

Decision

IN THE MATTER OF

WELLMACED LEATHER GOODS CO. ET AL.

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

Docket 6879. Complaint, Aug. 30, 1957—Decision, Jan. 10, 1958

Consent order requiring manufacturers in New York City to cease preticketing their boys' and men's belts with fictitious and exaggerated prices and thereby placing in the hands of retail outlets means for deceiving the purchasing public as to the usual retail price of the belts.

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

Mr. Julian Buchbinder, of New York, N.Y., for respondents.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 30, 1957, issued and subsequently served its complaint in this proceeding against respondents Wellmade Leather Goods Co., a corporation existing and doing business under and by virtue of the laws of the State of New York, Morris Baron, Harold Baron, and Rose Baron, individually and as officers of the corporate respondent. The office and principal place of business of said respondents is at 477 Broadway, New York, N.Y.

On November 18, 1957, there was submitted to the undersigned hearing examiner an agreement between respondents and counsel supporting the complaint providing for the entry of a consent order. By the terms of said agreement, respondents admit all the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. By such agreement, respondents waive any further procedural steps before the hearing examiner and the Commission; waive the making of findings of fact and conclusions of law; and waive all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement. Such agreement further provides that it disposes of all of this proceeding as to all parties; that the record on which this initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement; that the latter shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the agreement is for settlement

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

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

1. Respondent Wellmade Leather Goods Co. is a corporation existing and doing business under the laws of the State of New York, with its office and principal place of business located at 477 Broadway, New York, N.Y. Respondents Morris Baron, Harold Baron, and Rose Baron are officers of said corporation, and have their office and principal place of business at the same address as the corporation.

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

ORDER

It is ordered, That the respondents, Wellmade Leather Goods Co., and its officers, and Morris Baron, Harold Baron, and Rose Baron, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of men's and boys' belts do forthwith cease and desist from:

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

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner shall, on the 10th day of

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

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

IN THE MATTER OF
NATHAN E. WHITE TRADING AS QUEEN DISTRIBUTING
CO.

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

Docket 6751. Complaint, Mar. 27, 1957—Decision, Jan. 15, 1958

Consent order requiring New York City seller of vending machines and gum and nut meats dispensed thereby, to cease, in advertisements placed in local newspapers—some in the "Help Wanted" columns—and by his salesmen visiting prospects, misrepresenting the profits that could be made from the machines, and making such false representations as that the business was "perfect insurance against old age, permanent or partial disability," that satisfactory locations would be obtained for the machines, etc.

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

Mr. Bernard Katzen, of New York, N.Y., for respondent.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

The complaint in this proceeding charges that the respondent, Nathan E. White, an individual trading and doing business as Queen Distributing Co., hereinafter called respondent, has violated the provisions of the Federal Trade Commission Act by making false and misleading representations in advertisements in connection with the sale and distribution of vending machines.

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

The material 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; the record herein shall consist solely of the complaint and the agreement; 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 he has violated the law as alleged in the complaint.

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

JURISDICTIONAL FINDINGS

1. Respondent Nathan E. White is an individual trading and doing business as Queen Distributing Co. with its office and principal place of business last located at 251 W. 42d Street, New York, N. Y.

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

ORDER

It is ordered, That respondent Nathan E. White, an individual, trading as Queen Distributing Co., or under any other name, and his representatives, agents, and employees, directly or through any corporate or other device, in connection with the sale, offering for sale, or distribution of vending machines or vending machine supplies in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

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

2. The earnings or profits derived from the operation of respondent's machines exceed those which are, in fact, customarily earned by operators of respondent's machines.

3. The amount of money invested in respondent's products is secured by inventory or otherwise.

4. The purchasers of respondent's products will be given an exclusive territory within which to place and operate their machines, unless such is the fact.

5. It is necessary for a person to have a car or furnish references in order to qualify for respondent's offer.

6. The purchasers of respondent's products cannot lose their investments.

7. Financial security will be realized by the person who participates in respondent's proposal.

8. The operation of respondent's machines provides the safest or surest business on earth, or misrepresenting in any other manner the safety or surety of said business.

9. The profits derived from the operation of respondent's machines provide financial assurance to old persons and those suffering from permanent or partial disability.

10. The machines sold by respondent are insured by him without charge to the purchaser.

11. Respondent or his sales representatives or agents obtain, or assist in obtaining, satisfactory or other locations for machines purchased, unless such is the fact.

12. Respondent or his sales representatives or agents will aid or assist purchasers in learning the vending machine business and furnish literature and instructions in connection therewith, unless such is the fact.

13. Respondent will purchase the vending machines if purchasers are not satisfied.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

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

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

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IN THE MATTER OF
NAN DUSKIN, INC., ET AL.

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

Docket 6845. Complaint, July 22, 1957—Decision, Jan. 15, 1958

Consent order requiring furriers in Philadelphia, Pa., to cease violating the Fur Products Labeling Act by removing from fur products the original manufacturer's labels and substituting labels which failed to include all the required information; by failing to conform to the labeling and invoicing requirements; and, in newspaper advertisements, failing to disclose the names of animals producing certain furs, the fact that certain furs were artificially colored, and the name of the country of origin of imported furs, and using comparative price and savings claims not based on current market values.

Mr. Charles W. O'Connell for the Commission

Mr. Burton Caine, of Philadelphia, Pa., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (hereinafter referred to as the Commission) issued its complaint herein, charging the respondents with having violated the Federal Trade Commission Act and the Fur Products Labeling Act as well as the rules and regulations promulgated under the latter act by the Commission. Each of the respondents was duly served with process and time of respondents to file answer was extended and the initial hearing canceled pending negotiations of counsel for a consent agreement.

On November 27, 1957, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an "Agreement containing consent order to cease and desist," which had been entered into by and between counsel supporting the complaint and the respondents and Burton Caine, their counsel, under date of November 19, 1957, subject to the approval of the Bureau of Litigation of the Commission. Such agreement had been thereafter duly approved by that Bureau. It appears from said agreement that respondent Anne D. Lincoln was erroneously referred to in the complaint as Mrs. August A. Lincoln and that the respondent Milton Schneidman was erroneously referred to in the complaint as

Milton Schneiderman, but said respondents, Anne D. Lincoln and Milton Schneidman, have each, both individually and as officers of the respondent Nan Duskin, Inc., a corporation, duly executed said agreement by their true names.

On due consideration of said "Agreement containing consent order to cease and desist," the hearing examiner finds that said agreement both in form and in content is in accord with section 3.25 of the Commission's rules of practice for adjudicative proceedings and that by said agreement the parties have specifically agreed that:

1. Respondent Nan Duskin, 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 1729 Walnut Street, in the city of Philadelphia, State of Pennsylvania.

Respondents Anne D. Lincoln, Milton Schneidman, and August A. Lincoln are president, secretary, and vice president-treasurer, respectively, of said Nan Duskin, Inc., and their office and place of business is the same as that of the corporate respondent.

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

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

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

5. Respondents waive:

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

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

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

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

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

8. This agreement is for settlement purposes only and does not

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constitute an admission by respondents that they have violated the law as alleged in the complaint.

Upon due consideration of the complaint filed herein, and the said "Agreement containing consent order to cease and desist," the latter is hereby approved, accepted and ordered filed, the same not to become a part of the record herein, unless and until it becomes a part of the decision of the Commission. The hearing examiner finds from the complaint and the said "Agreement containing consent order to cease and desist" that the Commission has jurisdiction of the subject matter of this proceeding and of the persons of respondent; that the complaint states a legal cause for complaint under the Federal Trade Commission Act and under the Fur Products Labeling Act and the rules and regulations thereunder; both generally and in each of the particular charges alleged therein; that this proceeding is in the interest of the public; that the following order as proposed in said agreement is appropriate for the full disposition of all the issues in this proceeding, such order to become final only if and when it becomes the order of the Commission; and the said order, therefore, should be, and hereby is, entered as follows:

ORDER

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

A. Misbranding fur products by:

1. Failing to affix labels to fur products showing:

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

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

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

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

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

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

2. Setting forth on labels attached to fur products:

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

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

3. Failing to show on labels attached to fur products all of the information required under section 4(2) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder on one side of such labels.

B. Falsely or deceptively invoicing fur products by:

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

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

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

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

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

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

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

2. Using the term "blended" to describe the pointing, bleaching, dyeing, or tip-dyeing of furs.

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

1. Fails to disclose:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur products as set forth in the Fur Prod-

ucts Name Guide and as prescribed under the rules and regulations;

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

(c) The name of the country of origin of any imported furs contained in fur products.

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

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

It is further ordered, That in connection with the substitution of labels by respondents affixed to fur products which have been shipped to and received by respondents in commerce, that respondents do forthwith cease and desist from misbranding such products in any of the respects set forth in paragraph A1 of this order.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

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

It is ordered, That respondent Nan Duskin, Inc., a corporation, and its officers, and respondents Anne D. Lincoln (erroneously referred to in the complaint as Mrs. August A. Lincoln), Milton Schneidman (erroneously referred to in the complaint as Milton Schneiderman), and August A. Lincoln, individually and as officers of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF
E. REGENSBURG & SONS ALSO TRADING AS S. FERNAN-
DEZ & CO. ET AL.

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

Docket 6854. Complaint, July 26, 1957—Decision, Jan. 15, 1958

Consent order requiring cigar manufacturers in New York City to cease using on cigar boxes a "guarantee" stamp so closely resembling the official customs stamp in lettering, design, and placement on boxes as to lead customers to believe that they were buying cigars made under Government bond.

Mr. C. W. O'Connell for the Commission.

Paskus, Gordon & Hyman by *Mr. Charles H. Lieb*, of New York, N.Y., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

The complaint in this proceeding charges that the respondents, E. Regensburg & Sons, a corporation, trading and doing business under its own name and as S. Fernandez & Co. and Edward J. Regensburg, Charles P. Regensburg, Edward B. Regensburg, and Jeannette Regensburg, individually and as officers of said corporation, hereinafter called respondents, have violated the provisions of the Federal Trade Commission Act by making misleading representations by affixing a stamp to each of the boxes containing their cigars which simulates the United States customs stamp required by the Tariff Act of 1930.

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

The material provisions of said agreement are as follows: Respondents admit all jurisdictional facts; the complaint may be used in construing the terms of the order; the order shall have the same force and effect as if entered after a full hearing and the said agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission; the record herein shall consist solely of the complaint and the agreement; respondents waive the requirement that the decision must contain a statement of findings of fact and conclusion of law; re-

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spondents waive further procedural steps before the hearing examiner and the Commission, and the order may be altered, modified, or set aside in the manner provided by statute for other orders; respondents waive any right to challenge or contest the validity of the order entered in accordance with the agreement; and the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

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

JURISDICTIONAL FINDINGS

1. Respondent E. Regensburg & Sons is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 468 Fourth Avenue, New York, N.Y. Respondent Edward J. Regensburg is president and treasurer of said corporation, Respondent Charles P. Regensburg is vice president in charge of sales of said corporation, respondent Edward B. Regensburg is vice president in charge of manufacturing of said corporation and respondent Jeannette Regensburg is secretary of said corporation.

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

ORDER

It is ordered, That E. Regensburg & Sons, a corporation, trading and doing business under its own name and as S. Fernandez & Co., and its officers, and Edward J. Regensburg, Charles P. Regensburg, Edward B. Regensburg, and Jeannette Regensburg, individually and as officers of said corporation, and their agents, representatives, and employees, directly or through any corporate or other device, in connection with offering for sale, sale, or distribution of cigars in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using any stamp which either by reason of its appearance, its placement on containers of cigars, or by a combination of both effects, simulates the United States customs stamp required by the Tariff Act of 1930 and the regulations thereunder to be affixed to boxes containing cigars manufactured in bond.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT
OF COMPLIANCE

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

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

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IN THE MATTER OF
CARL COHEN TRADING AS BON TON FINDINGSCONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 6858. Complaint, July 26, 1957—Decision, Jan. 15, 1958*

Consent order requiring a manufacturer in New York City to cease imprinting the mark "14K" on the back or other location of watch cases which were manufactured from gold of less than 14-karat fineness, thereby enabling retailers to mislead the public as to the gold content of the product.

Edward F. Downs and *Thomas A. Sterner, Esqs.*, in support of the complaint.

