Decision

IN THE MATTER OF

NATIONAL CLEARANCE BUREAU ET AL.

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

Docket 6648. Complaint, Oct. 11, 1956—Decision, Oct. 31, 1957

Order requiring a company in East Orange, N.J., to cease selling—mainly to credit bureaus maintained by business and professional organizations, collection agencies, and finance companies—and using in its own collection business, printed "skip tracing" forms, cards, and envelopes designed to obtain information concerning alleged delinquent debtors by subterfuge through falsely representing connection with the United States Government by use of such headings as "Treasurer's Office Disbursement Notice," etc., and a printed picture of an eagle or the Treasury Department building or a like structure, and representing further that a check for a sum of money would be forwarded to the person addressed upon receipt of the completed questionnaire.

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

Fast & Fast, by *Mr. Herman L. Fast* and *Mr. Kenneth Fast*, of Newark, N.J., for respondents.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

STATEMENT OF PROCEEDINGS

The Federal Trade Commission issued its complaint against the above-named respondents on October 11, 1956, charging them with having engaged in certain unfair and deceptive acts and practices, in violation of the Federal Trade Commission Act. Said complaint charges, in substance, that respondents, in connection with their business of obtaining information on delinquent debtors for customers, have used certain forms in which they have falsely represented a connection with the United States Government and that the debtors who supply the information requested in the forms will receive a sum of money. Respondents, after being duly served with said complaint, appeared by counsel and filed their answer in which they admitted having used the forms referred to in the complaint, but denied that said forms contained any false representations as alleged in the complaint.

Pursuant to notice, hearings on the charges were held in New York, New York, on January 3, and March 14, 1957, before the undersigned hearing examiner, theretofore duly designated to hear this proceeding. At said hearings testimony and other evidence

were offered in support of, and in opposition to, the allegations of the complaint, the same being duly recorded and filed in the office of the Commission. All parties were represented by counsel, participated in the hearings, and were afforded full opportunity to be heard and to examine and cross-examine witnesses.

Following the close of the hearings, and pursuant to agreement of counsel, there was received in evidence by order of the undersigned dated April 16, 1957, an additional exhibit proffered by counsel supporting the complaint. Counsel supporting the complaint have also filed a motion to strike certain testimony and evidence, which motion is disposed of in the manner hereinafter indicated.

Pursuant to leave granted by the undersigned, proposed findings of fact, conclusions of law and an order were filed by counsel supporting the complaint and counsel for respondents. No request for oral argument was made by any of the parties. Proposed findings which are not herein adopted, either in the form proposed or in substance, are rejected as not supported by the evidence or as immaterial.

Upon consideration of the entire record herein, and from his observation of the witnesses, the undersigned finds that this proceeding is in the public interest and makes the following:

FINDINGS OF FACT

I. The Business of Respondents and the Interstate Commerce

1. Respondent National Clearance Bureau is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey. Its main office is located at 380 Main Street, East Orange, New Jersey. The individual respondents Abraham Montag, Melvin Montag and Edwin G. Axel are, respectively, president, secretary and treasurer of said corporation. The individual respondents Edwin G. Axel and Melvin Montag are the co-managers of said corporation and formulate, direct and control its policies and practices. The business address of the individual respondents Edwin G. Axel and Melvin Montag is the same as that of the corporate respondent.

Respondent Abraham Montag, while president of the corporate respondent, is not active in its operations, receives no salary from said respondent and is elsewhere employed on a full time basis. Said individual respondent owns a single share of stock in the corporate respondent and was made an official for corporate qualifying purposes only. Provision will hereafter be made for dismissal of the complaint as to said individual respondent, and the term "respondent," as hereinafter used, is not intended to refer to said respondent.

2. The individual respondent Edwin G. Axel, also trades and does business under the name Credit Information Bureau, with his main office located at the same address as the corporate respondent. The business operations of said respondent as Credit Information Bureau are hereinafter referred to, for convenience, by the trade name under which said respondent does business.

3. Credit Information Bureau is now, and for more than one year last past has been, engaged in the business of selling certain printed "skip tracing" forms, cards and envelopes, which are designed to obtain information relating to delinquent debtors. The customers of Credit Information Bureau are mainly credit bureaus maintained by business and professional organizations, collection agencies, finance companies, and certain large creditors desiring information concerning delinquent debtors. Credit Information Bureau solicits such customers and prospective customers, whose names are obtained from business directories, by mailing to them advertising literature (in which its method of operation and skip tracing forms are described) and order blanks for ordering such forms. The forms consist of a questionnaire which is to be completed by the debtor, a return envelope and another window-type envelope in which the questionnaire and the return envelope are enclosed for mailing to the debtor.

4. Credit Information Bureau utilizes a mailing address in Washington, D.C. for the purpose of mailing the forms to delinquent debtors of their customers, and receiving back the completed questionnaires. The customers, after purchasing the forms, fill in the name and address of the alleged debtor in the space provided on the questionnaire and mail it in the envelope furnished by Credit Information Bureau, to the latter's Washington, D.C. mailing address, from whence it is meter-mailed (with a Washington, D.C. postmark) to the addressee. If the debtor fills in the questionnaire he encloses it in the return envelope addressed to the mailing address used by Credit Information Bureau in Washington, D.C. When the envelope is received in Washington, D.C., it is forwarded, unopened, to Credit Information Bureau in East Orange, New Jersey, where the envelope is opened and the questionnaire is turned over to the customer originally seeking the information. Debtors who fill in and return the questionnaire receive a check from Credit Information Bureau in the nominal amount of 10 cents.

5. Credit Information Bureau sends out varying quantities of its advertising literature and order blanks to prospective customers located in all parts of the United States. At one time it amounted to several thousand pieces per month. However, this amount has

now been reduced to 10 to 20 pieces per month. The prices of the skip tracing forms range from approximately $30.00 per hundred to $1,000 for 5,000 forms. The amount of business done in such forms ranges from $12,000 to $15,000 per year, at least half of which is with customers located outside of the State of New Jersey. The debtors to whom the questionnaires are mailed are located in various states of the United States, other than the State of New Jersey.

In carrying on the business under the trade name of Credit Information Bureau, respondent Edwin G. Axel has engaged, and is now engaging, in substantial commercial intercourse in commerce, as "commerce" is defined in the Federal Trade Commission Act, among and between the various states of the United States by virtue of the activities above described, including the transmission in commerce of advertising matter, "skip tracer" forms, checks, letters and other written instruments.

6. Respondent National Clearance Bureau is a collection agency which specializes in the collection of professional accounts, mainly medical. In the course of its business said respondent purchases skip tracing forms from Credit Information Bureau for the purpose of obtaining information concerning delinquent debtors of its customers. During the period of about a year since it was organized in November or December 1955, said respondent has purchased approximately $500.00 worth of such forms. The forms purchased by said respondent are handled in the same manner as those purchased by other customers of Credit Information Bureau, *viz.*, after the name and address of the debtor are filled in by it on the questionnaire it is mailed to Washington, D.C. for meter-mailing to the debtor, and after the questionnaire has been returned by the debtor to the Washington, D.C. address, it is forwarded to East Orange, New Jersey, where the information is turned over to the corporate respondent.

The record disclosses that in addition to purchasing skip tracing forms from Credit Information Bureau, the corporate respondent on two occasions in March and April of 1956, solicited a prospective customer in Garden City, New York, for the purpose of selling skip tracing forms to the latter. While it is undisputed that such solicitations were made on the stationery of the corporate respondent, respondent Edwin G. Axel who dictated the letters testified that the use of the stationery of the corporate respondent was due to a clerical error on the part of the stenographer and that the stationery of Credit Information Bureau should have been used instead.

The undersigned finds it unnecessary to resolve the conflict in the evidence on the question of whether the corporate respondent has

solicited the sale of skip tracing forms in interstate commerce on its own behalf. In view of the fact that said corporate respondent has regularly purchased the skip-tracing forms of Credit Information Bureau for the collection of its own delinquent accounts and has transmitted them through the United States mails across State lines for the purpose of obtaining information concerning delinquent debtors in the manner above found, it is found that said corporate respondent, together and its dominant figures, Edwin G. Axel and Melvin Montag, have engaged and are now engaged in substantial commercial intercourse in commerce, as "commerce" is defined in the Federal Trade Commission Act.[1]

II. The Alleged Unfair and Deceptive Practices

A. *The "Skip Tracing" Forms*

1. The charge that respondents have engaged in unfair and deceptive acts and practices arises out of the composition and makeup of the "skip tracing" forms which are mailed to delinquent debtors or other persons from whom information is sought. Central to respondents' method of operation is the questionnaire form. The form now in use is a card of the IBM tabulating size. The card is designated on the front side thereof as a "DISBURSEMENT CERTIFICATE." It also contains on its face a picture of an eagle and the address "Treasurer's Office, Headquarters Building, Washington, D.C." There also appears on the face of the card the facsimile of a seal enclosing the picture of an indeterminate structure of the classical design typical of many government buildings, and bearing the legend "Treasurer's Office, Washington, D.C."

In the center of the card, directly beneath the picture of the eagle and the address "Treasurer's Office, Headquarters Building, Washington, D.C.," appears the following legend:

> If you will fill in the reverse side of this blank giving the requested information we will forward you a Treasurer's Certificate with a small sum of money which we have on deposit for you for that purpose. Disbursement will be sent to the address given registered in your name.

On the reverse side of the card, at the top thereof, appears the legend: "CONFIDENTIAL OFFICE QUESTIONNAIRE," beneath which is a series of blanks calling for the following information concerning the debtor: "Name, Age, Number and Street, City, State, Employed by, Address, Phone, Spouse's Name, Bank with,

[1] It may be noted that in their answer respondents admit the allegation of the complaint with respect to their engagement in commerce, except that they deny their business is "extensive commercial intercourse in commerce."

Make of Car, State & Tag," etc. The back of the card also bears the legend:

Disbursement check will not be sent unless all information is given. * * * Fill in and return blank within thirty days. Allow two weeks for mailing disbursement.

7. Prior to the use of the present form of questionnaire, Credit Information Bureau utilized other questionnaires which were substantially similar in form. Some of these forms were designated as "Disbursement Notice" instead of the present designation of "Disbursement Certificate." However, they were otherwise substantially similar to the form above described in composition and make-up.

8. The return envelope which is enclosed with the questionnaire, for use in returning the completed questionnaire, is similar in color and size to that used by Government agencies, and contains the address "Treasurer's Office, Headquarters Building, Washington 6, D.C." The outer glass-window envelope, in which the addressed questionnaire and return envelope are mailed to the delinquent debtor, is similar in color and contains the return address "Treasurer's Office, Headquarters Building, Washington 6, D.C."

Prior to the use of the present mailing address in Washington, D.C. on its forms, Credit Information Bureau utilized the address "Disbursement Office, 1424 K Street N.W., Washington 5, D.C."

9. Respondents have never maintained any office where they transact business in Washington, D.C., other than the above addresses which are merely mailing and telephone answering service addresses and are used solely for the purpose of mailing and receiving the envelopes containing the skip tracing forms. Respondents have no employees in Washington, D.C., but pay the company which operates the mailing service a monthly fee for handling respondents' mail.

10. It has been the practice of respondents, in connection with the above forms, to send to persons who complete and return the questionnaire, a check in the amount of 10 cents. At one time the checks contained the name of the payor as "Disbursement Office, N.C.B.," the latter being the initials of the corporate respondent. At the present time the checks bear the name of Credit Information Bureau.

B. *The Representations Made*

1. Respondents, by the use of the forms above described, represent and imply, and place instruments in the hands of their customers whereby they may represent and imply, to the recipients

thereof, that such forms emanate from an agency of the United States Government and that the request for information contained therein is made on behalf of such Government agency. Such representation or impression is created by the format and phraseology of the forms as a whole, including the use of such words as "Treasurer's Office, Disbursement Certificate" or "Disbursement Notice," the use of the printed picture of an eagle on the face of the "Treasurer's Office" forms, the use of the facsimile of a seal with the picture of a structure similar to many government buildings, the use of the address "Headquarters Building, Washington, D.C." or other Washington, D.C., mailing address on the "Treasurer's Office" questionnaire and envelopes, and the color and format of the envelopes, as well as the format of the "Confidential Office Questionnaire."

2. Respondents contend that the use of the Washington address is to "add prestige" to the request for information and that the pictures of the Eagle and of a Government-type building are merely for "design purposes." However, it is evident from the record as a whole that "prestige" which respondents were seeking to take advantage of was that of the United States Government and that the "design" impression which they were trying to create was one of connection with an agency of that Government.

Respondents' regular place of business is East Orange, New Jersey. Their only connection with Washington, D.C. is the address of the mailing service which permits them to have their mail postmarked "Washington, D.C." and enables them to put a Washington, D.C. address on their questionnaire and envelopes. For this privilege they pay a monthly fee. It seems evident from the format and phraseology of the forms that the "prestige" with which respondents were seeking to associate themselves is that of the United States Government.[2]

Any doubt as what impression respondents were trying to create by their forms is dissipated by reference to the advertising literature sent out to prospective customers of the forms, in which it is stated:

> Our TREASURER'S OFFICE SKIP TRACING FORM works because the skip is offered a small sum of money from the Treasurer's Office in Washington, D.C., which we send, if he fills in the questionnaire on back of the form. *The TREASURER'S OFFICE FORM COMES FROM WASHINGTON, D.C.* He is impressed with it and has no idea you are looking for him! *The form is so OFFICIAL LOOKING,* his desire for money is so great that he gladly TELLS US ALL WE ASK. He becomes worried if he doesn't, he begins to

[2] Respondent Edwin Axel conceded in his testimony that the fact Washington was the capital of the United States might have contributed to their use of the Washington address.

think he lost out on a fortune of money. His conscience bothers him, he wants the money! THAT'S WHY our TREASURER'S OFFICE SKIP TRACING FORM, *mailed from Washington, D.C.*, gets results. [Emphasis supplied.]

In addition to the above statement, the following appears in one of respondents' advertising brochures:

The form is METER-MAILED, so *OFFICIAL LOOKING,* and his desire for money is so great that he gladly tells us all we ask. * * * Tracer [form] *comes in same type of Kraft envelope as used by official agencies!* * * * All forms are METER-MAILED from Washington, D.C. *This makes it more official looking* and gets better results than using an ordinary 3¢ postage stamp! [Emphasis supplied.]

It is clear, both from respondents' admissions and the forms themselves, that they are deliberately designed to, and do, create the impression that the forms are issued by, or have a connection with, an agency of the United States Government and that the information sought is being requested by such Government agency.

3. Respondents, by the use of the forms above described, represent and imply, and place instruments in the hands of their customers whereby they may represent and imply, that persons completing and returning the questionnaire will receive a sum of money which is more than negligible in amount, and that it will thus be to the advantage of the recipients of the questionnaire to complete and mail same. Such representation or impression is created by the format and phraseology of the forms as a whole, including the use of such words as "Treasurer's Office," "Disbursement Office," "Disbursement Certificate," and "Disbursement Notice," and statements that persons giving the requested information will be forwarded "a Treasurer's Certificate with a small sum of money which we have on deposit for you," or that persons filling in the questionnaire will receive "a Treasurer's check for a small sum of money which we have on deposit for you," and that "Disbursement check will not be sent unless all information is given."

That the forms are designed to create the impression that the sum to be received by persons returning the questionnaire will be more than negligible in amount, is evident not only from the forms themselves but from respondents' advertising literature which states that the recipient of the form

* * * becomes worried if he doesn't [fill it out]; he begins to think he lost out on a fortune.

It is also stated that:

MONEY offered to the Skip by the Treasurer's Office is the impelling *FORCE*—so it GETS RESULTS. It's even better than an investigator who, relations know, wants to collect a bill. Because of the money promised in the form, relatives will travel for miles to see that the skip gets his letter!

C. *The Falsity of the Representations*

The representations hereinabove found to have been made and the implications arising therefrom are false, misleading and deceptive. In truth and in fact respondents are not connected with the United States Government in any respect. There is no advantage to the debtor in furnishing the information requested. The amount of the check, namely, ten cents, is insufficient to justify any reference to it, and would not in many instances have prompted the completion and return of the questionnaire had the addressee been informed of the amount.[3] This practice is a transparent scheme to mislead and conceal the purpose for which the information is sought. The use of the forms and the questionnaire contained thereon, and the reply envelope, is an attempt to obtain information concerning alleged delinquent debtors by subterfuge.

D. *Contentions and Concluding Findings*

1. It is the position of respondents that the persons to whom such forms are sent are not deserving of public protection by reason of their debt delinquency and that the practices used are justified means to the legitimate end of getting such persons to pay up their debts. The argument which respondents make here is one which, in the main, has been fully considered, both by the Commission and the courts, and has been found to be wanting. The legitimate objective of seeking to induce debtors to pay their debts does not justify the use of illegitimate and unlawful means. There is no lack of public interest in the protection of such persons merely by virtue of their delinquency. *Silverman* v. *FTC*, 145 F. 2d 751; *Rothchild* v. *FTC*, 200 F. 2d 39; *National Service Bureau* v. *FTC*, 200 F. 2d 362; *Dejay Stores, Inc.* v. *FTC*, 200 F. 2d 865; and *National Research Company*, etc., Docket No. 6236, June 1, 1956.

2. Respondents also contend that the Commission is "without power to proceed" because it has set up no definite standards as to what constitutes compliance with its orders with respect to the form and content of "skip tracing" forms. Respondents refer, in this connection, to the fact that the Commission approved certain forms as constituting compliance with its order in the *National Research Bureau* case, and later withdrew such approval.

In the opinion of the undersigned the action taken in the case cited by respondents in no way derogates from a finding of violation in this proceeding or precludes the issuance of an order here. There is no claim made by respondents that the forms here involved are

[3] See *National Service Bureau* v. *FTC*, 200 F. 2d 362, where the court of appeals stated that "in the context of 'deposited' and 'a check,' ten cents is not a 'sum of money' or even 'a small sum of money.'"

similar to those which received tentative approval at the compliance stage of the *National Research Bureau* case, or that they were in any way prejudiced by the action taken in that case. Moreover, any argument which respondents may wish to make concerning "lack of standards" or possible disparate treatment should appropriately be reserved for a later stage of this proceeding, to be determined on the basis of the order actually issued against them.

3. Counsel supporting the complaint have moved to strike the testimony and other evidence which was offered by respondents to show lack of public interest and the action taken by the Commission at the compliance stage of the *National Research Bureau* case. While the undersigned regards such evidence as being of marginal relevance or materiality, the motion to strike same will be denied in view of the limited amount of such evidence and in order to preserve same in the record for utilization by respondents at the appellate stage of this proceeding.

4. It is concluded and found that the use by respondents of the skip tracing forms hereinabove described, containing false, misleading and deceptive statements has had, and now has, the tendency and capacity to mislead and deceive many persons to whom said forms were sent, into the erroneous and mistaken belief that the statements, representations and implications were true and to induce the recipients thereof to supply information to the respondents and respondents' customers which otherwise they would not have supplied.

