IN THE MATTER OF

MILWAUKEE ALLIED MILLS, INC., ET AL.

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

Docket 7112. Complaint, Apr. 9, 1958—Decision, Mar. 23, 1959

Order requiring a manufacturer in Milwaukee, Wis., to cease violating the Wool Products Labeling Act by invoicing and labeling as 70 percent woolen and 30 percent non-woolen fibers, woolen waddings or interlining materials which contained substantially less than 70 percent wool, and by failing to label certain wool products as required.

Thomas A. Zebarth, Esq. for the Commission.

Wickham, Borgelt, Skogstad & Powell, by *John J. Ottusch*, Esq., of Milwaukee, Wisc., for respondents.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

On April 9, 1958, the Federal Trade Commission issued its complaint against Milwaukee Allied Mills, Inc., and Mark E. Atwood and William L. Armstrong, individually and as officers of said corporation (hereinafter collectively called respondents), charging them with misbranding and falsely and deceptively invoicing and representing certain wool products in violation of the provisions of the Wool Products Labeling Act of 1939 (hereinafter called the Wool Act), 15 U.S.C. 68, the Rules and Regulations promulgated thereunder, and the Federal Trade Commission Act (hereinafter called the Act), 15 U.S.C. 41, *et seq.* Copies of said complaint together with a notice of hearing were duly served upon respondents.

The complaint alleges in substance that respondents misbranded certain of their wool products by not labeling them as required under the Wool Act and by falsely and deceptively labeling them with respect to the amount of the constituent fibers contained therein in violation of the Wool Act, and that respondents falsely and deceptively invoiced and represented the woolen content of their products in violation of the Act. Respondents appeared by counsel and filed an answer admitting the corporate, commerce, competition, and representation allegations of the complaint, as well as the misbranding by failure to label, stamp or tag their products as required under §4(a)(2) of the Wool Act, but denying that they falsely or deceptively labeled or tagged such prod-

ucts, or in any other way misrepresented such products, with respect to the amount of the constituent fibers contained therein.

Pursuant to notice, hearings were thereafter held in Milwaukee, Wisconsin, and Washington, D.C., before the undersigned hearing examiner duly designated by the Commission to hear this proceeding. All parties were represented by counsel, participated in the hearings, were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence pertinent to the issues, to argue orally upon the record, and to file proposed findings of fact, conclusions of law, and orders, together with reasons therefor. Both parties waived oral argument, and pursuant to leave granted, thereafter filed proposed findings of fact, conclusions of law, and orders, together with reasons in support thereof. All such findings of fact and conclusions of law proposed by the parties, respectively, not hereinafter specifically found or concluded are herewith specifically rejected.[1]

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

FINDINGS OF FACT

I. The Business of Respondents

The complaint alleged, respondents admitted, and it is found that Milwaukee Allied Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin. Mark E. Atwood and William L. Armstrong are president and secretary-treasurer, respectively, of said corporation. Said individual respondents cooperate in formulating, directing, and controlling the acts, policies, and practices of said corporation. Respondents have their office and principal place of business at 2322 Clybourn Street, Milwaukee, Wis.

II. Interstate Commerce and Competition

The complaint alleged, respondents admitted, and it is found that, subsequent to the effective date of the Wool Act, they have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, and offered for sale in commerce, as "commerce" is defined in the Act and the Wool Act, wool products, as "wool products" are defined in the Wool Act. Respondents in the course and conduct of their business were and are in substantial competition in com-

[1] 5 U.S.C. 1007(b).

merce with corporations, firms and individuals likewise engaged in the manufacture and sale of woolen waddings or interlining materials.

III. The Unlawful Practices

A. *Misbranding of Wool Products*

1. Stamps, Tags, and Labels Required by the Wool Act

Respondents are engaged in the manufacture and sale of woolen waddings or interlining materials. The complaint alleged, respondents admitted, and it is found that certain of these wool products were misbranded in that they were not stamped, tagged, or labeled as required under the provisions of §4(a)(2) of the Wool Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

2. False and Deceptive Stamping, Tagging or Labeling

The complaint also alleged that respondents misbranded certain of their wool products in violation of §4(a)(1) of the Wool Act by falsely and deceptively labeling or tagging them with respect to the amount of the constituent fibers contained therein. The complaint further alleged that respondents, in violation of §5 of the Act, by means of invoices and oral representations, falsely and deceptively misrepresented the woolen content of their products. These alleged violations of the two Acts are considered together inasmuch as they involve the same facts and evidence with respect to the woolen content of respondents' products.

The complaint alleged and respondents admitted that they labeled and tagged their waddings as containing 70 percent woolen and 30 percent nonwoolen fibers. The complaint also alleged and respondents admitted that they invoiced and orally represented said products as containing 70 percent woolen and 30 percent nonwoolen fibers. Thus the basic issue is whether or not such tags and representations were true.

In the manufacture of their product, respondents purchase from two sources of supply clippings or scraps of cloth in 1,000-pound bales, which are supposed to contain approximately 70 percent wool and 30 percent nonwool. Respondents run this material through a machine known as a rag picker, which reduces it to the original cloth fibers but does not effectively mix or stir the fibers so as to produce an homogenous product containing uniform percentages of wool and nonwool fibers. This shredded material is then placed into another machine called a garnet

which wads it. Facing material is then added. The final product is sold to and used by others as a wadding or interlining material for jackets and similar types of products. The garnet like the rag picker does not mix the fibers so as to produce an homogenous result with uniform percentages of woolen and nonwoolen fiber.

As previously found, respondents, admitted that they labeled such wadding as containing 70 percent wool and 30 percent nonwool, and also invoiced and orally represented such wadding as having such woolen and nonwoolen content. Two samples of respondents' wadding were secured at random from two different customers of respondents. Two tests of each sample were made by a chemist employed by the Commission to ascertain the woolen content thereof. Respondents conceded the expert qualifications of the chemist, who testified that the tests conducted were standard and recognized tests for ascertaining the wool and other fiber content of such materials. The two tests of one sample revealed a woolen content of 34.5 and 34.8 percent, respectively. The two tests of the other sample revealed a woolen content of 32.4 and 31.8 percent, respectively. It is apparent from these tests that the woolen content in each case did not amount even to one-half as much as represented by respondents.

Respondents argue that the tests were inadequate both because of the limited number of samples and the manner in which they were made. Having conceded the expert qualifications of the chemist, and in the light of her testimony with respect to the nature, type and sufficiency of her tests, this contention is without merit. Respondents also rely upon the proviso contained in §4(a)(2)(A) of the Wool Act as a defense to their misbranding and misrepresenting the woolen content of their products. The proviso reads as follows:

> . . . *Provided*, That deviation of the fiber contents of the wool product from percentages stated on the stamp, tag, label, or other means of identification, shall not be misbranding under this section if the person charged with misbranding proves such deviation resulted from unavoidable variations in manufacture and despite the exercise of due care to make accurate the statements on such stamp, tag, label, or other means of identification.

Respondents contend both that they exercised due care and that the deviation resulted from unavoidable variations in manufacture. The record establishes the contrary. As previously found, respondents secured their raw materials from two sources of supply. Respondents requested these suppliers to label such clippings as to woolen content and said suppliers refused to do so.

In addition thereto, one of the suppliers furnished respondents with letters stating that the cuttings contained 70 percent wool and 30 percent nonwool fibers, approximately 5 percent more or less, and also specifically stating that this was not to be construed as a warranty of any kind. Section 9(a) of the Wool Act sets forth the type of guaranty in writing available to respondents as a defense for misbranding. It is apparent that respondents have received no such guaranty from either supplier. In fact, the refusal of such suppliers either to label or warrant the woolen content of their clippings should have warned respondents, in the exercise of due care, that such supplies might well not contain the amount of wool respondents were representing their product to contain.