David S. Golden, Esq., New York, N.Y. for respondent.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

The complaint in this proceeding, issued July 26, 1957, charges the respondent Carl Cohen, an individual, trading and doing business as Bon Ton Findings, with violation of the Federal Trade Commission Act in connection with the selling and distributing of watch cases. The office and principal place of business of respondent is located at No. 208 W. 27th Street, New York, N.Y.

After issuance and service of said complaint, the respondent entered into an agreement for a consent order with counsel in support of the complaint, disposing of all of the issues in this proceeding, which agreement was duly approved by the director 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 respondent that he has violated the law as alleged in the complaint.

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

By said agreement, respondent further agreed that the order to

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

Said agreement recites that respondent Carl Cohen is an individual, trading and doing business as Bon Ton Findings, with his office and principal place of business located at No. 208 W. 27th Street, New York, N.Y.

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

ORDER

It is ordered, That respondent, Carl Cohen, trading and doing business as Bon Ton Findings, or under any other name, his agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of any articles composed in whole or in part of gold or an alloy of gold in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Stamping, branding, engraving, or marking any article, or selling any article that is stamped, branded, engraved, or marked, with any phrase or mark such as 14K, or otherwise representing directly or by implication that the whole or a part of any article is composed of gold or an alloy of gold of any designated fineness, unless the article or part thereof so marked or represented is composed of gold of the designated fineness within the permissible tolerance established by the National Stamping Act (15 U.S.C. secs. 294 et seq.).

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DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

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

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

IN THE MATTER OF
KEITH E. McKEE DOING BUSINESS AS NATIONAL
LABORATORIES OF DES MOINES

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

Docket 6871. Complaint, Aug. 21, 1957—Decision, Jan. 15, 1958

Consent order requiring a distributor of vending machines and nut meats dispensed thereby, located in Des Moines, Iowa, to cease representing falsely in advertisements in newspapers and through his salesmen that he was offering employment, that exaggerated profits could be earned servicing his vending machines, that inventory of machines and their supplies was security for the purchaser's investment, that customers were given exclusive territory, aid in locating machines profitably, and that machines were repurchased from dissatisfied customers; and to cease misleading use of the word "Laboratories" in his trade name or otherwise.

Mr. Garland S. Ferguson for the Commission.

Mr. Stanley R. Browne, of Des Moines, Iowa, for respondent.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) issued its complaint herein, charging the above-named respondent Keith E. McKee, an individual trading and doing business as National Laboratories of Des Moines, with having violated the Federal Trade Commission Act in certain particulars. The respondent was duly served with process and in due course filed his answer. An initial proceeding was convened at Des Moines, Iowa, October 29, 1957, pursuant to due notice, at which place and time counsel supporting the complaint and respondent and his counsel were present and at which time during a recess of the hearing an "Agreement containing consent order to cease and desist" was executed by counsel supporting the complaint and by the respondent upon the advice of his counsel, and the hearing examiner was then so informed. The initial hearing was thereupon recessed and a further scheduled hearing was canceled pending the approval and submission of said agreement in due course.

On November 6, 1957, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval said "Agreement containing consent order to cease and desist" entered into and executed by respondent and Garland S. Ferguson,

counsel supporting the complaint, which agreement had been there-after approved by the Bureau of Litigation of the Commission.

On due consideration of said "Agreement containing consent order to cease and desist," the hearing examiner finds that said agreement, both in form and in content, is in accord with section 3.25 of the Commission's rules of practice for adjudicative proceedings and that by said agreement the parties have specifically agreed that:

1. Keith E. McKee is an individual trading and doing business under the trade name of National Laboratories of Des Moines, with his principal place of business located at 3023 36th Street, Des Moines, Iowa.

2. Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 21, 1957, issued its complaint in this proceeding against respondent, and a true copy was thereafter duly served on respondent.

3. 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

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

5. Respondent waives:

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

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

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

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

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

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

Upon due consideration of the complaint filed herein, and the said "Agreement containing consent order to cease and desist," the latter is hereby approved, accepted and ordered filed, the same not to become a part of the record herein, unless and until it becomes a part of the decision of the Commission. The hearing examiner finds from the complaint and the said "Agreement containing consent order to cease and desist" that the Commission has jurisdiction of the subject matter of this proceeding and of the person of the re-

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spondent signatory to said agreement; that the complaint states a legal cause for complaint under the Federal Trade Commission Act both generally and in each of the particular charges alleged therein; that this proceeding is in the interest of the public; that the following order as proposed in said agreement is appropriate for the full disposition of all the issues in this proceeding, such order to become final only if and when it becomes the order of the Commission; and that said order, therefore, should be, and hereby is, entered as follows:

ORDER

It is ordered, That respondent Keith E. McKee, individually and trading as National Laboratories of Des Moines or trading under any other name, his agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of vending machines or vending supplies in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that:

(a) Employment is offered by respondent when in fact the real purpose of the respondent's advertisements is to obtain purchasers for respondent's products.

(b) The earnings or profits derived from the operation of respondent's machines are any amounts in excess of those which have been, in fact, customarily earned by operators of respondent's machines.

(c) The amount invested in respondent's products is secured either by inventory or otherwise.

(d) Purchasers of respondent's products are given exclusive territory within which to place and operate their machines.

(e) It is necessary for a person to have a car or furnish references in order to qualify for respondent's offer.

(f) Purchasers will realize financial security by participating in respondent's proposal.

(g) Respondent or his sales representatives obtain or assist in obtaining satisfactory locations for machines purchased from respondent.

(h) Respondent will repurchase machines if purchasers are not satisfied unless such is the fact.

2. Using the word "Laboratories" as a part of any name under which he does business or representing in any manner that he operates a laboratory in connection with his business.

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DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF
COMPLIANCE

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

It is ordered, That respondent Keith E. McKee, an individual trading and doing business as National Laboratories of Des Moines, 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
SHAY AUERBACH TRADING AS BELVEDERE WOOL CO.
CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE WOOL PRODUCTS LABELING ACTS

Docket 6783. Complaint, Apr. 19, 1957—Decision, Jan. 16, 1958

Consent order requiring a manufacturer of wool products in Brooklyn, N.Y., to cease violating the Wool Products Labeling Act by failing to comply with the labeling requirements and by invoicing products falsely.

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

Mr. Samuel Shapiro, of New York, N.Y., for respondent.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on April 19, 1957, charging respondent with misbranding and falsely and deceptively invoicing his wool products, in violation of the Federal Trade Commission Act and of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder.

Thereafter, on November 1, 1957, following a hearing at which counsel supporting the complaint completed the presentation of his evidence and rested his case, respondent, his counsel, and counsel supporting the complaint herein entered into an agreement containing consent order to cease and desist, which was approved by the director and the assistant director of the Commission's Bureau of Litigation, and thereafter submitted to the hearing examiner for consideration.

The agreement identifies Respondent Shay Auerbach as an individual trading as Belvedere Wool Co., with his office and principal place of business located at 99 Broadway, New York, N.Y.

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.

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

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

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

It is ordered, That the respondent, Shay Auerbach, an individual trading as Belvedere Wool Co., or trading under any other name, and respondent's representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction in commerce, or the offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of wool fibers or other wool products, as such products are defined in and subject to said Wool Products Labeling Act of 1939, which products contain, purport to contain, or in any way are represented as containing "wool," "reprocessed wool," or "reused wool" as those terms are defined in said act, do forthwith cease and desist from misbranding such products by:

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

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

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

(c) The name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for

sale, sale, transportation, distribution or delivery for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939.

It is further ordered, That the respondent, Shay Auerbach, an individual trading as Belvedere Wool Co., or trading 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, or distribution of wool fibers or other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly:

Misrepresenting in sales invoices, shipping memoranda, or in any other manner the fiber content of said products.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner shall, on the 16th day of January, 1958, become the decision of the Commission; and, accordingly:

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

Decision

IN THE MATTER OF
RELIABLE LUGGAGE, INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 6794. Complaint, May 14, 1957—Decision, Jan. 16, 1958*

Consent order requiring manufacturers in West Pittsburgh, Pa., to cease preticketing their luggage with labels bearing fictitiously high retail prices, thereby giving retailers a means of deceiving the public into believing that the actual prices were bargains.

Mr. Garland S. Ferguson for the Commission.

Mr. Paul J. Winschel, of Pittsburgh, Pa., for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondents with violation of the Federal Trade Commission Act through the use of fictitious prices for their luggage. 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 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:

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1. Respondent Reliable Luggage, 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 in West Pittsburgh, Lawrence County, Pa. Respondents Sam L. Weiner, Jay H. Weiner, and Leroy Weiner are officers of the corporation and formulate, direct, and control its practices.

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, Reliable Luggage, Inc., a corporation, and its officers, Sam L. Weiner, Jay H. Weiner, and Leroy Weiner, individually and as officers of said corporate respondent, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of luggage and related products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing by means of fictitious preticketing of price tags or otherwise that certain amounts are the customary and usual retail prices of such products when such amounts are in excess of the prices at which such products are usually and customarily sold at retail in the normal course of business.

2. Putting any plan into operation through the use of which retailers or others may misrepresent the customary and usual retail prices of such products.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner shall, on the 16th day of January 1958, become the decision of the Commission; and, accordingly:

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

Decision

IN THE MATTER OF
CROWN QUILTING CO., INC., ET AL.

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

Docket 6864. Complaint, Aug. 14, 1957—Decision, Jan. 16, 1958

Consent order requiring a manufacturer in New York City to cease violating the Wool Products Labeling Act by labeling and invoicing as "100% Re-processed Wool" or "100% Repr. Wool", quilted interlining materials containing substantial amounts of nonwoolen fibers.

Mr. John T. Walker supporting the complaint.

Mr. Irving Israel, of New York, N.Y., for respondents.

INITIAL DECISION OF JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on August 14, 1957, charging them with having violated the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, and the Federal Trade Commission Act, through the misbranding of certain wool products and falsely representing the composition of certain quilted interlining material on sales invoices and shipping memoranda. After being served with said complaint, respondents appeared by counsel and filed their answer thereto. Thereafter the parties entered into an agreement containing consent order to cease and desist, dated October 21, 1957, purporting to dispose of all of this proceeding as to all parties without hearing. 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 have agreed that the record may be taken as if findings of jurisdictional facts had been made in accordance with such allegations. Said agreement further provides that respondents waive any further procedural steps before the hearing examiner and the Commission, the making

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of findings of fact or conclusions of law, and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with said agreement. It has been agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full hearing and that the complaint may be used in construing the terms of said order. It has also been agreed that the aforesaid agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

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

1. Respondent, Crown Quilting Co., Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 115 Christopher Street, in the City of New York, State of New York. Respondent, Seymour Bermak, is an officer of said corporate respondent and formulates, directs and controls the policies, acts, and practices of said corporate respondent.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the Wool Products Labeling Act of 1939 and the Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

It is ordered, That the respondents, Crown Quilting Co., Inc., a corporation, and its officers, and Seymour Bermak, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for intro-

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duction into commerce, or the offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Federal Trade Act and the Wool Products Labeling Act of 1939, of quilted interlining material or other "wool products," as such products are defined in and subject to the Wool Products Labeling Act of 1939, which products contain, purport to contain, or in any way are represented as containing, "wool," "reprocessed wool," or "reused wool," as those terms are defined in said Act, do forthwith cease and desist from misbranding such products by :

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

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

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

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

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

It is further ordered, That Crown Quilting Co., Inc., a corporation, and its officers, and Seymour Bermak, 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 quilted interlining material or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from :

Misrepresenting the constituent fibers of which their products are composed or the percentages or amounts thereof, in sales invoices, shipping memoranda or in any other manner.

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 16th day of January 1958, become the decision of the Commission; and, accordingly:

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

Complaint

IN THE MATTER OF
THE AMALGAMATED SUGAR CO.

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

Docket 6768. Complaint, Apr. 8, 1957—Decision, Jan. 21, 1958

Consent order requiring a major manufacturer in the beet sugar industry— with principal office at Ogden, Utah, and with plants and warehouses in Utah, Idaho, Oregon, and Washington, and annual sales volume approximating \$46,000,000—to cease violating section 2(a) of the Clayton Act by reducing the price of its sugar on various occasions in Utah only, in which State it sold only a small percentage of its total output, which discriminations in price were particularly harmful to its processor competitors who sold a large part of their sugar in Utah and would have diverted business from them if they had not immediately met the price reductions, and had an additional injurious effect on the growers who supplied beets under contract to respondent and its competitors in the Utah area and whose price received for beets depended on the net returns of the processor.