CONCLUSION OF LAW

It is concluded that the acts and practices of the respondents, as hereinabove found, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondents, National Clearance Bureau, a corporation and its officers and Melvin Montag and Edwin G. Axel, individually and as officers of said corporation, and Edwin G. Axel, individually and trading and doing business as Credit Information Bureau, or under any other name, their representatives, agents and employees, directly or through any corporate or other device in connection with the business of obtaining information concerning delinquent debtors, or the offering for sale, sale, or distribution of forms or other material for use in 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 forms, letters, questionnaires or other material, printed or written, which does not clearly and expressly state that the information requested is to be used for credit or collection purposes;

2. Representing, or placing in the hands of others, by sale or otherwise, any means of representing, directly or by implication, that money is being held for, or is due, persons concerning whom information is sought, or is collectible by such persons, unless money is in fact due and collectible by such persons and the amount of money is actually stated;

3. Using the words "Treasurer's Office," "Disbursement Office," or the picturization of an eagle or of a structure so designed as to suggest that it is a government building, or any other word, phrase, or picturization of similar import on forms or otherwise, to designate, describe, or refer to respondents' 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 or forms are in any way connected with the United States Government;

4. Using the name, "Disbursement Notice," or "Disbursement Certificate," or any other name of similar import to designate, describe, or refer to respondents' business or forms, or otherwise representing, directly or by implications, that money has been deposited with them for persons from whom the information is requested, unless or until the money has in fact been so deposited, and then only when the amount so deposited is clearly and expressly stated.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to respondent Abraham Montag, individually.

OPINION OF THE COMMISSION

By KERN, Commissioner:

This is an appeal from the hearing examiner's initial decision requiring respondents, other than an individual as to whom the examiner would dismiss the complaint, to cease and desist from certain unfair and deceptive acts and practices in commerce, violative of the Federal Trade Commission Act.

The remaining individual respondents, Melvin Montag and Edwin G. Axel, own and control the respondent corporation, National Clearance Bureau, a collection concern specializing in recovering debts owed to professional people. Respondent Axel also trades as the "Credit Information Bureau," an unincorporated business which locates and obtains personal information about delinquent debtors. Both businesses are conducted from the same address in East Orange, New Jersey.

There is no dispute over the hearing examiner's finding that the Credit Information Bureau provides a so-called "skip-tracing" service which, for its success, depends upon deception and subterfuge. Questionnaire cards and mailing envelopes are sold for a flat charge to creditors. The creditor will address such a questionnaire to the debtor at his last known location and transmit it to a mailing office in Washington, D.C., operated by the Credit Information Bureau, whence it is meter-mailed to the debtor. The envelope and its enclosure, a questionnaire printed on a punched business machine card, are physically designed to suggest that a government agency is officially advising that a sum of money is being held for the debtor and if he will supply his present address, the make and license number of his automobile, the name of his bank, etc., such a sum will be remitted to him. The completed questionnaire is enclosed in the self-addressed return envelope and sent back to respondents' Washington office, from where it is forwarded to the creditor. To anyone completing and returning the questionnaire, respondents send their check for ten cents.

The appeal does not challenge the finding that this scheme is deceptive. Respondents contend, however, (1) that the jurisdictional requirement of public interest is not present, (2) that the Commission has not provided a standard of acceptable compliance with an order of the type here proposed, and (3) that the case should be dismissed as to the corporate respondent because there has been no showing that the corporate respondent engages in interstate commerce or is in the skip-tracing business, or that there is any public interest in its activities.

It is well settled that there is substantial public interest in the prevention of deceptive methods and practices used in interstate commerce in the collection of debts. "It is not necessary that an unfair or deceptive act forbidden by the Trade Commission Act should cause a pecuniary loss. One of the purposes of the Act has been the protection of the public, and public interest may exist even though the practice deemed to be unfair does not violate any private right. * * * The fact that acts and practices deemed deceptive are used to trace delinquent debtors does not prevent such acts and practices from being against the public interest. Some of the debtors may have had a justifiable reason for not paying their obligations." *Rothschild* v. *FTC*, 200 F. 2d 39, 42 (7th Cir. 1952), *cert. denied* 345 U.S. 941 (1953). Orders of the kind here proposed have been consistently upheld on judicial review. *Dejay Stores, Inc.* v. *FTC*, 200 F. 2d 865 (2d Cir. 1952), and cases there cited.

Respondents next assert that the complaint should be dismissed because, they say, there is "a lack of standards within the Federal Trade Commission delineating just what is acceptable to the Commission." To support their contention, they refer to certain negotiations for compliance with an order issued in an altogether separate proceeding in which respondents were not involved. Inasmuch as what constitutes due and proper compliance with an order to cease and desist can only be determined by the Commission in the light of the circumstances of the particular case, any speculation on possible modes of satisfactory compliance is manifestly premature at this stage. It suffices that the proposed order is clear and definite and reasonably related to the abuses found, upon substantial evidence, to have been committed.

Finally, respondents insist that the complaint should be dismissed as to the corporate respondent and its officers because, assertedly, it has not been shown that the corporation is engaged in interstate commerce or in the business of "skip-tracing." There is nothing in this contention. The record makes it clear beyond doubt, and the hearing examiner has so found, that the corporate respondent uses the facilities of the Credit Information Bureau, including the deceptive questionnaire forms which are in regular course transmitted from the New Jersey office to the District of Columbia office for mailing. Thus the corporate respondent and those who direct its policies and operations employ the channels of interstate commerce to carry on their business and thereby engage in unfair and deceptive acts and practices in interstate commerce.

We agree with the hearing examiner that it is "unnecessary to resolve the conflict in the evidence on whether the corporate respondent has solicited the sale of skip tracing forms in interstate commerce on its own behalf." However, it was the corporate respondent's transmittal of the forms from one State to another, not merely the use of the United States mails, that constituted acts and practices in interstate commerce. Hence the findings will be modified in this respect.

The hearing examiner has found, upon substantial evidence, that respondent Abraham Montag, though president of the corporate respondent, is not active in its operations, receives no salary therefrom on account of his positions, owns but a single share of the corporation's stock, and was made an official only for purposes of securing incorporation. No appeal was taken from this finding and we therefore approve the hearing examiner's dismissal of the complaint against this party as an individual.

The examiner has also found that the questionnaire used by respondents carries on its face, among other things, a printed seal depicting "the Treasury Department Building or a similar government structure, with the legend on the seal 'Treasurer's Office, Washington, D.C.'" The exhibits in evidence do not entirely support this finding. Though the seal referred to does show a building, it obviously is not the United States Treasury Building in Washington, D.C., but a more general type of structure suggestive of a public edifice. The tendency and capacity to deceive remains, however, for the total impression conveyed by respondents' forms and envelopes and the use of a Washington, D.C., address and a seal showing an official-looking building is that they come from the Federal Government. The findings and the order will also be amended in this particular.

It is our judgment that respondents, other than Abraham Montag, have violated the provisions of Section 5 of the Federal Trade Commission Act, and their appeal is therefore denied. As modified, the initial decision will be accepted and adopted as the Commission's decision. An appropriate order will be issued.

FINAL ORDER

This matter having been heard on the respondents' appeal from the hearing examiner's initial decision, and the Commission having concluded that respondents, other than respondent Abraham Montag, have violated the provisions of Section 5 of the Federal Trade Commission Act, and having rendered its opinion denying the appeal; and

The Commission in its opinion having directed that the initial decision be modified in accordance with its views as therein expressed:

It is ordered, That the second sentence of the first full paragraph on page 5 of the initial decision be, and it hereby is, modified to read as follows: "In view of the fact that said corporate respondent has regularly purchased the skip-tracing forms of Credit Information Bureau for the collection of its own delinquent accounts and has transmitted them through the United States mails across State lines for the purpose of obtaining information concerning delinquent debtors in the manner above found, and it is found that said corporate respondent and its dominant figures, Edwin G. Axel and Melvin Montag, have engaged and are now engaged in substantial commercial intercourse in commerce, as 'commerce' is defined in the Federal Trade Commission Act."

It is further ordered, That the last sentence on page 5 of the initial decision be, and it hereby is, modified to read as follows: "There also appears on the face of the card the facsimile of a seal enclosing the picture of an indeterminate structure of the classical design typical of many government buildings, and bearing the legend 'Treasurer's Office, Washington, D.C.'"

It is further ordered, That the second sentence of the paragraph numbered "1" on page 7 of the initial decision be, and it hereby is, modified to read as follows: "Such representation or impression is created by the format and phraseology of the forms as a whole, including the use of such words as 'Treasurer's Office, Disbursement Certificate' or 'Disbursement Notice,' the use of the printed picture of an eagle on the face of the 'Treasurer's Office' forms, the use of the facsimile of a seal with the picture of a structure similar to many government buildings, the use of the address 'Headquarters Building, Washington, D.C.' or other Washington, D.C., mailing address on the 'Treasurer's Office' questionnaire and envelopes, and the color and format of the envelopes, as well as the format of the 'Confidential Office Questionnaire.'"

It is further ordered, That the third numbered paragraph of the order to cease and desist contained in the initial decision be, and it hereby is, modified to read as follows:

"3. Using the words 'Treasurer's Office,' 'Disbursement Office,' or the picturaziation of an eagle or of a structure so designed as to suggest that it is a government building, or any other word, phrase, or picturization of similar import on forms or otherwise, to designate, describe, or refer to respondents' 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 or forms are in any way connected with the United States Government;".

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

It is further ordered, That respondents National Clearance Bureau, a corporation, Melvin Montag, and Edwin G. Axel, within sixty (60) days after service of this order upon them, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order contained in the initial decision as hereinabove modified.

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IN THE MATTER OF

AMERICAN PHOTOGRAPHIC SOCIETY ET AL.

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

Docket 6810. Complaint, May 29, 1957—Decision, Oct. 31, 1957

Consent order requiring a company in Pasadena, Calif.—engaged in selling photograph albums together with certificates for photographs to be taken at independent affiliated studios through salesmen calling upon mothers of newborn children whose names they obtained from newspapers, hospitals, etc.—to cease representing falsely that the persons solicited were specially selected and would receive free two albums, the larger of which alone was worth more than the total price paid; and that they had studios all over the country to take the pictures; and to cease representing falsely that it was a society or foundation or an institute engaged in research, through use of its corporate name and of the word "Foundation" in connection therewith, and of the corporate name "Advertising-Research Institute."

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

Respondents, pro se.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on May 29, 1957, charging them with having violated the Federal Trade Commission Act by making false and misleading representations concerning the selection of customers, the worth or value of their product, photographic albums, the offering of "free" albums, the availability of photographers honoring respondents' certificates, and characterizing their businesses as a a society of photographers and an institute engaged in advertising research. Respondents entered into an agreement, dated August 7, 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.

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

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

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

1. Respondents American Photographic Society and Advertising-Research Institute are corporations existing and doing business under and by virtue of the laws of the State of California, with their principal place of business located at 77 North Raymond Avenue, Pasadena, California. Respondents Donald D. Moore and Alice S. Moore are officers of both corporate respondents. They formulate, direct and control the policies, acts and practices of said corporate respondents. Respondent John B. Isgrig is an officer of corporate respondent, Advertising-Research Institute, and he assists the other individual respondents in formulating and directing the policies, acts and practices of Advertising-Research Institute.

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

ORDER

It is ordered, That respondents American Photographic Society, a corporation, and Advertising-Research Institute, a corporation, and their officers; Donald D. Moore and Alice S. Moore, individually

and as officers of said corporations, and John B. Isgrig, individually and as an officer of respondent Advertising-Research Institute, 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 photograph albums or certificates for photographs, in commerce, as "commerce" is defined by the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication:

(a) That the persons to whom they sell their albums have been especially selected;

(b) That their albums are given free or without cost;

(c) That their albums are worth or are of a value in excess of the price at which said albums are usually and customarily sold at retail.

2. Misrepresenting the availability and location of photographers who will honor certificates issued by respondents or that photographers who will honor such certificates will be available in any city or locality.

3. Using the corporate name "American Photographic Society" or any other name of similar import or the word "Foundation" to designate, describe or refer to respondents' business or otherwise representing that their business is a society of photographers.

4. Using the corporate name "Advertising-Research Institute" or any other name of similar import to designate or refer to respondents' business or otherwise representing that their business is an institute or is engaged in advertising research.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner did, on the 31st day of October, 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

OWENS, INC.

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

Docket 6825. Complaint, June 25, 1957—Decision, Nov. 5, 1957

Consent order requiring a furrier in Rockford, Ill., to cease violating the Fur Products Labeling Act by failing to label and invoice certain fur products as required; and by advertising in newspapers which failed to disclose the name of the animal producing certain furs or that the fur in certain products was artificially colored or of inferior quality, or named other animals than those producing the fur in certain products.

Mr. S. F. House for the Commission.
Respondent, *pro se.*

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

The complaint in this proceeding charges that Owens, Inc., a corporation, hereinafter called respondent, has violated the provisions of the Federal Trade Commission Act, the Fur Products Labeling Act, and the Rules and Regulations promulgated thereunder by misbranding and falsely and deceptively invoicing and advertising fur products.

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

The pertinent provisions of said agreement are as follows: Respondent admits 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; respondent waives the requirement that the decision must contain a statement of findings of fact and conclusion of law; respondent waives further procedural steps before the hearing examiner and the Commission, and the order may be altered, modified, or set aside in the manner provided by statute for other orders; respondent waives 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 respondent that it has violated the law as alleged in the complaint.

The hearing examiner having considered the agreement and proposed order and being of the opinion that 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 Owens, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 112 West State Street, Rockford, Illinois.

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

ORDER

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

1. Misbranding fur products by:

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

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

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

(3) That the fur product contains or is composed of bleached, dyed, or 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, ad-

vertised or offered it for sale in commerce, or transported or distributed it in commerce;

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

(b) Setting forth on labels attached to fur products information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder which is intermingled with non-required information.

(c) Failing to set forth on one side of the labels attached to fur products, all the information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder.

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.

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 and as prescribed under the said Rules and Regulations;

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

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

(b) Contains the name or names of any animal or animals other than the name or names provided for in Paragraph 3(a)(1) above.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 5th day of November 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.

Decision

IN THE MATTER OF

GORDON L. VAN DER BOOM ET AL. DOING BUSINESS AS HOME STUDY EDUCATORS

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

Docket 6795. Complaint, May 14, 1957—Decision, Nov. 6, 1957

Consent order requiring a Los Angeles, Calif., correspondence school to cease advertising falsely that its correspondence course in fish, forestry, and wildlife covered essential requirements for State and federal jobs in those fields and that it provided a placement service for students completing its course; and to cease misrepresenting the educational requirements, opportunities for employment and advancement, and starting salaries, among other things.

John J. McNally, Esq., for the Commission.
Henry Junge, Esq., of Chicago, Ill., for respondents.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on May 14, 1957, charging them with having violated the Federal Trade Commission Act by making false and misleading representations concerning their product, a correspondence course of instruction, their business organization, and opportunities afforded purchasers of said product. Respondents entered into an agreement, dated August 12, 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.

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

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

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

1. Respondents Gordon L. Van der Boom, John J. McNaughton and Arnold Heiderich are individuals trading and doing business under the name and style of Home Study Educators, with their office and principal place of business located at 1036–1038 South La Brea Avenue, Los Angeles 19, California.

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

ORDER

It is ordered, That respondents Gordon L. Van der Boom, John J. McNaughton and Arnold Heiderich, individually and doing business as Home Study Educators, or under any other name, their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of their course of instruction pertaining to fish, forestry and wildlife, or any other similar course, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly:

(a) The said course of instruction is a complete course or that it covers the essential requirements for all positions with the fish,

forestry or wildlife departments of each of the States of the United States or of the United States Government, or misrepresenting in any manner the extent or coverage of said course of instruction.

(b) That testimonials set out in respondents' advertisements are unbiased or unsolicited when such is not the fact.

(c) That respondents provide a placement service for those completing their course of instruction or render service to them in obtaining positions in cases involving civil service employment.

(d) That an expert on fish, forestry or wildlife is on respondents' staff, unless such is the fact.

(e) That respondents provide consultation service or personal counseling to those who purchase their course of instruction, unless such is the fact.

(f) That their course of instruction is offered at a saving unless the represented saving is based upon the price at which the course of instruction is usually and customarily sold.

2. Misrepresenting the necessary basic educational requirements or experience, or lack of either of them, to qualify persons for positions referred to in 1(a) above.

3. Misrepresenting the openings and opportunities for employment in the various fields referred to in 1(a) above.

4. Misrepresenting the salaries and opportunities for advancement for any of the types of employment referred to in 1(a) above.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 6th day of November, 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

THE SWEETS COMPANY OF AMERICA, INC.

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

Docket 6460. Complaint, Nov. 21, 1955—Decision, Nov. 7, 1957

Consent order requiring a candy manufacturer in Hoboken, N.J., to cease violating Sec. 2(d) of the Clayton Act by making special allowances to certain customers—such as those granted for promotion of anniversary sales to food chains in Philadelphia, Pa., and Washington, D.C.—without making them available to competing customers on proportionally equal terms.

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, The Sweets Company of America, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its office and principal place of business located at Hoboken, New Jersey.

PAR. 2. Respondent is now and has been engaged in the manufacture, sale and distribution of candy products, the principal ones of which are sold under the trade name "Tootsie." Respondent sells its candy products through brokers, distributors, and direct to retail customers, including retail chain store organizations. Sales made by respondent of its products are substantial, amounting in the year 1954 to $12,486,065.

PAR. 3. In the course and conduct of its business respondent has engaged and is now engaging in commerce, as "commerce" is defined in the Clayton Act as amended. Respondent sells and causes its products to be transported from the respondent's principal place of business, located in New Jersey, to customers located in other States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business in commerce, respondent 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 the sum of $800 to the Food Fair Stores, Inc., of Philadelphia, Pennsylvania, and $100 to the Giant Food Shopping Center, Inc., of Washington, D.C., as compensation or as an allowance for advertising or other service or facility furnished for sale or sale of products sold them by the respondent. Such compensation 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., or Giant Food Shopping Center, Inc.

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

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

Becker, Ross & Stone, by *Mr. Murray C. Becker*, of New York, N.Y., for respondent.

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 The Sweets Company of America, Inc., a corporation existing and doing business under and by virtue of the laws of the State of Virginia, with its office and principal place of business located at Hoboken, New Jersey.

One hearing was held after which there was, on September 6, 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 agreement further provides that it disposes of all of this proceeding as to all parties; and that the record on which this initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement; that the latter shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the agreement is for settlement purposes only and does not constitute an admission by 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 The Sweets Company of America, Inc., is a corporation existing and doing business under the laws of the State of Virginia, with its office and principal place of business located at Hoboken, New Jersey.

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

ORDER

It is ordered, That respondent The Sweets Company of America, 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 candy 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 candy 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 candy 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 did, on the 7th day of November, 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

HARRY G. KRIEGEL TRADING AS SUPERIOR PRODUCTS

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

Docket 6670. Complaint, Apr. 8, 1957—Decision, Nov. 7, 1957

Order requiring a seller in New York City to cease representing falsely in advertisements in newspapers and periodicals and material supplied to his distributors that attachment of his colored sheet of transparent plastic designated "Color V" to a black-and-white television set would produce the same effect as a color television; would eliminate glare and prevent and relieve eyestrain caused by viewing television; and was an electronic device.

Mr. Brockman Horne for the Commission.
Mr. Harry G. Kriegel, of New York, N.Y., *pro se*.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

This proceeding involves charges that respondent Harry G. Kriegel, an individual trading as Superior Products, has violated the Federal Trade Commission Act by using false, misleading, and deceptive advertising by mail to sell and has sold in interstate commerce throughout the country a product designated as "Color V." The complaint was filed April 8, 1957, and was lawfully served thereafter upon respondent, who in due course answered by letter dated July 26, 1957, which was filed and treated as an answer on July 30, 1957, respondent contending, in substance, therein that he was not the owner of Superior Products and that at any rate the sale of said "Color V" screens was discontinued June 1, 1956.