Even assuming the clippings were originally 70 percent wool, respondents concede that the method of manufacturing used by them might frequently result in substantial batches of wadding containing far less than 70 percent wool, because the machines used do not mix the fibers into an homogenous mass and therefore wadding resulting from a 1,000-pound bale containing 30 percent nonwool might well contain large portions having little or no wool content, and certainly substantially less than 70 percent. Indeed, respondents base their contention that such variations were unavoidable upon this fact. However, they testified that there are machines available which would bring about an adequate mixture resulting in an homogenous product containing the same percentages of wool and nonwool as the raw material. They stated that they did not use this machine because it would have increased their costs of production. Patently this cannot be characterized as an unavoidable variation in manufacture. Further, it demonstrates that respondents not only did not exercise due care in labeling and representing the woolen content of their products, but in fact knew that substantial percentages of their wadding must have contained less than 70 percent wool.

In support of their "due care" defense, respondents also testified that they previously had conducted periodic chemical tests of their own to determine the woolen content of their product. Again for economic reasons, these tests had been discontinued by respondents for almost a year prior to the hearings herein. In addition, their tests when conducted were done so improperly in that they failed to exclude the acetate content of the wadding, thereby substantially increasing the resulting percentage of "wool." Even wih this erroneously enhanced percentage, on oc-

casion their tests resulted in a finding of substantially less than 70 percent wool. Because of the knowledge derived from their own chemical tests as well as the knowledge that their method of manufacture resulted in substantial quantities of wadding containing much less than 70 percent wool, respondents' "due care" defense is without merit.

For the reasons set forth above with respect to due care and unavoidable variations, respondents' reliance upon the *Beacon* decision [2] is misplaced. In that case the Commission found the respondent had met the terms of the proviso to §4(a)(2)(A), hereinabove quoted. The Commission held that:

> . . . It is and for many years has been the respondent's policy to do everything possible and to take every precaution to see that its blankets contain the percentages of wool and other fibers claimed for them, and it appears that, insofar as this result can be obtained, the respondent has been successful in these efforts. It is true that, due to unavoidable variations in the mechanical manufacturing process, and despite the exercise of due care, swatches of some of the respondent's blankets have been found to contain slightly less than the percentages of wool fibers called for by the labels affixed to such blankets, but these variations apparently represent rare and isolated mistakes against which the respondent cannot reasonably be expected to guarantee. . . .

A mere reading of the foregoing quotation demonstrates its inapplicability to the facts herein.

A preponderance of the reliable, probative, and substantial evidence in the entire record convinces the undersigned and accordingly it is found that respondents misbranded certain of their wool products with respect to the amount of the constituent fibers contained therein, in violation of §4(a)(1) of the Wool Act and the Rules and Regulations promulgated thereunder, and falsely and deceptively invoiced and represented their products with respect to woolen content, in violation of §5 of the Act.

B. *The Effect of the Unlawful Practices*

The use by respondents of the false, deceptive and misleading statements and representations in invoices, shipping memoranda, orally or in any other manner, hereinabove found, has had and now has the tendency and capacity to cause manufacturers purchasing respondents' products and relying upon such false statements and representations to misbrand products made from said products of respondents.

---

[2] *Beacon Manufacturing Co.*, 46 F.T.C. 1073 (1949).

CONCLUSIONS OF LAW

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

2. The misbranding acts and practices of respondents hereinabove found are in violation of the Wool Act and the Rules and Regulations promulgated thereunder, and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the meaning of the Act.

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

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

ORDER

It is ordered, That respondents Milwaukee Allied Mills, Inc., a corporation, and its officers, and Mark E. Atwood and William L. Armstrong, individually and as officers of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for the introduction into commerce, or offering for sale, sale, transportation, or distribution in commerce, as "commerce" is defined in the Act and the Wool Act, of woolen waddings or interlining materials or other "wool products" as such products are defined in, and subject to, the Wool Act, do forthwith cease and desist from misbranding said products by:

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

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

a. The percentages 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 the percentage by weight of such fiber is 5 percentum or more, and (5) the aggregate of all other fibers;

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

c. The name or 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 Act.

It is further ordered, That Milwaukee Allied Mills, Inc., a corporation, and its officers, and Mark E. Atwood and William L. Armstrong, individually and as officers of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of woolen waddings or interlining materials, or any other products or material in commerce, as "commerce" is defined in the Act, do forthwith cease and desist from:

Directly or indirectly 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.

OPINION OF THE COMMISSION

By GWYNNE, Chairman:

This matter is before the Commission on appeal of respondents from the initial decision and order of the hearing examiner. The respondents filed an appeal brief and counsel in support of the complaint filed a reply brief. Oral argument was not requested.

The complaint charged the respondents with misbranding and falsely and deceptively invoicing and representing certain wool products in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder and the Federal Trade Commission Act.

The complaint alleged that respondents misbranded certain of their wool products by not labeling them as required by the Wool Act and by falsely and deceptively labeling them with

respect to the constituent fibers contained therein in violation of the Wool Act, and that respondents falsely and deceptively invoiced and represented the woolen content of their products in violation of the Act. Respondents admitted the corporate existence, competition and misrepresentation allegations of the complaint, as well as misbranding by failure to comply with Section 4(a)(2) of the Wool Act, but denied they falsely or deceptively labeled or tagged such products, or in any other way misrepresented such products with respect to the amount of the constituent fibers contained therein.

The respondents raise the following two issues in their appeal brief:

(1) Are the results of the two tests for fiber content performed on small quantities of the respondents' wadding sufficient to support a finding that the wadding did not contain the amounts of wool represented?

(2) Were the deviations in fiber content of the respondents' wadding the result of unavoidable variations in manufacture despite the exercise of due care within the meaning of Sec. 4(2)(A) of the Wool Products Labeling Act of 1939?

I.

The respondents claim there is not substantial evidence to support the order, for only one witness testified that the product did not contain 70% wool. They contend this testimony fails to establish a violation for the following reasons:

a. The amount of material tested is too small;

b. The testing procedure is incorrect;

c. The respondents have affirmatively proven that their wadding did in fact contain 70% wool as represented by them.

The record shows that two different pieces of material were tested. The samples were obtained from two different customers of respondents located in two different cities by two different investigators from different shipments made on different dates. From each of these, the Commission witness stated she cut a piece of material from a corner of each of the samples obtained. Each piece tested was approximately 21 square inches and weighed about 1.25 to 1.35 grams. The respondents contend this must be contrasted with their annual production in excess of 1,000,000 pounds. We agree with Commissioner Davis in his opinion in Docket No. 5506 (Smithline Coats and Smithline Coat Co.) 45 F.T.C. Dec. 79, in which he said:

The enforcement of this Act must necessarily be made on the basis of a sampling of the products of a large number of sellers. If violations are indi-

cated, it would obviously be most impractical and unnecessary to test several thousand or even several hundred of the products of a seller in order to establish a violation of the Act. The Act places the responsibility on the manufacturer and distributor of products subject thereto to label them correctly and in accordance with the terms of said Act. . . .

The respondents claim the testing procedure was incorrect, not because of the type of test performed and not because of the professional competence of the person making the test, but only because the test consisted of a small corner from each exhibit. The respondents' contention is premised on the basis that they are under no duty to produce a homogenous mixture so that the woolen content of the batting will be evenly distributed throughout. We must reject this contention. This is the very situation that the legislation was designed to correct.