Mr. Cecil G. Miles and Mr. James R. Fruchterman for the Commission.

Howrey & Simon, by Mr. William Simon, of Washington, D.C., and Ray, Quinney & Nebecker, by Mr. Paul H. Ray, of Salt Lake City, Utah, for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated and is now violating the provisions of subsection (a) of section 2 of the Clayton Act (U.S.C. Title 15, section 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. The Amalgamated Sugar Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Utah, with its principal office and place of business located at 801 First Security Bank Building, 24th Street and Washington Boulevard, Ogden, Utah, with factories and warehouses located as indicated below.

PAR. 2. The Amalgamated Sugar Co., hereinafter sometimes referred to as Amalgamated, or as respondent, is engaged in the processing of sugar beets and the manufacture, sale and distribution of beet sugar, processed and manufactured at its plants located at Lewiston, Utah; Twin Falls, Rupert, and Nampa, Idaho; and Nyssa, Oreg. It maintains sugar storage warehouses in Ogden and Logan, Utah; and Burley, Idaho. It also maintains sugar distribution warehouses in Portland, Oreg., and Seattle, Wash.

Amalgamated occupies a major position in the beet sugar industry, with a total sales volume of approximately \$46 million annually.

PAR. 3. In the course and conduct of its business, as aforesaid, respondent is now engaged, and for the past several years has been engaged, in commerce as "commerce" is defined in the aforesaid Clayton Act, having sold its sugar manufactured at its various plants located in the States of Utah, Idaho, and Oregon, and transported or caused the same to be transported from its plants or other places of business in said States named above to purchasers thereof located in other States of the United States, or in other places under the jurisdiction of the United States. Respondent sells and distributes its sugar principally, if not exclusively, through brokers to wholesale concerns, large retail chains, and to direct users. Said product was and is sold and distributed for use, consumption, or resale in the various States of the United States, or other places under the jurisdiction of the United States.

PAR. 4. In the course and conduct of its business, as aforesaid, Amalgamated is now and for the past several years has been in substantial competition with others engaged in the manufacture, sale, and distribution of beet sugar in commerce between and among the various States of the United States, or other places under the jurisdiction of the United States.

PAR. 5. In the course and conduct of its business, as aforesaid, respondent Amalgamated has discriminated in price between different purchasers of its sugar of like grade and quality by selling it to some of its customers at higher prices than to other of its customers.

For example, on or about October 18, 1954, but retroactive to October 8, 1954, respondent reduced the price of its beet sugar, in Utah only, from the basis price of \$8.40 to \$8.10 per hundredweight, or a reduction of 30 cents per hundredweight. This price reduction was withdrawn by respondent on November 2, 1954.

On or about April 12, 1955, but retroactive to April 2, 1955, respondent reduced the price of its beet sugar, in Utah only, from the basis price of \$8.40 to \$7.90 per hundredweight, or a reduction of 50

cents per hundredweight. This price reduction was withdrawn by respondent on October 27, 1955, thereby restoring the previous basis price of \$8.40. On the same date, however, respondent also increased the basis price from \$8.40 to \$8.55 per hundredweight, or an increase of 15 cents per hundredweight, thereby establishing a new basis price of \$8.55 per hundredweight.

On or about January 27, 1956, but retroactive to on or about January 17, 1956, respondent again reduced the price of beet sugar in Utah only from the basis price of \$8.55 to \$8.20 per hundredweight, or a reduction of 35 cents per hundredweight, which price cut is still in effect.

Respondent's discriminations in price, as described above, were sufficient to divert business from its competitors, and would have done so if its competitors had not immediately met these price reductions. Further, these price reductions by respondent are sufficient to divert business from respondent's competitors to respondent in the future, unless its competitors continue to meet respondent's reduced prices.

These price cuts by respondent, being effective in Utah only, are particularly harmful to processors who sell a large part of their sugar in Utah. By comparison, the effects of these reduced prices have not been as great on respondent, inasmuch as it sells only a small percentage of its total output in said State. Said price cuts have been extremely harmful to the one-unit processors who sell extensively in Utah. For instance, the following table shows the percentage of sales in Utah only as compared to total sales, by respondent and its chief competitors in this area, for the crop year ending September 30, 1956:

	Crop years ending	Bags sold in Utah	Percent of total sales
The Amalgamated Sugar Co.....	Sept. 30, 1956	148,214	3.325
Utah-Idaho Sugar Co.....	Sept. 30, 1956	295,297	9.20
Layton Sugar Co. (one unit processor).....	Sept. 30, 1956	106,238	6.21
Franklin County Sugar Co. (one unit processor).....	Sept. 30, 1956	47,439	25.36

PAR. 6. The effect of respondent's said discriminations in price may be substantially to lessen competition in the line of commerce in which respondent is engaged. Said practices of respondent also have a dangerous tendency unduly to hinder competition, or to injure, destroy or prevent competition between respondent and its competitors, and tend to create a monopoly.

Furthermore, by virtue of provisions in contracts between the beet-sugar processors and the growers of beets for said processors, the price the grower receives for his beets depends on the net returns the proc-

essor receives for his sugar. As a result of these price cuts, initiated by respondent, the net returns received by these processors were lowered, thereby reducing the price the grower received for his beets. Therefore, the aforesaid discriminatory pricing practices of Amalgamated have had and continue to have an additional injurious effect on the beet growers who supply beets, under contract, to respondent and to respondent's competitors, in this area.

PAR. 7. The discriminations in price, as hereinabove alleged and described, are in violation of subsection (a) of section 2 of the aforesaid Clayton Act, amended by the Robinson-Patman Act.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on April 8, 1957, charging it with having violated section 2(a) of the Clayton Act, as amended by the Robinson-Patman Act. Respondent appeared by counsel and entered into an agreement, dated October 14, 1957, containing a consent order to cease and desist, disposing of all the issues in this proceeding without hearing, which agreement has been duly approved by the director of the Bureau of Litigation. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with section 3.25 of the rules of practice of the Commission.

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

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

1. Respondent is a corporation existing and doing business under and by virtue of the laws of the State of Utah, with its office and principal place of business located at 801 First Security Bank Building, 24th Street and Washington Boulevard, in the City of Ogden, State of Utah.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent hereinabove named. The complaint states a cause of action against said respondent under the Clayton Act, as amended by the Robinson-Patman Act.

ORDER

It is ordered, That the respondent, The Amalgamated Sugar Co., a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the sale or distribution of sugar in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from discriminating, directly or indirectly, in the price of such products of like grade and quality, by selling sugar to any purchaser at a price which is lower than the price charged any other purchaser engaged in the same line of commerce, where such lower price undercuts the price at which the purchaser charged the lower price may purchase sugar of like grade and quality from another seller.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission, by order issued November 7, 1957, having placed this case on its own docket for review; and

Counsel for the respondent and the acting director of the Commission's Bureau of Litigation, by joint motion filed January 14, 1958, having requested that the order contained in the hearing examiner's initial decision be modified in certain respects; and

The Commission being of the opinion that the request should be granted:

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

It is ordered, That the respondent, The Amalgamated Sugar Co., a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the sale or distribution of sugar in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from discriminating, directly or indirectly, in the price of such products of like grade and quality, by selling sugar to any purchaser at a price which is lower than the price charged any other purchaser engaged in the same line of commerce, where such lower price undercuts the price at which the purchaser charged the lower price may purchase sugar of like grade and quality from another seller.

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

It is further ordered, That the respondent, The Amalgamated Sugar Co., 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 contained herein.

Decision

IN THE MATTER OF
THE WARSON PRODUCTS CORP. ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6711. Complaint, Jan. 18, 1957—Decision, Jan. 22, 1958

Consent order requiring sellers in St. Louis, Mo., to cease representing falsely in newspaper and radio advertising that their "Warsene Capsules," the only active ingredient of which was salicylamide, were an effective treatment for arthritis, rheumatism, and similar ailments, contained several active ingredients, were "made like a doctor's prescription," were new and different from other products, and were a buffered formula and would not cause stomach upset, etc.

The corporate respondent agreed to the same consent settlement on August 22, 1957, p. 200 herein.

Mr. Harold A. Kennedy for the Commission.

Mr. Donald E. Fahey, of St. Louis, Mo., *pro se* and for Respondent John J. Powers; *Mr. George R. Williams*, of St. Louis, Mo., *pro se*.

INITIAL DECISION AS TO INDIVIDUAL RESPONDENTS BY ABNER E.
LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on January 18, 1957, charging Respondents with violation of the provisions of the Federal Trade Commission Act by the dissemination of false and misleading advertisements with respect to a drug preparation designated "Warsene Capsules," which respondents sell and distribute in commerce.

On July 22, 1957, Respondents John J. Powers, George R. Williams, and Donald E. Fahey, their counsel, and counsel supporting the complaint entered into an agreement containing consent order to cease and desist, which was approved by the director and the assistant director of the Commission's Bureau of Litigation, and thereafter submitted to the hearing examiner for consideration.

Respondents John J. Powers, George R. Williams, and Donald E. Fahey are identified in the agreement as individuals and former officers of Respondent The Warson Products Corp. The agreement states that Respondent John J. Powers maintains his office at 5900 North Broadway, St. Louis, Mo., and served as president of said corporate Respondent until July 1956; that Respondent George R. Williams maintains his office at 5935 Jameison Avenue, St. Louis, Mo., and served as vice president of said corporate respondent until August

1956; and that Respondent Donald E. Fahey maintains his office at 314 North Broadway, St. Louis, Mo.; is now a director of the said corporate respondent; and served as secretary-treasurer thereof until August 1956.

The present agreement specifies that the order contained therein does not prohibit the representations alleged in subparagraphs 5 and 6 of paragraph 6 of the complaint, regarding respondents' product being a buffered formula and that it is a result of research, for the reason that counsel supporting the complaint is of the opinion, on the basis of the evidence now available, that such allegations cannot be sustained.

Individual Respondents John J. Powers, George R. Williams, and Donald E. Fahey admit all the jurisdictional facts alleged in the complaint; agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations; and waive any further procedure before the hearing examiner and the Commission, the making of findings of fact or conclusions of law, and all the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

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

After consideration of the allegations of the complaint and the provisions of the agreement and the proposed order, the hearing examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding with respect to the individual Respondents John J. Powers, George R. Williams, and Donald E. Fahey. Accordingly, in consonance with the terms of the aforesaid agreement, the hearing examiner accepts the agreement containing consent order to cease and desist; finds that the Commission has jurisdiction over the respondents signatory thereto, and over their acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That Respondents John J. Powers, George R. Williams and Donald E. Fahey, individually and as former officers of The Warson Products Corp., their representatives, agents and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of the preparation "Warsene Capsules," or any preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from, directly or indirectly:

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 said preparation:

(a) Is an adequate, effective, or reliable treatment for the aches, pains, or discomforts of any kind of arthritis, rheumatism, neuralgia, neuritis, bursitis, sciatica, lumbago, muscle soreness, or allied disorders; will afford immediate, complete, or permanent relief from the aches, pains, or discomforts thereof, or have any therapeutic effect on the symptoms or manifestations of any such conditions or disorders in excess of affording temporary relief of minor aches or pains thereof;

(b) Contains any analgesic ingredient other than salicylamide;

(c) Is made like a doctor's prescription, provided, however, this shall not prohibit the making of truthful representations concerning the use of such product by physicians;

(d) Is a new or substantially different, kind of preparation or substantially different, in its mode of action or analgesic effect from other commonly used analgesics;

(e) Will not cause stomach upset;

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT
OF COMPLIANCE

Pursuant to section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner shall, on the 22d day of January 1958, become the decision of the Commission: and accordingly:

It is ordered, That respondents John J. Powers, George R. Williams, and Donald E. Fahey, individually and as former officers of respondent The Warson Products Corp., a corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Decision

IN THE MATTER OF
AMERICAN BUSINESS EXCHANGE, INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 6793. Complaint, May 13, 1957—Decision, Jan. 22, 1958*

Consent order requiring a Chicago real estate firm to cease representing falsely in advertising and statements made by its solicitors to persons who had property for sale that it had available prospective buyers interested in their specific properties; that the property was underpriced and the asking price should be increased; that the property would be nationally advertised in periodicals and widely read newspapers and by radio and television, and listed in bulletins distributed nationally to brokers, banks, and investment groups; that through its financial department it would finance the purchase of the property; that it would bring prospective purchasers for examination of the listed property; and that the listing fee was an advance on the selling commission and would be refunded if the property was not sold in 6 months.