Upon proper order served upon the parties, initial hearing was held in Washington, D.C., whereat Commission's counsel appeared but respondent did not appear or present any evidence in his behalf under his answer or otherwise. Commission's counsel presented evidence in support of his case-in-chief and rested. The hearing examiner thereupon closed the proceeding for the taking of evidence, and Commission's counsel at the close of the hearing having submitted his proposed findings, conclusion and order, respondent was given to and including September 9, 1957, in which to submit his proposed findings, conclusion and order, of which due notice was given. Respondent did not file any such proposals.

Upon due and impartial consideration of the whole record, it is found that the material allegations of the complaint are sustained

by the evidence, the hearing examiner specifically finding the facts as alleged in the several paragraphs of the complaint to be as follows:

Respondent does business as a sole proprietorship, and his office and principal place of business is located at 673 Broadway, New York 12, New York.

Respondent is now, and for some time last past has been, selling and distributing a product designated as "Color V" which is a sheet of transparent plastic upon which is sprayed paint of orange color blending into green at one border and blue at the opposite border and designed to be fastened over the viewing screen of a television set. Respondent sells this product by mail to consumers, and sells, or offers to sell, it to agents and distributors for resale to consumers, throughout the country.

In the course and conduct of his business, respondent causes his product, referred to above, when sold, to be shipped from the State of New York to the purchasers thereof located in various states of the United States and has maintained a course of trade in said products, in commerce, among and between various states of the United States.

In the course and conduct of the business hereinbefore described and for the purpose of inducing the purchase of the aforesaid products in commerce as "commerce" is defined in the Federal Trade Commission Act, respondent, through the use of statements and representations appearing in advertisements inserted in newspapers and periodicals circulated generally among the purchasing public, and in advertising material supplied by respondent to his agents and distributors, has represented, directly or by implication:

1. That by attaching the product "Color V" to a black-and-white television set said television will thereby produce the same visual effect as a color television in that the objects appearing upon the viewing screen will be shown in the same colors as the objects being broadcast.

2. That said product is an electronic device.

3. That the use of said product will eliminate glare from television screens.

4. That the use of said product will prevent and relieve eyestrain caused by viewing television.

The statements and representations hereinabove referred to are false, misleading, and deceptive. In truth and in fact:

1. The attaching of said product to a black-and-white television set does not give the same visual effect as a color television in that

objects appearing upon the viewing screen will not be shown in the same colors as the objects being broadcast.

2. Said product is not an electronic device.

3. The use of said product will not eliminate glare from television screens.

4. The use of said product will not prevent or relieve eye-strain caused by viewing television.

Respondent, by furnishing to its agents and distributors various forms of advertising matter containing the statements referred to hereinbefore, thereby furnishes to said agents and distributors means and instrumentalities by and through which they may mislead and deceive the purchasing public in the respects set out in said paragraphs hereinabove stated.

Respondent, in the conduct of his business, is and has been in substantial competition in commerce with other individuals and with firms and corporations engaged in the sale of the same or like products.

The use by the respondent of the false, misleading, and deceptive statements and representations hereinabove referred to, in connection with the offering for sale of the product "Color V," has had and now has the capacity and tendency to mislead and deceive purchasers and prospective purchasers into the erroneous and mistaken belief that such statements and representations were true and to induce the purchase of substantial quantities of said product because of such erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been and is now being unfairly diverted to respondent from his competitors and injury has been and is now being done to competition in commerce.

There being jurisdiction of the person of respondent, upon the foregoing findings of fact the hearing examiner makes the following conclusions of law:

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

2. The Federal Trade Commission has jurisdiction over all of said respondent's acts and practices which have been hereinabove found to be false, misleading, and deceptive.

3. The public interest in the proceeding is clear, specific, and substantial.

Upon the foregoing findings of fact and conclusions of law, the following order is hereby entered:

ORDER

It is ordered, That respondent Harry G. Kriegel, an individual trading under the name of Superior Products, or under any other name, and respondent's representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of a plastic sheet to be fastened over the viewing screen of a television set, designated as "Color V," or any other product of substantially similar construction or possessing substantially the same characteristics, whether sold under the same or any other name, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That by the use of such product—

(a) In connection with the operation of a black-and-white television set, said television set will thereby produce the same visual effect as a color television set or misrepresenting in any manner the color provided by said product when used in connection with a television set;

(b) Glare will be eliminated from television screens;

(c) Eye strain caused by viewing television will be prevented or relieved.

2. That such product is an electronic device.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner did, on the 7th day of November, 1957, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Harry G. Kriegel, an individual trading as Superior Products, 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

CIMIER WATCH CORP. ET AL.

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

Docket 6703. Complaint, Jan. 8, 1957—Decision, Nov. 9, 1957

Consent order requiring two concerns doing business at the same address in New York City to cease misrepresenting their "Cimier" watches by display cards and posters furnished to jobbers and dealers and by them distributed to retailers, which advertised the watches falsely as "Golden De Luxe," "Jeweled Movement," with "One Year Unconditional Guarantee"; and by the word "jeweled" imprinted on the face of the watches.

Mr. Frederick McManus supporting the complaint.

Mr. Ruben Schwartz and *Mr. Robert W. Adler*, of New York City, for respondents.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on January 8, 1957, charging them with violation of the Federal Trade Commission Act as alleged in said complaint. After service of the complaint, all respondents and their counsel, except AB–Swiss Watch Corporation on September 19, 1957 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 of the issues in this proceeding, without hearing. 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 said agreement contains a provision that the complaint be dismissed as to respondent AB–Swiss Watch Corporation, based on the dissolution of that corporate respondent. This agreement is considered as a joint motion to dismiss as to said respondent and is granted.

In said agreement, respondents Cimier Watch Corporation, a corporation, Irving Abelov and Barnett Shiff, individually and as officers of respondent Cimier Watch Corporation and as copartners trading as Swiss Time Company, 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 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 in 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 provide for appropriate disposition of this proceeding, the order and agreement are hereby accepted and ordered filed upon becoming part of the Commission's decision pursuant to Sections 3.21 and 3.25 of the Rules of Practice and the hearing examiner accordingly makes the following findings for jurisdictional purposes and order:

1. Respondent Cimier Watch Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 1 East 33rd Street, New York, New York.

2. Individual respondents Irving Abelov and Barnett Shiff are officers of corporate respondent Cimier Watch Corp. Said individual respondents formulate, direct and control the acts and practices of said corporate respondent.

3. Swiss Time Company is a partnership in which the individual respondents Irving Abelov and Barnett Shiff are the sole partners. The individual respondents have their office at the same place as that of the corporate respondent.

4. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents executing said agreement. 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, Cimier Watch Corporation, a corporation; and its officers; Irving Abelov and Barnett Shiff, individually and as officers of said corporation, and trading as Swiss Time Company, or under any other name or names, 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 watches, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly:

1. That a watch is a jeweled watch, or that it contains a jeweled movement, unless said watch contains at least seven jewels, each of which serves a mechanical purpose as a frictional bearing.

2. That the cases of watches are gold, unless such is the fact and the gold content is accurately and conspicuously described.

3. That watches are guaranteed without clearly disclosing the nature and extent of such guaranty.

4. That watches are guaranteed, when a service charge is imposed, unless the amount thereof is clearly and conspicuously disclosed.

It is further ordered, That this proceeding be dismissed as to respondent AB-Swiss Watch 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 did, on the 9th day of November, 1957, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents Cimier Watch Corp., a corporation, Irving Abelov and Barnett Shiff, individually and as officers of said corporation and as copartners trading as Swiss Time Company shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

A. A. WYN, INC., ET AL.

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

Docket 6792. Complaint, May 13, 1957—Decision, Nov. 9, 1957

Consent order requiring book distributors in New York City to cease selling newly titled reprints without adequate disclosure of the titles under which the books were originally published.

Mr. John W. Brookfield, Jr. supporting the complaint.
Mr. Jerome N. Wanshel, of New York, N.Y., for respondents.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on May 13, 1957, charging them with the use of unfair and deceptive acts and practices and unfair methods of competition, in commerce, in violation of the Federal Trade Commission Act, by failing to adequately disclose that certain previously published books, which were sold and distributed by respondents under new titles, are reprints of such original publications. After being served with said complaint, respondents appeared by counsel and filed their answer thereto. Thereafter said respondents entered into an agreement, dated August 26, 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 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 consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

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

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

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

1. Respondent A. A. Wyn, Inc., is a corporation organized and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 23 West 47th Street, New York 36, New York. Respondent Aaron A. Wyn is President of corporate respondent A. A. Wyn, Inc., and respondent Rose Wyn is Secretary of said corporate respondent. Both the individual respondents have their place of business and office at the same address as that of the corporate respondent. The individual respondents formulate and direct the policies and practices of said corporate respondent and are responsible for the operation and management thereof.

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

ORDER

It is ordered, That the respondents A. A. Wyn, Inc., a corporation and its officers, and Aaron A. Wyn and Rose Wyn, 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 books in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using or substituting a new title for, or in place of, the original title of a reprinted book unless a statement which reveals the

original title of the book and that it has been previously published thereunder appears in clear, conspicuous type upon the front cover and upon the title page of the book, either in immediate connection with the new title or in another position adapted readily to attract the attention of a prospective purchaser.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner did, on the 9th day of November, 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

KAY JEWELRY STORES, INC., ET AL.

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

Docket 6445. Complaint, Nov. 17, 1955—Decision, Nov. 12, 1957

Order requiring a corporation furnishing supervision and management services to a chain of approximately 110 retail jewelry stores throughout the United States, and its wholly owned sales subsidiary, with principal place of business in Washington, D.C., to cease falsely representing the usual retail price of their "Lachine" watches, which sold at retail for $19.75, by affixing to them price tags ranging from $33.75 to $125, and by making the same false representations in advertisements in newspapers.

Frederick McManus, Esq., for the Commission.

Lord, Day & Lord, by *Charles W. Merritt, Esq.*, of New York City and *Simon Hirshman, Esq.*, of Washington, D.C., for respondents.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

STATEMENT OF THE CASE

On November 17, 1955, the Federal Trade Commission issued its complaint against Kay Jewelry Stores, Inc., Fairfax Distributing Company, Cecil D. Kaufmann,[1] Joel S. Kaufmann,[1] David R. Trattner, Benjamin B. Golding and Simon Hirshman, individually and as officers of said corporations (all hereinafter collectively called respondents), charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act (hereinafter called the Act), 15 U.S.C. 41, *et seq.* Copies of said complaint together with a notice of hearing were duly served upon respondents.

The complaint alleges in substance that respondents, by attaching price tags to certain watches, falsely represented that such prices were the usual and regular retail prices when in fact they were not, thereby placing in the hands of retailers a means and instrumentality for deceiving and misleading the purchasing public, and by the dissemination of certain newspaper advertisements containing "original" prices and savings to be effectuated, falsely represented such prices to be the regular and usual retail prices and the savings to be effectuated. Respondents appeared by counsel and filed a

[1] Incorrectly referred to as Kaufman in the caption of the complaint and other documents.

joint answer admitting the corporate, commerce and competition allegations of the complaint, the furnishing of such price tags for said watches, and the dissemination of said advertisements, but denying all alleged violations of the Act.

Pursuant to notice, hearings were thereafter held before the undersigned hearing examiner duly designated by the Commission to hear this proceeding on January 30, May 22, August 13 and 14, September 18, November 19 and December 3, 1956 in Washington, D.C. and Philadelphia, Pennsylvania. All parties were represented by counsel, participated in the hearings, and afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence pertinent to the issues, to argue orally upon the record and to file proposed findings of fact, conclusions of law, and orders, together with reasons therefor. At the conclusion of the case-in-chief, counsel for respondents made several motions to dismiss portions of the complaint, which motions were denied. All parties waived oral argument and pursuant to leave granted, thereafter filed proposed findings of fact, conclusions of law, and orders, together with reasons in support thereof. All such findings of fact and conclusions of law proposed by the parties, respectively, not hereinafter specifically found or concluded, are herewith specifically rejected.[2]

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

FINDINGS OF FACT

1. The Business of Respondents

The complaint alleged, respondents admitted, and it is found that Kay Jewelry Stores, Inc. (hereinafter called Kay), is a Delaware corporation engaged in the furnishing of supervision and management services to a chain of approximately 110 retail stores throughout the United States in each of which it is the owner of varying amounts of capital stock. Fairfax Distributing Company (hereinafter called Fairfax), is a Delaware corporation wholly owned and controlled by Kay. The office and principal place of business of both Kay and Fairfax is 702 H Street, N.W., Washington, D.C. Respondents Cecil D. Kaufmann, Joel S. Kaufmann, David R. Trattner, Benjamin B. Golding and Simon Hirshman are officers and directors of Kay and direct, formulate and control its policies, acts and practices. Cecil D. Kaufmann and Joel S. Kaufmann are president and vice president, respectively, of Fairfax and direct, formulate and control its policies, acts and practices. The address of Mr.

[2] 5 U.S.C. §1007(b).

Hirshman, Secretary of Kay and a practicing attorney and member of the District of Columbia Bar, is 917 Woodward Building, Washington, D.C. The respective addresses of Benjamin B. Golding and David R. Trattner are 985 Main Street, Hartford, Connecticut, and 510 Commercial Exchange Building, Los Angeles, California. The address of all other individual respondents is the same as that of the corporate respondents.

II. Interstate Commerce and Competition

The complaint alleged, respondents admitted as hereinafter qualified, and it is found, that they are now and have been for some years engaged in the sale and distribution to retail jewelers of jewelry of all kinds, including watches. Kay does not sell jewelry but furnishes supervisory and management services to the chain of Kay retail stores located throughout the United States and wholly owns Fairfax, which purchases and sells jewelery to such stores throughout the United States.[3] Among the watches sold and distributed by respondents have been watches sold and distributed under the trade name "Lachine." The individual respondents did not personally participate in the sale and distribution of the Lachine watches except in their capacity as officers and directors of Kay and Fairfax. In the regular and usual course and conduct of their business, respondents sold and caused to be transported from their place of business in the District of Columbia said Lachine watches to retail customers located in other states and in the District of Columbia for resale to the purchasing public. Respondents maintain and have maintained a constant and substantial course of trade in watches in commerce among and between the various states of the United States and the District of Columbia. In the course and conduct of their business, respondents have been at all times mentioned herein in substantial competition in commerce with other corporations, firms and individuals likewise engaged in the sale and distribution of watches.

III. The Unlawful Practices

A. *The Issues*

The principal issues in this case are whether respondents, by affixing various price tags to the Lachine watches before selling them to the public, falsely represented the usual and regular retail prices of

[3] Mr. Taylor, the general merchandising manager of Kay, testified that the managers of the various retail stores took their orders and directions from him. As sole owner of both Fairfax and Advertising Associates, Inc., the corporation which prepared the advertising referred to hereinafter, it cannot be disputed seriously that Kay, as principal, is responsible for their actions.

such watches, and by disseminating certain newspaper advertisements containing claimed original prices of said watches and savings to be effectuated by purchasers, falsely represented the usual and regular prices of said watches and the savings to be effectuated.

B. *The False Representations*

1. The Preticketed Prices

There is no dispute in the record that respondents caused to be affixed to the Lachine watches before they were sold to the public price tags ranging from $33.75 to $125.00, which watches were offered for sale at $19.75, and caused to be disseminated in various newspapers throughout the country advertisements containing, among other things, the following statements:

KAY SAVES YOU $14 TO $80
ON FAMOUS WATCHES. ORIG.
$33.75 TO $100 KAY'S PRICE
$19.75

The Famous Maker of These Fine Watches has retired from business. He offered the 90 Kay Jewelry Stores his entire stock of watches at a fraction of their cost.

We promised not to mention this famous maker's name.

Respondents conceded the use of the aforesaid price tags and advertisements but, contrary to the allegations of the complaint, contended that such prices were the usual and regular retail prices and consequently the represented savings were also truthful and factual.

During October 1954, respondents entered into a contract with Samuel Lashoff of Philadelphia under the terms of which they purchased his entire stock of Lachine watches, some 4,900 watches and 766 watch movements. Mr. Lashoff for some years had been engaged in the business of importing Swiss watches imprinted with his own trade name "Lachine" and selling them wholesale to various retail outlets in the Philadelphia area. Mr. Lashoff decided to retire from the business and sold his entire stock to respondents through Fairfax for $34,750. Included in the sale were a number of boxes and price tags previously used by Mr. Lashoff, with prices ranging from $27.50 to $125.00.

Among other things, the contract between Lashoff and Fairfax contained a provision permitting Fairfax for a period of one year to purchase additional watches from other sources and use the name Lachine thereon. Pursuant to this provision, respondent purchased approximately 846 watches from the Greygor Watch Company of New York City which were included in the subsequent sale of the Lachine watches to the public. In March 1955 the above-found ad-

vertisement was run in various newspapers throughout the United States and respondents, through approximately 65 of the Kay retail jewelry stores, engaged in the sale to the public of the Lachine watches, including those purchased from Greygor, at the price of $19.75 each. Respondents preticketed the watches purchased from Mr. Lashoff with price tags ranging from $33.75 to $125.00, and the watches purchased from Greygor with price tags ranging from $39.75 to $59.50.

The record establishes that until about 1952 Mr. Lashoff advertised his Lachine watches for sale by retailers at suggested retail prices ranging from $27.50 to $100.00, and delivered Lachine watches to his retail customers with price tags affixed thereto ranging from $27.50 to $125.00. The lowest suggested retail price of $27.50 applied to all of the 7-jewel watches sold by Mr. Lashoff. Included among the purchase by respondents were approximately 1,360 7-jewel watches. The remainder of the watches and movements purchased by respondents from Lashoff contained 17 jewels and were preticketed with prices ranging from $45.00 to $125.00. The record establishes that certain of the prices tagged and advertised were not the usual and regular retail prices of the Lachine watches. However, even assuming *arguendo* that the usual and regular retail price of the Lachine 7-jewel watches was $27.50, respondents preticketed and advertised these 7-jewel watches at $33.75. This of course even under the assumption was not their usual and regular retail price. Respondents contend that because they added to such watches a metal band costing them $2.00 which had a retail value of $6.00 or more, and Mr. Lashoff sold these watches with only straps or cords attached thereto, the retail value of the watches was correspondingly increased $6.00 or more.

The issue of value was inserted in the case by counsel supporting the complaint, who contended that the preticketing not only placed in the hands of retailers a means and instrumentality for deceiving the public as to price but also as to value. The Commission has held recently in affirming the undersigned that the issue of value is irrelevant in a fictitious pricing case.[4] As pointed out therein, the issue of whether respondents have falsely represented the usual and regular *price* of their products has nothing to do with the *value* of such products. Even assuming the value to be equal to the preticketed price casts no light upon the issue of whether or not such prices are the usual and regular prices of the products in question.

[4] *Rudin & Roth*, Docket No. 6419 (1956); *Neuville, Inc.*, Docket No. 6405 (1956), and cases cited therein.

Unfortunately in this proceeding, because the complaint alleged that the fictitious pricing furnished an instrumentality for deception as to value, as well as price, considerable evidence was received from both parties concerning value, which upon reflection and for the reasons stated is found to be irrelevant. No finding is made that respondents falsely represented the value of their watches or furnished an instrumentality for deception of the public as to such value.