Respondents contend they have proved that the wadding contained 70% wool. In support thereof, they point to oral and written representations received from suppliers and to the fact that they made periodic tests using the "standard boil-out method." Contrasted to this is evidence produced by the two tests on each sample which shows a woolen content of 34.5 and 34.8, respectively, on one sample, and 32.4 and 31.8 on the other.

The respondents receive their supplies from two suppliers. While respondents requested their suppliers to properly label their shipments in 1953, one supplier in 1957 stated that to the best of his knowledge the clippings contained 70% wool and 30% man-made fibers, but specifically denied that this was a warranty. The second supplier in 1957 stated that to the best of its knowledge the cuttings contained 70% wool fibers and 30% man-made fibers and there was approximately 5% variation. By such action on the part of their suppliers, respondents were put on notice that the supplies likely did not contain the specified fibers as represented. Yet, they continued to rely absolutely on such representations.

And, in 1957, the respondents, for reasons of economy, stopped making tests. Even when respondents conducted tests, they were such that the acetate content was not excluded, thereby substantially increasing the resulting percentage of "wool." And even then, respondents admitted that their tests sometimes resulted in finding less than 70% wool. Thus, we believe the record amply supports the finding that the percentages of wool were substantially less than claimed.

II.

Respondents, in attempting to prove that the deviation in fiber content was unavoidable and despite the exercise of due care, establish three factors which they state must be considered:

(a) The type of raw materials available;
(b) The processing method and procedures available for the processing of this raw material; and
(c) The type of product manufactured.

The respondents base this defense on Section 4(a)(2)(A) of the Wool Products Labeling Act of 1939 which states as follows:

* * * deviation of the fiber contents of the wool product from percentages stated on the stamp, tag, label, or other means of identification, shall not be misbranding under this section if the person charged with misbranding proves such deviation resulted from unavoidable variations in manufacture and despite the exercise of due care to make accurate the statements on such stamp, tag, label, or other means of identification.

They contend that with the introduction of synthetic fibers, separation of baled clippings become impossible as a practical matter and that a reasonable interpretation should be reliance upon "careful hand sorting by experienced waste material dealers such as those from whom the respondents purchase their clippings." We cannot accept this contention. This would eliminate a class of manufacturer from the provisions of the Act and would deny to the public the type of protection which the law was meant to cover.

The evidence clearly shows that while respondents knew it was possible to achieve a homogenous mixture by special machinery, hand mixing or other means, they failed to do so claiming that the cost would be prohibitive. This is not a valid excuse for violating the law.

The respondents next contend that due care must be determined according to the economic realities of the wool wadding industry and to impose upon respondents additional cost of manufacturing would be to destroy the industry. Thus, the criterion of due care in the wadding industry must be given wide variation.

Woven throughout these three arguments is the thought that the expense and difficulty of correctly stating the content of the material would place an intolerable burden on the respondents. We must reject this contention. The law does not require a particular fiber content or a specific manufacturing process. The law does require that the fiber content be correctly stated on the labels. The law was designed for the protection of the consumer.

Whatever the content, the respondents can conform to the provisions of the Act merely by correctly stating the fiber content on their labels so that no misrepresentations occur.

Respondents' appeal is hereby denied. The findings and order of the hearing examiner are adopted as the findings and order of the Commission. It is directed that an order issued in accordance with this opinion.

FINAL ORDER

The respondents herein having filed an appeal from the hearing examiner's initial decision, and the Commission having considered the matter on the briefs of counsel (oral argument not having been requested), and having rendered its decision denying the appeal and adopting as its own the findings and the order in the initial decision:

It is ordered, That the respondents, Milwaukee Allied Mills, Inc., a corporation, Mark E. Atwood and William L. Armstrong, shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order contained in the aforesaid initial decision.

IN THE MATTER OF

INDEPENDENT SALMON CANNERIES, INC., ET AL.

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

Docket 7201. Complaint, July 22, 1958—Decision, Mar. 24, 1959

Order requiring Seattle packers of salmon and other sea food products acting also as primary brokers for other packers, to cease violating the brokerage section of the Clayton Act by such practices as granting certain buyers or their agents reductions in price which were offset in whole or in part by a reduction of the field broker's commission, and granting price concessions which reflected brokerage on direct sales.

Mr. Cecil G. Miles for the Commission.

Mr. Josef Diamond, of *Lycette, Diamond & Sylvester*, of Seattle, Wash., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

This proceeding involves alleged violations of §2(c) of the Clayton Act, as amended (U.S.C., Title 15, §13), it being charged in the complaint, in substance, that respondents have paid, granted or allowed something of value as commission, brokerage, or other compensation, or allowance or discount in lieu thereof, in connection with the sale of their seafood products or those of their packer-principals, to buyers purchasing for their own account for resale, or to agents or intermediaries, acting for or in behalf of, or subject to the direct or indirect control of, said buyers.

The complaint was issued on July 22, 1958, and from the record it appears that respondents were duly served with a copy of said complaint; that they never filed an answer or other pleading and have long been in default of answer or any other appearance, except as to a letter dated October 29, 1958, by counsel above named, asking for an earlier setting or a postponement of the initial hearing herein; that due service was made upon such counsel pursuant to the Commission's Rules of Practice for Adjudicative Proceedings of the order setting this proceeding for November 25, 1958, in Seattle, Washington, for the purpose of hearing the evidence to be presented by counsel supporting the complaint to find whether or not the facts as against said respondents are as alleged in the complaint, to make proper findings on the evidence presented, and to determine the form of order to be issued against said respondents under said

complaint and evidence in the initial decision to be rendered herein as to said respondents.

On November 25, 1958, at the time and place designated therefor, the hearing examiner appeared to conduct such a hearing, counsel supporting the complaint appeared, and counsel for respondents also appeared with a request that the hearing be set over to November 28, 1958, at 10:00 a.m., at the same place, in order for him to obtain instructions from his client, which request was granted. But on that date, just before the hearing, counsel for respondents advised by telephone that he had no further instructions from his clients and to proceed with the hearing. Accordingly the hearing examiner conducted this hearing as scheduled, at which counsel for respondents did not appear; respondents being long in default of answer, and, on motion of counsel supporting the complaint, their default was taken and entered of record by the hearing examiner. Hearing then proceeded upon the presentation made by the attorney for the Commission who requested that findings be made against said respondents in accordance with the allegations of the complaint and that order be issued against said respondents. The proceeding was then taken under advisement.

Upon due consideration of the whole record herein and the hearing examiner being fully advised in the premises, it is found as follows:

1. Respondent Independent Salmon Canneries, Inc., hereinafter sometimes referred to as corporate respondent, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at Pier 66, Seattle Wash. Respondent has been for the past several years and is now engaged in packing, selling, and distributing canned and cured fish, including canned salmon, all of which are hereinafter referred to as seafood products, and is a substantial distributor of said products. Respondent also acts as primary broker for a number of packer-principals, in connection with the sale and distribution of their seafood products.

2. Respondent Bernard D. Oxenberg is an individual and is vice president of the corporate respondent named herein. Individual respondent Oxenberg and the Oxenberg family own a substantial majority of the outstanding capital stock of the corporate respondent. As vice president and substantial owner, as described above, respondent Oxenberg exercises authority

and control over the corporate respondent and its business activities, including the direction of its sales and distribution policies.

3. In the course and conduct of their business, respondents, both corporate and individual, have sold and distributed, and are now selling and distributing seafood products in commerce, as "commerce" is defined in the aforesaid Clayton Act, to buyers located in the several states of the United States, other than the state in which respondents are located. Said respondents transport, or cause such seafood products, when sold, to be transported from their place of business or warehouses, or the place of business or warehouses of their packer-principals, in the State of Washington or elsewhere, to buyers or to said buyers' customers located in various other states of the United States. There has been at all times mentioned herein a continuous course of trade in commerce in said seafood products across state lines between respondents and the respective buyers of said products.