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

Mr. Howard R. Slater, of Chicago, Ill., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on May 13, 1957, charging respondents with the dissemination of false, misleading, and deceptive representations in connection with the solicitation of the listing for sale and advertising of real estate and other property, in violation of the Federal Trade Commission Act.

On November 27, 1957, counsel supporting the complaint submitted to the hearing examiner a motion to dismiss complaint without prejudice as to Respondent Max Berman, individually and as an officer of American Business Exchange, Inc., and Respondent Phil Packard, individually, because service upon these two respondents, either by mail or personally, has been impossible to secure. In view of this fact, the hearing examiner is of the opinion that said motion should be granted.

Also on November 27, 1957, Respondent American Business Exchange, Inc., by its president; individual Respondents Louis Michael Parrelli, George B. Bry, and Ruth Parrelli; their counsel, and counsel supporting the complaint herein entered into an agreement containing consent order to cease and desist, which was approved by the director and the assistant director of the Commission's Bureau

of Litigation, and thereafter submitted to the hearing examiner for consideration.

The agreement identifies Respondent American Business Exchange, Inc., as an Illinois corporation, with its office and place of business located at 30 W. Washington Street, Chicago, Ill.; and Respondents Louis Michael Parrelli, also known as Louis Parrell; Ruth Parrelli, also known as Ruth Drummond; and George B. Bry as officers of the said corporate respondent, the address of the two respondents Parrelli being 1446 Elmdale Avenue, Chicago, Ill., and of Respondent George B. Bry, 509 East End Avenue, Hillside, Ill.

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

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

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

It is ordered, That respondents American Business Exchange, Inc., a corporation, and its officers, and Louis Michael Parrelli, also known as Louis Parrell; George B. Bry; Ruth Parrelli, also known as Ruth

Drummond, individually, and as officers of said corporation, and Respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the soliciting of business or other property of others for sale, or the selling of advertising of said property or other services or facilities in connection with the offering for sale, selling, buying or exchanging of said property in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly:

1. That they have available prospective buyers who are interested in the purchase of specific property;

2. That a prospective seller's property is underpriced and that the asking price should be increased;

3. That respondents will advertise the property of a prospective seller in periodicals of national circulation or widely-read newspapers, or will be advertised by means of radio and TV, or by any other means, that is not in accordance with the facts;

4. That the property of a prospective seller will be listed for sale and published in bulletins distributed to brokers, banks or investment groups;

5. That respondents maintain a financial department, or that they possess the finances and ability to finance the purchase of the listed property when sold;

6. That respondents will bring or present prospective purchasers for examination of the seller's listed property;

7. That the listing fee is an advance on the selling commission or will be refunded to the property owner.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to Respondents Max Berman, individually and as an officer of the corporate respondent, and Phil Packard, individually, without prejudice to the right of the Commission to take such further action as circumstances may warrant.

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 22d day of January 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondents American Business Exchange, Inc., a corporation, and Louis Michael Parrelli, also known as Louis Parrell; George B. Bry; and Ruth Parrelli, also known as Ruth

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

Decision

IN THE MATTER OF
THE McALPIN CO.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS*Docket 6834. Complaint, July 8, 1957—Decision, Jan. 22, 1958*

Consent order requiring a furrier in Cincinnati, Ohio, to cease violating the Fur Products Labeling Act by making deceptive comparative price and percentage saving claims in its advertising and failing to keep the required records on which the pricing claims were based; and by failing in other respects to comply with the advertising, labeling, and invoicing requirements of the act.

Mr. John T. Walker for the Commission.
The McAlpin Co., pro se.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

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

The hearing examiner having considered the agreement and proposed order and being of the opinion that they provide an ade-

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quate 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 The McAlpin Co. (erroneously referred to in the complaint as The McAlpin Co., Inc.) is a corporation existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 6th and Race Streets, Cincinnati, Ohio.

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

ORDER

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

A. Misbranding fur products by:

1. Failing to affix labels to fur products showing:

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

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

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

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

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

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

2. Setting forth on labels attached to fur products:

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

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

3. Failure to show on labels attached to fur products all of the information required under section 4(2) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder, on one side of such labels.

B. Falsely or deceptively invoicing fur products by:

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

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

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

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

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

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

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

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

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

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

1. Fails to disclose:

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

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

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

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

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

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

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT
OF COMPLIANCE

Pursuant to section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner shall, on the 22d day of January 1958, become the decision of the Commission; and, accordingly:

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

Decision

IN THE MATTER OF
SPURGEON PICKERING TRADING AS MONDO GRASS CO.
AND MONDO GRASS & NURSERY CO.

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

Docket 6847. Complaint, July 23, 1957—Decision, Jan. 22, 1958

Consent order requiring a seller of nursery stock in Biloxi, Miss., to cease representing falsely in newspaper and magazine advertisements that the plant *Ophiopogon Japonicus*—which he referred to as “Mondo ‘Grass’”—is a grass, will make a lawn, maintain lawn height, withstand traffic, remain evergreen the year round, withstand severe freezing, and is drought resistant.

Mr. John W. Brookfield, Jr., and Mr. Charles W. O’Connell for the Commission.

Mr. Leonard J. Calhoun, of Washington, D.C., for respondent.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

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

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The proposed order covers all of the charges in the complaint except the charge that respondent has represented, contrary to fact, that his product forms a sod. As to this charge, the agreement contains a statement by counsel supporting the complaint to the effect that the charge cannot be sustained. The omission of the matter from the proposed order therefore appears proper.

The hearing examiner being of the opinion that the agreement and proposed order represent an appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued:

1. Respondent Spurgeon Pickering is an individual trading and doing business under his own name and as Mondo Grass Co. and Mondo Grass & Nursery Co., with his office and place of business located at Briarfield Avenue, Route 3, Biloxi, Miss.

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 Spurgeon Pickering, an individual trading and doing business under his own name and as Mondo Grass Co. and Mondo Grass & Nursery Co., or trading under any other name or names, and his agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of the plant ophiopogon japonicus, by whatever name it may be designated, do forthwith cease and desist from:

1. Advertising or offering ophiopogon japonicus for sale unless a clear and conspicuous disclosure is made that it is not a grass.

2. Representing directly or by implication:

(a) That ophiopogon japonicus will make a lawn unless it is clearly and conspicuously disclosed that it will not serve all the uses of a lawn.

(b) That without mowing it will maintain the height to which lawns are usually mowed.

(c) That regardless of the region of the United States in which it is planted:

(1) It remains evergreen the year around.

(2) It is winter hardy.

(3) It is drought tolerant.

3. Misrepresenting directly or indirectly the ability of ophiopogon japonicus to withstand traffic.

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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 22d day of January 1958, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF
FREDERICK MANUFACTURING CO. ET AL.

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

Docket 6866. Complaint, Aug. 14, 1957—Decision, Jan. 22, 1958

Consent order requiring manufacturers in Providence, R.I., to cease affixing to their costume jewelry and men's accessories, before shipping to retail dealer purchasers, labels bearing fictitious prices greatly in excess of the usual retail prices, thereby providing retailers with means for deceiving the purchasing public.

Mr. John W. Brookfield, Jr., and Mr. Charles W. O'Connell, for the Commission.

Dick & Carty, by Mr. E. Harold Dick, of Providence, R.I., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on August 14, 1957, charging respondents with the dissemination, upon labels at the request of purchasers, of false, deceptive, and misleading representations of the retail prices of their costume jewelry and men's accessories, in violation of the Federal Trade Commission Act.

On November 18, 1957, respondents, their counsel, and counsel supporting the complaint herein entered into an agreement containing consent order to cease and desist, which was approved by the director and the assistant director of the Commission's Bureau of Litigation, and thereafter submitted to the hearing examiner for consideration.

The agreement identifies Respondents Frederick Manufacturing Co. and Casselini, Inc. as Rhode Island corporations, having their office and principal place of business, in common, at 244 Oak Street, Providence, R.I.; and Respondents Albert Lieberman and Albert Bensusan as president and treasurer, respectively, of both corporations, and having the same office and place of business.

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

Respondents waive any further procedure before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all the rights they may have to challenge or

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

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

It is ordered, That Respondents Frederick Manufacturing Co. and Casselini, Inc., corporations, and their officers, and Albert Lieberman and Albert Bensusan, individually and as officers of said corporations, and their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of costume jewelry and accessories or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing through prices or amounts set out on tickets or labels, whether or not affixed to or shipped with such merchandise, or in any other manner, that certain amounts are the regular and usual retail prices of such merchandise, when such amounts are in excess of the prices at which such merchandise is usually and regularly sold at retail.

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 22d day of January 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Frederick Manufacturing Co. and

Casselini, Inc., corporations, and Albert Lieberman and Albert Ben-susan, individually and as officers of said corporations, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Complaint

IN THE MATTER OF
ALLEN V. SMITH, INC.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (a)
OF THE CLAYTON ACT*Docket 6877. Complaint, Aug. 23, 1957—Decision, Jan. 22, 1958*

Consent order requiring a processor and packer of dried food products in Marcellus Falls, N.Y., to cease discriminating in price in violation of section 2(a) of the Clayton Act by such transactions as selling dried peas and beans to The Great Atlantic & Pacific Tea Co. of America for resale in the Baltimore area at prices lower than those charged other direct-buying retailers in the area and lower than those charged wholesalers who resold to A & P's competitors.

Mr. William Smith and *Mr. James R. Fruchterman* for the Commission.

Mr. Nathan J. Goldrich, of New York City, for respondent.

COMPLAINT

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

PARAGRAPH 1. Respondent Allen V. Smith, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York with its principal office located in Marcellus Falls, N.Y.

PAR. 2. Respondent is a processor and packager of dried food products, which consist for the most part of peas, beans, and pearled barley.

Respondent sells its dried food products of like grade and quality to a large number of purchasers located throughout the United States for use, consumption, or resale therein.

Respondent processes and packages its dried food products at its plants located at Marcellus Falls and Martisco, N.Y., Sylvania, Ohio, Garfield, Wash., and Greeley, Colo.

PAR. 3. In the course and conduct of its said business, respondent is now, and for many years has been, shipping its dried food products

from the States in which they are processed and packaged to purchasers located in other States, in a constant current of commerce, as "commerce" is defined in the Clayton Act.

PAR. 4. Respondent sells its packaged dried food products directly to wholesale food dealers, to the Great Atlantic & Pacific Tea Co. of America, and also directly to retail food dealers.

The Great Atlantic & Pacific Tea Co. of America resells respondent's packaged dried food products directly to the consuming public through its own retail stores.

The wholesale food dealers resell respondent's packaged dried food products to retail food dealers, who in turn resell to the consuming public as do other retail food dealers purchasing directly from respondent.

PAR. 5. Under the respondent's system of distribution there is actual competition between the Great Atlantic & Pacific Tea Co. of America and those retail dealers who purchase the respondent's packaged dried food products from wholesalers as well as those retail dealers who purchase these products directly from the respondent.

PAR. 6. The respondent has in the past and is at the present time discriminating in the prices charged to various purchasers of certain of its dried food products, including packaged dried peas and beans of various types, by charging higher prices to some of its purchasers than it does to other purchasers for merchandise of like grade and quality.

For example, respondent Allen V. Smith, Inc., has sold large quantities of packaged dried food products, including various kinds of dried peas and beans, on numerous occasions to the Great Atlantic & Pacific Tea Co. of America, hereinafter referred to as the A & P Tea Co., for resale by its retail stores which are located in or near Baltimore, Md. Said sales to the A & P Tea Co. were made at prices consistently and substantially lower than the prices charged to other direct buying retail dealers competing with the A & P in the Baltimore, Md. area, for dried packaged peas and beans of like grade and quality. Moreover, such sales to the said A & P Tea Co. were made at prices lower than those charged to wholesale food dealers purchasing said products for resale to retailers who compete with the A & P Tea Co. in and around the Baltimore, Md., area.

The discrimination in price mentioned above is not a fixed and certain discount but varies with each sale and with each item and is in the nature of a special price granted solely to the A & P Tea Co.

