or any other substance, when such is not the fact.

3. Misrepresenting the constituent fiber of material used in products or the respective percentages thereof.

4. Representing that certain amounts are the regular and usual retail prices of bed comforters or other products, when such amounts are in excess of the prices at which such comforters or other products are usually and regularly sold at retail.

5. Putting into operation any plan whereby retailers or others may misrepresent the regular and usual retail prices of merchandise.

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 September 1957, become the decision of the Commission; and, accordingly:

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

Decision

IN THE MATTER OF

OLD YORK DISTRIBUTORS, INC., ET AL.

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

Docket 6790. Complaint, May 3, 1957—Decision, Sept. 18, 1957

Consent order requiring an incorporated concern in Philadelphia, Pa., to cease using in advertising in newspapers and otherwise purported offers of employment to sell its candy vending machines and misrepresenting profits customers would make operating them; and falsely representing orally and through salesmen that it represented the Hershey Chocolate Corp., and that vending machine purchasers would also be Hershey representatives—among a variety of false and misleading claims, all made for the purpose of inducing purchase of their products.

The same order was issued in default upon the president and co-owner of Old York Distributors, on Feb. 27, 1958, p. 1096 herein.

Mr. Floyd O. Collins for the Commission.
Mr. Mark Charleston, of Philadelphia, Pa., for respondent.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes hereinafter referred to as the Commission), on May 3, 1957, issued its complaint herein under the Federal Trade Commission Act against the above-named respondents, Old York Distributors, Inc., a corporation, and Kolman Freedman and Henry Perkins, individually and as officers of said corporation, charging said respondents with having violated the provisions of the Federal Trade Commission Act in certain particulars. The respondents were duly served with process.

On July 19, 1957, 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 said respondent, Old York Distributors, Inc., respondent Henry Perkins, individually and as an officer of said corporation, and Floyd O. Collins, counsel supporting the complaint, under date of July 15, 1957, and subject to the approval of the Bureau of Litigation of the Commission. Such agreement had been thereafter duly approved by the Director and Assistant Director of that Bureau.

The initial hearing set in the notice portion of the complaint for July 15, 1957, was canceled by order dated July 1, 1957, pending the negotiation of an Agreement Containing Consent Order To Cease And Desist. Another order was issued on July 22, 1957, set-

ting hearing for August 16, 1957, to determine the form of order as to respondent Kolman Freedman who is not a party to nor bound by said agreement so submitted to the hearing examiner on July 19, 1957.

On due consideration of the "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 thereto have agreed that:

1. Old York Distributors, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania with its home office and principal place of business located at 5940 Old York Road, Philadelphia, Pennsylvania. Henry Perkins is an individual and is now President of respondent corporation and was until March 7, 1957, Secretary-Treasurer of respondent corporation, and his address is the same as that of the corporate respondent. Kolman Freedman is an individual and was until March 7, 1957, President of respondent corporation and his address is 1022 Sydney Street, Philadelphia, Pennsylvania.

2. Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 3rd day of May, 1957, issued its complaint in this proceeding against respondents, and a true copy was thereafter duly served on respondents.

3. Respondents, Old York Distributors, Inc., and Henry Perkins, 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, except respondent Kolman Freedman and as to all issues as against the parties to the agreement except as to the charge in the complaint set out in subparagraph 4 of Paragraph 6. As to this charge, counsel supporting the complaint states that, in his opinion, there is not sufficient evidence, presently available, to sustain such charge.

5. Respondents Old York Distributors, Inc., and Henry Perkins 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 therein 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.

In the said agreement, the parties thereto have further specifically agreed that the proposed order to cease and desist included therein may be entered in this proceeding by the Commission without further notice to the respondents who are parties to said agreement; that when so entered it shall have the same force 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 "Agreeement Containing Consent Order To Cease And Desist," the latter is hereby approved, accepted and ordered filed, the same not to become a part of the record herein, unless and until it becomes part of the decision of the Commission. The hearing examiner finds from the complaint and the said "Agreement Containing Consent Order To Cease And Desist" that the Commission has jurisdiction of the subject matter of this proceeding and of the respondents who are parties to the agreement; that the complaint states a legal cause for complaint under the Federal Trade Commission Act both generally and in each of the particular charges alleged therein; that this proceeding is in the interest of the public; that the following order as proposed in said agreement is appropriate for the full disposition of all the issues in this proceeding, except as to respondent Kolman Freedman and except as to the charge in the complaint set out in subparagraph 4 of Paragraph Six, such order to become final only if and when it beocmes the order of the Commission; and that said order, therefore, should be, and hereby is, entered as follows:

ORDER

It is ordered, That respondents Old York Distributors, Inc., a corporation, and its officers, and Henry Perkins, 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 and distribution

of vending machines or candies, or both, in commerce, as "commerce" is defined in the Federal Trade Commission Act ,do forthwith cease and desist from representing, directly or indirectly, that:

1. Employment is offered when, in fact, the purpose of the offer is to obtain purchases of respondents' products.

2. The route the prospective purchaser would serve is in any way connected with or under the supervision or control of the Hershey Chocolate Corporation, or that said route had been established prior to the time of the purchase of respondents' machines.

3. It is necessary for a purchaser to own a car or furnish references in order to qualify for respondents' offer, or misrepresenting in any manner the necessary qualifications.

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

5. The amounts invested in respondents' products are secured by inventory or otherwise.

6. Respondents' salesmen or the purchasers of their products represent the Hershey Chocolate Corporation.

7. Respondents will place the machines sold by them in choice locations from a revenue producing standpoint.

8. Purchasers of respondents' machines and supplies are allowed to purchase additional machines and supplies on credit.

9. Salesmen or placement men render services to purchasers after the machines purchased are located.

10. Freight, express, or other delivery charges on the initial shipment are paid by respondents or any of them.

11. Candy dispensed by respondents' machines cannot be bought in local stores at retail.

12. Respondents pay any or all taxes or licenses on machines sold by them.

13. Respondents have had 43 years of experience in the vending machine business or for any period of time that is not in accordance with the facts.

14. Purchasers of respondents' machines are under respondents' jurisdiction for any period of time or are required to operate in accordance with respondents' standards.

15. In the event purchasers of their machines desire to sell the machines, respondents will assist them in finding buyers, unless such is a fact.

16. Respondents will refund the purchase price of machines.

17. Purchasers are given exclusive territorial franchises.

18. The amount paid for respondents' machines is a surety bond or anything other than the purchase price.

It is further ordered, That the charge set out in subparagraph 4 of Paragraph 6 of the complaint be, and the same hereby is, dismissed without prejudice as to the respondents Old York Distributors, Inc., a corporation, and Henry Perkins, individually and as an officer of said corporation.

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 September, 1957, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Old York Distributors, Inc., a corporation, and Henry Perkins, 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

ELLISBERG'S, INC., ET AL.

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

Docket 6819. Complaint, June 14, 1957—Decision, Sept. 18, 1957

Consent order requiring a furrier in Raleigh, N.C., to cease violating the Fur Products Labeling Act by fictitious pricing on labels and in advertising, and by advertising in newspapers which failed to disclose the names of animals producing the fur in certain products or the country of origin or that certain furs were artificially colored, and which misrepresented values, comparative prices, percentage savings, and guarantees; and by failing in other respects to comply with the labeling, invoicing and advertising requirements of the Act.

Michael J. Vitale and *Thomas A. Ziebarth, Esqs.*, supporting complaint.

Howard E. Manning, Esq., representing respondents.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

The complaint in this proceeding, issued June 14, 1957, charges the respondents, above-named, with violation of the provisions of the Federal Trade Commission Act, the Fur Products Labeling Act and the Rules and Regulations promulgated under the last-named Act, in connection with the sale, advertising and offering for sale, transportation and distribution, shipping and receiving in commerce, of fur and fur products, as the designations "commerce," "fur" and "fur products" are defined in the Fur Products Labeling Act.

Subsequent to the service of the complaint on all respondents, all parties did, on July 20, 1957, enter into an agreement for a consent order disposing of all of the issues in this proceeding, which agreement was duly approved by the Director and Assistant Director of the Bureau of Litigation of the Commission. It was provided in said agreement that the signing thereof 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.

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

a Hearing Examiner or the Commission; the making of findings of fact or conclusions of law by the Hearing Examiner or the Commission; the filing of exceptions and oral argument before the Commission, and all further and other procedure before the Hearing Examiner and the Commission to which the respondents may otherwise, but for the execution of said agreement, be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission.

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

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

Said agreement recites that respondent Ellisberg's, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of North Carolina; that the individual respondents, Elias and Mortimer Ellisberg are, respectively, President and Secretary-Treasurer of the corporate respondent; the complaint charges that the individual respondents, acting in cooperation with each other, formulate, direct and control all of the acts and policies of the corporate respondent. The address and principal place of business of all respondents is located at No. 126 Fayetteville Street, Raleigh, North Carolina.

The Hearing Examiner has considered such agreement and the order therein contained, and, it appearing that said agreement and order provides for an appropriate disposition of this proceeding, the same is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice.

Consonant with the express terms and provisions of said agreement, the Hearing Examiner finds that the complaint herein states a valid cause of action; that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of all respondents named herein and that this proceeding is in the public interest, wherefore he issues the following order:

ORDER

It is ordered, That respondent Ellisberg's, Inc., a corporation, and its officers, and Elias Ellisberg and Mortimer Ellisberg, 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 sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product, or in connection with the sale, advertising, offering for sale, transportation or distribution of any fur product which is made in whole or in part of fur which has been shipped or 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. Falsely or deceptively labeling or otherwise identifying any such product by affixing thereto any label or tag containing a price which is greater than the price normally charged in the usual and regular course of business;

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

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

3. Setting forth on labels attached to such fur products nonrequired information mingled with information that is required under Section 4(2) of the Act and the Rules and Regulations thereunder;

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 otherwise artificially colored fur, when such is a fact;

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

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

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

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

1. 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 under the Rules and Regulations;

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

(c) The name of the country of origin of any imported fur contained in such fur products;

2. Sets forth information required under Section 5(a) of the Fur Products Labeling Act and the Rules and Regulations thereunder in abbreviated form;

3. Fails to set forth in type of equal size and conspicuousness information required under Section 5(a) of the Fur Products Labeling Act and the Rules and Regulations thereunder;

4. Represents prices of fur products as being reduced from regular or usual prices where the so-called regular or usual prices are in fact fictitious, in that they are not the prices at which said merchandise is usually sold by respondents in the recent regular course of business in violation of Section 5(a)(5) of the Fur Products Labeling Act and Rule 44(a) of the Rules and Regulations thereunder;

5. Guarantees that prices will be higher later in the season unless such is the fact;

D. Making use of comparative prices and percentage savings claims in advertising unless such prices and claims are based on

current market values or unless the designated time of a bona fide compared price is given;

E. Making pricing claims and representations of the type referred to in Paragraphs C 4 and D unless full and adequate records disclosing the facts upon which such claims and representations are purportedly based are maintained, as required under Rule 44(e) of the Rules and Regulations.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 18th day of September, 1957, 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

J. H. FILBERT, INC.

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

Docket 6467. Complaint, Nov. 21, 1955—Decision Sept. 19, 1957

Order requiring a Baltimore manufacturer of food products—principally salad dressing and oleomargarine sold under the trade name "Mrs. Filbert's"—with annual sales of approximately $16,000,000, to cease violating Sec. 2(d) of the Clayton Act by such practices as paying sums of money to a Philadelphia food chain as compensation or allowance for advertising furnished in connection with the sale of its products, while not making any allowance available on proportionally equal terms to competitors of the chain.

Mr. Andrew C. Goodhope and *Mr. Fredric T. Suss* for the Commission.