4. Respondents, both corporate and individual, for the past several years have sold and distributed, and are now selling and distributing their seafood products in commerce, as well as those of their packer-principals, to customers located in the several states of the United States, generally through field brokers. When acting as primary brokers for their packer-principals in negotiating sales for them, respondents generally receive for their services a brokerage or commission usually at the rate of 5 percent of the net selling price of the merchandise. When respondents utilize the services of field brokers, they usually pay them a brokerage or commission at the rate of 2½ percent of the net selling price of the merchandise.

5. In the course and conduct of their business in commerce, either as distributor of their own seafood products or as primary brokers for their packer-principals, or in both capacities, respondents have made grants or allowances in substantial amounts in lieu of brokerage, or have made price concessions which reflect brokerage to certain buyers of said seafood products.

Among and including, but not necessarily limited to the methods and means employed by respondents in so doing are the following:

(a) Granting or allowing to certain buyers, or agents of buyers, reductions in prices which were coupled with or were off-set in whole or in part by a reduction of the field broker's commission or brokerage fee on said sales;

(b) Granting discounts or price concessions which reflect brokerage where no brokers are utilized in connection with said sales.

CONCLUSIONS OF LAW

There being jurisdiction over the persons of respondents, upon the findings herein made, the allegations of the complaint, and the presentation of counsel supporting the complaint, the hearing examiner upon the whole record makes the following conclusions of law:

1. The Federal Trade Commission has jurisdiction over all of the respondents' acts and practices herein found to be unlawful.

2. The public interest in this proceeding is clear, specific, and substantial.

3. The aforesaid acts and practices of respondents, both corporate and individual, as herein found, were and are all in violation of §2(c) of the Clayton Act, as amended (U.S.C., Title 15, §13).

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

ORDER

It is ordered, That Independent Salmon Canneries, Inc., a corporation, and its officers, and Bernard D. Oxenberg, individually and as an officer of respondent corporation, and respondents' agents, representatives, or employees, directly or through any corporate or other device, in connection with the sale of seafood products in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

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

2. Paying, granting, or passing on, either directly or indirectly to any buyer or to anyone acting for or in behalf of or who is subject to the direct or indirect control of such buyer, brokerage earned or received by respondents on sales made for their packer-principals, by allowing to buyers lower prices which reflect all or any part of such brokerage, or by granting them allowances or rebates which are in lieu of brokerage, or by any other method or means.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 24th day of March 1959, become the decision of the Commission; and, accordingly:

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

Decision

IN THE MATTER OF

EASTERN METAL PRODUCTS CORPORATION, ET AL.

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

Docket 7294. Complaint, Nov. 5, 1958—Decision, Mar. 24, 1959

Consent order requiring distributors of electrical appliances—including irons, cooker-fryers and skillet-casseroles—in Tuckahoe, N.Y., to cease representing falsely in advertising material disseminated to customers for use in resale, in newspaper advertising, on attached tags and labels, and on cartons packaging its products, that exaggerated prices were the regular retail prices; by use of the Good Housekeeping Seal of Approval, that its products had been approved and guaranteed by Good Housekeeping Magazine and advertised therein; and through use of the name "General Electric" that the products were manufactured by General Electric Company.

Mr. Terral A. Jordan for the Commission.
Respondents, for themselves.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on November 5, 1958, charging respondents with violation of the Federal Trade Commission Act by the use of false and misleading statements and representations as to prices, the Good Housekeeping Seal of Approval, and the name "General Electric," contained in or appearing on advertising material prepared and disseminated by respondents in connection with the sale and distribution in commerce of their electrical appliances, including irons, cooker-fryers and skillet-casseroles.

Thereafter, on January 19, 1959, respondents and counsel supporting the complaint herein entered into an Agreement Containing Consent Order to Cease and Desist, which was approved by the director and an assistant director of the Commission's Bureau of Litigation, and thereafter submitted to the hearing examiner for consideration.

The agreement identifies respondent Eastern Metal Products Corporation as a New York corporation, and respondents Arnold Troy and Seymour Troy as individuals and president and vice president, respectively, of said corporate respondent; all respondents having their office and principal place of business located at 135 Marbledale Road, Tuckahoe, N.Y.

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

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

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

It is ordered, That respondents Eastern Metal Products Corporation, a corporation, and its officers, and Arnold Troy and Seymour Troy, 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 electrical appliances, including irons, cooker-fryers, or skillet-casseroles, or other articles of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing directly or indirectly that any price is the

retail selling price of their products which is in excess of the price at which their products are regularly and customarily sold at retail;

2. Using the Good Housekeeping Seal of Approval in connection with their merchandise; or representing in any manner that their merchandise has been awarded said seal of approval, or that their merchandise has been approved by any other group or organization, unless such is the fact; *provided, however,* that this prohibition shall not be construed as prohibiting a truthful statement that a part of an article of merchandise has been approved by a group or organization, when such part is clearly and conspicuously identified;

3. Using the name of any company in connection with merchandise which has not been manufactured in its entirety by said company, or representing, directly or indirectly, that merchandise not manufactured in its entirety by a specified company, was so manufactured; *provided, however,* that this prohibition shall not be construed as prohibiting a truthful statement that a part of an article of merchandise has been manufactured by a specific company when such part is clearly and conspicuously identified;

4. Providing retailers or distributors of their products with preticketed articles of merchandise or price lists or advertising or promotional material through or by which said retailers or distributors are enabled to mislead and deceive the purchasing public with respect to the matters set out in paragraph 1 herein.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 24th day of March 1959, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Eastern Metal Products Corporation, a corporation, and Arnold Troy and Seymour Troy, 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

MARTIN GOLDSTEIN, ET AL. DOING BUSINESS AS THE NAGOLD CO.

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

Docket 7312. Complaint, Nov. 19, 1958—Decision, Mar. 26, 1959

Consent order requiring a New York City firm of factory agents for manufacturers of cutlery, luggage, kitchenware, jewelry, and other merchandise, to cease representing falsely that fictitious and exaggerated amounts appearing in their advertising and promotional literature and attached to their said products were the usual retail selling prices.

Mr. Terral A. Jordan for the Commission.

Shemitz, Craig & Fischman, by *Mr. Sydney U. Craig*, of New York, N.Y., for respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated November 19, 1958, the respondents are charged with violating the provisions of the Federal Trade Commission Act.

On February 3, 1959, the respondents and their attorney entered into an agreement with counsel in support of the complaint for a consent order.

The hearing examiner finds that the content of the agreement meets all of the requirements of Section 3.25(b) of the Rules of the Commission.

The hearing examiner being of the opinion that the agreement and the proposed order provide an appropriate basis for disposition of this proceeding as to all of the parties, the agreement is hereby accepted and it is ordered that the 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 following jurisdictional findings are made and the following order issued.

1. Respondents Martin Goldstein and Morris Nagler are individuals trading and doing business as a copartnership under the name of The Nagold Co., with their office and principal place of business located at 1150 Broadway, New York, N.Y.

2. The Federal Trade Commission has jurisdiction of the sub-

ject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Martin Goldstein and Morris Nagler, as individuals or as copartners trading and doing business as The Nagold Co., or under any other trade name, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of cutlery, luggage, kitchenware, jewelry or any other articles of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing directly or indirectly that any price is the retail selling price of their products which is in excess of the price at which their products are regularly and customarily sold at retail.