PAR. 7. The effect of such discrimination in price has been or may be substantially to lessen competition in the lines of commerce in which

respondent's purchasers are engaged, and to injure, destroy, or prevent competition between respondent's favored and nonfavored purchasers and between respondent's favored purchaser, or purchasers, and the customers of its nonfavored purchasers, as alleged and described herein.

PAR. 8. Said discriminations in price constitute a violation of subsection (a) of section 2 of the aforesaid Clayton Act, as amended.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) issued its complaint herein, charging the above-named respondent, Allen V. Smith, Inc., a corporation, with having violated the provisions of subsection (a) of section 2 of the Clayton Act (U.S.C., Title 15, sec. 13), as amended by the Robinson-Patman Act approved June 19, 1936. The respondent was duly served with process and time for answer was extended and initial hearing canceled pending negotiations of counsel for a consent agreement.

On November 26, 1957, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an "Agreement containing consent order to cease and desist," which had been entered into by and between the respondent and his attorney, and William Smith and James R. Fruchterman, counsel supporting the complaint, under date of November 26, 1957, subject to the approval of the Bureau of Litigation of the Commission. Such agreement had been thereafter duly approved by the Bureau.

On due consideration of the said "Agreement containing consent order to cease and desist," the hearing examiner finds that said agreement, both in form and in content, is in accord with section 3.25 of the Commission's rules of practice for adjudicative proceedings and that by said agreement the parties have specifically agreed that:

1. Respondent is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at Marcellus Falls, State of New York.

2. Pursuant to the provisions of the Clayton Act, the Federal Trade Commission, on August 23, 1957, issued its complaint in this proceeding against respondent, and a true copy was thereafter duly served on respondent.

3. Respondent admits all the jurisdictional facts alleged in the complaint and agrees that the record may be taken as if findings of

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

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

5. Respondent waives:

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

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

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

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

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

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

Upon due consideration of the complaint filed herein, and the said "Agreement containing consent order to cease and desist," the latter is hereby approved, accepted and ordered filed, the same not to become a part of the record herein, unless and until it becomes a part of the decision of the Commission. The hearing examiner finds from the complaint and the said "Agreement containing consent order to cease and desist" that the Commission has jurisdiction of the subject matter of this proceeding and of the person of the respondent corporation; that the complaint states a legal cause for complaint under the Clayton Act as amended, both generally and in each of the particular charges alleged therein; that this proceeding is in the interest of the public; that the following order as proposed in said agreement is appropriate for the full disposition of all the issues in this proceeding, such order to become final only if and when it becomes the order of the Commission; and that said order, therefore, should be, and hereby is, entered as follows:

ORDER

It is ordered, That respondent Allen V. Smith, Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the sale of packaged dried food products, in commerce, as "commerce" is defined in the

Clayton Act (U.S.C., Title 15, sec. 13), as amended, do forthwith cease and desist from:

1. Discriminating, directly or indirectly, in the price of such products of like grade and quality, by selling to any purchaser at net prices higher than the net prices charged any other purchaser, competing in fact in the resale and distribution of such products.

2. Discriminating in the price of such products of like grade and quality by selling to any retailer at net prices lower than the net prices charged any wholesaler who competes, or whose customers compete, with such retailer in the resale and distribution of such products.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission having considered the initial decision of the hearing examiner in this proceeding, based on an agreement for consent order executed by the respondent and counsel in support of the complaint; and

It appearing that said initial decision recites that the complaint states a legal cause of action under the Federal Trade Commission Act, whereas, in fact, the complaint charges a violation of section 2(a) of the Clayton Act (15 U.S.C. sec. 13), as amended by the Robinson-Patman Act; and

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

It is ordered, That the initial decision of the hearing examiner be, and it hereby is, amended by substituting the words "Clayton Act, as amended" for the words "Federal Trade Commission Act" in the last paragraph preceding the order to cease and desist.

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

It is further ordered, That respondent Allen V. Smith, Inc., a corporation, shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with the order contained in the aforesaid initial decision.

IN THE MATTER OF
SILVERCRAFT CO., INC., ET AL.

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

Docket 6887. Complaint, Sept. 11, 1957—Decision, Jan. 22, 1958

Consent order requiring a seller of cutlery in Boston, Mass., to cease selling with the words "Made in England" etched on the blades and "FINE SHEFFIELD CUTLERY, Sheffield, England" printed on the display cartons, cutlery made with handles imported from Japan on which the word "Japan" was concealed in assembling them with steel blades and tines imported from England; and to cease selling other cutlery assembled from domestic blades and tines imported from Japan without disclosing the foreign source of the handles.

Mr. Edward F. Downs and *Mr. Thomas A. Sterner* for the Commission.

Mr. Simon Queen, of Boston, Mass., for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondents with misrepresenting certain cutlery products sold by them, in violation of the Federal Trade Commission Act. An agreement has now been entered into by respondents and counsel supporting the complaint which provides, among other things, that respondents admit all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order 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 pro-

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

1. Respondent Silvercraft Co., Inc., is a corporation existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business located at 20-24 Yeoman Street, Boston, Mass. Respondents Oscar Miller and Maurice Miller are officers of the corporate respondent and they dominate, direct, and control the policies, acts, and practices of the said corporate respondent.

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

ORDER

It is ordered, That the respondent Silvercraft Co., Inc., a corporation, and its officers, and Oscar Miller and Maurice Miller, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of cutlery or other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

2. Offering for sale or selling cutlery containing handles made in Japan, or any other foreign country, combined with other parts made in the United States without clearly disclosing the foreign origin of the handles;

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

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner shall, on the 22d day of January 1958, become the decision of the Commission; and, accordingly:

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

Decision

IN THE MATTER OF
LESTER CONKLIN FURS

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

Docket 6881. Complaint, Aug. 30, 1957—Decision, Jan. 23, 1958

Consent order requiring a furrier in Reno, Nev., to cease violating the Fur Products Labeling Act by labeling fur products falsely with respect to the names of animals producing the fur; by failing in other respects to comply with invoicing and labeling requirements of the act; and in newspaper advertising failing to disclose the names of animals producing certain furs and that certain products were composed of artificially colored fur, and using comparative prices and representing that selling prices were reduced without maintaining the required records as a basis for such pricing claims.

Morton Nesmith and *John J. Mathias*, Esqs., in support of the complaint.

F.R. Breen, Esq., of Reno, Nev., for respondent.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

The complaint in this proceeding, issued August 30, 1957, charges the respondent above-named with violation of the provisions of the Federal Trade Commission Act, the Fur Products Labeling Act and the rules and regulations promulgated under the last-named act, in connection with the sale, advertising and offering for sale, transportation and distribution, shipping and receiving in commerce, of fur and fur products, as the designations "commerce," "fur," and "fur products" are defined in the Fur Products Labeling Act.

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

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

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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 respondent may be entitled under the Federal Trade Commission Act or the rules of practice of the Commission.

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

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

Said agreement recites that respondent Lester Conklin is an individual trading as Lester Conklin Furs, with his office and principal place of business located at 46 W. First Street, Reno, Nev.

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 respondent, is ordered filed upon becoming part of the Commission's decision in accordance with sections 3.21 and 3.25 of the rules of practice, and in consonance with the terms of said agreement, the hearing examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent named herein, and that this proceeding is in the interest of the public, and issues the following order:

ORDER

It is ordered, That respondent Lester Conklin, an individual trading as Lester Conklin Furs or under any other trade name, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce of any fur product, or in connection with the sale, advertising, offering for sale, transportation or distribution of any fur product which is made in whole or in part of fur which has been shipped and received in commerce,

as "commerce," "fur," and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

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

2. Failing to affix labels to fur products showing:

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

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

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

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

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

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

(g) That the fur product contains or is composed of secondhand fur, when such is the fact.

3. Setting forth on labels attached to fur products:

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

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

B. Falsely or deceptively invoicing fur products by:

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

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

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

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

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

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

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

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

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

1. Fails to disclose :

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

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

2. Makes pricing claims or representations in advertisements respecting reduced prices, comparative prices, value or quality of furs or fur products, unless there is maintained by respondent full and adequate records disclosing the facts upon which such claims or representations are based.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner shall, on the 23d day of January 1958, become the decision of the Commission; and, accordingly :

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

Complaint

IN THE MATTER OF
REED CANDY CO.

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

Docket 6461. Complaint, Nov. 21, 1955—Decision, Jan. 28, 1958

Consent order requiring a candy manufacturer in Chicago, Ill., with annual sales approximating \$3,250,000, to cease making payments to some of its customers—such as the payment of \$100 to the Giant Food Shopping Center, Inc., of Washington, D.C., and of \$800 to Food Fair Stores, Inc., of Philadelphia, Pa.,—as compensation for advertising its products without making such payments available on proportionally equal terms to all their competitors.

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

Mr. David A. Canel, of Chicago, Ill., for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly 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, Reed Candy Co., is a corporation organized, 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 1245 Fletcher Street, Chicago, Ill.

PAR. 2. Respondent, Reed Candy Co., is now, and has been, engaged in the manufacture, sale and distribution of candy products sold under the trade name "Reed's". Respondent sells its products through its own salesmen and brokers who sell to candy jobbers and retail stores including retail chain store organizations. Sales by respondent of its products are substantial, amounting approximately to \$3,250,000 annually.

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 its principal place of business located in the State of Illinois to customers located in states other than the State of Illinois and in the District of Columbia.

PAR. 4. In the course and conduct of its business in commerce, respondent Reed Candy Co. has paid or contracted for the payment of something of value to or for the benefit of some of its customers as compensation or in consideration for services and facilities furnished by or through such customers in connection with their offering for sale or sale of products sold to them by said respondent, and such payments were not 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 \$100 to the Giant Food Shopping Center, Inc., of Washington, D.C., and the sum of \$800 to Food Fair Stores, Inc., of Philadelphia, Pa., as compensation or as an allowance for advertising or other service or facility furnished by or through such customers in connection with their offering 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 Giant Food Shopping Center, Inc., or Food Fair Stores, 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.

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 Reed Candy Co., 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 1245 Fletcher Street, Chicago, Ill.

On December 2, 1957, there was submitted to the undersigned hearing examiner an agreement between respondent and counsel supporting the complaint providing for the entry of a consent order. By the terms of said agreement, respondent admits all the jurisdictional facts alleged in the complaint and agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. By such agreement, respondent waives any further procedural steps before the hearing examiner and the Commission; waives the making of findings of fact and con-

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

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

1. Respondent Reed Candy Co., is a corporation existing and doing business under the laws of the State of Illinois, with its principal place of business located at 1245 Fletcher Street, Chicago, Ill.

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

ORDER

It is ordered, That respondent Reed Candy Co., a corporation, its officers, employees, agents, and representatives, directly or through any corporate or other device, in or in connection with the sale of 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 cus-

tomers 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 section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner shall, on the 28th day of January 1958, become the decision of the Commission; and, accordingly:

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

Decision

IN THE MATTER OF
INDIANA FUR CO., INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS

Docket 6585. Complaint, July 9, 1956—Decision, Jan. 28, 1958

Consent order requiring a furrier in Indianapolis, Ind., to cease violating the Fur Products Labeling Act by labeling certain fur products falsely with respect to the names of animals producing the furs; by failing, in advertisements in newspapers, to disclose the names of animals producing certain furs and that the fur in some products was artificially colored, and to set forth the names of pieces of which fur products were composed; and by failing in other respects to comply with the labeling, invoicing, and advertising requirements of the act.

Mr. S. F. House for the Commission.

Ross, McCord, Ice & Miller, by *Mr. James V. Donadio* and *Mr. Willis H. Ellis*, of Indianapolis, Ind., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on July 9, 1956, charging respondents with misbranding and falsely and deceptively invoicing and advertising their fur products, in violation of the Federal Trade Commission Act and of the Fur Products Labeling Act and the rules and regulations promulgated thereunder.

Thereafter, on November 21, 1957, respondents, their counsel, and counsel supporting the complaint herein entered into an agreement containing consent order to cease and desist, which was approved by the director and by the assistant director of the Commission's Bureau of Litigation, and thereafter submitted to the hearing examiner for consideration.