Mr. Nathan Patz, of Baltimore, Md., for respondent.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Complaint herein, issued November 21, 1955, charged respondent with having paid advertising or promotional allowances for services to some of its customers without making such payments available on proportionally equal terms to all of its other customers competing in the resale of respondent's products with the recipients in violation of Section 2(d) of the Clayton Act (15 U.S.C. 13). After service of the complaint, various motions by respondent were made and ruled on and thereupon, on January 24, 1956, respondent filed its answer admitting descriptive and jurisdictional facts, admitting the payment of various allowances, but only for valuable services performed in good faith, and alleging availability and proportionally equal treatment of all its customers. Thereafter, six hearings were held in Baltimore, Maryland, four for the reception of evidence supporting the charge, and two for respondent's defense, at which 29 witnesses testified for a total of 610 pages of transcript, and at which 27 exhibits were received as supporting the charge and 14 exhibits in defense thereof. Thereafter, all counsel filed with the hearing examiner proposed findings and conclusions of law, on consideration of which, together with the entire record herein, said hearing examiner makes the following:

FINDINGS OF FACT

1. Respondent J. H. Filbert, 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 principal place of business located at 3701 Southwestern Boulevard, Baltimore, Maryland.

2. Respondent is now and has been engaged in manufacturing, selling and distributing a number of food products, principally salad dressing and oleomargarine which are sold under the trade name "Mrs. Filbert's." Respondent's total sales of all products are substantial, being approximately $16,000,000 per year.

3. In the course and conduct of its business, respondent has engaged in commerce, as "commerce" is defined in the Clayton Act as amended. Respondent ships its products, or causes them to be transported, from its principal place of business in the State of Maryland to customers located in the same state and other states of the United States and the District of Columbia.

4. Prior to 1950 respondent, in order to promote the retail sale to consumers of its products, drew up printed contracts to be entered into by it with its customers providing for payment by respondent to such customers of an advertising allowance of ½¢ per pound of margarine purchased for resale by such customers, or 3% of dollar purchases of mayonnaise and beverage syrups, toward the cost of a monthly handbill or newspaper advertisement by the customer of such product if the name and the price thereof occupied at least one inch space; equaled, or exceeded the space used for any competitive brand in the same advertisement, and proof of such advertisements was submitted to respondent. These contracts are referred to by respondent, and by all counsel throughout this case, as respondent's regular cooperative advertising agreements.

5. On their face, there is nothing therein to suggest a violation of the charging statute. The base selected is measurable, capable of being proportionalized, within the reach of, and capable of being used by all of respondent's customers, is definitely and understandably stated, and each applies to products which are competitively different. There is no attack here on these contracts or their terms as such. The attack is under that part of Clayton's Section 2(d) which reads "unless such payment or consideration is available * * * to all other customers * * *" and the construction thereof by the Commission in Kay Windsor Frocks, Inc., et al, Docket 5735, and Henry Rosenfeld, Inc., et al, Docket 6212, to mean that this requires an affirmative offering of any plan or contract by respondent to each of its customers competitively engaged in the resale of its products. In other words, counsel in support of the complaint contends that respondent did not, as required, offer its participation contracts to all such customers.

6. The record on this point is substantially confined to the Baltimore trading area, and to the year 1954, and the first six months

of 1955, and shows that in that area, and in that time, respondent had an estimate of 2,500 customers to only 76 of whom, according to respondent's account books, it made advertising allowances for 1954, and to only 79 of whom it paid such allowance in the first six months of 1955. This lopsided proportion, however, is no proof by itself of failure to offer, particularly in view of respondent's insistence that all were offered, because respondent's duty under the law is fully discharged if it affirmatively offers the contracts here involved. Opportunity to share is all the law seeks on that point.

7. To prove his contention, counsel supporting the complaint took the testimony of eleven witnesses who either owned or worked for the owners of Baltimore groceries, all of whom were either quite positive that neither respondent's driver-salesmen, making weekly or biweekly calls, or any other employees of respondent, made either payments or offers of respondent's regular cooperative advertising allowances, or else could not recall any such payments or offers. All of these witnesses testified they were in competition in consumer resale of respondent's products, with Food Fair Stores, Inc., or some other chain store recipient of advertising allowances from respondent, or stated facts such as physical proximity, common shoppers, etc., from which such competition could be reasonably inferred.

8. One of these positive grocers, on recall by respondent as its own witness, admitted, when confronted therewith, his signature on one of the contracts he had previously testified he never saw or heard of. Respondent's driver-salesman who serviced this witness' store testified specifically that he had repeated offered such contracts to the witness.

9. Another of these positive witnesses, when recalled by respondent, completely recanted his previous testimony with the flippant explanation that he was only "kidding," previously. Lacking contempt power, the hearing examiner was unable to give him the thirty days indicated to ponder on, and in the future, avoid such a cavalier attitude toward oath and this proceeding, and can do no more than reject his rambling recital for complete lack of credibility.

10. Two more of these witnesses admitted on cross-examination that respondent's driver-salesman had told them that if they, the witnesses, would put out handbills respondent would pay part of the cost. This is corroborated by the driver-salesman referred to, in greater detail as to the offer.

11. Two additional, quite positive, such witnesses, both of whom worked in two of a five store chain or group under common ownership, were flatly contradicted by another employee who testified he was offered respondent's contracts by its driver-salesman and its

then supervisor, both of whom he identified in the hearing room, but that the offer was refused because the store group did no advertising. This was corroborated by the testimony of the two employees of respondent involved.

12. A seventh such witness was flatly contradicted by his employer, who testified the witness had no authority to discuss such matters, that he the owner, and his son, were offered these contracts by respondent's driver-salesman and that the offer was refused because the owner did no advertising and was not interested in doing any.

13. Of the remaining four witnesses, three were not positive as to no payment and no offer, but stated simply that they could not recall any. The last of the eleven witnesses was positive in his assertion. In each case, respondent's driver-salesman servicing that store was positive that respondent's regular cooperative advertising allowance contracts were offered to each of them, but refused because that particular store did no advertising and had no desire to do so. The first three of these remaining four witnesses appeared to the hearing examiner to be unsteady in their negative recollection, and from his observation of them all, the nature of the transactions, the disinterest in advertising, even discounting for obvious interest in this issue, the testimony of respondent's driver-salesmen, the conclusion is that the evidence of failure to offer affirmatively respondent's regular cooperative advertising contracts to all of its customers is unsubstantial, unreliable and lacks probative value.

14. This rejection of testimony of past recollection of a negative does not mean that the testimony of most of these witnesses as to current events is similarly rejected. There is a vast and obvious difference in the probative value of a witness' present recollection of what did not happen in the past, and his recital of present facts—such as where his grocery is located, what he sells therein, to whom, its physical proximity to competitors, and who those competitors are.

Added to the above, are the facts testified to by respondent's officials and two former and one present driver-salesmen that it was, and is, the fixed policy of respondent to obtain as many of these cooperative advertising contracts with its customers as it could, that they were to be aggressively offered to all, that driver-salesmen were periodically and repeatedly instructed to do so, that the latter, working on salary and commission, had an incentive to do so, because of the anticipated increased sales volume, and that each driver-salesman carried a supply of forms on his truck.

15. The conclusionary finding, therefore, is that, on this record respondent's regular cooperative advertising allowance contracts,

offered, entered into and carried out, as above described, do not violate the statute charged.

16. Respondent's advertising allowance practices are under additional attack in this proceeding because of its payments to the Food Fair Stores, Inc. The record shows that in 1954 respondent paid to Food Fair Stores, Inc., a supermarket chain incorporated in Pennsylvania conducting an integrated interstate operation, $3,412.25 and in the first six months of 1955, $1,955.61 on its regular cooperative advertising contracts which it had with Food Fair Stores, Inc., as generally described above, but that in addition it paid Food Fair Stores, Inc. for the same periods $1,250 and $1,350 respectively, for special sales promotions of the Food Fair Stores, Inc.

17. In the spring of each year, the latter stages what it calls "Spectacular Anniversary Celebrations" accompanied by saturation advertising—newspaper, radio and television—of the products which it has for sale, their prices and brand names, and the bargains obtainable for that limited period only. Food Fair Stores, Inc. actively solicits financial subsidization by its suppliers in this advertising by form letters, enclosing a number of form contracts in blank, the latter varying in cost to the supplier directly to advertising promised. Respondent executed several of these contracts with Food Fair Stores, Inc. covering its various products and paid the amounts indicated above in paragraph 16 in the years 1954 and 1955. The record is clear that these payments were not proportionalized by respondent among its other customers competitively engaged in the resale of respondent's various products with the recipient. Wherefore the claim that Clayton's Section 2(d) was violated.

18. By way of defense, several contentions are advanced. First, it is asserted that the charging statute does not apply to respondent in this situation in that the Anniversary Sale plans were the purchaser's—Food Fair Stores, Inc.—in origination, solicitation and operation; that any duty to proportionalize was on it, not on respondent, that the latter had its own cooperative advertising allowance plans, and is responsible for none other. This same contention of counsel, and this same attitude of the respondent, and its officials, have been urged in other proceedings analagous, if not the same, as this one; and this same hearing examiner therein ruled that when a supplier "participates" in, or contracts with a purchaser for advertising services and payments therefor, the supplier thereby adopts such purchaser-originated and purchaser-promoted or solicited plan as the supplier's own and must comply in all respects therein with the governing statute, regardless of whether or not such supplier already has his own plan or contracts. There has been no reversal

as yet of such ruling and, on this record, this hearing examiner sees no reason to rule otherwise. To do so would provide a convenient and easy escape hatch to the prohibitions of the charging statute. It would, indeed, be then very simple for a supplier, desiring to favor certain of his larger or most aggressive customers, for the best of commercial or selfish reasons, to have no plan, and simply let such intended favorees draw up one, accept it, pay under it, and leave the vast majority of his customers unsubsidized. This would most certainly emasculate the statute and thwart the will of Congress—which clearly was to insure proportional equality of share by all customers of a supplier's advertising handouts. The contention is rejected.

19. Respondent's second contention is that when solicited to participate in Food Fair's yearly extravaganza, it first determined whether the proffered promotion was worth the charge therefor to it. In view of the varying charges for the varying costs, apparently an affirmative decision was largely routine. Then respondent ascertained whether or not competitive margarines, mayonnaises, salad dressings, etc., were participating—being promoted. If so, and they always were, then respondent felt it had to enter into a contract to meet this competition—in other words, an invocation of Clayton's Section 2(b) as to defense to the charged violation of Section 2(d). The Commission having already explicitly ruled in Henry Rosenfeld, Inc., D. 6212, that Section 2(b) is not available as a defense to a charge of violation of Section 2(d) of the Clayton Act, this contention is rejected without further discussion.

20. Respondent's third contention is far more serious. Despite its admission in its answer that "In the course and conduct of its business, respondent has engaged in commerce, as 'commerce' is defined in the Clayton Act, as amended * * *," respondent asserts a lack of jurisdiction of this proceeding because of a lack of proof of these specific activities being in interstate commerce. Its position in gist is that notwithstanding that it and Food Fair Stores, Inc. are both engaged in commerce in their general operations, that for jurisdiction to exist in this proceeding, counsel supporting the complaint must show that the challenged payments were made to recipients located or operating in states other than Maryland, and secondly, that such out of state recipient must be shown to be in competition with non-recipient customers of respondent and that these two elements must co-exist. More specifically, respondent asserts that no payments have been shown to have been made to Food Fair Stores, Inc., except in the Baltimore and Philadelphia metropolitan areas—

that in the former, there is no commerce, that in the latter, there is no competition shown to exist between the recipient Food Fair Stores, Inc. and any non-recipient.