2. Providing retailers or distributors of their products with preticketed articles of merchandise or price lists or advertising or promotional material through or by which said retailers or distributors are enabled to mislead and deceive the purchasing public with respect to the matters set out in paragraph 1 herein.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 26th day of March 1959, 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

MORTON ETELSON

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

Docket 7322. Complaint, Dec. 2, 1958—Decision, Mar. 26, 1959

Consent order requiring a furrier in New York City to cease violating the Fur Products Labeling Act by failing to comply with the labeling and invoicing requirements, and advertising representations that certain fur products had a "wholesale market value" of a stated price without maintaining adequate records as a basis for such claims.

Mr. Alvin D. Edelson for the Commission.
Mr. Morton Etelson, pro se.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated December 2, 1958, the respondent is charged with violating the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and the Rules and Regulations made pursuant thereto.

On January 27, 1959, the respondent entered into an agreement with counsel in support of the complaint for a consent order.

By the terms of the 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, the making of findings of fact or 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. It is also agreed 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 agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, that the agreement is for settlement purposes only and does not constitute an admission of respondent that he has violated the law as alleged in the complaint, that the order to cease and desist may be entered in this proceeding of 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, that it may be altered, modified or set aside in the manner provided for other orders, and that the complaint may be used in construing the terms of the order.

The hearing examiner being of the opinion that the agreement and the proposed order provide an appropriate basis for disposition of this proceeding as to all of the parties, the agreement is hereby accepted and it is ordered that the 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 following jurisdictional findings are made and the following order issued.

1. Respondent Morton Etelson is an individual trading as Morton Etelson with his place of business located at 333 Seventh Avenue, 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 Morton Etelson, an individual, trading as Morton Etelson, or under any other name, and his 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 are 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 products contain or are 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 substan-

tial 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.

B. Falsely or deceptively invoicing fur products by:

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

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

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

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

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

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

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

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

3. Failing to set forth on invoices the item number or mark assigned to fur products as required under the aforesaid Rules and Regulations.

C. Setting forth pricing claims and representations in advertising unless respondent maintains full and adequate records disclosing the facts upon which such claims and representations are based.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

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

26th day of March 1959, 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

ALLBRIGHT'S, ET AL.

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

Docket 6890. Complaint, Sept. 17, 1957—Decisions, Mar. 27, 1959

Consent orders requiring 33 jobbers of automotive replacement parts and supplies and their corporate buying agent to cease using their combined bargaining power to induce discounts from sellers not made available to their competitors.

COMPLAINT

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

PARAGRAPH 1. (1) Respondent Allbright's is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with principal office and place of business located at 3889 Eighth Street, Riverside, Calif.

The following respondent individuals are the officers of said respondent corporation:

D. S. Allbright, president and Southwest executive officer.

C. H. Briggs, vice president.

R. J. Hoefferle, secretary and treasurer.

T. S. Huddleston, assistant secretary.

(2) Respondent Jack R. Doolittle is an individual doing business as Automotive Industrial Distributing Co., with principal office and place of business located at 709 South Queen Street, Honolulu, Hawaii.

(3) Respondent Auto Parts & Machine Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with principal office and place of business located at 3508 Firestone Boulevard, South Gate, Calif.

The following respondent individuals are the officers of said respondent corporation:

Rodney B. Terzenbach, president and Southwest executive officer.

Theodore Terzenbach, vice president.

E. V. Stretz, secretary and treasurer.

(4) Respondent Clark County Wholesale Mercantile Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nevada, with principal office and place of business located at 505 South Main Street, Las Vegas, Nev.

The following respondent individuals are the officers of said respondent corporation:

F. Lorin Ronnow, president.

E. W. Arnold, vice president.

George M. Roman, secretary and treasurer.

Stanley C. Brower, Southwest executive officer.

(5) Respondent Curtis & Christensen, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with principal office and place of business located at 501 East Anaheim Street, Long Beach, Calif.

The following respondent individuals are the officers of said respondent corporation:

Fred J. Curtis, president and Southwest executive officer.

Mable Curtis, vice president.

H. Kelly, secretary and treasurer.

Ralph Hubert, Southwest executive officer.

(6) Respondent Donald L. Diedrich is an individual doing business as L. N. Diedrich, Inc., with principal office and place of business located at 157 East Main Street, Ventura, Calif.

(7) Respondent Eckdahl Auto Parts Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with principal office and place of business located at 220 North Market Street, Inglewood, Calif.

The following respondent individuals are the officers of said respondent corporation:

B. T. Eckdahl, president and treasurer.

A. D. Shaw, vice president.

Fred A. Guffin, secretary and Southwest executive officer.

(8) Respondent Theodore Terzenbach is an individual doing business as Economy Auto Parts & Machine Co., with principal

office and place of business located at 1731 Firestone Boulevard, Los Angeles, Calif.

(9) Respondents Donald P. Godber, R. S. Hollett, and M. K. Godber are individuals and copartners doing business as G & H Auto Parts, with principal office and place of business located at 2400 West Valley Boulevard, Alhambra, Calif.

(10) Respondent James K. Gardner is an individual doing business as Gardner Automotive Parts, with principal office and place of business located at 490 North Virginia Street, Reno, Nev.

(11) Respondent B. H. Dickey is an individual doing business as General Auto Parts, with principal office and place of business located at 1218 Pine Street, Paso Robles, Calif.

(12) Respondent George W. Graveline is an individual doing business as Graveline Auto Parts, with principal office and place of business located at 9020 Olympic Boulevard, Beverly Hills, Calif.

(13) Respondent Green Motor Parts is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with principal office and place of business located at 145 North K Street, Tulare, Calif.

The following respondent individuals are the officers of said respondent corporation:

E. E. Green, president and Southwest executive officer.

T. E. Hermanson, vice-president, secretary and Southwest executive officer.

(14) Respondent W. E. Hardy is an individual doing business as Hardy Auto Parts, with principal office and place of business located at 417 West Whittier Boulevard, Montebello, Calif.

(15) Respondents R. B. Huston, George Huston and K. A. Greer are individuals and copartners doing business as Hollister Auto Parts, with principal office and place of business located at Fourth & East Street, Hollister, Calif.

Respondent Joseph R. Mulch is Southwest executive officer of Hollister Auto Parts.

(16) Respondent W. W. Kerrigan, Jr., is an individual doing business as Kerrigan Auto Parts, with principal office and place of business located at 516 East Fourth Street, Santa Anna, Calif.

(17) Respondent H. C. Jepson is an individual doing business as Los Gatos Auto Supply, with principal office and place of business located at 122 North Santa Cruz Avenue, Los Gatos, Calif.

(18) Respondents Ernest R. Blome, James G. Blome, Richard Peterson, Floyd Beutler, Dennis Panis and Allen Sticker are in-

dividuals and copartners doing business as Mel's Auto Supply, with principal office and place of business located at 3200 North San Gabriel Boulevard, South San Gabriel, Calif.

(19) Respondents Carl Pate and William Lehnhoff are copartners doing business as Montgomery Auto Parts, with principal office and place of business located at 198 North Monterey Street, Gilroy, Calif.

(20) Respondent National Parts Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with principal office and place of business located at 4385 East Olympic Boulevard, Los Angeles, Calif.

The following respondent individuals are the officers of said respondent corporation:

Henry Mezori, president.

Emeline Dawson, secretary and treasurer.

Joseph Ochoa, Southwest executive officer.

(21) Respondent H. M. Parker & Son, is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with principal office and place of business located at 230 South Central Avenue, Glendale, Calif.

The following respondent individuals are the officers of said respondent corporation:

Norman B. Parker, president and Southwest executive officer.

A. W. Owen, vice president.

A. J. Filar, treasurer.

George Lipp, secretary.