However, the record clearly establishes that respondents' preticketed prices were not the usual and regular retail prices of the Lachine watches. While the Lachine 7-jewel watches may have been sold for less, the record establishes beyond question that they were never sold for more than the ticketed price of $27.50, and therefore respondents' representation that the usual and regular price for such watches was $33.75 was false. The fact that respondents added a metal band to such watches which may have increased their retail value to $6.00 or more is no justification or defense for misrepresenting that such watches usually and regularly retail for $33.75. This contention is typical of the confusion which arises when the issues of price and value are not distinguished. As previously found, value is irrelevant. By preticketing these watches with a price of $33.75, respondents represented to the public that that was the usual and regular retail price when in truth and in fact such watches had never been sold at retail for more than $27.50. Although not essential, it is interesting to note that Mr. Lashoff, in a radio commercial,[5] offered Lachine watches for sale from $27.50 to $100.00 including "free" a matching watch band, which would negate respondents' argument even if relevant.

Additional evidence was offered that other preticketed prices of the Lachine watches were not the usual and regular prices. One of the exhibits received in evidence was a Lachine watch preticketed by respondents at $100.00. As previously found, these price tickets had been used by Mr. Lashoff and furnished by him to respondents. The record establishes that while this was one of Mr. Lashoff's suggested retail prices, it was not the usual and regular price at which such watches were sold at retail. Several of Mr. Lashoff's retail customers called as witnesses by counsel supporting the complaint testified that they sold this watch at prices ranging from $50.00 to $75.00, but never sold it for $100.00.

Substantially all of the retail jewelers called in support of the complaint testified that the usual and general practice in this indus-

[5] Commission Exhibit

try in selling watches, including Lachine, was to use a markup referred to in the trade as "Keystone." [6] Keystone was defined as doubling the price paid by the jeweler to the wholesaler. In other words, if the jeweler paid a wholesaler a price of $50.00 he normally would retail the watch at $100.00. The record establishes that the wholesale price of the watch preticketed $100.00 by respondents and Mr. Lashoff was $37.50, which would result in a Keystone retail price of $75.00. Some of the witnesses could not recall the specific prices at which they had sold various Lachine watches, but testified that their usual and regular price was Keystone, or double the amount they paid for the watch. Lashoff himself testified that while he normally did not sell his Lachine watches at retail, upon the occasions when he did so he sold them for 20% to 25% off of his tagged or suggested retail price. With reference to the watch tagged $100.00, this would result in a price of $75.00 to $80.00, or approximately Keystone.

At no point in the record did Mr. Lashoff claim that his tagged prices were the usual and regular retail prices of Lachine watches, or anything more than suggested retail prices.[7] The record establishes with respect to substantially all of the various models of Lachine watches purchased by respondents that, based upon Lashoff's price to his retailers, the preticketed price was substantially in excess of Keystone. Other witnesses called by counsel supporting the complaint who were qualified as experts on retail prices testified that the retail price of the particular watch ticketed $100.00 would vary from $50.00 to $85.00. While their testimony would not establish the usual and regular retail price of Lachine watches, inasmuch as they never handled or sold them, it tends to corroborate the testimony of the retail jewelers who did sell the Lachine watches. The foregoing facts, together with the facts previously found concerning the 7-jewel Lachine watch, as well as the facts hereinafter found concerning the Greygor watches, establish that the preticketed prices used by respondents were not in fact the usual and regular retail prices of said watches. It is well settled that such fictitious pricing constitutes an unfair and deceptive practice and an unfair method of competition which the Commission and the courts repeatedly have held to be unfair and in violation of the Act.[8]

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[6] Messrs. Lynn and Taylor, officials of Fairfax and Kay, respectively, and called by respondents as experts, admitted that the customary markup in the trade was Keystone.

[7] The record also reveals that Mr. Lashoff told Mr. Lynn that the prices on the tags were those at which Mr. Lashoff *asked* his retailers to sell.

[8] *Neuville, Inc.*, Docket No. 6405 (1956); *Rudin & Roth*, Docket No. 6419 (1956); *The Orloff Company, Inc.*, Docket No. 6184 (1956), and cases cited therein.

Counsel supporting the complaint also contended that Lashoff's suggested retail prices were based upon retail prices prevailing in 1951 and the years prior thereto, and that because lower retail prices prevailed in 1955, the use of such price tags by respondents falsely represented the usual and regular retail prices in 1955. Without passing upon the merits of this contention, suffice it to say that the record does not support the factual finding proposed by counsel supporting the complaint. There is little if any substantial evidence in the record concerning this alleged price decline. If anything, the record would support a finding that the price of such watches had not declined.

2. The Advertised Prices and Savings

As previously noted, respondents advertised the Lachine watch sale in newspapers throughout the country. This advertisement stated that these "Famous" watches were originally $33.75 to $100.00, were being sold at $19.75, and purchasers saved from $14.00 to $80.00. The complaint alleged both representations to be false. The Commission recently has held that an advertisement substantially identical to the words used herein, namely, "Orig. $33.75 to $100.00," was a representation that such prices were the usual and regular retail prices of the product in question.[9] For the same reasons set forth above in connection with the preticketed prices, respondents' advertising representations concerning the usual and regular prices of the watches are false.

In addition, as previously found, the watches included in this promotion were not only those purchased from Mr. Lashoff but included some 846 additional watches purchased from Greygor but labelled with the Lachine name. The price representations are also false with respect to these watches purchased from Greygor. Respondents' defense with respect to this group of watches has even less merit than with respect to those purchased from Lashoff. With respect to Greygor watches, respondents could not even argue that the prices were those usually and regularly charged for Lachine watches, because they had never been handled by Lashoff or sold by his retailers at any price. Respondents could only offer proof that the Greygor watches were comparable in quality and value to some of the watches in the Lachine line but, as previously found, quality and value are irrelevant to a representation concerning the usual and regular retail price.

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[9] *American Broadloom Carpet Company*, Docket No. 6271 (1956).

The above-quoted advertisement of respondents which was received in evidence as Commission Exhibit 1 contains a representation which, while not alleged in the complaint, was patently false in view of the undisputed facts in the case. The advertisement refers to all of the watches on sale as "Famous Watches" and also states, "The Famous Maker of these fine watches has retired from business. We promised not to mention this Famous Maker's name. Don't confuse these with ordinary watches. They are one of the finest makes in the world today!" The foregoing statements are obviously untrue with respect to the Greygor watches which were stamped with the Lachine name and mingled with the rest of the watches included in the sale. The statements that they were famous watches secured at a fraction of their cost from a famous maker who had retired from business, whose name had been promised not to be mentioned, and that they were not ordinary watches but one of the finest makes in the world, were uniformly untrue and false. As previously found, respondents had secured permission from Mr. Lashoff to purchase and label additional watches with the Lachine name. This, however, does not make the foregoing representation any less false. These representations, for reasons not explained in the record, were not alleged in the complaint nor litigated at the hearings and accordingly are not in issue herein and are not included in the order hereinafter. However, they unquestionably establish the falseness of respondents' representation as to the usual and regular price of these watches and the savings to be effectuated by the purchasers. Inasmuch as neither Mr. Lashoff nor respondents had ever sold these particular watches before, any representation concerning their usual and regular retail price must of necessity be false.

The reference in the advertisement to the original price of these "famous watches, one of the finest makes in the world," obviously could only refer to those watches acquired from the "famous maker who had retired from business," and could not by any stretch of the imagination be truthful representations with respect to watches acquired from other sources. The record establishes that respondents affixed price tags ranging from $39.75 to $59.50 to these so-called Lachine watches purchased from Greygor. A witness from the Greygor Company called by respondents testified that Greygor had never sold these particular styles to Fairfax before or since. Experts called by counsel supporting the complaint testified that one of these Greygor watches received in evidence as an exhibit would regularly at retail prices ranging from $19.95 to $28.50. Regardless

of at what price Greygor watches would normally retail, respondents' representation that the usual and regular retail prices of these watches were from $39.75 to $59.50 was false.[10]

The same conclusions apply with respect to respondents' representations concerning the savings to be effectuated, namely, $14.00 to $80.00 per watch, which merely computes for the customer the arithmetical differences between the claimed original prices and the sale price. Inasmuch as the prices represented as the usual and regular prices have been found to be false, it follows that the represented savings based thereon must also be false. The same facts which establish the falseness of the representation of the usual and regular retail price of the Lachine watches establish the claimed savings to be false, and the same facts which establish the falseness of the representation of prices with respect to the Greygor watches equally disprove the claimed savings thereon. Normally, of course, representations concerning regular and usual prices refer to those prices at which a respondent's products are regularly and usually sold at retail. Here, however, because respondents had never previously sold Lachine watches, and because they had acquired these watches from the former wholesaler thereof, as made clear by their advertising, the original usual and regular prices referred to must of necessity have been those of Mr. Lashoff. With respect to the Greygor watches, the representation was doubly false in that it falsely represented the source as well as the usual and regular retail prices.

C. *Respondents' Contentions and Defenses*

In addition to denying the false representations previously found, respondents also contend that no order should be issued because the proceeding is moot, inasmuch as all of the Lachine watches have now been sold. This contention is without merit. It is well established that even the discontinuance and abandonment of the manufacture and sale of a product does not deprive the Commission of its discretion to issue a cease and desist order against future violations of the Act, especially in the absence of a strong showing that

[10] Even assuming, contrary to the decisional law, the propriety of the price tags attached by respondents to the Greygor watches, their own evidence reveals, at least in one instance, that such prices were in excess of the "usual and regular" prices or retail values contended for by respondents. One of the Greygor watches cost respondents $13.05. It was undisputed, including evidence from respondents' witnesses, that the customary mark-up was 50% by the wholesalers and 100% by the retailer, plus in some cases an additional 10% to cover either taxes or trade-in allowances. Applying this to the $13.05 results in a net of $42.00, yet respondents placed a $55.00 price tag on that Greygor watch.

the practices are not likely to be resumed.[11] Here, respondents have not discontinued the business of selling watches, and the mere fact that in all probability they will not again sell Lachine watches would not in any way prevent them from engaging in the same type of representations with respect to other watches, now handled or subsequently acquired.

Respondents also contend that because counsel supporting the complaint offered no proof of participation by the individual respondents in the conduct complained of other than their status as officers and directors of Kay and Fairfax, any order issued should not be against such individual respondents. The complaint alleged and the answer admitted that the individual respondents are officers and directors of the corporations and direct, formulate and control their policies, acts and practices. It is well settled that under such circumstances the Commission properly may include such individuals in its cease and desist orders.[12]

D. *Concluding Findings*

A preponderance of the reliable, substantial and probative evidence in the entire record convinces the undersigned and accordingly it is found that respondents, by affixing price tags to the Lachine and Greygor watches in the course and conduct of their business in commerce, represented that such prices were the usual and regular retail prices when in truth and in fact such representations were false, misleading and deceptive, and by means of such practices, placed in the hands of retailers a means and instrumentality whereby they might deceive and mislead the purchasing public as to the usual and customary retail prices of respondents' products. It is further concluded and found that respondents, by disseminating in the course and conduct of their business in commerce newspaper advertisements containing original prices and savings to be effectuated, represented that such prices were the usual and regular retail prices and that such savings were available to purchasers, when in truth and in fact such representations were false, misleading and deceptive.

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[11] *F.T.C. v. Goodyear Tire & Rubber Co.*, 304 U.S. 257 (1938); *F.T.C. v. Wallace*, 75 F. 2d 733 (C.A. 8, 1935); *Perma-Maid Co. v. F.T.C.*, 121 F. 2d 282 (C.A. 6, 1941); *Philip R. Park v. F.T.C.*, 136 F. 2d 428 (C.A. 9, 1943); *Gelb v. F.T.C.*, 144 F. 2d 580 (C.A. 2, 1944); *Deer v. F.T.C.*, 152 F. 2d 65 (C.A. 2, 1945); *Marlene's Inc. v. F.T.C.*, 216 F. 2d 556 (C.A. 7, 1954).

[12] *Standard Education Society v. F.T.C.*, 302 U.S. 12 (1937); *Standard Distributors v. F.T.C.*, 211 F. 2d 7 (C.A. 2, 1954).

E. *The Effect of the Unlawful Practices*

The acts and practices of respondents as hereinabove found have had and now have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the usual and regular retail prices of respondents' watches and thereby induce the purchase of substantial quantities thereof. As a result, substantial trade in commerce has been and is being unfairly diverted to respondents from their competitors, and substantial injury has been and is being done to competition in commerce.

CONCLUSIONS OF LAW

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

2. The acts and practices of respondents hereinabove found are all to the prejudice and injury of the public and of their competitors and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Act.

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

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

ORDER

It is ordered, That respondents, Kay Jewelry Stores, Inc., a corporation, and its officers, and Cecil D. Kaufmann, Joel S. Kaufmann, David R. Trattner, Benjamin B. Golding and Simon Hirsham, as officers of said corporation, and Fairfax Distributing Company, a corporation, and its officers, and Cecil D. Kaufmann and Joel S. Kaufmann, as officers thereof, 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 watches or other merchandise in commerce, as "commerce" is defined in the Act, do forthwith cease and desist from:

1. Representing 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; and

2. Representing directly or by implication the savings to be effectuated by purchasers by means of prices represented as the usual

and regular retail prices of merchandise which are in excess of the prices at which such merchandise is usually and regularly sold at retail, or representing directly or by implication that any savings are afforded to purchasers of respondents' merchandise in excess of those actually afforded.

ON APPEAL FROM INITIAL DECISION

Per Curiam:

The issues raised on this appeal are essentially the same as those which were before the Hearing Examiner and considered by him in his initial decision. We are of the opinion that there is no error in his holding that the practices in question constitute a violation of Section 5 of the Federal Trade Commission Act and that an order to cease and desist should issue.

Illustrative of misrepresentation of usual and regular price and savings to purchasers, for instance, is the matter concerning 7-jewel watches. From the record it seems clear that many of the watches involved, namely, those which bore retail price tags of $33.75 and were advertised by respondents as originally selling at that price, had never sold for more than a retail price of $27.50. As emphasized by the Hearing Examiner in this connection, the basic issue presented relates to the "usual and regular price" of the products rather than to their value. Assuming that the addition of metal bracelets by respondents would increase the retail value of these watches, it is still apparent that the watches had not been sold by respondents or any one else for more than a previously preticketed price of $27.50, and that there had been established no original or usual and regular price of $33.75.[1]

The order of the Hearing Examiner does require modification, however, insofar as it is directed at named respondents in their individual capacities as distinguished from their capacities as officers of the corporate respondents. The Hearing Examiner based his conclusion of individual liability upon the fact that the complaint alleged and the answer admitted that the individual respondents are officers and directors of the corporations, and that said individuals formulate, direct and control the policies, acts and practices of the corporate respondents. The record is devoid of any other evidence or showing of circumstances to support a conclusion that individual liability should attach.

We do not consider the foregoing facts alone sufficient justification in this instance for including the officer respondents as re-

[1] Cf. In the Matter of American Broadloom Carpet Company, et al., Docket No. 6271 (1956).

spondents in their individual capacities. The Commission has wide discretion in determining the necessity of attaching individual liability to insure the full effectiveness of an order to cease and desist. But where there is no record evidence showing justification and where "no other circumstances appear pointing to the necessity of directing the order against these parties in their individual as distinguished from their official capacities,"[2] their inclusion as individuals should not be approved.[3]

As modified in accordance with this opinion, the initial decision is adopted as the decision of the Commission. An appropriate order will be entered.

FINAL ORDER

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

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

It is ordered, That, except to the extent indicated in the opinion, the appeal of respondents be, and it hereby is, denied.

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

"*It is ordered*, That respondents, Kay Jewelry Stores, Inc., a corporation, and its officers, and Cecil D. Kaufmann, Joel S. Kaufmann, David R. Trattner, Benjamin B. Golding and Simon Hirsham, as officers of said corporation, and Fairfax Distributing Company, a corporation, and its officers, and Cecil D. Kaufmann and Joel S. Kaufmann, as officers thereof, 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 watches or other merchandise in commerce, as 'commerce' is defined in the Act, do forthwith cease and desist from:

"1. Representing 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; and

"2. Representing directly or by implication the savings to be effectuated by purchasers by means of prices represented as the usual

[2] In the Matter of Wilson Tobacco Board of Trade, Inc., et al., Docket No. 6262 (1956).

[3] Cf. In the Matter of Neuville, Inc., et al., Docket No. 6405 (1956); In the Matter of Maryland Baking Company, et al., Docket No. 6327 (1956).

and regular retail prices of merchandise which are in excess of the prices at which such merchandise is usually and regularly sold at retail, or representing directly or by implication that any savings are afforded to purchasers of respondents' merchandise in excess of those actually afforded."

It is further ordered, That the findings, conclusion and order, as modified, contained in the initial decision be, and they hereby are, adopted as those of the Commission.

It is further ordered, That respondents, Kay Jewelry Stores, Inc., a corporation, and Cecil D. Kaufmann, Joel S. Kaufmann, David R. Trattner, Benjamin B. Golding and Simon Hirsham, as officers of said corporation, and Fairfax Distributing Company, a corporation, and Cecil D. Kaufmann and Joel S. Kaufmann, 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, as modified.

IN THE MATTER OF

THE BORDEN COMPANY ET AL.

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

Docket 6737. Complaint, Mar. 8, 1957—Decision, Nov. 13, 1957

Consent order requiring a manufacturer and processor of fluid milk and other dairy products and two of its subsidiaries—one the successor of the other in handling such products in the areas concerned and with an annual business therein of approximately $14,000,000—to cease discriminating in price in violation of Sec. 2(a) of the Clayton Act through charging customers in Wilmington, Del., for fluid milk prices substantially lower than those charged customers in Pennsylvania and New Jersey, and also through giving favored customers cash purchase discounts of 2%.

Before *Mr. Frank Hier*, hearing examiner.

Mr. Lewis F. Depro for the Commission.

Mr. Cecil I. Crouse and *Dewey, Ballantine, Bushby, Palmer & Wood*, by *Mr. John E. F. Wood*, of New York City, for The Borden Co.

Fox, Rothschild, O'Brien & Frankel, by *Mr. Daniel Lowenthal*, of Philadelphia, Pa., for Sylvan Seal Milk, Inc. and 612 Corporation.

COMPLAINT

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

PARAGRAPH 1. Respondent The Borden Company, sometimes hereinafter referred to as respondent Borden, is a corporation organized and existing under the laws of the State of New Jersey, with its principal office and place of business located at 350 Madison Avenue, New York, New York.

Respondent Sylvan Seal Milk, Inc., sometimes hereinafter referred to as respondent Pennsylvania corporation, is a corporation organized and existing under the laws of the State of Pennsylvania, with its principal office and place of business located at 612 South 24th Street, Philadelphia, Pennsylvania. Said respondent was incorporated on April 13, 1956.

Respondent 612 Corporation, sometimes hereinafter referred to as respondent Delaware corporation, is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 612 South 24th Street, Philadelphia, Pennsylvania. Said respondent was incorporated in January 1932, as Sylvan Seal Milk, Inc., and on or about May 1, 1956, its name was changed to 612 Corporation.

PAR. 2. Respondent Borden has been and is now engaged, throughout the United States, in the purchase, manufacture, processing, sale and distribution of fluid milk and other dairy products including, but not limited to, cheese, cream, buttermilk, chocolate milk and ice cream.