21. Factually, the situation is that respondent is, as a whole, engaged in interstate commerce with its plant in Baltimore, Maryland. Food Fair Stores, Inc., a Pennsylvania corporation with headquarters at Philadelphia but with branches in other states, is likewise engaged in interstate commerce, buying products from many suppliers located in various states and reselling them to consumers through 216 supermarkets located from New York to Florida, with average annual sales per store being $2,000,000. In the Washington metropolitan area, respondent sells to only two customers—the Mann Company, a distributor—and Safeway Stores, a supermarket chain, reselling to consumers. There is no evidence of any sales to Food Fair Stores, Inc. in this area or any payment of advertising allowances. Hence, there is no showing of either commerce, or competition between recipient and non-recipients. In the Philadelphia area, respondent has only three customers—Food Fair Stores, Inc., a retailer, Stanley Marvel, a Philadelphia distributor, and Ernest Nicholls, a Trenton, New Jersey distributor. Neither of these presumably compete with Food Fair Stores, Inc. in the resale of respondent's products—at least, there is no such showing. Nor is there in the record any list of the retailers to whom any of these distributors resell. Respondent does, of course, ship its products to the Philadelphia warehouse of Food Fair Stores, Inc. in the regular course of business, and did pay to the latter $700 in 1954 and 1955 as an advertising allowance for the Anniversary sale. So we have merchandise sold and payments made by respondent in commerce, but no showing of competition between the recipient, Food Fair Stores, Inc. and any non-recipient. In the Baltimore area, such competition is amply shown, but obviously there is no commerce. Payment was made, and goods shipped, from respondent's Baltimore office and warehouse to Food Fair Stores, Inc's office and warehouse, which for buying and advertising purposes, is autonomous.

22. No case has been cited, and none has been found, which would sustain the jurisdiction asserted here. Full Federal jurisdiction for anti-trust purposes has been held to reach local transactions where discriminatory sales have been made to purchasers who compete in interstate commerce, where local trade has been restrained through utilization of interstate mechanisms, where the local restraint has a restrictive effect on the free flow of interstate commerce, or where local prices are fixed by interstate commercial transactions. Corn

Products Refining Co. vs. F.T.C. 324 U.S. 726; Lorain Journal Co. vs. U.S. 342 U.S. 143; Wickard vs. Fulburn 317 U.S. 111; U.S. vs. Frankfort Distilleries 324 U.S. 293; but the record here is factually deficient in bringing this situation within the logical orbit of any of those cases. Nor does Moore vs. Mead's Fine Bread Company, 348 U.S. 115 aid the claimed jurisdiction here. The court's holding there, obviously turned on the use of the profits from an interstate operation being used for the proven purpose and result of financing the driving of a local competitor out of business through ruinous and discriminatory price cutting. There is no evidence in this record of such design, scheme, use, or result.

Several other points raised by counsel for respondent remain for disposition. The latter requests a finding of fact that his client had no intention to violate the charging statute. Intent is immaterial. Similar request for a finding of acting in good faith throughout is denied for the same reason. Similarly denied is a request to find that the services contracted for from Food Fair Stores, Inc., exceeded in value their cost. Respondent's counsel also requests a finding that the practices hereinabove found have existed for many years and were known, or should have been known, to the Federal Trade Commission, but without action from it until now. The statutory discretion of the Commission makes this wholly immaterial, and this hearing examiner has no power, statutory, delegated, or implied, to assess an abuse of administrative discretion by the Commission.

23. The conclusory finding, therefore, is that there is no substantial evidence of the statutorily prescribed prerequisites of jurisdiction under the charge.

CONCLUSION

There being no jurisdiction, this proceeding must be dismissed and respondent's motion to that effect is granted.

ORDER

It is ordered, That respondent J. H. Filbert, Inc., a corporation, its officers, employees, agents, and representatives, directly or through any corporate or other device, in or in connection with the sale of food products in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Making or contracting to make, to or for the benefit of Food Fair Stores, Inc., or any other customer, any payment of anything of value as compensation or in consideration for advertising or other services or facilities furnished by or through such customer, in connection with the handling, offering for resale, or resale of the respondent's products, unless such payment is affirmatively offered

or otherwise made available on proportionally equal terms to all other customers competing in the distribution or resale of such products.

OPINION OF THE COMMISSION

By TAIT, Commissioner:

The complaint in this proceeding charges, in effect, that the respondent has paid promotional allowances to some of its customers who engaged in the resale of its products, which payments were not made available on proportionally equal terms to its other customers who compete with recipients of those allowances in the resale of respondent's products. The respondent's acts and practices in the latter respect were alleged to be in violation of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

In the initial decision, filed March 1, 1957, the hearing examiner found that there was "no substantial evidence of the statutorily prescribed prerequisites of jurisdiction" and ordered that the complaint be dismissed. Counsel supporting the complaint have appealed from this decision. The case has been submitted on briefs alone, neither side having requested oral argument.

In addition to argument on the question of jurisdiction, respondent urges the Commission to consider also certain "additional defenses and contentions" raised unsuccessfully by the respondent in the proceedings before the hearing examiner. Counsel supporting the complaint have moved to strike from respondent's answering brief all references to any matters not raised in the appeal brief, citing Section 3.22 of the Commission's Rules of Practice.

Respondent J. H. Filbert, Inc., is a Maryland corporation with its office and principal place of business at 3701 Southwestern Boulevard, Baltimore, Maryland.

Respondent manufactures, sells, and distributes food products, including margarine, salad dressing, and beverage syrups under the trade name "Mrs. Filbert's." Respondent's sales of all products total approximately $16,000,000 per year.

Respondent sells its products to independent retail grocers, to grocery distributors, and to chain store retail grocers, including Food Fair Stores, Inc., a Pennsylvania corporation with its main office and warehouse at 2223 E. Allegheny Avenue, Philadelphia, Pennsylvania. During 1954, respondent paid $1250 as "special" allowances to Food Fair for advertising respondent's products in anniversary sales promotions by Food Fair. During the first six months of 1955, respondent paid $1350 to Food Fair for like pro-

motions. These payments were made pursuant to contracts between respondent and Food Fair.

Section 2(d) of the Clayton Act, as amended, provides:

That it shall be unlawful for any person engaged in commerce to pay or contract for the payment of anything of value to or for the benefit of a customer of such person in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such person, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

Respondent's answer admitted, and the hearing examiner found:

In the course and conduct of its business, respondent has engaged in commerce, as "commerce" is defined in the Clayton Act as amended. Respondent ships its products, or causes them to be transported, from its principal place of business in the State of Maryland to customers located in the same state and other States of the United States and the District of Columbia.

The record shows that during 1954 and the first six months of 1955, the respondent sold its products to American Stores, Food Fair, and Schreiber Brothers in Baltimore, to the Mann Company and Safeway Stores in Washington, to American Stores and Stanley Marvel in Philadelphia, and to Ernest Nicholls in Trenton, New Jersey. In addition, respondent sold its products through route salesmen truck driver employees to some 2500 retail stores, which in 1956 included 17 establishments in the District of Columbia, one in Mercersberg, Pennsylvania, and one in Long Island City, New York, as well as to 15 Food Fair stores in Baltimore and its suburbs. Generally, these route salesmen carried a full line of respondent's products, but delivery to Food Fair stores was of margarine only. Delivery of respondent's other products, as well as margarine, was made to Food Fair's Baltimore warehouse, which in 1955 serviced 36 Food Fair stores in Maryland and Pennsylvania. Respondent's products were also sold by 66 Food Fair stores in Pennsylvania, New Jersey, and Delaware, serviced by Food Fair's Philadelphia warehouse.

Competition in the distribution of respondent's products was shown to exist between Food Fair outlets in Baltimore and independent retailers who were customers of respondent in Baltimore.[1] Allowances for advertising of the type granted to Food Fair were

[1] That these customers were engaged only in intrastate commerce is no bar to a finding of a violation of Section 2(d). The statute includes no such requirement. For related cases see *Moore* v. *Mead's Fine Bread Company*, 348 U.S. 115 (1954) (Section 2(a)); *Sun Cosmetic Shoppe* v. *Elizabeth Arden Sales Corp.*, 178 F. 2d 150 (2d Cir. 1949) (Section 2(e)).

not made available on proportionally equal terms to these customers competing with Food Fair in the distribution of respondent's products.[2]

It is clear (1) that respondent is engaged in commerce, (2) that respondent has contracted for and made payments to a customer for advertising provided by such customer in connection with the sale of respondent's products, and (3) that such payments were not available on proportionally equal terms to all other customers competing in the distribution of respondent's products.

The issue here is: were these "special" payments "in the course of such commerce," i.e., the "commerce" in which respondent is "engaged," as specified in the statute? We believe they were.

Respondent's brief submits "that there are two issues to be passed upon, that both of them are those which were specifically ruled upon by the Examiner adversely to the complaint and that they are succinctly presented by these inquiries:

"1. Did the separate and independent payment to Food Fair Stores, Inc., in the Baltimore area, involve interstate commerce within the meaning of the statute, when the Respondent's production for, delivery and sale, as well as such payment, to Food Fair Stores, Inc., were all made entirely and independently and for exclusive use within the State of Maryland?

"2. Did the separate and independent payment to Food Fair Stores, Inc., in and for the exclusive use of the Philadelphia area, in which area the Respondent had no other competing customer with Food Fair Stores, Inc., violate the statute involved?"

Such a statement of the issues is consistent with the hearing examiner's conclusion. He stated, "So [in Philadelphia] we have merchandise sold and payments made by respondent in commerce, but no showing of competition between the recipient, Food Fair Stores, Inc., and any non-recipient. In the Baltimore area, such competition is amply shown, but obviously there is no commerce."

We must decline to restrict ourselves to this fragmented view of either respondent's or Food Fair's business in a "nice and technical inquiry into the non-interstate character of some of its necessary incidents and facilities when considered alone and without reference to their association with the movement of which they were an essential but subordinate part." *Stafford* v. *Wallace*, 258 U.S. 495, 519 (1922). Nor does such a view appear consistent with the evidence in the record.

[2] Mr. J. Frederick Diener, respondent's advertising manager, testified that the "special" contracts with Food Fair, unlike the regular cooperative advertising contracts, were not "proportionalized" on any basis, but were based on "publicity values."

Our conclusion that these "special payments" to Food Fair were made by the respondent in the course of its business in interstate commerce, part of which includes sales to Food Fair for interstate distribution, depends on (a) the character of the Food Fair organization which resells respondent's products [3] and (b) the character of the advertising for which such payments were made,[4] regardless of the mere locus of the transactions between the respondent and Food Fair.

So far as the record shows, all dealing between the respondent and Food Fair occurred in Baltimore. Except for such margarine as was delivered to certain Food Fair outlets by respondent's route salesmen, delivery of all products was made to Food Fair's warehouse in Baltimore.[5] Contracts for payment for advertising were made as a result of negotiations between respondent's officials and Mr. Joseph Rash, Assistant Secretary of Food Fair Stores, Inc., and Director of Operations of Maryland for Food Fair. Mr. Rash stated ". . . in addition to my being an officer of the company and directing the operations of our expansion program, I am head buyer of all grocery items purchased in the Maryland area."

As the hearing examiner found, Food Fair Stores, Inc., is "a supermarket chain incorporated in Pennsylvania conducting an *integrated interstate operation*," (emphasis supplied) with "headquarters at Philadelphia but with branches in other states . . ., buying products from many suppliers in various states and reselling them to consumers through 216 supermarkets located from New York to Florida, with average annual sales per store being $2,000,000." Management of the supermarkets is directed from the organization headquarters in Philadelphia.[6]

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[3] See *Kentucky-Tennessee Light & Power Co.* v. *Nashville Coal Co.*, 37 F. Supp. 728, 736-7 (D.C. Ky. 1941), affirmed 136 F. 2d 12, 17 (6th Cir. 1943).