(22) Respondents John M. Moss, Dudley Laughton, Roland Imwalle and Lucille Leeper are individuals and copartners doing business as Peninsula Auto Parts Co., with principal office and place of business located at 336 Washington Street, Monterey, Calif.

(23) Respondent Pioneer Mercantile Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with principal office and place of business located at 1111 Twenty First Street, Bakersfield, Calif.

The following respondent individuals are the officers of said respondent corporation:

Frank G. Schamblin, president and Southwest executive officer.

A. E. Randour, vice president.

L. A. Schamblin, secretary and treasurer.

(24) Respondent Pomona Motor Parts, is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with principal office and place of business located at 363 West Third Street, Pomona, Calif.

The following respondent individuals are the officers of said respondent corporation:

Joseph K. Wilkinson, president and Southwest executive officer.

Helen Bates, secretary and treasurer.

(25) Respondent Psenner-Pauff, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with principal office and place of business located at 112 East Maple Avenue, Glendale, Calif.

The following respondent individuals are the officers of said respondent corporation:

H. E. Psenner, president.

Carolyn Psenner, vice president.

A. N. Pauff, secretary and Southwest executive officer.

(26) Respondent Santa Cruz Auto Parts, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with principal office and place of business located at 703 Front Street, Santa Cruz, Calif.

The following respondent individuals are the officers of said respondent corporation:

E. J. Ayer, president and Southwest executive officer.

Paul Schaeffer, vice president.

Charles Quinn, secretary and treasurer.

(27) Respondent Standard Auto Parts, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with principal office and place of business located at 1085 Higuera Street, San Luis Obispo, Calif.

Respondent Frank D. Muzio the controlling stockholder and officer of said respondent corporation is also a Southwest executive officer.

(28) Respondent Stedman Auto Parts, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with principal office and place of business located at 3205 West 54th Street, Los Angeles, Calif.

The following respondent individuals are the officers of said respondent corporation:

P. E. Stedman, president.

R. E. Stedman, secretary and Southwest executive officer.

(29) Respondent Valley Auto Supply Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with principal office and place of business located at 633–641 State Street, El Centro, Calif.

The following respondent individuals are the officers of said respondent corporation:

W. A. Tondro, president.

Ella Belle Tondro, vice president.

Lyman W. Tondro, secretary-treasurer and Southwest executive officer.

(30) Respondent Valley Auto Supply of San Bernardino is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with principal office and place of business located at 441 Fifth Street, San Bernardino, Calif.

The following respondent individuals are the officers of said respondent corporation:

John Wilson, president and Southwest executive officer.

Paul Clammer, vice president.

Arthur Lindholm, secretary and treasurer.

(31) Respondent Frank P. Verbeck is an individual doing business as Verbeck's Automotive Sales, with principal office and place of business located at 80 North Lake Avenue, Pasadena, Calif.

(32) Respondent Walter's Auto Parts, is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with principal office and place of business located at 515 South Greenleaf Avenue, Whittier, Calif.

The following respondent individuals are the officers of said respondent corporation:

Joseph L. Walter, president and Southwest executive officer.

R. W. Cottle, vice president.

R. Connell, secretary and treasurer.

(33) Respondents James Sheerin, William Pointer and Raymond Nelson are individuals and copartners doing business as West Covina Auto Supply, with principal office and place of business located at 1038 East Garvey Boulevard, West Covina, Calif.

Respondent Allen Sheerin is Southwest executive officer of West Covina Auto Supply.

(34) Respondent Southwest Automotive Distributors, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with principal office and place of business located at 736 East Washington Boulevard, Los Angeles, Calif.

The following respondent individuals are the officers of said respondent corporation:

Frank D. Muzio, president.

Lyman W. Tondro, vice president.

Frank P. Verbeck, secretary and treasurer.

L. E. Williams, general manager.

PAR. 2. The respondent corporations, partnerships, and proprietorships set forth in subparagraphs (1) through (33) of paragraph 1, *supra*, are independent business entities principally engaged in the jobbing of automotive replacement parts and supplies. Since June 19, 1936, said jobbers have purchased and now purchase in commerce from sellers, and from sellers engaged in commerce, numerous such parts and supplies for use, consumption or resale within the United States, Hawaii, and the District of Columbia, and in connection with such transactions said jobbers have been and are now in active and substantial competition with other corporations, partnerships, proprietorships also engaged in the purchase for use, consumption or resale of automotive replacement parts and supplies of like grade and quality from the same or competitive sellers. The aforesaid sellers are located in the several States of the United States and the aforesaid buyers and said sellers cause the parts and supplies so purchased, in manner and method and for purposes as aforesaid, to be shipped and transported among and between the several States of the United States from the respective State or States of location of said sellers to the respective State, or Territory or States of location of said buyers.

PAR. 3. Respondent Southwest Automotive Distributors, Inc., at all times mentioned herein has been and is now maintained, managed, controlled and operated by and for the particular jobbers associated together at any given time for the effectuation of the purchasing policies and practices hereinafter described. Certain of the respondent jobbers have been so associated together since the inception of this course of action by the organization

of said respondent corporation in 1939. All of the respondent jobbers are currently so associated together in the continuation of said course of action by respondent Southwest Automotive Distributors, Inc., and each said respondent jobber following such association, adopted, ratified, approved and began taking part in the purchasing policies and practices hereinafter described.

In practice and effect, respondent Southwest Automotive Distributors, Inc., has been and is now serving as the medium or instrumentality by, through or in conjunction with which said jobbers exert the influence of their combined bargaining power on the competitive commodity sellers hereinbefore described. As a part of their planned common course of action, said jobbers direct the attention of said commodity sellers to the potential purchasing power possessed by them acting in concert and, by reason of such, have demanded on their individual purchases discriminatory prices, discounts, allowances, rebates, terms and conditions of sale not otherwise offered or granted by said commodity sellers in such transactions. Sellers not acceding to such demands are usually replaced as sources of supply for the commodities concerned and such market is closed to them in favor of such sellers as can be and are induced to afford the discriminatory prices, discounts, allowances, rebates, terms and conditions of sale so demanded.

Said planned common course of action usually includes the demand by said jobbers, among other things, that acceding sellers shall consider their several purchases in the aggregate for the purpose of granting thereon quantity discounts, allowances or rebates in accordance with said sellers' established schedules. When, and if, this demand is acceded to by a particular seller, the subsequent purchase transactions between said seller and the individual jobbers have been and are billed to and paid for through the aforesaid organizational device of Southwest Automotive Distributors, Inc. Said organization thus purports to be the commodity purchaser when in truth and in fact it has been and is now serving only as agent for the several individual purchasers aforedescribed or as a mere bookkeeping device for facilitating the inducement and receipt by the said purchasers from the said sellers of discriminatory and off-scale merchandise pricing. Said Southwest Automotive Distributors, Inc., has not functioned and

does not now function as a purchaser for its own account for consumption, use or resale of the commodities concerned.

PAR. 4. Each and all of the respondents aforenamed since June 19, 1936, have adopted, followed, and pursued purchasing policies and practices which were knowingly designed and intended to and did induce from such of the aforesaid commodity sellers as acceded, discriminatory and illegal prices, discounts, allowances, rebates, terms and conditions of sale favorable to said respondent jobbers as aforesaid in the commodity purchase transactions hereinbefore described.