Respondent 612 Corporation, under the name of Sylvan Seal Milk, Inc., a Delaware corporation, from 1932 to 1956, has been engaged in the purchase, manufacture, processing, sale and distribution of fluid milk and other dairy products. Its plant has been and is now located at 612 South 24th Street, Philadelphia, Pennsylvania.

Respondent Pennsylvania corporation has been since on or about May 1, 1956, and is now operating the business of the purchase, manufacture, processing, sale and distribution of fluid milk and other dairy products, which business prior to that time was operated by respondent Delaware corporation.

Said respondents have sold and distributed and respondents Borden and Pennsylvania corporation now sell and distribute fluid milk and other dairy products, at wholesale, to supermarkets and other retail outlets including grocery stores. The annual sales of respondents Delaware and Pennsylvania corporations have approximated $14,000,000.

PAR. 3. As a result of negotiations beginning in 1955, respondent Borden on or about April 13, 1956, acquired ownership and control of Sylvan Seal Milk, Inc., of Delaware, through the acquisition of all property, assets and rights of the latter, and on or about May 1, 1956, caused the name of the said Sylvan Seal Milk, Inc., of Delaware to be changed to respondent 612 Corporation.

Also on or about May 1, 1956, respondent Borden caused to be organized under the laws of the State of Pennsylvania the respondent Sylvan Seal Milk, Inc., of Pennsylvania, which is a wholly owned and controlled subsidiary of respondent Borden.

The business formerly conducted by Sylvan Seal Milk, Inc., of Delaware has been since about May 1, 1956, conducted by respondent Sylvan Seal Milk, Inc., of Pennsylvania. Respondent Borden has through ownership of the business exercised authority and con-

trol over said business by formulating and directing the policies and operations thereof, and has entered into contracts with the principal officers of the said Sylvan Seal Milk, Inc., of Delaware, providing for their employment by respondent Borden and their continuation in the business.

PAR. 4. Respondents in the course and conduct of their said business are engaged in commerce as "commerce" is defined in the Clayton Act in that they sell and distribute fluid milk and other dairy products to purchasers thereof located in states other than the state of origin of shipment and cause such products, when sold, to be shipped and transported from their place of business in the state of origin to purchasers located in other states. There is now and has been a constant course and flow of trade and commerce in such products between respondents in the state of origin and purchasers located in states other than the state of origin and respondents are, therefore, subject to the jurisdiction of the Federal Trade Commission.

PAR. 5. In the course and conduct of their said business respondents have been, and respondents Borden and Pennsylvania corporation are now, in competition with others in the sale and distribution in commerce of fluid milk and other dairy products, except as such competition has been substantially lessened by the pricing practices of respondents hereinafter alleged.

Some of the respondents' customers are in competition with each other and with customers of competitors of respondents in the purchase and resale of fluid milk and other dairy products.

PAR. 6. Respondents, either directly or indirectly, have been and respondents Borden and Pennsylvania corporation are now discriminating in price between different purchasers of fluid milk by selling such products to some purchasers at substantially higher prices than they sell such products of like grade and quality to other purchasers, some of whom are engaged in competition with the less favored purchasers in the resale of such products.

For example, since about June 1955, respondents have charged, and respondents Borden and Pennsylvania corporation do now charge, prices for the sale of fluid milk in half gallon and quart containers in the Wilmington, Delaware, area which prices have been and are lower than those charged by said respondents for the sale of fluid milk of like grade and quality to purchasers in Pennsylvania and New Jersey. Such differences in price have ranged as high as 5 to 7½ cents per half gallon or, on a quart basis, from 2½ to 3¾ cents per quart.

As of October 1956, respondents Borden's and Pennsylvania corporation's prices for fluid milk in the Wilmington area were 7 cents less per half gallon than for the same quantity of fluid milk of like grade and quality sold to purchasers in Pennsylvania.

PAR. 7. Respondents have further discriminated, and respondents Borden and Pennsylvania corporation do now discriminate, in price between purchasers by granting discounts for cash of 2% for the sale of fluid milk of like grade and quality to some purchasers and not to others, some of whom, though not receiving the benefit of the cash discount, are nevertheless in competition in the resale of such milk with some of those purchasers who do receive the benefit of a lower price in the form of cash discounts.

PAR. 8. The discrimination in price on the part of respondents being substantial, it is alleged that the effect thereof may be substantially to lessen competition and to tend to create a monopoly in the respective lines of commerce in which respondents and the purchasers receiving the preferential prices are engaged and to tend to prevent, injure and destroy competition between respondents and their competitors and between and among purchasers of such fluid milk from respondents.

PAR. 9. The discriminations in price, as hereinbefore alleged, are in violation of the provisions of Section 2(a) of the Clayton Act, as amended by the Robinson-Patman Act.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of the Clayton Act, subsection (a) of section 2 (U.S.C. Title 15, Sec. 13), as amended by the Robinson-Patman Act, the Federal Trade Commission on March 8, 1957, issued and subsequently served its complaint in this proceeding against respondents The Borden Company, a corporation existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 350 Madison Avenue, New York, New York; Sylvan Seal Milk, Inc., a corporation existing and doing business under and by virtue of the laws of the State of Pennsylvania; and 612 Corporation, a corporation existing and doing business under and by virtue of the laws of the State of Delaware. The office and principal place of business of the last two named respondents is at 612 South 24th Street, Philadelphia, Pennsylvania.

On September 25, 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. Repondent The Borden Company is a corporation existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 350 Madison Avenue, New York, New York.

Respondent Sylvan Seal Milk, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 612 South 24th Street, Philadelphia, Pennsylvania.

Respondent 612 Corporation is a corporation existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 612 South 24th Street, Philadelphia, Pennsylvania.

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

ORDER

It is ordered, That respondents Sylvan Seal Milk, Inc., a corporation, and 612 Corporation, a corporation and their successors or

assigns, and their respective officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the sale of fluid milk in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from discriminating in price by selling fluid milk of like grade and quality to any purchaser at a price which is lower than the price charged any other purchaser in the same line of commerce:

(1) Where such lower price undercuts the price at which the purchaser charged the lower price may purchase fluid milk of like grade and quality from another seller; or

(2) Where any purchaser who does not receive the benefit of the lower price does in fact compete in the resale of such product with the purchaser who does receive the benefit of the lower price.

It is further ordered, That respondent The Borden Company, a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from directing or suggesting or participating in any conduct, on the part of respondent Sylvan Seal Milk, Inc. or respondent 612 Corporation or their successors or assigns, and their respective officers, representatives, agents and employees, constituting a violation 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 did, on the 13th day of November, 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

HIRAM B. HUNDLEY DOING BUSINESS AS BEN HUNDLEY

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

Docket 6815. Complaint, June 7, 1957—Decision, Nov. 13, 1957*

Consent order requiring a seller in Washington, D.C., to cease advertising falsely in newspapers that automobile and truck tires into which he had cut additional grooves to give the appearance of snow tires, were brand new, factory built, 100 level, first line snow and slush tires, and that the District of Columbia law required chains or snow tires on vehicles driving on certain streets when the weather warranted them.

Mr. Michael J. Vitale for the Commission.

Mr. Frederick Stohlman, of Washington, D.C., for respondents.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

The complaint in this proceeding, issued June 7, 1957, charges the respondent Hiram B. Hundley, an individual, trading and doing business as Ben Hundley, with violation of the Federal Trade Commission Act in connection with the selling and distributing of new and used automobile and truck tires. Thereafter, on August 28, 1957, this Hearing Examiner issued an order amending the complaint by removing as respondent said individual, and substituting in lieu thereof Ben Hundley Tires, Inc., a corporation, existing and doing business under and by virtue of the laws of the District of Columbia, and Hiram B. Hundley, individually and as principal officer of said corporate respondent. The office and principal place of business of both respondents is located at 3446 14th Street, N. W., Washington, D.C.

Subsequently, on September 6, 1957, respondents entered into an agreement for consent order with counsel in support of the complaint, disposing of all of the issues in this proceeding, which agreement was duly approved by the Director of the Bureau of Litigation. It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

By the terms of said agreement, the respondents admitted all the jurisdictional allegations of the complaint, as amended, and agreed that the record herein may be taken as though the Commission had

* Amended Aug. 28, 1957.

made findings of jurisdictional facts in accordance with such allegations. By said agreement, the parties expressly waived a hearing before the Hearing Examiner or the Commission, the making of findings of fact or conclusions of law by the Hearing Examiner or the Commission, the filing of exceptions and oral argument before the Commission, and all further and other procedure before the Hearing Examiner and the Commission to which respondents may 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 if 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, as amended, shall constitute the entire record herein; that the complaint herein, as amended, 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 Ben Hundley Tires, Inc., is a corporation existing under and by virtue of the laws of the District of Columbia, with its office and principal place of business located at 3446 14th Street, N.W., Washington, D.C., and respondent Hiram B. Hundley is the principal officer of said corporation. His address is the same as that of the corporate respondent.

The Hearing Examiner has considered such agreement and the order therein contained, and, it appearing that said agreement and order provides for an appropriate disposition of this proceeding, the same is hereby accepted and, without further notice to respondents, is ordered filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice, and in consonance with the terms of said agreement, the Hearing Examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents named herein, and that this proceeding is in the interest of the public, and issues the following order:

ORDER

It is ordered, That respondent Ben Hundley Tires, Inc., a corporation, and its officers, and Hiram B. Hundley, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in

connection with the offering for sale, sale or distribution of new and used automobile and truck tires or any other merchandise 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 a specified tire is a factory-built snow and slush tire, unless such is the fact.

2. That a snow and slush tire or any other type of tire, is of a certain kind, line, quality, or level, unless such is the fact.

3. That the law in the District of Columbia requires snow and slush tires to be used at certain times.

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 13th day of November, 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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IN THE MATTER OF

WALSIDE, INC., ET AL.

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

Docket 6873. Complaint, Aug. 21, 1957—Decision, Nov. 13, 1957

Consent order requiring Des Moines, Ia., manufacturers of aluminum house or building siding to cease making, in advertising and through sales talks given by employees, false representations as to a free gift of a dining table service set purportedly given to interested prospects and the value thereof, and commissions paid for the use of houses of purchasers as models to demonstrate their product; and to cease quoting initial inflated and fictitious prices and subsequently quoting the lower usual price as special introductory conditioned on use of the customer's home for demonstration, etc.

Mr. Terral A. Jordan for the Commission.

Mr. Charles J. Cardamon, of Des Moines, Ia., for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

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

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

1. Respondent Walside, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Iowa. Respondents Hilary Di Paglia (erroneously referred to in the complaint as Hillary Di Paglia), Raymond Di Paglia, and Floren Di Paglia are individuals trading and doing business as copartners under the name of Builders Supply Co., and are officers of the aforesaid corporate respondent. The office and principal place of business of the respondents is located at 1526 Harding Road, Des Moines, Iowa.

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 Walside, Inc., a corporation, and its officers, and Hilary Di Paglia (erroneously referred to in the complaint as Hillary Di Paglia), Raymond Di Paglia, and Floren Di Paglia, as individuals or as copartners trading and doing business as Builders Supply Co., or under any other trade name, 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 manufacturing for sale, offering for sale, sale and distribution of aluminum house or building siding material or of any other kind of goods or merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly:

1. That a free gift of a dining table service set or any other kind of merchandise will be made to persons complying with specified conditions unless in truth and in fact such merchandise is sent to all persons complying with such conditions.

2. That dining table service sets or any other articles of merchandise either sold or offered as gifts by respondents have a value 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 regularly and

usually engaged in the sale and distribution at retail of such articles of merchandise.

3. That a special introductory price or reduced price is offered to selected purchasers of the aforesaid products where such price constitutes respondents' usual and regular selling price and is generally available to all purchasers.

4. That the houses or buildings of selected purchasers of the aforesaid products will be used as model or demonstration houses or buildings to advertise or sell the aforesaid products where such is not the fact.

5. That commissions or fees on the sale of respondents' aforesaid products will be paid by respondents to purchasers of said products whose houses or buildings are used for model or demonstration purposes unless, in truth and in fact, such commissions or fees are actually paid and such houses or buildings are used for model or demonstration purposes.

6. That any price for the aforesaid products in excess of respondents' usual and regular price constitutes the usual and regular selling price of said products.

7. That any price which is not of an amount less than respondents' regular and usual price for the aforesaid products is a special introductory price or a reduced price or any kind of price other than respondents' regular and usual price for the aforesaid 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 did, on the 13th day of November, 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

LOESCH HAIR EXPERTS ET AL.

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

Docket 6305. Complaint, Mar. 2, 1955—Decision, Nov. 14, 1957

Order requiring an individual with place of business in Houston, Tex., from where he or his representatives traveled to various cities to meet customers and prospects, along with his advertising agency, to cease representing falsely in advertisements inserted in local newspapers announcing his arrival that by use of his scalp preparations bacteria swarming beneath the scalp would be killed; dandruff, itching, irritation, and all local scalp disorders would be cured and the scalp kept healthy; excessive hair fall would be stopped, and all types of baldness prevented, new hair induced to grow, and the hair become thicker; requiring him to reveal that the cause of "male-pattern" baldness, which accounts for approximately 95% of all cases, would not be favorably influenced; and requiring him to cease representing falsely, by use of the word "Trichologist" and pictorial representations, that he and his representatives had had competent training in dermatology having to do with treatment of scalp disorders.

Mr. Morton Nesmith for the Commission.

Welling & Welling by *Mr. Richard M. Welling*, of Charlotte, N.C., for William T. Loesch.

McGregor & Sewell, by *Mr. Douglas W. McGregor*, of Houston, Tex., for William B. Zimmerman.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

INTRODUCTORY STATEMENT

The complaint in this case was issued March 2, 1955, against the respondents named in the caption hereof. Among other things it was alleged therein that respondent Loesch was engaged in the business of selling and distributing various cosmetic and other preparations for external use in the treatment of conditions of the hair and scalp in interstate commerce; that in the course and conduct of such business respondents had disseminated or caused the dissemination of advertisements concerning said preparations for the purpose of inducing and which were likely to induce the sale of said preparations; and that respondent Zimmerman, trading as Zimmerman Advertising, prepared said advertisements. Typical of such statements and representations were certain statements with respect to the efficacy of the products and it was alleged that through the use of such statements, said respondents had represented that by the use of respondent Loesch's preparations bacteria swarming beneath

the scalp will be killed; dandruff, itching and irritation of the scalp will be permanently eliminated; all local scalp disorders will be cured and the scalp kept healthy; excessive hair fall will be stopped; all types of baldness, including hereditary baldness and spot baldness, will be prevented and overcome; new hair will be induced to grow; and the hair will become thicker. It was further alleged that by use of the word "trichologist" and by other means respondents had represented that respondent Loesch and his employees had had competent training in dermatology and other branches of medicine having to do with the diagnosis and treatment of scalp disorders affecting the hair and scalp.

It was further alleged in the original complaint that such advertisements were misleading in material respects and constituted false advertisements as that term is defined in the Federal Trade Commission Act. Respondents in their answers denied the material allegations.

After taking testimony in support of the above allegations, counsel in support of the complaint filed a motion to amend the complaint which motion was granted March 1, 1956. As amended, the complaint now alleges in paragraph nine that respondent's products will not stop excessive hair fall in the type of baldness known to dermatologists as male pattern baldness which type accounts for approximately 95% of all cases of baldness; will not in cases of male pattern baldness prevent or overcome baldness or have any favorable influence on its underlying cause; induce new hair to grow in such cases; or cause the hair to become thicker in such cases. It is further alleged in the amended complaint that respondent's said advertisements are misleading in a material respect:

in that they fail to reveal facts material in the light of the representations made. The statements and representations in said advertisements have the capacity and tendency to suggest and do suggest to persons who have excessive hair fall or who are bald that there is a reasonable probability that they are threatened with or have a type of baldness which will be prevented or overcome by use of respondent Loesch's preparations. In the light of such statements and representations, said advertisements are misleading in a material respect and therefore false because they fail to reveal the fact that the vast majority of cases of excessive hair fall and baldness are the beginning and more fully developed stages of that type of baldness known to dermatologists as male pattern baldness, and that in cases of that type respondent Loesch's preparations will not stop excessive hair fall, prevent or overcome baldness or have any favorable influence on its underlying cause.

In paragraph ten of the complaint as amended it is alleged that:

The use by the respondents of the foregoing false and misleading statements and representations, disseminated as aforesaid, and their failure to reveal the material facts set forth in subparagraph two of Paragraph Nine, have had

and now have the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and to cause them to purchase said preparations hereinabove referred to from respondent William T. Loesch because of such erroneous and mistaken belief.

At the time the complaint was amended, as aforesaid, the Hearing Examiner entered an order that the evidence theretofore taken in support of and in opposition to the allegations of the complaint be adopted and considered as evidence in support of and in opposition to the amended complaint to the same extent and effect as if such evidence had been originally taken under the amended complaint. Subsequent to the amendment of the complaint, testimony was taken on behalf of respondent William B. Zimmerman but no testimony was taken on behalf of respondent William T. Loesch. Counsel for both respondents filed motions to dismiss at the conclusion of the taking of testimony. The order closing the taking of testimony was entered by the Hearing Examiner on October 16, 1956. Subsequent to that date proposed findings and order were filed by all parties and oral argument was held on April 8, 1957. Consideration having been given by the undersigned Hearing Examiner to all of the reliable, probative and substantial evidence in the record on all material issues of fact, law or discretion, the following findings, conclusions and order are hereinafter set forth:

FINDINGS OF FACT AND LAW

Respondent William T. Loesch is an individual doing business as Loesch Hair Experts, with his office and principal place of business located at 603 Avondale Avenue, Houston, Texas. Since September 1, 1952, said respondent has been engaged in the business of selling and distributing various cosmetic and other preparations for external use in the treatment of conditions of the hair and scalp. He causes said preparations when sold to be transported from his place of business in the State of Texas to purchasers thereof located in various States of the United States. At one time he had an office in St. Paul, Minnesota, where one of his representatives was located, which he closed in July 1954. Although respondent Loesch has sold his products in most of the States except the New England States, most of his business has been done in what respondent described as the Gulf Coast States from New Mexico and Arizona in the West to the Atlantic Coast in the East, including particularly the States of Texas, Tennessee, North and South Carolina and Florida. During 1953 sales of Loesch Products amounted to approximately $100,000 and in 1954 between $100,000 and $150,000.

Respondent William B. Zimmerman has been for a number of years engaged in the business of conducting an advertising agency under the name or style of Zimmerman Advertising, with his office and principal place of business at 603 Avondale Avenue, Houston, Texas. He represented respondent Loesch as advertising counsel during 1953, 1954 and until August 1955 and placed advertisements for respondent Loesch which he had helped prepare, and which he had prepared for and which had been used by one Sidney J. Mueller, the former employer and predecessor of respondent Loesch, against whom the Commission had issued an Order to Cease and Desist in December 1952 on charges similar to those involved in this case.

Respondent Loesch's usual method of doing business is for either himself or one of his representatives to travel to various cities where they meet prospective as well as present clients or customers, in which cities, shortly before being visited by respondent or his representative, advertisements are inserted by respondents Loesch and Zimmerman in local newspapers announcing their arrival. The following are some of the phrases or headlines in such advertisements:

Save-your-hair day set for tomorrow. Scalp specialist here to demonstrate new home treatment.

How to save and improve your hair demonstrated by expert here tomorrow.

Take advantage of save your hair week at your Loesch Hair Experts.