[4] See *Corn Products Refining Co.* v. *Federal Trade Commission*, 324 U.S. 726, 744-5 (1945).

[5] The hearing examiner found: "Respondent does, of course, ship its products to the Philadelphia warehouse of Food Fair Stores, Inc., in the regular course of business . . ." This conclusion apparently rested on an examination of the advertising contract which referred to the Philadelphia warehouse. However, Commission's Exhibit 1, showing sales to all customers of respondent in the Baltimore, Washington, and Philadelphia areas, lists all sales to Food Fair to the Baltimore warehouse. On our view of this case it makes no difference whether the portion of respondent's products which Food Fair distributed from its Philadelphia warehouse were physically delivered by respondent to the Baltimore warehouse or to the Philadelphia warehouse. See *Dalmke-Walker Co.* v. *Bondurant*, 257 U.S. 282, 290 (1921); *Lemke* v. *Farmers Grain Co.*, 258 U.S. 50 (1922). This difficulty in determining to which warehouse respondent made such deliveries suggests the "integrated" character of Food Fair's "interstate operation."

The hearing examiner's conclusion that payments were made to the Philadelphia warehouse appears equally unwarranted.

[6] A Food Fair official testified that department managers in individual Food Fair Stores may not handle any item not "authorized" by the central management.

That the payments to Food Fair should be regarded as having been made "in the course of such commerce" is indicated by the "special" advertising contracts, some of which were placed in evidence. Commission's Exhibit 13, "Contract of Participation, 1955 Anniversary Plan," shows that Food Fair agreed to render advertising and promotion service of respondent's margarine during a selected week for which respondent agreed to pay $350 in accordance with Plan No. 2–B. This plan, headed "1955 Anniversary Plan, Food Fair Stores, Inc., Philadelphia, Pa., Baltimore Warehouse—36 Stores," provides for (1) advertising to be placed in newspapers in Baltimore, Maryland, and in Carlisle, Columbia, Harrisburg, Lebanon, and York, Pennsylvania; (2) insertion in circulars to be distributed "in selected trading areas"; (3) a feature display in every store; (4) "extra shipments of [respondent's] product to stores for displays," and (5) "pep-up bulletins telling the merits of [respondent's] product sent to each store manager to insure proper ordering and display." [7]

Commission's Exhibit 15, "Plan 2–P," is part of the contract on which respondent paid to Food Fair $700 for promotion of respondent's margarine. The same five promotional services are contracted for, except that this program is headed "Philadelphia Warehouse—66 Stores" and provides for advertising in 19 newspapers located in 13 cities in Pennsylvania, 5 cities in New Jersey, and in Wilmington, Delaware.

In addition, respondent contracted with Food Fair for special advertising of mayonnaise, salad dressing, and mustard in Baltimore newspapers only, for which respondent paid $300 on May 4, 1955.

All three of these contracts were made on March 22, 1955, by respondent's advertising manager, Mr. J. Frederick Diener. Payments were made pursuant to invoices later submitted by Food Fair and processed by respondent's advertising department. We believe it fair to conclude that sales to Food Fair and these payments to Food Fair were made in the whole course of respondent's sale and distribution of its products in interstate commerce.

The motion of counsel supporting the complaint to strike certain portions of respondent's brief was properly made. In any event, we find the hearing examiner dealt fully and correctly with such contentions in paragraphs 18 and 19 and the second part of paragraph 22 in the initial decision, on which we explicitly affirm his rulings.

[7] Respondent's records show that on June 14, 1955, respondent paid to Food Fairs $350 for "Anniversary Sale, Baltimore-York-Harrisburg."

In our decision here, we hold, and so find, that the respondent has contracted for and made payments to Food Fair Stores, Inc., in the course of commerce in consideration for services and facilities furnished by that customer for promoting the resale of the respondent's products. Such payments have not been offered or otherwise been made available by the respondent on proportionally equal terms to all other customers of the respondent engaging in the resale of the respondent's products in competition with certain of the outlets of Food Fair Stores, Inc., named in the advertising contracts. It follows that the respondent's acts and practices in the latter respect have been in violation of subsection (d) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act. The appeal of counsel supporting the complaint is granted accordingly. Rejected, to the extent that they are contrary hereto, are the findings and recitations contained in paragraph 21, the first part of paragraph 22 and paragraph 23, together with the initial decision's legal conclusion that the complaint herein should be dismissed; and the remaining findings of the initial decision are adopted hereby. Our order, which is issuing herewith, contains an order to cease and desist which is being adopted in lieu of the order contained in the initial decision.

FINAL ORDER

This matter having been heard by the Commission upon the appeal of counsel supporting the complaint from the initial decision of the hearing examiner and upon the briefs of counsel, oral argument not having been requested; and the Commission having rendered its decision granting said appeal and variously adopting and rejecting certain findings and conclusions contained in the initial decision as designated in the Commission's accompanying opinion and further directing issuance of an appropriate order in lieu of the order contained in the initial decision:

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

"*It is ordered*, That respondent J. H. Filbert, Inc., a corporation, its officers, employees, agents, and representatives, directly or through any corporate or other device, in or in connection with the sale of food products in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

"Making or contracting to make, to or for the benefit of Food Fair Stores, Inc., or any other customer, any payment of anything of value as compensation or in consideration for advertising or other

services or facilities furnished by or through such customer, in connection with the handling, offering for resale, or resale of the respondent's products, unless such payment is affirmatively offered or otherwise made available on proportionally equal terms to all other customers competing in the distribution or resale of such products."

It is further ordered, That the respondent 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

POMPEIAN OLIVE OIL CORPORATION

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

Docket 6468. Complaint, Nov. 21, 1955—Decision, Sept. 20, 1957

Consent order requiring a Baltimore corporation, engaged in selling its "Pompeian Olive Oil" through food brokers and direct to large retail chain store organizations, with sales in 1954 amounting to $1,747,493, to cease violating Sec. 2(d) of the Clayton Act by paying money to a Philadelphia food chain as an allowance for advertising, while not making such allowance available on proportionally equal terms to all competitors of the chain.

Before *Mr. Frank Hier*, hearing examiner.

Mr. Andrew C. Goodhope and *Mr. Fredric T. Suss* for the Commission.

Mr. Morton J. Hollander, of Baltimore, Md., and *Mr. James W. Cassedy*, of Washington, D.C., for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly described, has violated the provisions of subsection (d) of Section 2 of the Clayton Act (U.S.C. Title 15, Sec. 13), as amended by the Robinson-Patman Act, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, Pompeian Olive Oil Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 4201 Pulaski Highway, Baltimore, Maryland.

PAR. 2. Respondent is now and has been engaged principally in the business of selling olive oil. Respondent sells its olive oil through food brokers and direct to large retail chain store organizations. Respondent sells its olive oil under the trade name "Pompeian Olive Oil" and sales of such product made by the respondent are substantial, amounting in the year 1954 to $1,747,493.

PAR. 3. In the course and conduct of its business, respondent has engaged in commerce, as "commerce" is defined in the Clayton Act. Respondent ships its products, or causes them to be transported, from its principal place of business in the State of Maryland to customers located in the same and any other states of the United States and the District of Columbia.

PAR. 4. In the course and conduct of its business in commerce, respondent has paid, or contracted for the payment of, something of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished by or through such customers in connection with their offering for sale or sale of products sold to them by respondent, and such payments were not made available on proportionally equal terms to all other customers competing in the sale and distribution of respondent's products.

PAR. 5. For example, during the year 1955 respondent contracted to pay and did pay $2,000.00 to the Food Fair Stores, Inc., of Philadelphia, Pennsylvania, as compensation or as an allowance for advertising or other service or facility furnished by or through such customer in connection with its offering for sale or sale of products sold it by the respondent. Such compensations or allowances were not offered or otherwise made available by respondent on proportionally equal terms to all other customers competing in the sale and distribution of respondent's products with Food Fair Stores, Inc.

PAR. 6. The acts and practices of the respondent, as alleged above, violate subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of subsection (d) of Section 2 of the Clayton Act (U.S.C. Title 15, Sec. 13), as amended by the Robinson-Patman Act, the Federal Trade Commission on November 21, 1955, issued and subsequently served its complaint in this proceeding against respondent Pompeian Olive Oil Corporation, a corporation existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 4201 Pulaski Highway, Baltimore, Maryland.

One hearing was held after which there was, on August 2, 1957, 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 agree-

ment 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 Pompeian Olive Oil Corporation, is a corporation existing and doing business under the laws of the State of Maryland, with its office and principal place of business located at 4201 Pulaski Highway, Baltimore, Maryland.

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

ORDER

It is ordered, That respondent Pompeian Olive Oil Corporation, a corporation, its officers, employees, agents, and representatives, directly or through any corporate or other device, in or in connection with the sale of olive oil and other products in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, do forthwith cease and desist from:

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Sec. 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 20th day of September, 1957, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

MANUEL KASNOW TRADING AS KASNOW FURS

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

Docket 6767. Complaint, Apr. 8, 1957—Decision, Sept. 20, 1957

Consent order requiring a Chicago furrier to cease violating the Fur Products Labeling Act by removing the original manufacturer's label and substituting his own which failed to include all the information required by the Act, and by failing in other respects to comply with the labeling requirements; by advertising in newspapers which failed to disclose that certain fur products were used or secondhand, and represented falsely sale prices as reduced from regular prices which were in fact fictitious; and by failing to maintain adequate records as a basis for such claims of savings.

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

Thompson, Raymond, Mayer, Jenner & Bloomstein by *Samuel W. Block*, Esq., of Chicago, Ill., for respondent.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on April 8, 1957, charging him with having violated the Fur Products Labeling Act, the rules and regulations issued thereunder, and the Federal Trade Commission Act, by misbranding and falsely advertising his fur products. Respondent appeared by counsel and entered into an agreement, dated July 25, 1957, containing a consent order to cease and desist, disposing of all the issues in this proceeding without hearing, which agreement has been duly approved by the Director of the Bureau of Litigation. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with Section 3.25 of the Rules of Practice of the Commission.

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

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

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

1. Respondent Manuel Kasnow is an individual trading and doing business as Kasnow Furs. The office and principal place of business of respondent is located at 20 East Jackson Boulevard, in the city of Chicago, State of Illinois.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent hereinabove named. The complaint states a cause of action against said respondent under the 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 Manuel Kasnow, an individual trading as Kasnow Furs, or trading under any other name, and his agents, representatives and employees, directly or through any corporate or other device, in connection with the introduction, sale, advertising, or offering for sale in commerce, or the transportation or distribution of fur products, or in connection with the sale, advertising, offering for sale, transportation or distribution of fur products which have been made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

1. Failing to affix labels to fur products showing:

(a) The name or names of the 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 artificially colored fur, when such is the fact.

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

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

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

2. Setting forth on labels attached to fur products:

(a) Required information in abbreviated form.

(b) Non-required information mingled with required information.

(c) Required information in handwriting.

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

1. Fails to disclose that the fur product is composed of used fur, as required by Rule 21, when such is the fact.

2. Fails to disclose that the fur product is second-hand, in violation of Rule 23, when such is the fact.

3. Represents directly or by implication that respondent's regular price of any fur product is any amount which is in excess of the price at which the respondent has regularly or customarily sold or offered for sale in good faith fur products of like grade and quality in the recent regular course of his business.

C. Making use in advertising of comparative prices or percentage savings claims unless such compared prices or claims are based upon current market value of the fur product or upon a bona fide compared price at a designated time.

D. Making comparative or percentage pricing claims of the nature set out in Paragraphs B. 3. and C hereof, unless there are maintained by respondent full and adequate records disclosing facts upon which such claims and representations are based, as required by Rule 44 (e) of the Rules and Regulations.