Each and all of the aforenamed respondents in furtherance of the said policies and practices and in connection with the said commodity purchase transactions are and have been utilizing and employing the device of respondent Southwest Automotive Distributors, Inc., to induce and receive by, through or in conjunction therewith, from the aforesaid acceding sellers in said transactions, the aforesaid favorable prices, discounts, allowances, rebates, terms and conditions of sale, which were known or should have been known by said respondents to be discriminatory, illegal and prohibited to said acceding sellers under subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Each and all of the aforenamed respondent jobbers during the times aforestated made individual purchases of the said commodities upon which, and upon the total aggregate of which, and otherwise said jobbers knowingly induced and received, through use of the aforesaid device, substantial monetary amounts in discriminatory and favorable prices, discounts, allowances, rebates, terms and conditions of sale from the acceding sellers in the aforesaid purchase transactions. Except under color of such or a similar organizational device, the said favorable discriminatory prices, discounts, rebates, terms and conditions of sale, were to the knowledge of said respondents not available to, offered, or granted by said sellers, or their aforesaid competitors to respondents or respondents' aforesaid competitors, nor received by respondents or respondents' said competitors in connection with the aforesaid or like or similar such purchase transactions of the same or similar such commodities of like grade and quality so purchased for consumption, use or resale.

For example, during 1955, 21 of the respondent jobbers purchased $52,000 in the aggregate from one acceding seller and

received an aggregate rebate of $8,000. On their individual purchase amounts 11 of these jobbers would have received no rebates under this seller's established price and discount schedule, while the remaining 10 jobbers would have received an aggregate rebate of but $4,530. The 11 jobbers who should have received no rebates from this particular seller actually received an aggregate rebate of $630 while the other 10 jobbers received an aggregate rebate of $7,370. Accordingly, these 21 jobber purchasers received an excess aggregate rebate of $3,470 on their aggregate purchases. In 1954 said respondent jobbers made purchases through Southwest Automotive Distributors, Inc., from 92 acceding sellers in the amount of $882,573.75. In 1955 such purchases increased to $1,084,386.51 from 101 suppliers.

Each and all of the aforesaid discriminatory purchase transactions, so negotiated and made, tend to and do establish the acceding sellers therein as preferred sources of supply over competitive sellers not so acceding, for the purchase for consumption, use or resale by said respondent jobbers of the commodities concerned, and to give said jobbers a price advantage over competitive nonfavored buyers as aforesaid in the purchase for consumption, use or resale of the same or similar such commodities of like grade and quality.

PAR. 5. The effect of each and all of the aforesaid discriminations in prices induced by each and all of the respondents aforenamed in each and all of the purchase transactions aforedescribed made in the manner and method and for the purpose aforestated, and received in each and all of said transactions by each and all of the respondents as aforedesignated, has been and may be to substantially lessen competition in the lines of commerce in which the aforesaid acceding sellers, said sellers' competitors, said respondent jobbers, and said jobbers' competitors, as aforesaid, are engaged, and to injure, destroy or prevent competition with the said acceding sellers, the said respondent jobbers or with customers of either of them.

PAR. 6. The foregoing alleged acts and practices of said respondents, in knowingly inducing and in knowingly receiving, since June 19, 1936, the aforesaid discriminations in price prohibited by subsection (a), Section 2, of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C., Title 15, Section 13), are in violation of subsection (f), Section 2, of said Act.

By *Mr. Earl J. Kolb*, hearing examiner.

Mr. Eldon P. Schrup and *Mr. Robert E. Vaughan* for the Commission.

Mr. James W. Cassedy, of Washington, D.C., for all respondents except Pomona Motor Parts, Joseph K. Wilkinson, and Helen Bates.

INITIAL DECISION AS TO ALL RESPONDENTS EXCEPT POMONA MOTOR PARTS, JOSEPH K. WILKINSON, AND HELEN BATES

The complaint in this proceeding issued September 17, 1957, charges the respondents Allbright's, a corporation; Jack R. Doolittle, an individual doing business as Automotive Industrial Distributing Co.; Auto Parts & Machine Company, a corporation; Clark County Wholesale Mercantile Co., Inc., a corporation; Curtis & Christensen, Inc., a corporation; Donald L. Diedrich, an individual doing business as L. N. Diedrich, Inc.; Eckdahl Auto Parts Co., a corporation; Theodore Terzenbach, an individual doing business as Economy Auto Parts & Machine Co.; Donald P. Godber, R. S. Hollett and M. K. Godber, copartners doing business as G & H Auto Parts; James K. Gardner, an individual doing business as Gardner Automotive Parts; B. H. Dickey, an individual doing business as General Auto Parts; George W. Graveline, an individual doing business as Graveline Auto Parts; Green Motor Parts, a corporation; W. E. Hardy, an individual doing business as Hardy Auto Parts; R. B. Huston, George Huston and K. A. Greer, copartners doing business as Hollister Auto Parts; W. W. Kerrigan, Jr., an individual doing business as Kerrigan Auto Parts; H. C. Jepson, an individual doing business as Los Gatos Auto Supply; Ernest R. Blome, James G. Blome, and Floyd Beutler, copartners doing business as Mel's Auto Supply; Carl Pate and William Lehnhoff, copartners doing business as Montgomery Auto Parts; National Parts Co., a corporation; H. M. Parker & Son, a corporation; John M. Moss, Dudley Laughton, Roland Imwalle, and Lucille Loeper (erroneously referred to in the complaint as Lucille Leeper), copartners doing business as Peninsula Auto Parts Co.; Pioneer Mercantile Co., a corporation; Psenner-Pauff, Inc., a corporation; Santa Cruz Auto Parts, Inc., a corporation; Standard Auto Parts, Inc., a corporation; Stedman Auto Parts, Inc., a corporation; Valley Auto Supply Co., a corporation; Valley Auto Supply of San Bernardino, a corporation; Frank P. Verbeck, an individual doing business as Verbeck's

Automotive Sales; Walter's Auto Parts, a corporation; James Sheerin doing business as West Covina Auto Supply; Southwest Automotive Distributors, Inc., a corporation; and L. E. Williams, D. S. Allbright, C. H. Briggs, R. J. Hoefferle, T. S. Huddleston, Rodney B. Terzenbach, F. Lorin Ronnow, E. W. Arnold, George M. Roman, Stanley C. Brower, Fred J. Curtis, Mable Curtis, H. Kelly, Ralph Hubert, B. T. Eckdahl, A. D. Shaw, Fred A. Guffin, E. E. Green, T. E. Hermanson, Joseph R. Mulch, Emeline Dawson, Norman B. Parker, A. W. Owen, A. J. Filar, Frank G. Schamblin, L. A. Schamblin, A. E. Randour, H. E. Psenner, Carolyn Psenner, A. N. Pauff, E. J. Ayer, Paul Schaeffer, Charles Quinn, Frank D. Muzio, P. E. Stedman, R. E. Stedman, W. A. Tondro, Ella Belle Tondro, Lyman W. Tondro, John Wilson, Paul Clammer, Arthur Lindholm, Joseph L. Walter, R. W. Cottle, R. Connell, and Allen Sheerin, with violation of the provisions of subsection (f) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

After the issuance of the complaint, said respondents entered into an agreement containing consent order to cease and desist with counsel in support of the complaint, disposing of all the issues in this proceeding, which agreement was duly approved by the acting director of the Bureau of Litigation.

Subsequent to the submission of said agreement containing a consent order, counsel for the respondents and counsel in support of the complaint on December 19, 1958, filed a joint motion to amend said agreement so as to provide for the dismissal of said individual respondents named in said motion and to correct the name of one respondent. In said motion, counsel for the respondents represented that all signatories to the consent agreement are represented by him and that he has consulted with them and is specifically authorized to join with counsel supporting the complaint in said motion. Thereafter on January 13, 1959, the hearing examiner, after consideration of said motion, issued an order amending said agreement containing consent order to cease and desist as provided for in said motion.

It was expressly provided in said amended agreement that the signing thereof is for settlement purposes only and does not constitute an admission by said respondents that they have violated the law as alleged in the complaint.