Not the hair you lose that makes you bald, says noted "do it yourself" trichologist.

Questions on hair care answered free by expert. You can save your hair by home treatment and care, says W. T. Loesch, Director, Loesch Hair Experts.

To men growing bald: I dare you to try Loesch do-it-yourself scalp treatment at my risk.

Hair specialist here tomorrow will show how to save hair and prevent baldness.

There are pictorial representations in some of such advertisements of respondent Loesch in a white coat with a pointer in his hand before an enlarged picture of the hair follicle in the scalp. A sample of the text immediately under such pictorial representations is as follows:

One of the most common causes of hair loss, the blocked follicle is explained to balding men by trichologist W. T. Loesch. His organization is sending a hair expert here to advise men how to escape baldness by home treatment.

In some of these advertisements are pictorial representations of persons "before and after" using "Loesch-type" preparations. Also in other advertisements explaining the "before-and-after" pictures of men who were partially bald and whose hair apparently had been restored are such phrases as:

For balding heads like these a "save your hair day" has been announced. As long as you have some hair, trichologist W. T. Loesch, says you have an excellent chance to grow thicker hair by new methods of home treatment.

In one such advertisement, which Mr. Loesch testified was sent throughout the United States, under the caption "What causes baldness," the following statement appears:

How many times have you heard men attempt to explain their loss of hair with one of these remarks: "Oh, baldness runs in my family so I just have to accept it" or "Well, it's natural for a man to lose his hair as he gets along in years" or "If you're going to be bald, you're going to be bald and there's nothing you can do about it." So many men have said such things for so many hundreds of years, these old ideas are still widely believed. But they are not supported by modern knowledge.

True, some men do inherit a scalp structure that may predispose to early baldness. But any such tendency can be overcome by proper hair care. * * *

"Actually the two most common causes of baldness" says hair expert W. T. Loesch "are neglect and mistreatment of the hair" * * *

This famous authority urges that you do not resign yourself to baldness unless you are already bald. * * *

About 12 million American men are already bald or soon will be. How many women are bald no one can estimate. Certainly all of these men and women regret their condition.

Under the caption "Can Prevent Baldness" it is stated in this advertisement:

The shocking truth is that most of these bald people need not have lost their hair. Although baldness cannot be "cured" it can most certainly be prevented. Our Loesch trichologists have developed methods of self-administered home treatment that are successful 95% of the time. (Com. Ex. 6N)

In another advertisement in the Charlotte, North Carolina Observer in 1954 and which was sent all over the United States, containing many of the forgeoing statements, there appears under the caption "No Cure-All" the following language:

"After many years experience in treating scalp disorders" continued Loesch "we have developed scientific treatments that will correct your scalp trouble and give you a healthy scalp." Loesch emphasized that his treatment is neither "mail order" nor "cure-all". Different scalp conditions require different methods of treatment. "For that reason" he said "we do not recommend a treatment without first making a personal scalp examination."

Results from home treatment are quickly noticeable * * * usually it takes just a few weeks to cleanse the hair of dandruff (surface and imbedded), kill the bacteria swarming beneath the scalp, correct local disorders and stop excess hair fall.

Under the caption *Can Prevent Baldness* appears the following statement:

In most cases baldness can be prevented if you get professional help before your hair loss goes too far. * * * The important thing is don't put it off until your "hair factories" close down—for life. (Com. Ex. 4, 6–0)

In the Bakersfield Californian in 1953 under the general caption "How To Save and Improve Your Hair, Demonstrated by Expert Here Tomorrow" and a subcaption "Who can be helped" the following statement is made:

Loesch treatment can help any man or woman whose scalp is still creating hair. In most cases you can at least save and improve what you have. Some disorders such as *alopecia areata* (spot baldness) usually have complete recovery if caught in time.

Dandruff, itching and irritation disappear during the first 30 days of treatment. Hair fall decreases rapidly.

If you have scalp trouble, Loesch emphasizes that the important thing is this: *Don't wait until it's too late.* You cannot be helped when you are slick-bald after years of gradual hair loss. If you have a disease, of course, you should see a physician. (Loesch is not a doctor) * * * "Actually, our biggest problem is not in doing what we claim to do," Loesch declares. We satisfy more than 90% of our clients. But overcoming the average man's initial skepticism is really difficult. He's usually quite desperate—and definitely baldish—before he nerves himself to see us. All the time he's losing hair, he justifies his neglect with one of the old notions about hair: That baldness is hereditary; that men just have to lose hair as they get along in years; that nothing can be done to stop hair loss.

What's worse all the time he's losing hair he keeps right on with the bad habits of hair care that cause him to lose hair.

In an advertisement which Mr. Loesch testified was published in Nashville and Memphis newspapers in 1954 under the caption "Save Your Hair Specialist Makes Unprecedented Offer," and under a Houston, Texas date line, the following statements appear:

Houston, Texas—Now you can stop excessive hair loss, prevent baldness, eliminate dandruff, scalp itch and irritation. Now you can grow stronger, healthier looking hair.

"You can do it yourself at home without paying a cent until you have seen what the treatment will do." That's the daring offer now made to Nashville men and women by Loesch Hair Experts of Houston. The story behind it is explained by W. T. Loesch this way: * * *

Cause of Trouble

"Here's what we found:

"Most hair troubles are caused by discharge of body waste through the scalp. Far from being beneficial, as commonly supposed the so-called 'natural oils' (sebum) and perspiration are actually forms of toxic, acid-like matter thrown off by the system. It appears on your scalp as 'dandruff,' either in oily or dry form.

"This acid-like matter imbeds deep in the hair follicles, where it brings about excessive hair fall and weakens the hair growing facilities!"

This conclusion, Loesch said, is supported by recent experiments in a great university. They applied the "natural oils" to a number of test animals and the animals lost their hair in ten to twelve days!

Who Can Be Helped?

Hard to believe? The new Loesch method of scalp treatment based on this discovery has "made believers" out of 95% of those who tried it.

"Our methods will help *anybody's* hair." Loesch says,

"Dandruff, itching and irritation disappear within ten days. Hair loss slows down thereafter and soon becomes normal.

"Where you are already slick-bald, of course there isn't much chance to regrow hair but you can at least save and improve what hair you have." (Com. Ex. 7)

In pamphlets which are distributed to prospective customers by respondent Loesch but which were not prepared by respondent Zimmerman, respondent Loesch makes the following representations:

The following information presented by W. T. Loesch, Director of Loesch Hair Experts, Houston, Texas, is the composite result of the study of the problems, treatment and the subsequent regulated scalp hygiene of thousands of people in a twelve-state area during the past five years.

This experience and observation has resulted in the development of simple home treatment methods which have proven to be better than ninety-five percent effective in eliminating dandruff, itching and irritation and stopping excess hair fall.

Under the caption "Cause of Baldness" the following statement is made in this pamphlet:

We have found that the main cause of baldness is wrapped up in one, small five-letter word "sebum" * * *

For many years "sebaceous sebum" has been classified as "natural oil" and thought to be necessary to the hair and scalp. Actually this so-called natural oil and perspiration are forms of toxic, acid-like matter thrown off by your system. Instead of benefiting your hair and scalp as commonly supposed, *it causes dandruff, itching and irritation. It imbeds deep in the hair follicles on top of the scalp where it causes excessive hair fall and gradually weakens and eventually destroys the hair-growing and hair replacing facilities.*

The sides and back of the scalp are usually not affected since the hair follicles there point in a downward direction allowing the sebum to drain out of the hair follicles. That is why baldness usually occurs at the tops of the scalp where the sebum cannot drain off.

Under the caption "Heredity" the following statement is made in this pamphlet:

It can't be said positively that baldness is inherited. However, it is true that some people inherit a weaker than average scalp structure and as a result they have less resistance to the damaging work of sebum. It is also possible to inherit an over-abundance of male sex hormone and as a result have a heavier or more acid-like discharge of sebum and perspiration. Any such tendency can now usually be overcome with proper scalp care and hygiene.

In writing to his clients after his visits, respondent Loesch reminds them of the necessity of continuation of treatments and scalp hygiene.

You must remember that the constant discharge of body wastes and perspiration in the scalp is the main cause of most scalp trouble. If allowed to accumulate, it causes dandruff, itching and irritation and most of all is harmful to the hair growing and replacing facilities. *It should be removed as frequently as possible.*

Your six months series of progressive treatments are designed to neutralize, dissolve and gradually remove the accumulation of these toxic body wastes from deep within the hair follicles. At the same time, the treatments stimulate and strengthen your hair and scalp. You can help your condition by simply adjusting your scalp care to the condition in *your* scalp. The more perspiration and body waste you have the more frequently you *must* shampoo. (Com. Ex. 12)

In the event the client does not appear for his 90-day check-up, he is again contacted by letter by respondent Loesch and advised that it is necessary for him to continue the "scalp hygiene" to keep his scalp in healthy condition. Again he is told:

You must remember that the constant discharge of body wastes and perspiration in the scalp is the main cause of most scalp trouble (Usually evidenced by an oily forehead and an excessively oily or dry, scaly scalp). If allowed to accumulate, it causes dandruff, itching and irritation, and, most of all, it causes excessive hairfall and is harmful to the hair-growing and replacing facilities. *It should be removed as frequently as possible.*

Through the use of the foregoing statements and representations, respondent Loesch with the assistance of respondent Zimmerman has represented directly and by implication that by the use of respondent Loesch's preparations: (a) bacteria swarming beneath the scalp will be killed; (b) dandruff, itching and irritation of the scalp will be eliminated; (c) all local scalp disorders will be cured and the scalp kept healthy; (d) excessive hair fall will be stopped; (e) all types of baldness including male-pattern-type baldness and spot baldness will be prevented; (f) new hair will be induced to grow; and (g) the hair will become thicker.

By the use of the word "Trichologist" and by pictorial representations of respondent Loesch as an expert lecturing on the hair follicle in said advertisements, respondents have represented that respondent Loesch and his representatives have had competent training in dermatology, having to do with treatment of scalp disorders affecting the hair and scalp.

The said advertisements are misleading in material respects and constitute false advertisements as that term is defined in the Federal Trade Commission Act. In truth and in fact: (a) none of said preparations will cure bacteria beneath the scalp as they do not exist there; (b) none of respondents said preparations will eliminate dandruff, defined as an accumulation of scales on the scalp primarily due to shedding of top layers of the epidermis. Some of respondent Loesch's formulae will remove dandruff temporarily,

that is, so long as the product is used by the customer; (c) none of his products will correct or cure all kinds of local scalp disorders, itching and irritation; (d) none of respondent Loesch's products will stop excessive hair fall in the type of baldness known to dermatologists as "male pattern baldness," which type accounts for approximately 95% of all cases of baldness; (e) none of respondent Loesch's products will prevent or overcome any type of baldness or hair loss or have any favorable influence on the underlying causes. This is particularly true with respect to so-called spot or alopecia areata baldness which often accompanies dandruff and is often a symptom of systemic disorders which need medical treatment by a physician. Usually the hair in such cases will return under normal conditions and none of respondent Loesch's products need to be used in order for such hair to be restored; (f) there is some evidence that respondent Loesch's products will cause a fuzz known as lanugo or "puppy hair" to grow in some places but such fuzz is not recognized as hair and never grows to real hair; (g) none of respondent Loesch's products will actually cause hair to become thicker since the product will not cause new hair to grow.

Some consideration has been given to the testimony of a number of user or consumer witnesses who had attended respondent Loesch's clinics and had taken respondent Loesch's treatment and who testified generally to the effect that excessive hair fall had been stopped and that dandruff had been eliminated, and some to the effect that the hair was thicker after using respondent Loesch's treatment and preparations. No finding is made with respect to such testimony, as it is believed that to the extent it is contrary to the testimony of experts, it is unreliable, and there is nothing to show that these users had experienced anything more than the use of a good shampoo and tonic.

Neither the respondent Loesch nor any of his representatives are qualified to refer to themselves as a "trichologist," who is a scientist or person who studies the science of hair. Trichology is defined as the "science or study of the hair and its various disorders." It is generally recognized as a part of the study of dermatology. In other words before a person could pass himself off or hold out to the public that he is a "trichologist," it would be necessary for him to qualify himself as a dermatologist and neither the respondent nor any of his representatives had any such scientific training.

The record contains a complete list of all of the various ingredients used by respondent Loesch in the formulae, which ingredients are prepared for him by the Merrill Laboratory in St. Louis, Missouri. According to respondent Loesch there are two types of treatment: (a) for normal dandruff condition; and (b) for an oily

dandruff condition. Respondent Loesch represents in his advertisements that by cleaning the scalp and removing dandruff you will thereby help prevent baldness. It is also claimed that the product will neutralize fatty acids and help dissolve fatty acids and stimulate and destroy bacteria.

However, according to reliable and competent expert opinion, respondent Loesch's product in any of the formulae used will not kill bacteria and will not prevent itching and irritation of the scalp unless the cause of the irritation is removed by medication; and will not keep such scalps healthy or stop the excessive fall of hair; and positively will not have any effect in preventing or overcoming what is known as male-pattern-type baldness or spot baldness known as alopecia areata. It was admitted however by some of such experts that respondent Loesch's preparations will temporarily remove loose dandruff but they would not permeate down into the follicles of the hair as represented in some of the advertisements. It is also the consensus of expert medical opinion that a superficial infection of the scalp, known as seborrhea, or subaceous sebum, does not affect hair growth or cause baldness of any type as represented by respondent Loesch in some of his publications and in correspondence with customers. Some of these experts admitted on cross-examination that in using the various ingredients combined by the respondent in his formulae, one could expect a feeling of improvement in the scalp as far as itching and the amount of dandruff is concerned, but this would be temporary. There would be no effect on the hair growth whatever.

Respondent Loesch's products or any other similar product cannot have any effect upon male-pattern-type baldness, for the reason that it is caused by three main mechanisms—heredity, hormonal balance and the age process. Male-pattern-type baldness is defined by a medical authority in dermatology as the "genetic make-up of the individual. In other words, his hair follicles are destined to die after functioning a certain number of years. * * * Yes, the cause, as I stated it, is what he inherits from those ancestors. * * * all you can say is that the odds are very much in favor of a male child being born of parents whose ancestors who have male baldness will also have male baldness. * * *"

Respondent Loesch and his representatives are not doctors and are not educated in such a manner as to qualify them to pass upon medical questions nor to conduct examinations of prospective customers as they are not qualified to determine the condition of the scalp: although when they question the customer or patient as to whether he has alopecia, or alopecia areata, or attempt to conduct the examination of the scalp of the clients or ask questions as to

their physical condition, and whether they have had scarlet fever, typhoid fever, diphtheria, measles, or other illnesses, they give the impression they are so qualified.

It is the consensus of reliable and competent medical opinion that an understanding of the body as a whole and the diseases and disorders affecting it is necessary for the practice of dermatology, which relates to the diseases or disorders affecting the skin including the scalp and appendages, such as hair. Certainly only competent dermatologists are in a position to determine whether or not the so-called excessive hair fall or the itchy condition of the scalp are caused by some systemic disease, such as a fever, or whether it is a patchy type of baldness due to some other systemic condition.

Furthermore, the representations made by respondent Loesch in advertisements and in correspondence with his clients, as they are called, and the oral representations of said respondent and his representatives are false advertisements, as that term is defined in the Federal Trade Commission Act, in that they fail to reveal facts material in the light of the representations made. The statements and representations in said advertisements have the capacity and tendency to suggest and do suggest to those who are bald, that there is a reasonable probability that they are threatened with or have a type of baldness which will be prevented or overcome by the use of respondent Loesch's preparations. In the light of such statements and representations, said advertisements are misleading in a material respect because they fail to reveal the fact that the vast majority of cases of excessive hair fall and baldness are the beginning and more fully developed stages of that type of baldness known to dermatologists as "male-pattern baldness," and that in cases of that type, respondent Loesch's preparations will not stop excessive hair fall, nor will they prevent or overcome such baldness, or have any favorable influence on its underlying causes.

The use by the respondent Loesch of the forgeoing false and misleading statements and representations, disseminated as hereinbefore described, and his failure to reveal the material facts set forth above, have had and now have the capacity and tendency to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and to cause them to purchase said preparations from respondent Loesch because of such erroneous and mistaken belief.

CONCLUSIONS

The aforesaid acts and practices of the respondents are all to the prejudice and injury of the public, and constitute unfair and de-

ceptive acts and practices within the intent and meaning of the Federal Trade Commission Act.

Respondent Zimmerman is joined herein as a respondent in the following order because of his close relationship to respondent Loesch, and the assistance he gave respondent Loesch in preparing the printed matter contained in the advertisements and the placing of such advertisements in newspapers. His activities in connection with the affairs of other so-called hair experts, including S. J. Mueller against whom the Commission issued a complaint and order to cease and desist in 1952, and the interchange of advertisements under his copyright between respondent Loesch and others, are sufficient reason for holding that he should be included in the order to cease and desist in this case. Authority for the foregoing opinion as to inclusion of respondent Zimmerman in the order is found in the case of Fleming and Sons, Inc., Commission Docket 5264; Foster & Milbourne Co., et al., Docket 5937; and Carter Products Inc., et al., Docket 4960, in which cases the orders to cease and desist included the advertising agent.

The legal finding that respondent Loesch had violated the Federal Trade Commission Act is supported by numerous decisions including particularly the following: *Hayr Chemical Co., Inc., et al.*, Docket 6157, which became the decision of the Commission in April 1956. That case involved a product somewhat similar to respondent's and also somewhat similar allegations. An order was entered requiring the respondents to cease and desist disseminating advertisements representing among other things that the use of respondent's preparations will cause hair to grow on bald or partially bald heads; or that it has any effect upon dandruff other than a temporary removal of dandruff scales. This is the only decision where the question was litigated. It was decided after testimony had been taken, both in support of and in opposition to the allegations of the complaint, and represents the deliberate opinion of the Commission.

The Commission, however, has issued a number of orders to cease and desist in cases where an agreement was entered into between the Commission and the respondents authorizing the issuance of an order to cease and desist. Included among these is an order to cease and desist against Sidney J. Mueller trading as Mueller Hair Experts, Docket 5977, hereinbefore referred to as a predecessor and former employer of the respondent Loesch and as a client of respondent Zimmerman. In that case the order required the respondent to cease and desist the dissemination of advertisements which represented that the Mueller preparations would have any effect in preventing or overcoming baldness; cause hair to grow thicker in spots where it is thin; kill bacteria beneath the scalp; cause the scalp to

be energized to grow new hair; cause the permanent elimination of dandruff, itching, dryness, or oiliness of the scalp; or cure all scalp disorders, keep the hair healthy; or enable the individual to maintain a thick head of hair.

In another case, in the matter of *Hair Experts, Inc.*, et al., Commission Docket 5757, decided in 1950, the respondents therein engaged in a business quite similar to the one involved in this case. They were required, among other things, to cease and desist disseminating advertisements representing that their product would cause hair to grow when growth had ceased and resulted in thin hair or partial baldness, or that the germicides included in the preparation would penetrate beneath the skin surface, kill bacteria there located and destroy bacilli on the scalp surface; that their said preparations would prevent baldness, grow hair on bald heads and enable an individual to maintain a thick growth of hair for life. That order also required the respondents to cease and desist representing themselves as "trichologists" or using any similar name which may tend by implication, either directly or indirectly, to convey the idea or inference that such men have had competent training in dermatology or other branches of medicine having to do with the diagnosis and treatment of scalp disorders affecting the hair.