The agreement identifies Respondent Indiana Fur Co., Inc. as an Indiana corporation, with its office and principal place of business located at 114 E. Washington Street, Indianapolis, Ind., and Respondents Herbert Davidson, Fred Davidson, and Roy D. Dushman as president, secretary-treasurer, and comptroller thereof, respectively, their addresses being the same as that of the corporate respondent, whose acts, policies and practices they formulate, direct and control.

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

Respondents waive any further procedure before the hearing ex-

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

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

It is ordered, That respondents, Indiana Fur Co., Inc., a corporation, and its officers and Herbert Davidson, Fred Davidson, and Roy D. Dushman, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, 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. Falsely or deceptively labeling or otherwise identifying any such product as to the name or names of the animal or animals that produced the fur from which such product was manufactured;

b. Failing to affix labels to fur products showing:

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

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

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

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

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

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

c. Setting forth on labels attached to fur products:

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

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

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

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 invoice;

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

b. Setting forth required information in abbreviated form;

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

a. Fails to disclose:

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

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

(3) The names of the pieces of which the fur products are composed;

b. Contains the name or names of an animal or animals other than the name or names provided for in paragraph 5(a)(1) of the Fur Products Labeling Act;

c. Sets forth required information in abbreviated form.

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 28th day of January 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Indiana Fur Co., Inc., a corporation; Herbert Davidson, individually and as president of said corporation; Fred Davidson, individually and as secretary-treasurer of said corporation; and Roy D. Dushman, individually and as comptroller 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.

Complaint

IN THE MATTER OF

JABIE S. HARDIN DOING BUSINESS AS JABIE
SALES CO.

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

Docket 6812. Complaint, June 3, 1957—Decision, Jan. 28, 1958

Consent order requiring a food broker in Memphis, Tenn., to cease collecting brokerage fees on food products sold to a corporate wholesale distributor of which he was president and virtually all of the stock of which he owned, and to its successor copartnership, of which he retained substantial control, which transactions had the same effect as if he were purchasing for his own account and receiving brokerage and were thus in violation of section 2(c) of the Robinson-Patman Act.

Mr. Frederick McManus for the Commission.

Arnall, Golden & Gregory, by *Mr. Ellis Arnall*, of Atlanta, Ga.,
for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, since September 1, 1955, has violated and is now violating the provisions of subsection (c) of section 2 of the Clayton Act (U.S.C. Title 15, sec. 13), as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Jabie S. Hardin, an individual, doing business as Jabie Sales Co., is now and has been since September 1, 1955, engaged in the conduct of a food brokerage business, which business is located at 1184 Airways Boulevard, Memphis, Tenn. Respondent Jabie S. Hardin represents numerous manufacturers and suppliers of food products located outside the State of Tennessee in the sale and distribution of food products within said State of Tennessee.

PAR. 2. Helen E. Hardin and N. E. Hardin, copartners trading under the firm name of Hardin's Co., are engaged in the wholesale distribution and sale of food products. Helen E. Hardin is the wife and N. E. Hardin is the brother of respondent, Jabie S. Hardin. The place of business of Hardin's Co., is located at 1186 Airways Boulevard, Memphis, Tenn., immediately adjacent to the place of business of Jabie Sales Co.

PAR. 3. Prior to the formation of the partnership trading as the Hardin's Co., the business was conducted under the name of Hardin's, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee. Hardin's, Inc., was located at 1186 Airways Boulevard, Memphis, Tenn., the present address of Hardin's Co. The president of Hardin's, Inc., was respondent Jabie S. Hardin with title to 4,740 shares of stock in the corporation. The vice president of Hardin's, Inc., was N. E. Hardin with title to 260 shares of stock in the corporation. Helen E. Hardin was secretary of the corporation and owned no stock therein. Hardin's, Inc., was a wholesale distributor engaged in the sale and distribution of food products to retailers for resale to the consuming public.

PAR. 4. On or about September 1, 1955, respondent Jabie S. Hardin transferred all of his stock in Hardin's, Inc., to his wife, Helen E. Hardin, who became president of the corporation which continued in the business of a wholesale distributor of food products until on or about September 30, 1955, at which time the corporation was dissolved and the copartnership of Helen E. Hardin and N. E. Hardin, doing business under the firm name of Hardin's Co., was formed to acquire and conduct the wholesale food distribution business formerly conducted under the corporate name of Hardin's, Inc.

PAR. 5. On or about September 1, 1955, respondent Jabie S. Hardin, doing business as Jabie Sales Co., commenced business as a food broker and in such capacity represented various principals located outside the State of Tennessee in sales of food products to Hardin's, Inc., and subsequent to the dissolution of that corporation and the formation of Hardin's Co. has sold and continues to sell food products in substantial amounts to Helen E. Hardin and N. E. Hardin, doing business as Hardin's Co. In his capacity as a broker of food products, respondent Jabie S. Hardin has collected and continues to collect substantial amounts as commissions or brokerage fees on sales of food products to Hardin's Co.

PAR. 6. Jabie S. Hardin, through his wife, Helen E. Hardin, continues substantial ownership of Hardin's Co. He also continues to exercise a substantial degree of authority and control over the business operation of that company, including its purchase and sales policies. As a result of this ownership and control the purchases of food products made by Hardin's Co. through Jabie Sales Co. is for the benefit of Jabie S. Hardin and is the same or has the same effect as if he were purchasing for his own account and receiving brokerage on said purchases.

PAR. 7. In the course and conduct of its business, as aforesaid, Hardin's Co., since September 30, 1955, has made and continues to make substantial purchases of food products from manufacturers and distributors thereof with places of business located in several states of the United States other than the State of Tennessee, and has directly or indirectly caused such food products so purchased to be transported from said states to Hardin's Co.'s place of business in Memphis, Tenn. There is now, and at all times mentioned herein has been, a continuous course of trade in commerce, as "commerce" is defined in the aforesaid Clayton Act, in said food products across state lines between respondent and the sellers of said food products. Said food products are sold and distributed for use, consumption, or resale within the various States of the United States.

PAR. 8. The acts and practices of respondent since September 1, 1955, in receiving and accepting commissions, brokerage fees or other compensation, allowances or discounts in lieu thereof, on purchases of food products in commerce made directly or indirectly for his own account, as above alleged and described, is in violation of subsection (c) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on June 3, 1957, charging him with having violated section 2(c) of the Clayton Act, as amended by the Robinson-Patman Act. Respondent appeared by counsel and entered into an agreement, dated November 14, 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 and the assistant director of the Bureau of Litigation. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with section 3.25 of the rules of practice of the Commission.

Respondent, pursuant to the aforesaid agreement, has admitted all of the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been made duly in accordance with such allegations. Said agreement further provides that respondent waives 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

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

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

1. Respondent is an individual doing business as Jabie Sales Co. under and by virtue of the laws of the State of Tennessee with his office and principal place of business located at 1184 Airways Boulevard, in the city of Memphis, State of Tennessee, but said respondent is now engaged in terminating said business for economic considerations.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent hereinabove named. The complaint states a cause of action against said respondent under the Clayton Act, as amended by the Robinson-Patman Act. This proceeding is the interest of the public.

ORDER

It is ordered, That respondent Jabie S. Hardin, individually and doing business as Jabie Sales Co., or under any other name, and his representatives, agents, and employees, directly or through any corporate or other device, in connection with the purchase of food products or other commodities in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

1. Receiving or accepting, directly or indirectly from any seller, anything of value as a commission, brokerage, or other compensation,

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or any allowance or discount in lieu thereof, upon or in connection with any purchase of food products for his own account, or for the account of any corporation, partnership, or firm in which respondent, directly or indirectly, owns an interest or exercises a substantial degree of authority and control.

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 28th day of January 1958, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF
CUESTA, REY & CO. ET AL.

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

Docket 6855. Complaint, July 26, 1957—Decision, Jan. 28, 1958

Consent order requiring cigar manufacturers in Tampa, Fla., to cease placing on boxes of their cigars a "guarantee" stamp which so closely resembled the official Customs stamp in lettering, design, and placement on boxes that purchasers believed they were buying cigars made under bond.

Mr. Charles W. O'Connell for the Commission.

Mr. Norman S. Brown, of Brown, Brown & Corcoran, of Tampa, Fla., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

The complaint in this proceeding charges that Cuesta, Rey & Co., a corporation, Angel L. Cuesta, Jr., Ygnacio D. Rey, Karl B. Cuesta, and Eugene Simon, individually and as officers of said corporation, hereinafter called respondents, have violated the provisions of the Federal Trade Commission Act by misrepresenting that the cigars which they manufacture are made in a customs bonded warehouse.

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

The pertinent provisions of said agreement are as follows: Respondents admit all jurisdictional facts; the complaint may be used in construing the terms of the order; the order shall have the same force and effect as if entered after a full hearing and the said agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission; the record herein shall consist solely of the complaint and the agreement; respondents waive the requirement that the decision must contain a statement of findings of fact and conclusion of law; respondents waive further procedural steps before the hearing examiner and the Commission, and the order may be altered, modified, or set aside in the manner provided by statute for other orders; respondents waive any right to challenge or contest the validity of the order entered in accordance with the agreement; and the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

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

JURISDICTIONAL FINDINGS

1. The respondent Cuesta, Rey & Co., is a corporation organized and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 2416 N. Howard Avenue, Tampa, Fla. The individual respondents Angel L. Cuesta, Jr., Ygnacio D. Rey, Karl B. Cuesta, and Eugene Simon are president, vice president, treasurer, and secretary, respectively, of said corporation and their business address is the same as that of the corporation.

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

ORDER

It is ordered, That Cuesta, Rey & Co., a corporation, and its officers, and Angel L. Cuesta, Jr., Ygnacio D. Rey, Karl B. Cuesta, and Eugene Simon, individually, and as officers of said corporation, and their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of cigars in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using any stamp which either by reason of its appearance, its placement on containers of cigars, or by a combination of both effects, simulates the United States Customs stamp required by the Tariff Act of 1930 and the regulations thereunder to be affixed to boxes containing cigars manufactured in bond.

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 28th day of January 1958, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

S. MANN FURS, INC., ET AL.

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

Docket 6883. Complaint, Sept. 11, 1957—Decision, Jan. 28, 1958

Consent order requiring a furrier in New York City to cease violating the Fur Products Labeling Act by labeling and invoicing fur products with the name of an animal other than that which produced the fur; by failing to comply with other invoicing and labeling requirements of the act; and by affixing labels containing purported regular prices and suggested selling prices and furnishing invoices showing two columns of figures, one designated as "was" prices and the other designated as "now" prices, without keeping the required records to substantiate such pricing claims, which were later used by the customer as the basis for comparative pricing claims in newspaper advertising.

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

Kanton, Fixel and Rose, of New York, N.Y., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

The complaint in this proceeding charges that S. Mann Furs, Inc., a corporation, Sam Mann and Lila Mitchell, individuals, hereinafter called respondents, have violated the provisions of the Federal Trade Commission Act, the Fur Products Labeling Act, and the rules and regulations promulgated under the last-named act by misbranding and falsely and deceptively invoicing and advertising fur products.

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

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

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

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

JURISDICTIONAL FINDINGS

1. The respondent S. Mann Furs, Inc. is a corporation organized and doing business under the laws of the State of New York, with its office and principal place of business located at 363 Seventh Avenue, New York, N.Y. The individual respondents Sam Mann and Lila Mitchell are president and secretary-treasurer, respectively, of the corporate respondent and their business address is the same as that of the corporation.

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

ORDER

It is ordered, That S. Mann Furs, Inc., a corporation, and its officers and Sam Mann and Lila Mitchell, individually and as officers of said corporation, and their representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, manufacturing for introduction into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce of any fur product, or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur," and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

1. Failing to affix labels to fur products showing:

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

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

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

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

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

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

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

2. Setting forth, on labels affixed to fur products the name or names of any animal or animals other than the name or names provided for in paragraph A(1)(a) above.

3. Setting forth on labels affixed to fur products:

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

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

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

4. Failing to show on labels affixed to fur products all the information required under section 4(2) of the Fur Products Labeling Act and the rules and regulations thereunder on one side of such labels;

5. Failing to use labels that have a minimum dimension of one and three fourths inches by two and three fourths inches;

6. Failing to show separately on labels affixed to fur products composed of two or more sections containing different animal furs the information required under section 4(2) of the Fur Products Labeling Act and the rules and regulations thereunder with respect to the fur comprising each section.