It is further ordered, That respondent Manuel Kasnow, an individual trading as Kasnow Furs, or trading under any other name, and his agents, representatives and employees, directly or through any corporate or other device, do forthwith cease and desist from

misbranding fur products, in violation of Section 3(e) of the Fur Products Labeling Act, by substituting his own labels on such fur products, following their receipt in commerce, which labels fail to show all of the information required by Section 4(2) of the said Act and the Rules and Regulations promulgated thereunder.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 20th day of September, 1957, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

OTARION, INC., ET AL.

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

Docket 6757. Complaint, Apr. 3, 1957—Decision, Sept. 21, 1957

Consent order requiring a manufacturer of hearing aid instruments, parts, and accessories in Dobbs Ferry, N.Y., and its franchise distributor in the District of Columbia, to cease representing falsely in advertisements in newspapers, magazines, circulars, etc., furnished by said manufacturer to its distributors in the form of mats, that their "Listener" hearing aid was cordless, could not be seen, required nothing in either ear, and was completely contained in and could not be distinguished from ordinary eyeglasses.

Mr. Kent P. Kratz for the Commission.

Benjamin, Galton & Robbins, of New York, N.Y., for respondents.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 3, 1957, issued and subsequently served its complaint in this proceeding against respondents Otarion, Inc., a corporation existing and doing business under and by virtue of the laws of the State of New York, Leland E. Rosemond, individually and as president-treasurer of Otarion, Inc., Rosemond Hearing Aid Company, Inc., a corporation existing and doing business under and by virtue of the laws of the District of Columbia, and Ward T. Rosemond, individually and as president of Rosemond Hearing Aid Company, Inc. The office and principal place of business of respondents Otarion, Inc. and Leland E. Rosemond is located at 185-7 Ashford Avenue, Dobbs Ferry, New York, and that of respondents Rosemond Hearing Aid Company, Inc. and Ward T. Rosemond is located at 1410 New York Avenue, N.W., Washington, D.C.

On August 5, 1957, there was submitted to the undersigned hearing examiner an agreement between respondents and counsel supporting the complaint providing for the entry of a consent order. By the terms of said agreement, respondents admit all the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. By such agreement, respondents waive any further procedural steps before the hearing examiner and

the Commission; waive the making of findings of fact and conclusions of law; and waive all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement. Such agreement further provides that it disposes of all of this proceeding as to all parties; 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 Otarion, Inc. is a corporation existing and doing business under the laws of the State of New York, with its office and principal place of business located at 185-7 Ashford Avenue, Dobbs Ferry, New York. Respondent Leland E. Rosemond is president-treasurer of said corporation, with his office and principal place of business located at the same address as the corporate respondent. Respondent Rosemond Hearing Aid Company, Inc., is a corporation existing and doing business under the laws of the District of Columbia, with its office and principal place of business located at 1410 New York Avenue, N.W., Washington, D.C. Respondent Ward T. Rosemond is president of said corporation, with his office and principal place of business located at 1410 New York Avenue, N.W., Washington, D.C. Respondent Leland E. Rosemond is the principal stockholder of the corporate respondent Otarion, Inc. and respondent Ward T. Rosemond is the principal stockholder of the corporate respondent Rosemond Hearing Aid Company, Inc.

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 Otarion, Inc., a corporation, and its officers; Leland E. Rosemond, individually and as an officer of Otarion, Inc.; Rosemond Hearing Aid Company, Inc., a corporation, and its officers; Ward T. Rosemond, individually and as an officer of Rosemond Hearing Aid Company, Inc., 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 hearing aid device known as "The Listener" or any other device of substantially the same construction or operation whether sold under the same or any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mail 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 product, which advertisement:

(a) Represents, directly or by implication, that said hearing aid devices are invisible or cannot be seen.

(b) Represents, directly or by implication, that when wearing said device nothing is required to be placed in the ear.

(c) Represents, directly or by implication, that said device is nothing more than a pair of eyeglasses.

(d) Uses the words or phrases "No ear button," "No cord," "100% cordless" or other words or phrases of the same or similar import or meaning, unless in close connection therewith and with equal prominence it is stated that a visible plastic tube runs from the eyeglass frame to the ear.

2. Disseminating any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of respondents' product 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 Sec. 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 21st day of September, 1957, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents herein shall, within sixty (60) days after service upon them for 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

THE MAYDAY CORPORATION ET AL.

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

Docket 6785. Complaint, Apr. 26, 1957—Decision, Sept. 21, 1957

Consent order requiring a Cleveland, Ohio, furrier to cease violating the Fur Products Labeling Act by failing to comply with the labeling and invoicing requirements; by advertising which failed to disclose that certain fur products were composed of artificially colored fur, which contained the names of animals other than those producing certain fur, and which misrepresented prices and values; and by failing to maintain adequate records as a basis for such pricing claims.

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

Mr. Wm. R. Brunn, of *Halle, Haber, Berick & McNulty*, of Cleveland, Ohio, for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

The complaint in this proceeding charges that The Mayday Corporation, a corporation, doing business as K. B. Company, David G. Kangesser, and May Kangesser, erroneously referred to in the complaint as Mae Kangesser, hereinafter called respondents, have violated the provisions of the Federal Trade Commission Act, the Fur Products Labeling Act, and the Rules and Regulations promulgated thereunder in the sale, advertising and distribution, in commerce, of fur products.

After issuance and service of the complaint, counsel supporting the complaint, respondents, and their counsel, 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 order corrects the misspelling of the respondent May Kangesser's name and disposes of the matters complained about.

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

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

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

JURISDICTIONAL FINDINGS

1. The respondent, The Mayday Corporation, is a corporation organized and doing business under the laws of the State of Ohio, with its office and principal place of business located at 239 Euclid Avenue, Cleveland, Ohio. Said corporation does business as K. B. Company. The respondents David G. Kangesser and May Kangesser are individuals and officers of said corporation and their office and principal place of business is the same as that of the corporation.

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 The Mayday Corporation, a corporation, doing business under its own name; as K. B. Company or under any other name; and its officers; and David G. Kangesser and May Kangesser, 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 introduction into commerce or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product, or in connection with the sale, advertising, offering for sale, transportation or distribution of any fur product which is made in whole or in part of fur which has been shipped or 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. 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. 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 or distributed it in commerce;

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

3. Setting forth on the labels attached to fur products the name or names of any animal or animals other than the name or names provided for in Paragraph A(2)(a) above;

4. Setting forth on labels attached to fur products:

(a) Nonrequired information mingled with required information;

(b) Required information in handwriting;

(c) Required information in abbreviated form.

5. Failing to affix labels to fur products showing item numbers required under Rule 40 of the Rules and Regulations.

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 products, as set forth in the Fur Products Name Guide and as prescribed under the Rules and Regulations;

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

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

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

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

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

2. Abbreviating required information on invoices;

3. Failing to set forth on invoices the item number of the fur product;

4. Setting forth on invoices the name or names of any animal or animals other than the name or names provided for in Paragraph B(1)(a) above.

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

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

2. Uses the name or names of an animal or animals to describe the fur of an animal other than those producing the fur in the fur product.

3. Makes use of comparative prices and percentage savings claims unless such compared prices or claims are based upon a bona fide compared price at a designated time, and full and adequate records disclosing the facts upon which such prices and claims 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 21st day of September, 1957, 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

TIDEWATER PAINT & OIL COMPANY, INC., ET AL.

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

Docket 6744. Complaint, Mar. 18, 1957—Decision, Sept. 26, 1957

Consent order requiring a Norfolk, Va., seller of paints under its labels of "Tidewater Marine Outside Paint" and "Tidewater Quality Exterior White" to shipyards and small industries, but mostly to farmers, tobacco growers, and other rural dwellers, to cease representing falsely in letters and advertising literature mailed to prospective purchasers that a limited quantity of its paint was available in the prospect's vicinity and was being offered for sale at a special reduced price, saving the purchaser $2 per gallon, that it was high-quality all-purpose paint suitable for marine use, "guaranteed for many years outdoor exposure on every type of surface," and equal in durability to national brand paints; and to cease furthering such false representations by use in the brand names of the words "Marine" and "Quality."

Mr. Garland S. Ferguson for the Commission.

Breeden, Howard & MacMillen, by *Mr. Edward L. Breeden, Jr.*, Norfolk, Va., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents with violation of the Federal Trade Commission Act by falsely and deceptively advertising paint and allied products which they sell and distribute in commerce.

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

The agreement identifies respondent Tidewater Paint & Oil Company, Inc. as a Virginia corporation, with its office and principal place of business located at the Flatiron Building, Norfolk, Virginia; and respondents Stanley D. Legum, Esther S. Legum and Alvin Legum as individuals and officers of said corporation, who formulate, direct and control the policies and practices of the corporate respondent. All individual respondents have their office and principal place of business at the same location as that of the corporate respondent.

The agreement provides, among other things, that respondents admit all the jurisdictional facts alleged in the complaint and agree

that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the complaint may be used in construing the terms of the order agreed upon, which may be altered, modified or set aside in the manner provided for other orders; that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint; and that the order set forth in the agreement and hereinafter included in this decision shall have the same force and affect as if entered after a full hearing.

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

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

It is ordered, That respondents Tidewater Paint & Oil Company, Inc., a corporation, and its officers, and Stanley D. Legum, Esther S. Legum, and Alvin Legum, individually and as officers of said corporate respondent, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined by the Federal Trade Commission Act, of its Tidewater Quality Exterior Paint, or any other paint containing substantially the same ingredients or possessing substantially the same characteristics, do forthwith cease and desist from:

1. Representing directly or by implication:

(a) That the customary or regular price of respondents' said paint is any price which is in excess of the price at which such paint is regularly or customarily sold by respondents in the normal and usual course of business;

(b) That the price at which respondents offer their said paint for sale constitutes a price below or a reduction in their customary price, when in fact such price is the usual and customary price at which respondents sell their paint in the normal and usual course of business;

(c) That respondents have any quantity of paint warehoused, or on hand, in the vicinity of prospective purchasers, when respondents do not in fact have such paint warehoused or on hand in the designated locality;

(d) That respondents' paint is a "high quality" or "all purpose" paint or may be successfully used on every type of surface or is suitable for marine use;

(e) That respondents' paint will withstand adverse weather conditions for any period of time that is not a fact or misrepresenting in any manner the period of time within which it will not deteriorate;

(f) That respondents' paint is equal in durability to national brand paints unless such is the fact;

(g) That purchasers of respondents' paint will save any amount from respondents' regular and customary price unless such is the fact;

2. Using the word "Quality" as a part of the brand name for its product now designated as Tidewater Quality Exterior Paint or representing in any manner that said paint is a quality or high-grade paint;

3. Using the word "Marine" as a part of the brand name for its product now designated as Tidewater Marine Outside Paint or representing in any manner that said paint is suitable for marine use.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 26th day of September, 1957, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Tidewater Paint & Oil Company, Inc., a corporation, and Stanley D. Legum, Esther S. Legum, and Alvin Legum, individually and as officers of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

FOOD FAIR STORES, INC.

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

Docket 6458. Complaint, Mar. 12, 1957[1]*—Decision, Sept. 27, 1957*

Order dismissing—for the reason that respondent came within the definition of "packer" in the Packers and Stockyards Act of 1921 and as such was subject to the exclusive jurisdiction of the Secretary of Agriculture—complaint charging a supermarket grocery chain of 238 stores along the Atlantic seaboard from New England to Florida, with knowingly inducing and receiving from its suppliers, illegal advertising allowances which those suppliers had not made available on proportionally equal terms to all respondent's competitors.

Mr. Andrew C. Goodhope, *Mr. Fredric T. Suss*, and *Mr. Alvin C. Edelson*, supporting the complaint.