Although these two last-named decisions were not litigated, but were based upon an agreement between respondents and the Commission, they indicate the opinion of the Commission with respect to such practices.

With respect to the legal finding that the representations made by respondent Loesch in advertisements and in correspondence with his clients, as well as the representations of said respondent and his representative, are false advertisements as that term is defined in the Federal Trade Commission Act, in that they failed to reveal facts material in the light of the representations made; that is, the fact that the vast majority of cases of excessive hair fall and baldness are the beginning and more fully developed stages of that type of baldness known to dermatologists as male pattern baldness, reference is made to the following language of Section 15(a) of the Federal Trade Commission Act, as amended, with respect to food, drugs, devices or cosmetics.

> The term "false advertisement" means an advertisement, other than labeling, which is misleading in a material respect; and in determining whether any advertisement is misleading, there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, *but also the extent to which the advertisement fails to reveal facts material in the light of such representations* or material with respect to consequences which may result from the use of the commodity to which the advertisement relates under the conditions prescribed

in said advertisement, or under such conditions as are customary or usual. (Emphasis supplied)

The Courts have recognized the obligation on the part of the Commission to observe that portion of the statute. For instance the Court of Appeals for the Seventh Circuit in the case of *L. Heller & Sons, Inc., et al.* v. *Federal Trade Commission*, 191 F. 2d 954, decided in 1951, held:

We commence our study of the instant case with the knowledge that the Commission may require affirmative disclosures where necessary to prevent deception, and that failure to disclose by mark or label material facts concerning merchandise, which, if known to prospective purchasers, would influence their decisions of whether or not to purchase is an unfair trade practice violative of § 5 of the Federal Trade Commission Act. (Citing the case of *Haskelite Manufacting Company* v. *Federal Trade Commission*, 127 F. 2d 765.)

The *Alberty* case, 182 F. 2d 36, the United States Court of Appeals for the District of Columbia Circuit, presented the question and the Court made the following comment:

The Commission must find either of two things before it can require the affirmative clause complained of: (1) that failure to make such statement is misleading because of the consequences from the use of the product, or (2) that failure to make such statement is misleading because of the things in the advertisement.

In that case, the Court found that there was no such finding by the Commission. However, in the present case there is sufficient evidence to warrant the finding that respondent Loesch had full knowledge of the nature of male-pattern-type baldness which in one or two advertisements he recognized as "slick baldness" but as to which he gave the definite impression the use of respondents product, if taken in time, would prevent such baldness from developing. The whole impression given by respondent to prospects was that if they would use his preparation and keep their scalps clean they would thereby prevent the development of baldness of any kind, including male-pattern-type. This, according to reliable medical authority is false and misleading.

Turning now to the conclusion that the testimony of the medical experts should be the basis for a finding, reference is made to the decision of the United States Court of Appeals for the Fourth Circuit in the case of *Bristol-Myers Company* v. *Federal Trade Commission* in 1950, 185 F. 2d 58. In that case the Court held:

In our opinion the Commission was justified in giving preference to the testimony of the experts who supported the allegations of the complaint and who, so far as the evidence shows, were the persons best qualified in the field to form a trustworthy judgment upon the matters under investigation. Opinion evidence based on the general medical and pharmacological knowledge of quali-

fied experts has often been held to constitute substantial evidence, even if the experts have had no personal experience with the product.

The Court then goes on to say:

* * * and this has been done even where witnesses who had personally observed the effects of the product testified to the contrary.

In accordance with the foregoing findings and conclusions the following order is entered:

ORDER

It is ordered, That respondent William T. Loesch, an individual doing business as Loesch Hair Experts, or under any other name, and respondent William B. Zimmerman, an individual doing business as Zimmerman Advertising, or under any other name, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the various cosmetic or other preparations being sold, as set out in the findings herein, for use in the treatment of conditions of the hair and scalp, or any preparation of substantially similar composition, do forthwith cease and desist from:

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

(a) Kill bacteria beneath the scalp;

(b) Cause elimination of dandruff, itching or irritation of the scalp;

(c) Cure all local scalp disorders or keep the scalp healthy;

(d) Prevent or overcome excessive hair fall or baldness, unless such representations be expressly limited to cases other than those known to dermatologists as male pattern baldness, and unless the advertisement clearly and conspicuously reveals the fact that the great majority of cases of excessive hair fall and baldness are the beginning and more fully developed stages of said male pattern baldness, and that respondent Loesch's said preparations will not in such cases stop excessive hair fall, prevent or overcome baldness or have any favorable influence on its underlying cause;

(e) Induce new hair to grow or cause the hair to become thicker or otherwise grow hair in cases of impaired hair growth, unless such representations be expressly limited to cases other than those

arising by reason of male pattern baldness and unless the advertisement clearly and conspicuously reveals the fact that the great majority of all cases of excessive hair fall and baldness are the beginning and more fully developed stages of said male pattern baldness and that said preparation will not in such cases induce the growth of hair or thicker hair.

(f) Have any beneficial effect on itching scalp or other skin irritations or ailments in excess of affording temporary relief of scaling and itching.

2. Disseminating or causing to be disseminated by any means any advertisement for the purpose of inducing, or which is likely to induce, directly or indirectly the purchase of said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the representations prohibited in Paragraph 1 above, or which fails to comply with the affirmative requirements of subparagraphs (d) and (e) of Paragraph 1 hereof, or which advertisement uses the word "trichologist" or any other terms or words of similar import and meaning to designate, describe or refer to the respondent William T. Loesch or any of his representatives who have not had competent training in dermatology or other branches of medicine having to do with the diagnosis and treatment of scalp disorders affecting the hair.

OPINION OF THE COMMISSION

By ANDERSON, Commissioner:

The complaint, as amended, charges dissemination of false advertisements for inducing the sale of preparations for the home treatment of hair and scalp conditions. Named as parties to this proceeding are respondent William T. Loesch, doing business as Loesch Hair Experts, and respondent William B. Zimmerman, who has conducted an advertising agency under the name of Zimmerman Advertising. The latter participated in the preparation of certain printed matter including newspaper advertisements for the preparations and handled their placement with newspapers for dissemination.

In his initial decision, the hearing examiner held the charges were sustained by the evidence and the initial decision's order contains proscriptions against use by the respondents of the acts and practices which were found unlawful. The respondent William T. Loesch filed appeal from that decision as permitted under § 3.22 of the Commission's Rules of Practice, and, pending its review hereof, the Commission has stayed the effective date of the initial decision as to respondent William B. Zimmerman, who filed no appeal. Unless otherwise designated, the term "respondent," as used hereinafter, refers to the respondent William T. Loesch.

The respondent's initial contacts with prospective purchasers are secured through newspaper advertisements. Typical advertisements offering the treatments announce the arrival of a Loesch representative or staff trichologist and invite those having hair troubles for free examination and discussion of hair problems. The products consist of shampoos and other preparations for external scalp use. Orders secured by the representatives are filled by shipment from the respondent's place of business in Houston, Texas. His sales territory includes the Gulf Coast states and various southeastern states.

The appeal urges that the hearing examiner erred in sustaining the charges which allege that certain of the advertising statements constituted representations that the Loesch preparations permanently eliminate dandruff, itching and irritations of the skin. In this connection, the brief emphasizes that the word "permanently" does not appear in the text of relevant advertising statements and that their import must be understood as limited to claims of beneficial results while treatment progresses and when succeeded by a regimen of improved scalp hygiene, including continued use of the preparations. The advertising, however, has included statements that dandruff, itching and irritations disappear within 10 days and that the products will eliminate those disorders. We think the promise implicit in those and other relevant advertising statements is one of permanent correction of such conditions rather than temporary alleviation. Inasmuch as any benefits afforded by the shampooing and mild bacteriostatic effects of respondent's preparations on dandruff and associated irritations are temporary and limited to period of use, the hearing examiner properly concluded that the advertising statements relevant to this aspect of the charges have constituted false advertisements.

In related vein is the appeal's contention that the advertising statements do not represent or imply, as found by the hearing examiner, that all local scalp disorders will be cured through use of the Loesch treatment. In this connection, the appeal asserts that the word "all" has not appeared in the advertising, that a disclaimer of the treatment being a "cure-all" does appear, and that the advertisements must be construed as representing only that benefits will be afforded in selected cases. Not all the advertisements have contained that disclaiming language, however. Furthermore, the statement as to the treatment being neither mail-order nor cure-all usually has appeared in emphasis of additional representations that different scalp conditions necessitate different treatments, and that a free personal examination by respondent's representative is afforded before any treatment is recommended. The advertising has offered

the Loesch products expressly as scientific treatments that correct scalp trouble and as giving a healthy scalp and one of the "Quick Results" stressed in advertising is correction of local disorders. In our view, the hearing examiner correctly concluded that the advertising reasonably represents and implies that the preparations will cure all types of scalp disorders and will keep the scalp healthy. Because the evidence clearly shows that benefits are not afforded in all such conditions by use of the products, the hearing examiner's additional holding that those representations are false has sound record basis.

The complaint, as amended, additionally charged that the advertising has falsely represented that the preparations will stop excessive hair fall, overcome and prevent all types of baldness and induce growth of new and thicker hair. The hearing examiner in effect held these allegations sustained and found that no benefit would be afforded in the type of baldness known to dermatologists as male pattern baldness. According to the evidence, this type accounts for 95% or more of all baldness. In contending that the hearing examiner erred in concluding that claims of product efficacy for overcoming all types of baldness were implicit in the advertising, the appeal states that any impressions in that respect are wholly dispelled by the advertisements' additional statements disclaiming benefits in cases of "slick" baldness.

That certain of the advertisements do admit a probable lack of hair restorative power for the preparations for those "slick-bald after years of gradual hair loss" does not serve to disclaim merit in overcoming male pattern baldness, save perhaps for persons with completely denuded scalps. One of the advertisements promises that the user can "at least save and improve" the hair he has and the home treatment is represented as satisfactory or successful in 90% or 95% of cases of use. In illustrations contained in certain of the advertisements, the scalps portrayed feature barren or thinned areas ranging from small to substantial. It seems clear, therefore, that the advertising has promised and implied that the preparations will overcome and prevent all types of baldness including the male pattern variety.

The appeal also contends that the advertising claims of efficacy in preventing baldness have support in the fact that certain of the dermatologists called as witnesses by counsel supporting the complaint testified that they successfully treated selected cases of hair loss. The import of their testimony in that respect did not include cases of male pattern baldness, however, and those witnesses were unanimous in their views that the respondent's formulas have no

therapeutic effect in cases of loss attended by male pattern conditions. In alopecia areata, the so-called spot-type of baldness, the hair often returns spontaneously. Massage or shampoos sometimes are resorted to by dermatologists as one aspect of its management. The course of male pattern baldness, on the other hand, is not affected by anything applied to the scalp. Although its causative factors have not been finally determined by medical science, the great weight of the evidence establishes that dandruff is not one of them. Hence, the hearing examiner's conclusions as to the falsity of the respondent's foregoing representations have full support in the record and this aspect of the appeal is denied.

A companion and closely related charge to the foregoing one presents the legal issue of whether the advertising is false through alleged failure to reveal facts material in the light of other statements and claims contained in the advertising. Section 15 of the Federal Trade Commission Act, as amended, relates to the advertising of certain products, including cosmetics and drugs. False advertisements, as there defined, include not only those which are misleading in a material respect through representations made or suggested by words and statements or through their failure to reveal consequences of use, but also those advertisements which are misleading due to "the extent to which the advertisement fails to reveal facts material" in the light of other representations there made. On the basis of that provision of law, the complaint, as amended, alleges falsity of the advertising through failure to reveal, in the light of its other representations of product merit, that the vast majority of the cases of excessive hair fall and baldness are the beginning or more fully developed stages of male pattern baldness, and that in such cases the Loesch preparations will not stop excessive hair fall, prevent or overcome baldness, or have any favorable influence on its underlying cause.

As previously noted, the advertising has falsely represented that those suffering from hair loss can at least save and improve their remaining hair, the treatments being offered as satisfactory or successful in 90% and 95% of cases of use; and the advertising has been key-noted by the additional false theme that most of the twelve million American men already or soon to be bald need not have lost their hair and that baldness was "most certainly" preventable. These advertisements patently have served to engender beliefs among persons with excessive hair fall or baldness that there was great probability that they were threatened with, or had, a type of baldness which would be overcome or prevented by the preparations. Not only does the record show that male pattern baldness represents 95% or upwards of all baldness among males,

but it also supports informed determinations that beneficial effects for the remaining 5% or less of cases of hair loss are afforded by the respondent's preparations only in some instances. Because these limitations unquestionably are highly material in the light of the advertisements' other representations respecting hair fall or loss and no adequate revealing statement in respect thereto has been included in the advertising, it follows that such advertisements are false as a matter of law.

Ordinarily, excessive hair fall occurring in any stage of male pattern baldness readily is so identified and diagnosed by the dermatologist; and its course and the true facts concerning its relative frequency in scalp conditions are an old and familiar story to physicians. This does not hold true, however, for members of the purchasing public. Therefore, only if the order includes a provision requiring an appropriate revealing statement relevant to the therapeutic limitations of the respondent's preparations will the deception lurking in any future advertisements offering them in even selected conditions of hair loss be effectively eliminated. In its absence, such advertisements inevitably would serve, contrary to the true facts, to suggest and represent to persons suffering from excessive hair loss that there is a reasonable probability that they are threatened with, or have, a type of baldness favorably influenced by the preparations' use. We think that the hearing examiner's ruling sustaining this charge has sound legal basis and is in conformity with the public policy underlying the Act.

While we concur in the initial decision's findings on this aspect, the relevant provisions of the order appear to require modification. Such order would require a revelation to the effect that a majority of the cases of excessive hair fall and baldness are the beginning or more fully developed states of male pattern baldness. As expressly found in the initial decision, however, the vast majority of such cases fall in the male pattern baldness category. The order is being modified accordingly.

The appeal also excepts to the initial decision's holding that through use of the word "trichologist" in designating the respondent and his traveling agents, and by other means in the advertisements, the respondent has falsely represented that he and his employees have had competent training in dermatology and other branches of medicine having to do with diagnosis and treatment of scalp disorders affecting hair. "Trichology" is defined variously as the science of treating the hair and as the branch of medicine having to do with the hair, its anatomy, growth and disease. As found in the initial decision, respondent and his associates lack such sci-

entific training. Conclusions that the respondent's use of the word "trichologist" has had the capacity and tendency to deceive are nowise refuted by the fact that some of the advertisements have contained statements to the effect that Mr. Loesch is not a doctor or that those suffering hair loss from organic disease should be treated by a physician. Not all of the advertisements have contained statements in that regard, and those noting the respondent not to be a doctor contain no similar statement regarding his traveling representatives, usually designated in advertising as staff trichologists.

We also are of the view that in the context in which the foregoing statements have appeared they nowise serve to eliminate impressions necessarily engendered by the "trichologist" designation. Such impressions unquestionably have been corroborated and enhanced by additional designations of the respondent's representatives as scalp specialists, the connotation of which is not dissimilar, together with the advertising's pictorial matter portraying Loesch white-coated personnel engaged in diagrammatic lectures on the hair growth mechanism. While concurring in and adopting the initial decision's findings on this aspect, we are of the view that the relevant paragraph of the order should be modified in order, among other things, to limit its legal application to practices promoting sales of the preparations in commerce and in the interest of deleting a provision relating to matters elsewhere covered in the order.

The appeal also excepts to certain procedural and evidentiary rulings by the hearing examiner which the appealing respondent contends constitute arbitrary and capricious limitations on his right of cross-examination. The hearing examiner's action requiring counsel to conclude cross-examination of one of the scientific witnesses by 6 P.M. on the date when he appeared was made in the interest of expediting the hearings and, in the situation there presented, clearly represented an exercise of the hearing officer's sound discretion in the conduct of the proceedings. Furthermore, after the hearing examiner granted a motion by staff counsel for amendment of the complaint, an opportunity to examine the witness further was duly extended but subsequently waived by counsel.

The foreclosed line of questioning challenged under related exceptions concerns a conference between counsel supporting the complaint and a medical witness on the day prior to the latter's appearance as a witness. The doctor was questioned by counsel for the respondent on cross-examination respecting any discussion which occurred concerning the scientific views of an earlier witness; and after answers to several questions on the matter were received the hearing examiner remarked that the questions implied that counsel

supporting the complaint had told the medical witness how he was to testify and improperly impugned the motives of staff counsel. In this aspect of the cross-examination, the witness had stated in effect that the classification of the different forms of baldness to which he had testified constituted his sincere and independent views on the subject. No question was pending at the time of the hearing examiner's remarks and his ruling was a general one. As we interpret that ruling, it in no sense foreclosed counsed from propounding specific questions expressly directed to ascertaining whether the witness voiced scientific views at his prehearing interview or elsewhere which departed from those expressed by him when subsequently examined. It seems clear, therefore, that the ruling in no sense denied the respondent the right to examine the witness fully on matters of credibility, including possible bias, motive or interest, as long as the form of interrogation did not imply that the witness' testimony was inspired by improper conduct by counsel supporting the complaint. The same considerations are controlling to our conclusion that no undue restriction was presented respecting the cross-examination of another witness by reason of the hearing examiner's statement, in response to inquiry by respondent's counsel, that his ruling would be the same in the event the same type of questions were adopted there.

The last exception to procedural matters urges prejudicial error in connection with the hearing examiner's ruling excluding another question on cross-examination as immaterial. The question, in effect, requested an estimate of the percentage of cases of excessive hair loss in which loss would stop, or hair growth recur, under medical treatment by that physician; and the question apparently excluded the 95% or more cases of hair loss due to male pattern baldness or due to other disorders characterized by atrophy or death of the papilla, that is, the hair growth mechanism. Although two other medical witnesses were permitted to answer inquiries similar thereto, that circumstance does not render the instant ruling erroneous, however. The proportion of the relatively small percentage of cases of excessive hair fall due to the various causes not excluded under the question, including disease and certain other systemic factors, which may respond to treatment by a trained and experienced physician is in no sense an index to the efficacy of products solely intended for external use. The ruling as to the immateriality of those matters accordingly cannot be regarded as erroneous. We are convinced from our examination of all matters urged under this aspect of the appeal that the exceptions are lacking in merit.

The appeal is denied accordingly and the initial decision, as modified under our accompanying order, is adopted as the decision of the Commission.

FINAL ORDER

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

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

ORDER

It is ordered, That respondent William T. Loesch, an individual doing business as Loesch Hair Experts, or under any other name, and respondent William B. Zimmerman, an individual doing business as Zimmerman Advertising, or under any other name, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the various cosmetic or other preparations being sold, as set out in the findings herein, for use in the treatment of conditions of the hair and scalp, or any preparation of substantially similar composition, do forthwith cease and desist from:

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

(a) Kill bacteria beneath the scalp;

(b) Cause elimination of dandruff, itching or irritation of the scalp;

(c) Cure all local scalp disorders or keep the scalp healthy;

(d) Prevent or overcome excessive hair fall or baldness, unless such representations be expressly limited to cases other than those known to dermatologists as male pattern baldness, and unless the advertisement clearly and conspicuously reveals the fact that the great majority of cases of excessive hair fall and baldness are the beginning and more fully developed stages of said male pattern baldness, and that respondent Loesch's said preparations will not in such cases stop excessive hair fall, prevent or overcome baldness or have any favorable influence on its underlying cause;

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

(f) Have any beneficial effect on itching scalp or other skin irritations or ailments in excess of affording temporary relief of scaling and itching.