B. Falsely or deceptively invoicing fur products by:

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

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

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

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

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

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

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

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

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

4. Using the term "blended" to describe the pointing, bleaching, dyeing or tip-dyeing of furs.

C. Making price claims or representations in advertisements respecting reduced prices, comparative prices, value or quality of furs or fur products unless there are maintained by respondents adequate records disclosing the facts upon which such claims or representations are based.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF
COMPLIANCE

Pursuant to section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner shall, on the 28th day of January 1958, become the decision of the Commission; and, accordingly:

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

Decision

IN THE MATTER OF
P-X CAMERA EXCHANGE, INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6878. Complaint, Aug. 30, 1957—Decision, Feb. 1, 1958

Consent order requiring distributors of photographic equipment and supplies in New York City to cease representing falsely through use of the term "C. Z. Jena" in advertisements and prominently inscribed on the lenses, that the Japanese-made movie lenses they sold—on which the name "Japan" in very small letters was concealed under a screwed-on protective cap—were made by Carl Zeiss, the well-known German manufacturer.

Mr. Terral A. Jordon for the Commission.

Mr. Jesse Cohen, of New York, N.Y., for respondents.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 30, 1957, issued and subsequently served its complaint in this proceeding against respondents P-X Camera Exchange, Inc. and Janrus Camera, Inc., corporations existing and doing business under and by virtue of the laws of the State of New York, and Herbert Robbins, individually and as president-treasurer of each of said corporations. The office and principal place of business of said respondents is located at No. 37 West 47th Street, New York 36, N.Y.

On November 18, 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. Respondents P-X Camera Exchange, Inc., and Janrus Camera Inc., are corporations organized, existing and doing business under the laws of the State of New York, with their office and principal place of business located at No. 37 West 47th Street, New York, N.Y. Respondent Herbert Robbins is an individual and is president-treasurer of respondent Janrus Camera, Inc. He is not an officer of respondent P-X Camera Exchange, Inc. The office and principal place of business of the individual respondent is the same as that of the corporate respondents.

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 P-X Camera Exchange, Inc., a corporation, and its officers, and Janrus Camera, Inc., a corporation, and its officers, and Herbert Robbins, individually and as an officer of Janrus Camera, Inc., and each of respondents' agents, representatives, or employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of movie lenses, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the term "C. Z. Jena" to describe movie lenses not manufactured by "Carl Zeiss" in Jena, Germany, or using any other term which misrepresents the manufacturer or country of origin of said movie lenses.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to respondent Herbert Robbins as an officer of respondent P-X Camera Exchange, Inc. only, but not as an individual.

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

It is ordered, That the respondents P-X Camera Exchange, Inc., a corporation, Janrus Camera, Inc., a corporation, and Herbert Robbins, individually and as an officer of Janrus Camera, Inc., shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Decision

IN THE MATTER OF
WICO CORP. ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT

Docket 6859. Complaint, Aug 13, 1957—Decision, Feb. 5, 1958

Consent order requiring distributors in Chicago, Ill., to cease representing falsely in newspaper and other advertising to promote the sale of hot food service bars, that their offer was that of a wholesale distributing business of food products or a managership thereof, that "UP TO \$16,000 A YEAR" income was assured, that accounts were established for customers, that they were given exclusive distributorships, that refunds were made to those dissatisfied, that customers did not have to vend or sell, that the purchase price was secured by inventory and no financial risk was involved, etc.; and that their business was associated with and endorsed by food manufacturers and producers.

Mr. William A. Somers supporting the complaint.

Mr. Nathan Engelstein of Chicago, Ill., for respondents.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on August 13, 1957, charging them with violation of the Federal Trade Commission Act as set forth in said complaint. After issuance and service of the complaint all respondents on November 25, 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 the issues in this proceeding. This agreement has been duly approved by the assistant director and the director of the Bureau of Litigation and has been submitted to the undersigned, heretofore designated to act as hearing examiner herein, for his consideration in accordance with rule 3.25 of the rules of practice of the Commission.

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

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

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

1. Respondent Wico Corp. 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 2913 Pulaski Road, Chicago, Ill. Respondents Max Wiczer, Harry Wiczer, and Milton Wiczer are individuals and officers of said corporate respondent and their office and principal place of business is the same as that of the said corporate respondent.

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

ORDER

It is ordered, That respondents Wico Corp., a corporation, and its officers; and Max Wiczer, Harry Wiczer, and Milton Wiczer, individually and as officers of said corporation; and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of hot food service bars, or any other related products and supplies therefor, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

1. The offer made in the advertisement is an offer of a wholesale or distributing business or any other business or as a manager thereof

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when, in fact, the real purpose of the advertisement is to sell respondents' products.

2. Respondents establish accounts for their purchasers, unless such is a fact.

3. That purchasers do not have to engage in vending or selling, unless such is a fact.

4. The money paid to respondents is secured by the inventory or equipment purchased or is otherwise secured.

5. Prospective purchasers must have a car or furnish good references or be under any particular age in order to purchase respondents' products, unless such is a fact.

6. Respondents provide adequate training to those who purchase their products or any kind of training that is not actually provided.

7. That the income or profits derived from the purchase and operation of the food bars sold by respondents are any amounts in excess of those which have been, in fact, customarily earned by the purchasers and operators thereof.

8. Respondents grant exclusive distributorships or exclusive territory to their purchasers.

9. There is no financial risk involved in dealing with respondents.

10. Respondents obtain satisfactory or profitable locations for the food bars purchased from them.

11. Respondents relocate their hot food service bars when the locations obtained by them are not satisfactory to the purchaser.

12. Respondents refund the purchase price of their hot food service bars sold by them or resell them to another person, in case the purchaser is dissatisfied.

13. Food manufacturers or producers are associated with respondents in their business of hot food service bars or endorse their method of selling their food products therewith.

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

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

IN THE MATTER OF
BERNARD ROSTEN TRADING AS BERN PRODUCTS CO.
CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 6758. Complaint, Apr. 3, 1957—Decision, Feb. 6, 1958

Order requiring a seller in New York City of dolls, clocks, electric appliances, and other articles of merchandise, to cease supplying to operators and members of the public plans of merchandising, including pushcards, which involved the operation of games of chance, gift enterprises, or lottery schemes in the sale of the merchandise to the purchasing public; and to cease selling merchandise by games of chance.

Mr. William A. Somers for the Commission.

Mr. Horace J. Donnelly, Jr., of Washington, D.C., for respondent.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

This proceeding involves charges that the respondent has violated the Federal Trade Commission Act by selling and distributing merchandise in interstate commerce through the use of pushcards. This initial decision determines that the material allegations of the complaint have all been sustained and that the respondent has violated the act as charged.

The complaint herein was issued April 3, 1957, and thereafter duly served upon the respondent. Upon appearance and motion of Chicago, Ill., counsel for respondent, time for filing answer was extended to May 31, but postponement of time for initial hearing, set for June 11 in Chicago, was denied. Subsequently, however, the hearing was reset for the same date in New York, N.Y., at respondent's counsel's request, with further hearing ordered for Chicago on June 17, 1957. These hearings were held as ordered, respondent appearing in person and by New York counsel at the New York hearing. In addition to the formal notice filed of record in this proceeding, the hearing examiner also gave further notice of the Chicago hearing during the course of the New York hearing. Neither respondent nor any of his New York or Chicago attorneys appeared, however, at the time of the Chicago hearing, but testimony of three witnesses from Indiana was taken, which pertained to their receipt through the mail and their use of respondent's pushcards and explanatory literature sent them by respondent. At the close of this hearing, Commission's counsel rested his case-in-chief. Respondent's counsel having earlier indicated on the record that they desired to present evidence in respondent's

behalf, a further hearing for such purpose was ordered for July 15, 1957, in New York. Prior to this date respondent's counsel withdrew and present counsel of Washington, D.C., entered his appearance and moved for a continuance, upon which the said hearing so set for New York was cancelled and subsequently set for August 12, 1957. Thereafter respondent's counsel waived the presentation of respondent's evidence and requested that a time be fixed for the submission of proposed findings, conclusions, and order, as well as respondent's motions to dismiss the proceeding and otherwise. Thereupon, the examiner cancelled the hearing and fixed September 9, 1957, for submission of the parties' respective proposals and closed the case for the taking of evidence. Said proposals were submitted in due course and the matter taken under submission.

The issues framed by the pleadings are comparatively simple, the respondent having admitted the location and extent of his merchandise business, the sole issue being whether or not he was engaged in practices violative of the Federal Trade Commission Act which he denied.

The examiner, after hearing and observing the witnesses, has given full, careful, and impartial consideration to all of the documentary exhibits received in the record, to all other evidence presented on the record and to the fair and reasonable inferences arising therefrom, as well as to the facts stated in the complaint which are admitted by the answer. All arguments and authorities presented by way of objections and motions or in oral arguments or written briefs of counsel have likewise been fully and carefully considered. Upon the whole record thus evaluated, weighed, and considered, it is found that the material allegations of the complaint are each and all fully and fairly established by a preponderance of the evidence, the examiner specifically finding as follows:

Respondent Bernard Rosten is an individual doing business under the trade name of Bern Products Co. The respondent's principal place of business and office immediately prior to issuance of the complaint was located at 4309 W. Lake Street, Chicago, Ill., and is now, and has been since the issuance of the complaint herein, located at 640 Broadway, New York, N.Y. The respondent is now, and since August 1956, has been, engaged in the sale and distribution of electrical appliances, cameras, comforters, and other articles of merchandise and has caused said merchandise when sold to be transported from his places of business in Chicago, Ill., and New York, N.Y., to purchasers thereof located in States of the United States other than the States of Illinois or New York. There is now, and has been for more than 1 year last past a substantial course of trade by respondent

in such merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act between and among the various States of the United States and the District of Columbia.

In the course and conduct of his business, as hereinbefore stated, the respondent in soliciting the sale of and in selling and distributing his merchandise furnishes and has furnished various plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes when said merchandise is sold and distributed to the consuming public (Comm. Exs. 1A to 16, inclusive). Among the methods or sales plans adopted and used by the respondent and which is typical of the practices of the respondent is the following:

Respondent distributes, and has distributed, to operators and to members of the public certain literature and instructions, including among other things, pushcards, order blanks, circulars, including thereon illustrations and descriptions of said merchandise, and the circulars explain respondent's plan of selling and distributing his merchandise and of allotting it as premiums or prizes to the operators of said pushcards (Comm. Exs. 1A to 6D, inclusive); one of the respondent's said pushcards, which is substantially illustrative of all of them (Comm. Ex. 5C), bears 52 names with ruled columns on the back thereof for writing in the name of the purchaser of the pushcard corresponding to the name selected. Said pushcard has 52 partially perforated discs. Each of said discs bears one of the names corresponding to those on said list. Concealed within each disc is a number which is disclosed only when the customer separates the disc from the card. The pushcard also has a larger master seal and concealed within the master seal is one of the names appearing on the disc and list. The person selecting the name corresponding to one hidden under the master seal receives a 36-piece electric work saver. The pushcard bears the following legend or instructions:

Lucky Name Under Seal Receives This
36 PIECE ELECTRIC WORK SAVER
Every Home Has A Place For It
1001 uses in the home, on the farm, in the shop.
SAVES TIME—MONEY—WORK
(Illustrated by picture on push card)

6 EXTRA WINNERS

Nos. 40 and 45 Each Receive 4-in-1 Screw Driver	No. 1 Pays 1¢
Nos. 50 and 55 Each Receive Ball Pen and Flashlight	No. 2 Pays 2¢
Nos. 60 and 65 Each Receive Pencil Lighter	No. 9 Pays 9¢
	All Others Pay only 39¢
	None Higher

Sales of respondent's merchandise by means of said pushcards are made in accordance with the above-described legend or instructions and said prizes or premiums are allotted to the customers or purchasers from said card in accordance with the above legend or instructions. Whether the purchaser receives an article of merchandise or nothing for the amount of money paid and the amount to be paid for the merchandise or the chance to receive said merchandise are thus determined wholly by chance or lot. The articles of merchandise have a value substantially greater than the price paid for any one chance or push. Respondent furnishes and has furnished other pushcards accompanied by order blanks, instructions and other printed matter for use in the sale and distribution of their merchandise by means of games of chance, gift enterprises or lottery. The sales plans or methods involved in the sale of all said merchandise by means of said pushcards are the same as that hereinabove described, varying only in detail as to merchandise distributed and the prizes or chances and the number of chances on each card.