Stein, Stein & Engle, by *Mr. Howard Engle*, of Jersey City, N.J., *Gravelle, Whitlock & Markey*, by *Mr. Louis A. Gravelle*, and *Howrey & Simon*, by *Mr. David C. Murchison*, of Washington, D.C., for the respondent.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

In the midst of proof taking to support the allegations of the complaint, and immediately subsequent to the issuance by the Commission of amended complaint, respondent, by counsel, moves for complete dismissal for lack of jurisdiction. Since jurisdiction can be questioned at any time and is not conferred by consent, waiver, or failure to raise the point, at any previous time, the motion is timely and proper. The ground of the motion is that respondent's acts and practices, including those challenged by the complaint herein, are in the exclusive jurisdiction of the Secretary of Agriculture because respondent is subject to the Packers and Stockyards Act of 1921, U.S.C. 191 et seq.

Respondent herein is a supermarket grocery chain of 238 stores located along the Atlantic Seaboard from New England to Florida, selling a full line of grocery and household products including fresh and canned meat and meat products. Its gross sales were about $475,000,000 for the fiscal year ending April 28, 1956. It was organized about 1933. The charge against it in this proceeding is that it knowingly induced and received from suppliers advertising allowances which those suppliers had not made available on propor-

[1] Amended and supplemental.

tionally equal terms to all of their other customers competing with respondent in the retail sale of such suppliers' products and that respondent knew this. In short, that respondent knowingly induced a violation of section 2(d) of the Clayton Act by its suppliers.

On July 13, 1945, respondent acquired a meat packing plant at 406 Allen Street, Elizabeth, New Jersey, at which place it has since slaughtered livestock and prepared same for consumption, selling and shipping in commerce to the extent of $25,000,000 or 95,000,000 pounds, for the fiscal year ending April 28, 1956. Respondent's investment in said plant is $2,700,000. The products thereof are federally inspected and respondent is listed and licensed by the Department of Agriculture as a packer. Counsel supporting the complaint concedes that "to the extent it operates its meat packing plant in Elizabeth, New Jersey," respondent is a packer within the statutory definition set out in 7 U.S.C. 191, 42 Stat. 160, which reads as follows:

> When used in this chapter—
>
> The term "packer" means any person engaged in the business (a) of buying livestock in commerce for purposes of slaughter, or (b) of manufacturing or preparing meats or meat food products for sale or shipment in commerce, or (c) of manufacturing or preparing livestock products for sale or shipment in commerce, or (d) of marketing meats, meat food products, livestock products, dairy products, poultry, poultry products, or eggs, in commerce; but no person engaged in such business of manufacturing or preparing livestock products or in such marketing business shall be considered a packer unless—
>
> (1) Such person is also engaged in any business referred to in clause (a) or (b) of this section, or unless
>
> (2) Such person owns or controls, directly or indirectly, through stock ownership or control or otherwise, by himself or through his agents, servants, or employees, any interest in any business referred to in clause (a) or (b) of this section, or unless
>
> (3) Any interest in such business of manufacturing or preparing livestock products, or in such marketing business is owned or controlled, directly or indirectly, through stock ownership or control or otherwise, by himself or through his agents, servants, or employees, by any person engaged in any business referred to in clause (a) or (b) of this section, or unless
>
> (4) Any person or persons jointly or severally, directly or indirectly, through stock ownership or control or otherwise, by themselves or through their agents, servants, or employees, own or control in the aggregate 20 percentum or more of the voting power or control in such business of manufacturing or preparing livestock products, or in such marketing business and also 20 percentum or more of such power or control in any business referred to in clause (a) or (b) of this section. Aug. 15, 1921, c. 64 § 201, 42 Stat. 160.

Section 406(b) of the same statute (7 U.S.C. 227, 42 Stat. 169) provides "on or after the enactment of this Act, and so long as it remains in effect, the Federal Trade Commission shall have no power or jurisdiction so far as relating to any matter which by this Act is made subject to the jurisdiction of the Secretary, except in cases in

which, before the enactment of this Act, complaint has been served under Section 5 of the act entitled 'An Act To Create a Federal Trade Commission, to define its powers and duties, * * *' and except when the Secretary of Agriculture, in the exercise of his duties hereunder, shall request of the said Federal Trade Commission that it make investigations and report in any case (August 15, 1921, Chapter 64, Section 406, 42 Stat. 169; 7 U.S. Code Section 227)." The two exceptions mentioned in the above code section are obviously inapplicable to this proceeding and it will be noted that jurisdictional exclusion is as "to any matter which by this Act, is made subject to the jurisdiction of the Secretary * * *."

The *matter* above referred to is obviously that which is contained in Section 202, 7 U.S.C. 192 of that Act which reads as follows:

Unlawful Practices Enumerated

It shall be unlawful for any packer or any live poultry dealer or handler to:

(a) Engage in or use any unfair, unjustly discriminatory, or deceptive practice or device in commerce; or

(b) Make or give, in commerce, any undue or unreasonable preference or advantage to any particular person or locality in any respect whatsoever or subject, in commerce, any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever; or

(c) Sell or otherwise transfer to or for any other packer, or any live poultry dealer or handler, or buy or otherwise receive from or for any other packer or any live poultry dealer or handler any article for the purpose or with the effect of apportioning the supply in commerce between any such packers, if such apportionment has the tendency or effect of restraining commerce or of creating a monopoly in commerce; or

(d) Sell or otherwise transfer to or for any other person, or buy or otherwise receive from or for any other person, any article for the purpose or with the effect of manipulating or controlling prices in commerce, or of creating a monopoly in the acquisition of, buying, selling, or dealing in, any article in commerce, or of restraining commerce; or

(e) Engage in any course of business or do any act for the purpose or with the effect of manipulating or controlling prices in commerce, or of creating a monopoly in the acquisition of, buying, selling, or dealing in, any article in commerce, or of restraining commerce; or

(f) Conspire, combine, agree, or arrange with any other person (1) to apportion territory for carrying on business in commerce,

or (2) to apportion purchases or sales of any article in commerce, or (3) to manipulate or control prices in commerce; or

(g) Conspire, combine, agree, or arrange with any other person to do, or aid or abet the doing of, any act made unlawful by subdivisions (a)-(d) or (e) of this section.

Obviously the above broad proscriptions include the charge of the complaint here. There follows detailed provisions for complaint, answer, hearing, decision and order by the Secretary of Agriculture with right of appeal therefrom to the United States Circuit Court of Appeals—procedure closely following that of the Federal Trade Commission (7 U.S.C. 193–4–5) and indeed there is a separate general provision (7 U.S.C. 222) adopting for the use of the Secretary of Agriculture in the enforcement of the Act, all of the implementing provisions of the Federal Trade Commission Act. It was probably this which led to Fourth Circuit Court of Appeals in *United Corporation, et al* v. *F.T.C.*, 110 F. 2d 473 to say:

> It was doubtless because plenary power over the unfair trade practices of packers had been vested in the Secretary of Agriculture by the Packers and Stockyards Act and the Meat Inspection Act, that Congress withheld jurisdiction over packers from the Federal Trade Commission. Only confusion could result from an overlapping jurisdiction, as this case well illustrates.

On the basis of the above, counsel for respondent contends that it has an in personam immunity from supervision, investigation or correction by the Federal Trade Commission, being, by reason of its packing activities, subject in all of its operations exclusively to the jurisdiction of the Secretary of Agriculture. In a word, once in grace always in grace. Counsel supporting the complaint, on the other hand, contends that the exclusive jurisdiction of the Secretary of Agriculture is not personal, but is only as to matters given to him exclusively, and that the acts and practices of respondent challenged in the instant proceeding are not such a matter. His argument, so far as the examiner understands it, proceeds as follows:

(a) The Packers and Stockyards Act was aimed directly against the five big packers who, in 1917, handled 70.5 of all animals slaughtered under federal inspection.

(b) That these same five packers were under a 1920 consent decree forbidding them to engage in the retail distribution of grocery products including meat or meat products.

(c) That, therefore, the Packers and Stockyards Act was and is confined in its operation to slaughtering, processing, preserving, selling, and shipping meat and meat products in commerce, and does not cover the retail distribution thereof.

(d) Therefore, there was never conferred on the Secretary of Agriculture any jurisdiction whatever over the retail activities of any business coming within the statutory definition of packer, and, therefore he has no jurisdiction over the great bulk of respondent's acts and practices.

The above quoted statutory provisions are clear and unambiguous and would seem to this hearing examiner to require no resort to legislative history for clarification. But all counsel seem to think the contrary, and quote extensively from that legislative history to sustain their conflicting contentions.

Without extensive quotations from that legislative history, it is plain therefrom that while the consent decree of 1920, which barred the five major packers from engaging in most retail operations, was in the mind of Congress in 1921, it is also clear that Congress was legislating for all businesses doing any meat packing whatsoever, that the bill was intended to reach and regulate all phases of the business of any person, firm or corporation engaged in meat packing to any extent whatever, that the problem of "unrelated activities" was squarely before Congress and thoroughly considered, that the statutory definition of "packers" in Section 201 of the Act (7 U.S.C. 191) was made designedly broad so as to include all within its terms, "whatever the ramifications of his business, and whatever the form of corporate organization adopted" or "if such person has *an interest* in a packing business, as [above] defined or if a packer has *any interest* in his business." It is apparent that Congress was not legislating in a 1921 vacuum, but was legislating for the future and for an industry, and was keenly aware of extensions into other fields, and of other firms entering into the packing field. There is no evidence in this legislative history, that the Act was intended to be confined to those whole sole or primary business was meat packing. On the contrary, the House of Representatives was pressured by the Farm Bureau to narrow the definition of "packer" to just manufacturing or preparing meats and meat products for sale—in other words, just to meat packing—but this was flatly rejected:—the expressed intention then being "to relieve from regulation (by the Secretary of Agriculture) those outside industries only when having *no affiliation* with a packer." "Affiliation" is a broad and significant word. Finally, on this point, it is most significant to this hearing examiner that in 1938 when Congress was enlarging the jurisdiction of the Federal Trade Commission by adopting the Wheeler-Lea Amendment, and then having before it the extensive hearings preceding the Robinson-Patman Act, and their disclosure of new and devious anti-competitive practices which had come to life in the intervening years, with the knowledge of backward and forward in-

tegration occurring during the 1920 decade, was most careful to except from the new grant of additional jurisdiction "persons, partnerships or corporations subject to the Packers and Stockyards Act, 1921, except as provided in Section 406(b) of said Act." This careful additional exclusion of jurisdiction, not there before and coming 18 years later in that setting, seems to this hearing examiner to refute any claim that Congress in 1921 was legislating only about five packers, was not legislating as to retail activities, or "unrelated operations." It seems a re-affirmation of a firm intent to have the Secretary of Agriculture regulate all phases of any business in whatever primary field, connected in any way, or operating to any degree, in meat packing. There is, therefore, no necessity for deciding whether the exemption is in personam or merely in rem.

This interpretation logically and inevitably leads, counsel in support of the complaint contends, to absurd results enabling any concern to choose at will the regulatory authority, by simply acquiring or divesting itself of a packing plant. Or, put more crassly, by the simple expedient of buying a load of chickens, wringing their necks, plucking their feathers and selling their carcasses in commerce, any business in the nation, even a tire or battery manufacturer, for instance, may escape regulation of its entire business by the Federal Trade Commission, whose "expertise" in the use, for instance, of brokerage, advertising allowances, service grants and other devious means of competitive favoritism, is widely recognized. Thus, in the instant case, alleged competitive discrimination in the use of advertising allowances to push such non-agricultural products as floor wax, chewing gum and cleaning fluid is left exclusively to the Department of Agriculture. No law, says counsel, should be interpreted to achieve an absurd result.