2. Disseminating or causing to be disseminated by any means any advertisement for the purpose of inducing, or which is likely to induce, directly or indirectly the purchase of said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the representations prohibited in Paragraph 1 above, or which fails to comply with the affirmative requirements of subparagraphs (d) and (e) of Paragraph 1 hereof, or which advertisement uses the word "trichologist" or any other terms or words of similar import and meaning to designate, describe or refer to the respondent William T. Loesch or any of his representatives who have not had competent training in dermatology or other branches of medicine having to do with the diagnosis and treatment of scalp disorders affecting the hair.

It is further ordered, That the respondents, William T. Loesch and William B. Zimmerman, 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.

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

IN THE MATTER OF

COLLINS HAIR AND SCALP EXPERTS, INC., ET AL.

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

Docket 6707. Complaint, Jan. 9, 1957—Decision, Nov. 14, 1957

Order requiring three associated corporations in Oklahoma City, Okla., along with their advertising agency, to cease representing falsely in advertising in newspapers, periodicals, leaflets, etc., that by use of their hair and scalp preparations, thinning hair would be checked, all types of baldness would be prevented and overcome, new hair would be induced to grow, and the hair would become thicker, unless such advertisements were expressly limited to cases other than "male-pattern baldness" and clearly revealed that the great majority of cases of thinning hair and baldness were of such male-pattern type and would not be favorably influenced by respondents' preparations; and to cease representing falsely by use of the term "Trichologist" that individual respondents and their employees had had competent medical training in the diagnosis and treatment of scalp disorders.

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

John A. Green, Jr., Esq., of Oklahoma City, Okla., for respondents.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

PRELIMINARY STATEMENT

1. Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 9, 1957, issued and subsequently served its complaint in this proceeding upon the above-named respondents Collins Hair and Scalp Experts, Inc., a corporation; Carey Hair & Scalp Experts, Inc., a corporation; Winston, Ltd., a corporation; David R. Collins, M. W. Collins, Rex W. Ochs, and John A. Green, Jr., individually and as officers of the next foregoing-named corporations; and Philip J. Keough, Jr., individually and doing business as Phil Keough and Associates Advertising Agency. Said complaint charges that respondents, who are engaged in the business of selling and distributing various cosmetic and drug preparations for external use in the treatment of the hair and scalp, have disseminated or caused the dissemination of false and misleading advertisements concerning said preparations for the purpose of inducing, and which are likely to induce, the sale of said preparations.

2. On February 18, 1957, respondents filed their joint and several answer in the form of a general denial of all of the material allegations of the complaint, and, subsequent to the fixing of a date for the initial hearing for reception of testimony respondents, on May 16,

1957, moved to withdraw their answer and, on the same date order granting the requested withdrawal was passed by this Hearing Examiner. Further, in the aforesaid motion respondents stated they had no objection to the cancellation of the hearing then scheduled to take place in Oklahoma City, Oklahoma, and resetting same in the City of Washington, D.C., pursuant to which a hearing was thereupon scheduled for the latter place on May 23, 1957. At the appointed time and place the said hearing was duly convened, as the transcript thereof, duly filed in the office of the Commission in Washington, D.C., according to law, will reveal. At said hearing counsel in support of the complaint appeared and announced his readiness to proceed but so it is that respondents did not appear in person or by representative whereupon, and because of the withdrawal of their answer as aforesaid, and further by reason of the nonappearance of respondents, or any of them, the Hearing Examiner, pursuant to motion of Commission's counsel, declared the matter to be in default under the provisions of Rule No. 3.7(2)(b), notice of the provisions and effects of said rule having been served upon all respondents under the "Notice" portion of the complaint.

3. Prior to the date of hearing there were filed of record four affidavits signed by respondents M. W. Collins, John A. Green, Jr., Rex W. Ochs and David R. Collins, the tenor of all of such being that respondents M. W. Collins and John A. Green, Jr. served only as officers of certain of the corporate respondents in a purely nominal capacity; that neither had any voice in policy making or conducting the businesses of the corporate respondents, nor do either have any financial interest in any of the corporate respondents, wherefore, as to them, the complaint should be dismissed. To this request for dismissal the attorney in support of the complaint acceded, as will appear from the transcript, and confirmed his nonopposition in his submitted proposed findings, conclusions and order.

4. Default having occurred, and pursuant to the express provisions of the aforementioned Rule, the Hearing Examiner now proceeds with the making of his findings of facts, appropriate conclusions and order, such being based upon the complaint and proposed findings, conclusions and order submitted by the attorney in support of the complaint, no proposed findings having been submitted by the respondents.

FINDINGS OF FACT

1. Respondents Collins Hair and Scalp Experts, Inc., Carey Hair & Scalp Experts, Inc., and Winston, Ltd., are corporations organized and existing under and by virtue of the laws of the State of Oklahoma, with their offices and principal places of business at 4621

N. E. 13th Street, Oklahoma City, Oklahoma. The individual respondents David R. Collins, M. W. Collins, Rex W. Ochs and John A. Green, Jr., are the officers of the above named corporations. Their addresses are as follows: David R. Collins, 4621 N. E. 13th Street, Oklahoma City, Oklahoma; M. W. Collins, Hartley, Iowa; Rex W. Ochs, 1828½ N. W. 23rd Street, Oklahoma City, Oklahoma; and John A. Green, Jr., 1701 N. Broadway, Oklahoma City, Oklahoma. The individual respondents David R. Collins and Rex W. Ochs control and have controlled the policies, acts and practices of the said corporate respondents, including the acts and practices herein found as facts.

2. Respondent Philip J. Keough, Jr., doing business as Phil Keough and Associates Advertising Agency, an individual proprietorship, maintains and has maintained an office at 810 Leonhardt Building, Oklahoma City, Oklahoma. This individual respondent controls and has controlled the policies, acts and practices of the said Phil Keough and Associates Advertising Agency, including the acts and practices herein found as facts.

3. Respondents are now, and have been for more than one year last past, engaged in the business of selling and distributing various "cosmetic" and "drug" preparations, as those terms are defined in the Federal Trade Commission Act, for external use in the treatment of conditions of the hair and scalp. Respondents cause said preparations, in many instances when sold, to be transported from their places of business in the State of Oklahoma to purchasers thereof located in various other states of the United States and in Canada. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said preparations between and among the various states of the United States and between the State of Oklahoma and Canada.

4. Respondents have acted in conjunction and cooperation with each other in the performance of the acts and practices hereinafter found as facts.

5. The principal method of operating the business of said respondents is as follows: Employees of respondents, and also David R. Collins, travel about this country and Canada, stopping at various cities. Through extensive advertising, respondents invite persons in each locality to visit a temporary office, usually set up in a hotel room in that locality, for diagnosis and advice as to hair and scalp conditions; whereupon the use of certain preparations is recommended. If agreed to, said preparations are sold to such persons to be used at home and, together with instructions for their use, are shipped from the place of business of the corporate respondents to the purchasers thereof.

6. The ingredients in said preparations are taken from the following list and are in various combinations:

Boric Acid
Castor Oil
#77 Detergent (a general household and industrial cleaner made by Peck's Products Co.)
Dyes
Emcol 5130 (an alkanolamine condensate detergent made by Emulsol Chemical Co.)
Hyamine 1622 (di-isobutyl phenoxy ethoxy ethyl dimenthyl benzyl ammonium chloride made by The Rohm & Haas Co.)
Isopropyl Alcohol
Lanolin
Methylcellulose
Mineral Oil
Nopco 1034 (a sulfonated oil made by Nopco Chemical Co.)
Oil Bay Terpeneless
Perfumes
Phenol
Propylene Glycol
Resorcinol
Sulfonated Castor Oil
Tincture Capsicum
Tween 60 (polyoxethylene sorbitan monostearate made by Atlas Powder Co.)
Veegum (colloidal magnesium aluminum stearate made by R. T. Vanderbilt Co., Inc.)
Water
Glycerol 40% Liquid Soap

7. Respondent Philip J. Keough, Jr., doing business as Phil Keough and Associates Advertising Agency, has been and is engaged in the business of conducting an advertising agency. In operating such advertising agency he has prepared, participated in the dissemination of and the causing of the dissemination of advertising of the respondents herein, including the advertising hereinafter set forth and found as a fact to have been used by the respondents in the furtherance of their business enterprises.

8. Among and typical of the statements and representations contained in said advertisements, principally in newspapers and other periodicals, booklets, leaflets and otherwise, disseminated and caused to be disseminated in interstate commerce, as "commerce" is defined in the Federal Trade Commission Act, are the following:

World's Largest Home Treatment Firm Tells Truth About Hair and Scalp. Famous Trichologist Tells Truth About Saving And Improving Hair.

This new method of home treatment for saving and growing hair will be demonstrated in (name of city and date).

In an interview here today D. Russell Collins, internationally famous trichologist and director of the Collins Hair and Scalp Experts, Inc., said "There are 18 different scalp disorders that cause most men and women to lose hair. Using

common sense, a person must realize no one tonic or so-called cure-all could correct all the disorders," he explained.

"The Collins (or Carey) firm, recognizing that most people are skeptical of claims that hair can be grown on balding heads, offers a guarantee," Collins (or Carey) said.

GUARANTEED

Once a person avails themselves of the Collins treatment his skepticism immediately disappears.

* * * If there is fuzz, no matter how light, thin, or colorless, the Collins (or Carey) firm can perform wonders.

* * * This examination is very thorough and highly technical * * *.

World's Largest Home Treatment Firm Offers Lifetime Guarantee to Prevent Baldness.

Winston's New Method Offers Lifetime Satisfaction to Men and Women with Hair and Scalp Problems * * *.

* * * In an interview here today R. W. Ochs, who heads the House of Winston, the largest Hair and Scalp Home Treatment firm in the World, stood before us and in plain, simple language, set forth a new realm of hope with an entirely new concept of thinking regarding the Hair and Scalp, and its troubles. * * *

9. Through the use of the aforesaid statements and representations, respondents have represented, directly and by implication, that by the use of said preparations:

(1) Thinning hair will be checked;

(2) All types of baldness will be prevented and overcome;

(3) New hair will be induced to grow; and

(4) Hair will become thicker.

By use of the word "Trichologist," respondents have represented that respondents David R. Collins and Rex W. Ochs, and employees of the respondents, have had competent training in dermatology and other branches of medicine having to do with the diagnosis and treatment of scalp disorders affecting the hair.

10. The said advertisements are misleading in material respects and constitute "false advertisements," as that term is defined in the Federal Trade Commission Act. In truth and in fact, regardless of the exact formula or combination of the ingredients of the preparations or the method of application, the use of said preparations, in the type of baldness known as male pattern baldness, which type accounts for the great majority of cases of all baldness, will not check thinning hair, prevent or overcome baldness or have any favorable influence on its underlying cause, induce new hair to grow, or cause the hair to become thicker.

Neither respondent David R. Collins, respondent Rex W. Ochs, nor any of respondents' employees, have undergone competent training in dermatology or any other branch of medicine having to do with the diagnosis or treatment of scalp disorders affecting the hair.

Furthermore, the statements and representations in said advertisements have the capacity and tendency to suggest and do suggest to persons who have thinning hair, or who are bald, that there is a reasonable probability they are threatened with or have a type of baldness which will be prevented or overcome by the use of said preparations. In the light of such statements and representations, said advertisements are misleading in a material respect and, therefore, constitute "false advertisements," as that term is defined in the Federal Trade Commission Act, because they fail to reveal the material facts that the great majority of cases of thinning hair and baldness are the beginning and more fully developed stages of that type of baldness known as male pattern baldness, and that in cases of that type the said preparations will not check thinning hair, prevent or overcome baldness, have any favorable influence on the underlying cause of baldness, induce new hair to grow or cause hair to become thicker.

11. The use by respondents of the foregoing false and misleading statements and representations, disseminated as aforesaid, and their failure to reveal pertinent and material facts, have had, and now have, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and misrepresentations are true and into the purchase of said preparations.

CONCLUSIONS

1. The Federal Trade Commission has jurisdiction over the named respondents and over the subject matter hereinabove set forth.

2. The respondents are engaged in interstate commerce as such commerce is defined in Section 4 of the Federal Trade Commission Act.

3. The respondents M. W. Collins and John A. Green, Jr., in their capacities as nominal corporate officers of the named corporate respondents, having no financial interest in the corporate businesses above delineated, nor participating in the formulating, exercising or practicing of the false and misleading acts hereinabove found to exist, the complaint, as to them, will be dismissed in the hereinafter appended order.

4. The aforegoing acts and practices of the respondents as herein found, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondents Collins Hair and Scalp Experts, Inc., a corporation, and its officers; Carey Hair & Scalp Experts, Inc., a corporation, and its officers; Winston, Ltd., a corporation, and its officers; David R. Collins and Rex W. Ochs, individually and as officers of said corporations; and Philip J. Keough, Jr., an individual doing business as Phil Keough and Associates Advertising Agency, or under any other name or names, and said respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the various cosmetic and drug preparations set out in the findings herein, or any preparation of substantially similar composition, or possessing substantially similar properties, do forthwith cease and desist from:

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

(a) Will check thinning hair, prevent or overcome baldness, or have any favorable influence on the underlying cause of baldness, unless such representations be expressly limited to cases other than those known as male-pattern baldness, and unless the advertisement clearly and conspicuously reveals the fact that the great majority of cases of thinning hair and baldness are the beginning and more fully developed stages of said male-pattern baldness, and that said preparations will not in such cases check thinning hair, prevent or overcome baldness or have any favorable influence on its underlying cause.

(b) Will induce new hair to grow or cause the hair to become thicker or otherwise grow hair in cases of impaired hair growth, unless such representations be expressly limited to cases other than those arising by reason of male-pattern baldness and unless the advertisement clearly and conspicuously reveals the fact that the great majority of all cases of thinning hair and baldness are the beginning and more fully developed stages of said male-pattern baldness and that said preparations will not in such cases induce the growth of hair or thicker hair.

2. Disseminating or causing to be disseminated by any means any advertisement for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of said preparations in

commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement fails to comply with the requirements set forth in Paragraph 1 hereof, or which advertisement uses the word "trichologist" or any other terms or words of similar import and meaning to designate, describe or refer to the respondents David R. Collins or Rex W. Ochs, or said respondents' representatives, or representatives of the respondents Collins Hair and Scalp Experts, Inc., Carey Hair & Scalp Experts, Inc., or Winston, Ltd., who have not had competent training in dermatology or other branches of medicine having to do with the diagnosis and treatment of scalp conditions affecting the hair.

It is further ordered, That the complaint be, and it hereby is, dismissed as to the respondents M. W. Collins and John A. Green, Jr.

OPINION OF THE COMMISSION

By KERN, Commissioner:

Counsel supporting the complaint has appealed from an initial decision which would dismiss the complaint as to two nominal corporate officers therein named as respondents but found not to have participated in the illegal acts alleged and order the remaining respondents to cease and desist from disseminating false advertisements in violation of the Federal Trade Commission Act. The appeal is directed solely to the form of the proposed order.

The complaint charged that respondents were disseminating false advertisements for the purpose of inducing the sale of certain preparations for use in the home treatment of thinning hair and baldness. The hearing examiner found that the "great majority of cases of thinning hair and baldness are the beginning and more fully developed stages of that type of baldness known as male pattern baldness," and that in cases of that type respondents' preparations "will not check thinning hair, prevent or overcome baldness, have any favorable influence on the underlying cause of baldness, induce new hair to grow or cause hair to become thicker." He further held that statements and representations in respondents' advertisements have served, contrary to the facts, to suggest to persons who have thinning hair or are bald that "there is a reasonable probability that they are threatened with or have a type of baldness which will be prevented or overcome by the use of said preparations."

Paragraph 1(a) of the proposed order forbids advertisements of the sort aforementioned unless such representation be expressly limited to cases other than those known as male pattern baldness, and unless the advertisement clearly and conspicuously reveals the fact that the majority of cases of excessive hair thinning and baldness

are the beginning and more fully developed stages of said male pattern baldness which type represents the majority of all cases of baldness.

Counsel supporting the complaint argues that the above-quoted requirement that respondents disclose merely that a "majority" of such cases of hair trouble are due to male-pattern baldness is inadequate to correct the misrepresentation here involved and is not fully consistent with the finding that the "great majority" of cases of baldness are of the male-pattern type. We agree with that contention.

We further believe that this provision of the order is additionally deficient in that it fails to require respondents to reveal that their preparations will not, in cases of male-pattern baldness, check thinning hair or baldness or have any favorable influence on the underlying cause of baldness. Paragraph 1(b) of the proposed order, providing for a revealing statement in regard to certain other representations that respondents' products are of value in inducing the growth of new or thicker hair, is similarly deficient.

For reasons stated in our decision in the matter of *Loesch Hair Experts et al.*, Docket No. 6305 (decided today) we are of the opinion that our determinations respecting the form of order appropriate there and here have sound support in law and public policy. The appeal is granted and the order to cease and desist proposed in the initial decision will be modified in accordance with the views herein stated. As thus amended, the initial decision will be adopted as the decision of the Commission.

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 brief in support thereof, no answering brief having been filed by the respondents; and the Commission having determined, for reasons stated in its accompanying opinion, that said initial decision should be modified:

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

ORDER

It is ordered, That respondents Collins Hair and Scalp Experts, Inc., a corporation, and its officers; Carey Hair & Scalp Experts, Inc., a corporation, and its officers; Winston, Ltd., a corporation, and its officers; David R. Collins and Rex W. Ochs, individually and as

officers of said corporations; and Philip J. Keough, Jr., an individual doing business as Phil Keough and Associates Advertising Agency, or under any other name or names, and said respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the various cosmetic and drug preparations set out in the findings herein, or any preparation of substantially similar composition, or possessing substantially similar properties, do forthwith cease and desist from:

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

(a) Will check thinning hair, prevent or overcome baldness, or have any favorable influence on the underlying cause of baldness, unless such representations be expressly limited to cases other than those known as male-pattern baldness, and unless the advertisement clearly and conspicuously reveals the fact that the great majority of cases of thinning hair and baldness are the beginning and more fully developed stages of said male-pattern baldness, and that said preparations will not in such cases check thinning hair, prevent or overcome baldness or have any favorable influence on its underlying cause.

(b) Will induce new hair to grow or cause the hair to become thicker or otherwise grow hair in cases of impaired hair growth, unless such representations be expressly limited to cases other than those arising by reason of male-pattern baldness and unless the advertisement clearly and conspicuously reveals the fact that the great majority of all cases of thinning hair and baldness are the beginning and more fully developed stages of said male-pattern baldness and that said preparations will not in such cases induce the growth of hair or thicker hair.

2. Disseminating or causing to be disseminated by any means any advertisement for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement fails to comply with the requirements set forth in Paragraph 1 hereof, or which advertisement uses the word "trichologist" or any other terms or words of similar import and meaning to designate, describe or refer to the respondents David R. Collins or Rex W. Ochs, or said respondents' representatives, or representatives of the respondents Collins Hair and Scalp Experts,

Inc., Carey Hair & Scalp Experts, Inc., or Winston, Ltd., who have not had competent training in dermatology or other branches of medicine having to do with the diagnosis and treatment of scalp conditions affecting the hair.

It is further ordered, That the complaint be, and it hereby is, dismissed as to the respondents M. W. Collins and John A. Green, Jr.

It is further ordered, That the respondents, save those dismissed hereinabove, 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.

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