The persons to whom respondent furnishes and has furnished said pushcards use the same in selling and distributing respondent's merchandise in accordance with the aforesaid sales plan. Respondent thus supplies to and places in the hands of others the means of conducting games of chances, gift enterprises or lottery schemes in the sale of their merchandise in accordance with the sales plan hereinabove set forth. The use by the respondent of said sales plans or methods in the sale of said merchandise by and through the use thereof and by the aid of said sales plans or methods is a practice which is contrary to an established policy of the Government of the United States.

The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure one of the respondent's said articles of merchandise at a price much less than the normal retail price thereof. Many persons are attracted by said sales plans or methods used by the respondent for the reason of the element of chance involved therein and thereby are induced to buy and sell respondent's merchandise.

The use by the respondent of a sales plan or method involving distribution of merchandise by means of chance, lottery or gift enterprises is contrary to public interest and constitutes unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

The respondent, Bernard Rosten, is 25 years of age. He graduated from college, majoring in advertising and specializing in direct mail and mail order courses. Thereafter, he was in the military service

and then spent approximately 2 years with his father in the general merchandise business in New York before opening his business under challenge herein in Chicago during August 1956. His advertising matter and pushcards are disseminated from Chicago, but respondent removed his place of business to New York some three months after first engaging in it in Chicago. His average volume of business between August 1956, and the hearing in June 1957, was estimated to be between \$5,000 and \$7,000 a month, although in some months he averaged \$10,000. While his principal business is obtained through the pushcard method, he also sells some merchandise at his place of business, either directly or by mail where the pushcard method is not employed. He has sent out about 1 million mailings into every State of the Union and the District of Columbia during this period, which mailings included advertising of the merchandise, pushcards, and instructions as to the use of such cards for the procurement of merchandise. Respondent sends to the holder of the pushcard the commodities advertised thereby by parcel post but not until he has received the money. In these merchandise packages he also encloses from five to seven additional packets containing pushcards.

He incongruously contended in his testimony that there was no correlation between the development of his business and the use of the pushcards. He testified he was only interested in receiving the money for the merchandise, and further contended that since mail order businesses, such as Montgomery Ward, publish extensive catalogues while retail stores, such as Macy's, use large multiple page ads in the newspapers costing thousands of dollars, his method of selling by mail over the country is just his way of doing business which he is entitled to carry on as much as larger concerns are entitled to advertise in their ways. Without reciting further detail it may be said that the respondent's operations of his business and the selling of his merchandise in interstate commerce by the use of pushcards and also, as he admits (R. 62), by punch boards, examples of which are not in evidence, fit into the pattern of a multitude of cases of this type already determined by the Commission and the courts to be games of chance, gift enterprises, or lottery schemes.

Respondent's counsel urges, in substance, that the record is insufficient to warrant findings and order against respondent because respondent involuntarily appeared and testified under compulsion under the Commission's subpoena and that, since he has no agents out soliciting customers and has no personal contact with his customers, he has not violated the Federal Trade Commission Act and has not

been guilty of the operation or conduct of a lottery in interstate commerce and, therefore, the Commission has no jurisdiction. Counsel's contentions are those which he has made in a number of prior push-card cases which have been heretofore finally adjudicated. The authorities he cites are also largely criminal cases, most of them involving mail fraud statutes of the United States and not applicable to the present proceeding. He has also made the same argument in at least two prior proceedings in which he has been counsel, and this same contention has always been rejected by the Commission and the courts. In each instance the order of the Commission has been sustained by the Court of Appeals for the District of Columbia and certiorari denied by the United States Supreme Court. See *Carl Drath, etc. v. FTC* (Dec. 13, 1956), certiorari denied March 25, 1957, 353 U.S. 917, and *U.S. Printing & Novelty Co. v. FTC* (1953), 204 F. 2d 737, certiorari denied (1953), 346 U.S. 830. The Commission's latest decision on this subject in line with all the authority in holding the use of push-cards and other lottery schemes illegal is *Morse Sales, Inc.*, Docket No. 6613, issued August 22, 1957. Respondent's said contentions are now timeworn and groundless. An ancillary contention that the testimony of the three witnesses who testified at Chicago as to the receipt and use of respondent's pushcards under his instructions should be rejected as hearsay is likewise utterly without merit. Respondent twice had official notice of the time that evidence would be taken in Chicago, and his subsequent failure to appear either in person or by counsel to cross-examine these qualified witnesses who gave competent, relevant, and material evidence cannot give color to the facetious argument that the testimony of these witnesses is hearsay as to him.

CONCLUSIONS OF LAW

Upon the foregoing findings of fact, the hearing examiner makes the following conclusions of law:

Respondent's distribution of pushcards contemplates and inevitably involves the use of a lottery or game of chance, and the placing by respondents in the hands of others, lottery devices for use in the sales of his merchandise. Such a merchandising operation is violative of the established public policy of the Government of the United States, is to the prejudice of the public and constitutes unfair acts or practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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

Appeal

54 F.T.C.

ORDER

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

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

ON APPEAL FROM INITIAL DECISION

By Secret, Commissioner:

This matter is before the Commission for final disposition on the merits of respondent's appeal from the hearing examiner's initial decision finding that respondent has engaged in unfair acts and practices in commerce through the use of lottery schemes or games of chance in the sale and distribution of merchandise, in violation of section 5 of the Federal Trade Commission Act.¹

The order to cease and desist contained in the initial decision would require respondent to cease and desist from:

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

Respondent's lottery devices, or pushcards, and his method of utilizing them in the sale and distribution of merchandise are fully described in the initial decision, and the record clearly and unequivocally establishes that they are designed to be, and are, widely used in the sale of merchandise by paid chance.

Respondent argues on appeal that he does not sell pushcards and does not operate and conduct a lottery or game of chance, and does not supply to others devices designed or intended to be used in the

¹ 52 Stat. 111, 15 U.S.C.A. 45.

sale or distribution of respondent's merchandise by means of a game of chance, gift enterprise or lottery scheme.

The fact that respondent does not "sell" pushcards is immaterial.² It is well established that the precise acts and practices with which respondent is charged, which were admitted and which were found by the hearing examiner to have been used: disseminating in commerce to the hands of others lottery devices unaccompanied by merchandise but which are designed or intended for use in the sale or distribution of merchandise, are a violation of section 5 of the Federal Trade Commission Act. The courts consistently have upheld Commission cease and desist orders entered against the same type of enterprise as is here involved. *Chicago Silk Co. v. Federal Trade Commission*, 90 F. 2d 689 (C.A. 7, 1937), *cert. denied* 302 U.S. 753 (1937); *Jaffe v. Federal Trade Commission*, 139 F. 2d 112 (C.A. 7, 1943), *cert. denied* 321 U.S. 791 (1944); *Wolf v. Federal Trade Commission*, 135 F. 2d 564 (C.A. 7, 1943); *Colon v. Federal Trade Commission*, 193 F. 2d 179 (C.A. 2, 1952), *cert. denied* 344 U.S. 823 (1953); *Seymour Sales Company v. Federal Trade Commission*, 216 F. 2d 633 (C.A.D.C., 1954), *cert. denied* 348 U.S. 928 (1955); *Carl Drath t/a Broadway Gift Co. v. Federal Trade Commission*, 239 F. 2d 452 (C.A.D.C., 1956), *cert. denied* 353 U.S. 917 (1957).

Respondent testified that he was engaged in a general merchandise mail order business and that in furtherance thereof he disseminated to approximately 1 million prospects promotional literature, including pushcards, circulars, and order blanks. The circulars explained respondent's method of selling and distributing his merchandise. He further testified that these mailings went into practically all of the various States and that he receives approximately \$5,000 to \$7,000 a month business. The record clearly establishes that the pushcards are for the recipients' use in selling respondent's merchandise.

Witnesses testified that they had received in the mail, and across State lines, pushcards from respondent; that they sold punches on the pushcards and remitted the proceeds from such sale of punches on respondent's pushcards to respondent; that they received merchandise ordered from respondent which was distributed according to respondent's instructions; and if a person did not have a lucky name or number, he received nothing. It is clearly shown that whether the purchaser receives an article or nothing for the amount of money paid the chance to receive merchandise is determined solely by chance or lot. The articles of merchandise involved, the hearing examiner

²In the light of the whole context of the initial decision, use of the phrase "sale of pushcards" in the "Conclusions of Law" contained therein manifestly was inadvertent. The Commission has concluded, therefore, that the word "distribution" should be substituted for the term "sale" therein.

found, have a value substantially greater than the price paid for any one chance or push.

Substantial evidence in the record before the Commission establishes conclusively that the practices in which respondent was found to have engaged constituted a lottery scheme in the sale of respondent's merchandise, contrary to established public policy of the United States and in violation of section 5 of the Federal Trade Commission Act.

Respondent asserts that by virtue of the decision in *United States v. Halseh*, 342 U.S. 277 (1952), the Commission is without jurisdiction in the matter. That case arose under the postal statutes and did not involve construction of the Federal Trade Commission Act. It is not controlling here. As the Commission pointed out, citing cases, in the matter of *Carl Drath*, Docket No. 6185, affirmed 239 F. 2d 452 (C.A.D.C., 1956), the courts consistently have rejected this same contention, as we do here.

Finally, respondent contends that testimony given by respondent in this proceeding while under compulsion of a Commission subpoena *ad testificandum* cannot be considered to support a finding and decision against him. This same argument was submitted in the *Drath* case, *supra*, where the Commission said:

A Federal Trade Commission order to cease and desist is injunctive only, forbidding future violations of law but imposing no sanctions for past misconduct. Injunctive relief is not a "penalty" or a "forfeiture." *Bowles v. Misle*, 64 F. Supp. 835, 838 (Neb. 1946). Proceedings to collect civil penalties for disobedience of Commission orders are brought in United States District Courts and must be based on independent evidence of misconduct occurring subsequently to issuance of the order to cease and desist. The immunity clause is therefore inapplicable to respondent.

On appeal to the Court of Appeals, District of Columbia Circuit, from the Commission's ruling on the question, that court held squarely that:

The statute does not immunize a witness from a cease and desist order, which is prospective only and has been aptly described as "purely remedial and preventative." *Chamber of Commerce of Minneapolis v. Federal Trade Commission*, 8th Cir., 1926, 13 F. (2d) 673, 685. Having determined—partly on the basis of Drath's description of his activities—that he had unlawfully used lottery devices in making interstate sales of merchandise, the Commission did no more than direct him to discontinue such practices. One is not prosecuted by being told to desist from illegal conduct, nor does he thereby suffer the imposition of a penalty or the forfeiture of any legally protected right or property. *Carl Drath t/a Broadway Gift Company v. Federal Trade Commission*, *supra*.

Respondent's argument that, in being compelled to testify against himself, he acquired immunity under section 9 of the Federal Trade

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Order

Commission Act is without merit and is rejected. *In the Matter of Carl Drath, supra; Ritholz v. March*, 105 F. 2d 937 (C.A.D.C., 1939); *Standard Distributors, Inc. v. Federal Trade Commission*, 211 F. 2d 7 (C.A. 2, 1954).

The term "distribution" will be substituted for the word "sale" in the first line of the first paragraph of the "Conclusions of Law" (page 7 of the initial decision). As so modified, the findings, conclusions and order of the hearing examiner are adopted as the findings, conclusions and order of the Commission. Respondent's appeal is denied and it is directed that an appropriate order issue.

FINAL ORDER

Respondent having filed an appeal from the hearing examiner's initial decision and the matter having come on to be heard by the Commission upon the whole record, including briefs and oral argument in support of and in opposition to the appeal; and

The Commission having rendered its decision denying respondent's appeal and adopting as its own decision the initial decision, as modified by the Commission's opinion:

It is ordered, That the "Conclusions of Law" contained in the initial decision be modified to read as follows:

CONCLUSIONS OF LAW

Upon the foregoing findings of fact, the hearing examiner makes the following conclusions of law:

Respondent's distribution of push cards contemplates and inevitably involves the use of a lottery or game of chance, and the placing by respondent in the hands of others, lottery devices for use in the sales of his merchandise. Such a merchandising operation is violative of the established public policy of the Government of the United States, is to the prejudice of the public and constitutes unfair acts or practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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