The answer, of course, is that where a law is clear and unambiguous in terms, command, and intent and where the latter is also clear from the legislative history, interpretation is uncalled for and no deciding authority may interpose his views and interpret it away from that intent, regardless of result. The responsibility for the latter, any duty to change, as well as the sole right to change, lies with the enacting authority, Congress. That this is recognized by that body is evidenced by the recent introduction for passage by Congress of S. 1356 to confer on the Federal Trade Commission the very jurisdiction contended for here, and by the statement of its sponsor:

I believe it is in the public interest that Federal Trade Commission's control be extended over packers who enter into other side-line businesses—businesses which now escape such control because of United States Department of Agriculture's inaction, but whose competitors are subject to Federal Trade Commis-

sion's control. The same need for public control applies to food firms, especially food chains, which can now acquire packing plants, or a substantial interest in one, and thus escape Federal Trade Commission's supervision over their entire operations.

Despite distinctions of counsel, which are really not actual differences, the views expressed, and the language used in United Corporation, et al v. F.T.C. 110 F. 2d 473 (C.C.A. 4) (1940) and Docket 6409, Armour and Company (March 30, 1956) are consonant with, and, it is believed, fully support the views expressed, and the conclusion reached here, and these are precedents by which this hearing examiner is, of course, bound.

Express findings of this motion then are:

1. Respondent comes within the definition of "packer" as set out in 7 U.S.C. 191, not only as to its Elizabeth, New Jersey plant but as an entity.

2. As such, the Secretary of Agriculture has exclusive jurisdiction of the acts and practices charged in the complaint to be illegal.

3. The Federal Trade Commission has no jurisdiction thereof.

It follows that the motion of respondent to dismiss should be and the same hereby is granted.

Any and all requests for time to brief further the motion are denied.

ORDER

It is ordered, That the complaint and the amended and supplemental complaint in this proceeding be, and the same hereby are, dismissed for lack of jurisdiction.

OPINION OF THE COMMISSION

By GWYNNE, Chairman:

The amended and supplemental complaint filed under Section 5 of the Federal Trade Commission Act charges respondent with seeking and obtaining special discriminatory advertising allowances from certain of its suppliers, while knowing, or having reason to know, that such allowances were discriminatory, and with failure to use all of such allowances for advertising purposes.

During the trial, respondent moved for dismissal on the ground that the acts and practices complained of are under the exclusive jurisdiction of the Secretary of Agriculture under the Packers and Stockyards Act (U.S.C. Title 7, Sec. 181 et seq.). From an order sustaining this motion and dismissing the complaint, this appeal has been taken.

The jurisdictional facts are substantially as follows:

Respondent is a supermarket grocery chain operating 238 stores in the eastern part of the country, and selling a full line of grocery and household products including meat and meat products; its operations date from about 1933; on July 13, 1945, respondent acquired a meat packing plant in Elizabeth, New Jersey, and engages there in the preparation and distribution of meat products; respondent's investment in the plant is $2,700,000; the plant is licensed by the U.S. Department of Agriculture as a packer and its products are Federally inspected; during the fiscal year ending April 28, 1956, this plant prepared and shipped 95,000,000 pounds of product of a total sales value of $25 million, based on prices at the plant; about 1/10th of 1% of this product was sold through respondent's own retail stores, the balance being sold to independent jobbers; the total of $25 million of sales represents about 5% of respondent's total retail sales.

The jurisdictional issue presented involves the following questions:

(1) Does the complaint cover *matters* over which the Secretary of Agriculture has been given jurisdiction?

(2) Does the definition of commerce contained in the Packers and Stockyards Act exclude from the Act the operations of respondent here involved, except as to certain specific products hereinafter referred to?

(3) Does respondent come within the definition of "packer" laid down in the Act?

(4) If so, is the jurisdiction of the Secretary limited to those products traditionally included in the meat packing business?

I.

The Federal Trade Commission Act, as originally adopted in 1914, contained the following provision in Section 5:

> The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, and common carriers subject to the Acts to regulate commerce, from using unfair methods of competition in commerce.

After the adoption of various amendments, Section 5(a)(6) now provides:

> The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, common carriers subject to the Acts to regulate commerce, air carriers, and foreign air carriers subject to the Civil Aeronautics Act of 1938, and persons, partnerships, or corporations subject to the Packers and Stockyards Act, 1921, except as provided in Section 406(b) of said Act, from using unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce.

The Packers and Stockyards Act was adopted in 1921, following an extensive investigation by the Federal Trade Commission and also hearings by several Congressional committees. The Act is comprehensive, covering certain activities of packers, stockyard owners and operators, market agencies, dealers, poultry dealers, handlers, etc. Section 192 of Title 7 enumerates certain activities on the part of packers and live poultry dealers or handlers which are declared to be unlawful. It is declared unlawful to:

(a) Engage in or use any unfair, unjustly discriminatory or deceptive practice or device in commerce; or

(b) Make or give, in commerce, any undue or unreasonable preference or advantage to any particular person or locality in any respect whatsoever, or subject, in commerce, any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever; or

(c) Sell or otherwise transfer to or for any other packer, or any live poultry dealer or handler, or buy or otherwise receive from or for any other packer or any live poultry dealer or handler any article for the purpose or with the effect of apportioning the supply in commerce between any such packers, if such apportionment has the tendency or effect of restraining commerce or of creating a monopoly in commerce; or

(d) Sell or otherwise transfer to or for any other person, or buy or otherwise receive from or for any other person, any article for the purpose or with the effect of manipulating or controlling prices in commerce, or of creating a monopoly in the acquisition of, buying, selling, or dealing in, any article in commerce, or of restraining commerce; or

(e) Engage in any course of business or do any act for the purpose or with the effect of manipulating or controlling prices in commerce, or of creating a monopoly in the acquisition of, buying, selling, or dealing in, any article in commerce, or of restraining commerce; or

(f) Conspire, combine, agree, or arrange with any other person (1) to apportion territory for carrying on business in commerce, or (2) to apportion purchases or sales of any article in commerce, or (3) to manipulate or control prices in commerce; or

(g) Conspire, combine, agree, or arrange with any other person to do, or aid or abet the doing of, any act made unlawful by subdivision (a), (b), (c), (d), or (e) of this section.

Machinery is then set up by which the Secretary is to enforce the law. Section 227 of Title 7 provides:

So long as this chapter remains in effect, the Federal Trade Commission shall have no power or jurisdiction so far as relating to any matter which by this chapter is made subject to the jurisdiction of the Secretary except when the Secretary of Agriculture, in the exercise of his duties hereunder, shall request of the said Federal Trade Commission that it make investigations and report in any case.

Congress has not removed all activities of packers from the jurisdiction of the Federal Trade Commission, as has been done in the Federal Trade Commission Act in the case of banks. It denied jurisdiction only as to any matter made subject to the jurisdiction

of the Secretary by the Packers and Stockyards Act. The Wheeler-Lea Act, passed in 1938, did not change the jurisdictional framework set up by the Packers and Stockyards Act. Prior to the Wheeler-Lea Amendment, packers were subject to the Act only as to certain matters specifically set out therein. There is nothing in the Wheeler-Lea Act, or in its history, to indicate that Congress intended to confer other powers on the Secretary in addition to those given in the Packers and Stockyards Act.

An examination of the matters placed under the jurisdiction of the Secretary by Section 192 indicates that such jurisdiction includes the matters which are the subject of the complaint in this case.

II.

The Packers and Stockyards Act contains two sections relating to the definition of commerce. Title 7, Section 182(6) states:

> The term "commerce" means commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof; or within any territory, or possession, or the District of Columbia.

This is a familiar definition, and from a geographical standpoint, covers substantially every movement of goods over which Congress has jurisdiction under the commerce clause. From the standpoint of character of product, the definition is also all-inclusive and covers every product capable of being the subject of commerce.

Section 183 states:

> For the purpose of this chapter (but not in any wise limiting the definition in section 182 of this title) a transaction in respect to any article shall be considered to be in commerce if such article is part of that current of commerce usual in the livestock and meat-packing industries, whereby livestock, meats, meat food products, livestock products, dairy products, poultry, poultry products, or eggs, are sent from one State with the expectation that they will end their transit, after purchase, in another, including, in addition to cases within the above general description all cases where purchase or sale is either for shipment to another State, or for slaughter of livestock within the State and the shipment outside the State of the products resulting from such slaughter. Articles normally in such current of commerce shall not be considered out of such current through resort being had to any means or devices intended to remove transactions in respect thereto from the provisions of this chapter. For the purpose of this section the word "State" includes Territory, the District of Columbia, possession of the United States, and foreign nation.

From this it is argued that the grant of power to the Secretary of Agriculture covers only the products specifically named, "livestock, meats, meat food products, livestock products, dairy products, poultry, poultry products, or eggs." In other words, Section 183 is a limitation on the broad grant of power in Section 182(6).

One difficulty with this argument is that it ignores the fact that Section 183 expressly says it is not a limitation on the previous definition.

Furthermore, the history of the legislation indicates rather clearly why Section 183 was adopted. It was designed to meet a situation peculiar to the meat producing industry as it existed in 1921. This same situation, although in a lesser degree, exists today. The process begins with the animal, which has been raised on grass, being shipped to commission merchants at various stockyards throughout the country. There the cattle are unloaded, cared for, and sold either to packers for slaughter, to feeders who fatten them further on grain in their own yards, or to dealers at the stockyard centers. In this chain of events, the stockyards and all who operate there play an important part. In its attempt to control the monopolistic practices of the big packers both as to cattle producers and as to meat consumers, Congress concluded that it was necessary to bring stockyards under effective control. Inasmuch as many of the activities carried on at the stockyards were local or intrastate in character, this posed an important constitutional question. Various committee reports indicate the attention that was given to this problem.

In *Swift Company* v. *U.S.*, 196 U.S. 375, the Supreme Court had before it the question of whether the business done in the stockyards between the receipt of the livestock in the yards and the shipment of them therefrom is a part of interstate commerce or is so associated with it as to bring it within the power of national regulation. In commenting on this decision, the House Committee on Agriculture in Report No. 77, 67th Congress, 1st Session, which accompanied H.R. 6320 (the basis of the Act), had this to say:

> The bill makes it clear that Congress in treating this question is attempting to regulate evils which it has found to exist in respect to exorbitant charges and unreasonable practices on the stockyards, resulting in a direct burden upon interstate commerce, and that in the whole bill it is treating the entire slaughtering and meat-packing industry in all its ramifications as part of the "current of commerce" referred to in the Swift case. The bill in its definitions in section 2 repeats the language of the Swift case and contains a declaration "articles normally in such current of commerce shall not be considered out of such current through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this act." This clearly expresses the intention of Congress that all devices, whether skillful manipulation of corporate organization, or the setting up of dummies, or otherwise, should not result in an evasion of the act. If this great industry, bearing so important a relation to the welfare of the Nation, and constituting so large a part of interstate commerce, can escape the power of Congress by such devices, the power granted by the Constitution to regulate interstate commerce means nothing, a conclusion which the committee can not bring itself to believe is true.

In *Stafford* v. *Wallace* (1922) 258 U.S. 495, the Supreme Court upheld the constitutionality of the Packers and Stockyards Act. In the decision (p. 520) the Court said:

> It is manifest that Congress framed the Packers and Stockyards Act in keeping with the principles announced and applied in the opinion in the Swift case. The recital in Section 2, Paragraph (b), Title 1, of the Act quoted in the margin leaves no doubt of this. The Act deals with the same current of business and the same practical conception of interstate commerce.

Set out in the margin of the opinion is the substance of Title 7, Section 183.

It thus appears that the purpose of Section 183 was not to limit Section 182, Subparagraph (6) but to explain and strengthen it. Its purpose was not to limit the operation of the Act to certain specified products but to make certain that it applied to the entire slaughtering and meat packing industry in all its ramifications as part of the current of commerce referred to in the Swift case.

III.

The term "packer" is defined in Section 191 as follows:

> When used in this chapter—
>
> The term "packer" means any person engaged in the business (a) of buying livestock in commerce for purposes of slaughter, or (b) of manufacturing or preparing meats or meat food products for sale or shipment in commerce, or (c) of manufacturing or preparing livestock products for sale or shipment in commerce, or (d) of marketing meats, meat food products, livestock products, dairy products, poultry, poultry products, or eggs, in commerce; but no person engaged in such business of manufacturing or preparing livestock products or in such marketing business shall be considered a packer unless—
>
> (1) Such person is also engaged in any business referred to in clause (a) or (b) above, or unless
>
> (2) Such person owns or controls, directly or indirectly, through stock ownership or control or otherwise, by himself or through his agents, servants, or employees, any interest in any business referred to in clause (a) or (b) above, or unless
>
> (3) Any interest in such business of manufacturing or preparing livestock products, or in such marketing business is owned or controlled, directly or indirectly, through stock ownership or control or otherwise, by himself or through his agents, servants, or employees, by any person engaged in any business referred to in clause (a) or (b) above, or unless
>
> (4) Any person or presons jointly or severally, directly or indirectly, through stock ownership or control or otherwise, by themselves or through their agents, servants, or employees, own or control in the aggregate 20 per centum or more of the voting power or control in such business of manufacturing or preparing livestock products, or in such marketing business and also 20 per centum or more of such power or control in any business referred to in clause (a) or (b) above.

Thus, the term "packer" includes any person engaged in the business:

(1) of buying livestock in commerce for slaughtering, or

(2) of manufacturing or preparing for sale or shipment in commerce meats or meat food products (all edible by-products).

The inclusion of such persons is without condition or reservation. Then the definition includes additional persons engaged in the business:

(3) of manufacturing or preparing for sale or shipment in commerce of livestock products (non-edible products), or

(4) of marketing meats, meat food products, livestock products, dairy products, poultry products, or eggs.

The above persons are not included unconditionally and without reservation. They come under the definition only if certain other conditions exist, as set out in Subparagraphs (1), (2), (3) and (4).

What Congress had in mind by this somewhat complicated definition is indicated by the legislative history. For example, on February 5, 1921, the House Agriculture Committee filed Report 1297, 66th Congress, 3rd Session, to accompany S. 3944, which the House Committee had amended. Speaking of the definition of packer, the report states:

> The Senate bill in section 2 declares that the term "packer" means "any person engaged in the business of slaughtering livestock or preparing livestock products for sale in commerce, or of marketing livestock products as a subsidiary of or an adjunct to any such slaughtering or preparing business." This definition so drawn would apparently leave outside of all regulation many branches of the slaughtering and meat packing industry. It would seem that skillful reorganization of the existing forms of corporation organization would result in escaping the provisions of the Act, as for example the organization of a marketing corporation which owns the majority of the stock of a corporation engaged in the slaughtering business. Such marketing corporation would not seem to be within the definition of the act, inasmuch as it is not "a subsidiary of or an adjunct to" the slaughtering corporation, but the reverse is true, since the marketing company is the parent corporation.
>
> Nor does the definition in the Senate bill include cases where neither corporation owns or controls a dollar of stock in the other, but the control of each is in the hands of common stockholders. Thus, if all the stock of corporation A, engaged in the slaughtering business, and corporation B, engaged in the marketing business, were owned by X, Y, and Z, individuals, corporation B would clearly not be a "packer" since in no sense can it be said to be a "subsidiary of or an adjunct to" corporation A.
>
> These defects are remedied in the committee amendment (sec. 201).

In Report No. 77, 67th Congress, 1st Session, of the House Committee on Agriculture to accompany H.R. 6320, the Committee said:

> Section 201 defines the term "packer" in such manner as to include all persons engaged in the business of buying livestock in interstate or foreign com-

merce for purposes of slaughter, or of manufacturing or preparing meats or edible meat-food products for sale or shipment in such commerce.

In order to bring within the terms of the bill the packer as thus defined, whatever the ramifications of his business and whatever the form of corporate organization adopted and at the same time to avoid interference with businesses having no packer affiliations, it is provided that a person engaged in the business of manufacturing or preparing, for sale or shipment in interstate or foreign commerce, livestock products, or of marketing such products in such commerce, shall be considered a packer if such person has an interest in a packing business as above defined, or if a packer has any interest in his business, or if a common control amounting to 20 percent exists in each business. In this manner an independent tannery would not be a packer, but if a packer sets up a tannery business as a separate corporation it would be controlled.

It seems clear from the language of the Act and from the legislative history that Congress designedly made the definition of packer a very broad one. The general purpose was to regulate certain practices of the meat packing business in all its ramifications regardless of its organization or unrelated activities. About the only persons Congress seemed to exempt were those having no packer affiliations. Thus, an independent tanner would not be a packer, merely because of being in the tannery business. Nor would an independent marketer, simply because he marketed meats, meat food products and livestock products, etc. But if either engaged in certain activities traditionally connected with the packing business, or had a designated degree of affiliation therewith, they were included in the definition of packer.

It should be noted also that the definition applies only to persons "engaged in the business," etc. The general meaning of this language has frequently been explained by the courts. For example, in *Dane* v. *Brown*, 70 F. 2d 164 (1934), the court pointed out that such expressions as "pursue the practice of architecture," "engaging in the practice of law," contemplate a course of business and not single isolated instances arising from unusual circumstances. So also an isolated instance of the driving by a corporation of a motor truck through Alabama in interstate commerce was not engaging in such business within the meaning of the constitutional provision in question. *Dealers' Transport Co.* v. *Reese* (1943) 138 F. 2d 638. There are many cases pointing out that engaging in business or in a specified business implies a bona fide element of continuity or habitual practice—it means to be employed in the business—conducting, prosecuting and continuing a business by performing progressively all the acts normally incident thereto, not from time to time, but all the time.

In the instant case, it appears that respondent acquired possession of the packing plant in 1945 some years prior to the present contro-

versy; that it has been recognized by the Department of Agriculture as being a packer and subjected to inspection as a packer; that it regularly carries on the business of preparing meat products and selling same in commerce. We conclude that its activities, as appearing in the record, bring it within the definition of "packer" as that term was intended by Congress in the Packers and Stockyards Act.

It is also argued that, even assuming that respondent is a packer, nevertheless, the jurisdiction of the Secretary of Agriculture does not extend to those products not associated with its packing business, which in this case cover the predominant share of the products handled by respondent.

The construction here urged would seem reasonable in the light of present day conditions. Nevertheless, the law must be considered in the light of the problem existing in 1921 rather than the one in 1957.

The investigation of the meat packing business, particularly the activities of the five large packers disclosed evils in the entire industry which Congress seemed determined to remedy. This posed serious problems, as the legislative history clearly demonstrates. Even in 1921, the industry which produced meat food products and livestock products was an extensive and complicated one. This was true not only as to the stockyards feature, but also as to those allied industries which processed or used livestock products. That this matter was given attention clearly appears in the legislative record. For example, Congressman Haugen, Chairman of the House Agriculture Committee, in explaining the conference report, said:

> The next amendment referred to was to amend the definition of the term "live-stock products" so as to remove the objection that the bill subjected to regulation many industries never engaged in the slaughtering of animals, such as tanneries, fertilizer plants, woolen mills, automobile manufacturers, and many others using by-products of the packing industry.

Although supporting the amendment for this limited purpose, Chairman Haugen expressed the opposition of his Committee to an additional amendment urged by the Farm Bureau.

> At the same time, the Farm Bureau suggested that the definition of the term "packer" be so amended as to confine packers to those manufacturing or preparing meats as meat-food products for sale and shipment in commerce. While recognizing the justice of the complaint that the definition in the original Haugen Bill might be construed to include independent tanneries, fertilizer plants, and other industries using by-products of the packing industry, but the Committee at once perceived that the adoption of the suggestion of the American Farm Bureau Federation would be to leave outside of all regulation such industries when conducted as subsidiaries of the packing industry. It therefore amended the Haugen Bill in such manner as to relieve from regulation these outside industries when having no affiliation with a packer, but leaving

the packer to complete regulation, no matter what line of business he goes into. 61 Congressional Record, p. 4781.

As to the matters referred to in Section 192, it was the intention of the Congress to give the Secretary broad powers so that the unlawful practices therein outlined could be effectively and efficiently handled. This is well expressed in the following from the Committee report:

A careful study of the bill, will, I am sure, convince one that it, and existing laws, give the Secretary of Agriculture complete inquisitorial, visitorial, supervisory, and regulatory power over the packers, stockyards, and all activities connected therewith; that it is a most comprehensive measure and extends farther than any previous law in the regulation of private business, in time of peace, except possibly the interstate commerce act.

After setting forth the various powers granted to the Secretary, the report states:

The bill further coordinates the duties of the Secretary of Agriculture so that it prevents overlapping of authority and duplication of jurisdiction of other departments of Government having regulatory powers which previously existed. It provides for ample court review for any of the orders or regulations of the Secretary of Agriculture so as to protect the industry from any mistakes of judgments or unwarranted use of the power thus delegated.

In *United Corporation* v. *Federal Trade Commission* (1940) 110 F. 2d 473, the order of the Commission required respondent to cease and desist from:

Representing that the corned beef hash and deviled ham which it sells are made from products originating in Virginia, and using the trade name "Virginia Products Company" and using labels containing the words "Virginia" and from invoicing its sales from Richmond or other places within the State of Virginia.

Prior to the entry of the order by the Commission, respondent acquired 20% of the stock of the suppliers who canned the products for it. The court held that upon the acquisition of this stock, respondent became a packer whose business was subject to the control of the Secretary of Agriculture under the Packers and Stockyards Act. The court pointed out that the complaint charged an unfair practice in the marketing of meat food products by a packer and was a matter made subject to the jurisdiction of the Secretary by Title 7, Sections 192 and 193. While the case involved only meat food products, we think the same rule would have applied to other commodities marketed by this respondent packer. *In the Matter of Armour and Company*, Docket No. 6409, the Federal Trade Commission held that claimed false advertising of oleomargarine by the respondent packer came under the jurisdiction of the Secretary of Agriculture and accordingly dismissed the complaint. Insofar as

Sections 192 and 193 are concerned, there is no evidence that Congress meant to draw any distinction between meat food products and other products marketed by a packer. Such a conclusion would make the law very difficult of enforcement.

Based on the facts in this case, we conclude:

(1) The matters involved in the complaint are matters over which the Secretary of Agriculture was given jurisdiction by the Packers and Stockyards Act.

(2) The definition of "commerce" in the Packers and Stockyards Act does not limit such jurisdiction to livestock, meats, meat food products, livestock products, dairy products, poultry, poultry products, or eggs.

(3) Respondent comes within the definition of "packer" as announced in Section 191, Title 7.

(4) The jurisdiction of the Secretary as to matters involved in this case is not limited to meat food products marketed by respondent.

The appeal of counsel supporting the complaint is denied and it is ordered that the complaint and the amended and supplemental complaint be, and the same hereby are, dismissed for lack of jurisdiction.

Mr. Tait did not participate in the decision herein.

FINAL ORDER

Counsel supporting the complaint having filed an appeal from the hearing examiner's initial decision granting the respondent's motion to dismiss this proceeding for lack of jurisdiction; and the matter having come on to be heard upon the record, including the briefs and oral arguments of counsel, and the Commission having determined, for reasons stated in its accompanying opinion, that such appeal should be denied:

It is ordered, That the order contained in the initial decision, which duly provides for dismissal of this proceeding for lack of jurisdiction, be, and the same hereby is, affirmed.

Commissioner Tait not participating.