By the terms of said amended agreement, the said respondents admitted all the jurisdictional facts alleged in the complaint and

agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with the allegations, and that this amended agreement disposes of all of this proceeding as to all parties, except respondents Pomona Motor Parts, Joseph K. Wilkinson, and Helen Bates.

By said amended agreement, the said respondents expressly waived any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the amended agreement.

Respondents further agreed that the order to cease and desist, issued in accordance with said amended agreement shall have the same force and effect as if made after a full hearing.

It was further provided that said amended 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 amended agreement; and that said order may be altered, modified or set aside in the manner prescribed by the statute for orders of the Commission.

The hearing examiner has considered the amended agreement and the order therein contained, and, it appearing that said amended agreement and order provide for an appropriate disposition of this proceeding as to all parties, except Pomona Motor Parts, Joseph K. Wilkinson, and Helen Bates, the same is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice, and, in consonance with the terms of said amended agreement, the hearing examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents named herein, and issues the following order:

ORDER

It is ordered, That respondents, Allbright's, a corporation, and its officers; Jack R. Doolittle, individually and doing business as Automotive Industrial Distributing Co.; Auto Parts & Machine Company, a corporation, and its officers; Clark County Wholesale Mercantile Co., Inc., a corporation, and its officers; Curtis & Christensen, Inc., a corporation, and its officers; Donald L. Diedrich, individually and doing business as L. N. Diedrich, Inc.; Eckdahl Auto Parts Co., a corporation, and its officers; Theodore

Terzenbach, individually and doing business as Economy Auto Parts & Machine Co.; Donald P. Godber, R. S. Hollett, and M. K. Godber, individually and as copartners doing business as G & H Auto Parts; James K. Gardner, individually and doing business as Gardner Automotive Parts; B. H. Dickey, individually and doing business as General Auto Parts; George W. Graveline, individually and doing business as Graveline Auto Parts; Green Motor Parts, a corporation, and its officers; W. E. Hardy, individually and doing business as Hardy Auto Parts; R. B. Huston, George Huston, and K. A. Greer, individually and as copartners doing business as Hollister Auto Parts; W. W. Kerrigan, Jr., individually and doing business as Kerrigan Auto Parts; H. C. Jepson, individually and doing business as Los Gatos Auto Supply; Ernest R. Blome, James G. Blome, and Floyd Beutler, individually and as copartners doing business as Mel's Auto Supply; Carl Pate and William Lehnhoff, individually and as copartners doing business as Montgomery Auto Parts; National Parts Co., a corporation, and its officers; H. M. Parker & Son, a corporation, and its officers; John M. Moss, Dudley Laughton, Roland Imwalle, and Lucille Loeper (erroneously referred to in the complaint as Lucille Leeper), individually and as copartners doing business as Peninsula Auto Parts Co.; Pioneer Mercantile Co., a corporation, and its officers; Psenner-Pauff, Inc., a corporation, and its officers; Santa Cruz Auto Parts, Inc., a corporation, and its officers; Standard Auto Parts, Inc., a corporation, and its officers; Stedman Auto Parts, Inc., a corporation, and its officers; Valley Auto Supply Co., a corporation, and its officers; Valley Auto Supply of San Bernardino, a corporation, and its officers; Frank P. Verbeck, individually and doing business as Verbeck's Automotive Sales; Walter's Auto Parts, a corporation, and its officers; James Sheerin, individually and doing business as West Covina Auto Supply; Southwest Automotive Distributors, Inc., a corporation, and its officers; and the following individuals: L. E. Williams, D. S. Allbright, C. H. Briggs, R. J. Hoefferle, T. S. Huddleston, Rodney B. Terzenbach, F. Lorin Ronnow, E. W. Arnold, George M. Roman, Stanley C. Brower, Fred J. Curtis, Mable Curtis, H. Kelly, Ralph Hubert, B. T. Eckdahl, A. D. Shaw, Fred A. Guffin, E. E. Green, T. E. Hermanson, Joseph R. Mulch, Emeline Dawson, Norman B. Parker, A. W. Owen, A. J. Filar, Frank G. Schamblin, L. A. Schamblin, A. E. Randour, H. E. Psenner, Carolyn Psenner, A. N. Pauff, E. J. Ayer, Paul Schaeffer, Charles Quinn, Frank

D. Muzio, P. E. Stedman, R. E. Stedman, W. A. Tondro, Ella Belle Tondro, Lyman W. Tondro, John Wilson, Paul Clammer, Arthur Lindholm, Joseph L. Walter, R. W. Cottle, R. Connell, and Allen Sheerin; and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering to purchase or purchase of any automotive products or supplies in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Knowingly inducing or knowingly receiving or accepting any discrimination in the price of such products and supplies, by directly or indirectly inducing, receiving, or accepting from any seller a net price known by respondents to be below the net price at which said products and supplies of like grade and quality are being sold by such seller to other customers, where the seller is competing with any other seller for respondents' business, or where respondents are competing with other customers of the seller.

For the purpose of determining "net price" under the terms of this order, there shall be taken into account discounts, rebates, allowances, deductions or other terms and conditions of sale by which net prices are effected.

It is further ordered, That the complaint in this proceeding be, and it is hereby, dismissed as to the individual respondents Richard Peterson, Dennis Panis, Allen Sticker, William Pointer, Raymond Nelson, E. V. Stretz, Henry Mezori, Joseph Ochoa, and George Lipp.

By *Earl J. Kolb,* hearing examiner.

Mr. Eldon P. Schrup and *Mr. Robert E. Vaughan,* for the Commission.

Nichols, Cooper, Hickson and Lamb, of Pomona, Calif., for respondents Pomona Motor Parts, Joseph K. Wilkinson and Helen Bates.

INITIAL DECISION AS TO POMONA MOTOR PARTS, JOSEPH K. WILKINSON AND HELEN BATES

The complaint in this proceeding issued September 17, 1957, charges the respondents Pomona Motor Parts, a corporation, Joseph K. Wilkinson and Helen Bates, individually, with violation of the provisions of subsection (f) of Section 2 of the Clayton Act, as amended, by the Robinson-Patman Act.

After the issuance of the complaint, all of said respondents,

except Pomona Motor Parts, Joseph K. Wilkinson and Helen Bates, entered into an agreement containing consent order to cease and desist with counsel in support of the complaint, disposing of all the issues in this proceeding as to them, and on January 19, 1959, the hearing examiner issued an initial decision based upon such agreement.

An agreement containing consent order to cease and desist disposing of all the issues in this proceeding as to respondents Pomona Motor Parts, Joseph K. Wilkinson and Helen Bates has now been entered into by said respondents and counsel supporting the complaint, which agreement was duly approved by the Acting Director of the Bureau of Litigation. The term "respondents," as hereinafter used, therefore will refer only to respondents Pomona Motor Parts, Joseph K. Wilkinson and Helen Bates.

It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by said respondents that they have violated the law as alleged in the complaint.

By the terms of said agreement, the said respondents admitted all the jurisdictional facts alleged in the complaint and agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with the allegations.

By said agreement, the said respondents expressly waived any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

Respondents further agreed that the order to cease and desist, issued in accordance with said agreement, shall have the same force and effect as if made after a full hearing.

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

The hearing examiner has considered such agreement and the order therein contained, and, it appearing that said agreement and order provides for an appropriate disposition of this proceeding, the same is hereby accepted and is ordered filed upon be-

coming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice, and, in consonance with the terms of said agreement, the hearing examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents named herein, and issues the following order:

ORDER

It is ordered, That respondents, Pomona Motor Parts, a corporation, and its officers, and Joseph K. Wilkinson and Helen Bates, individually, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering to purchase or purchase of any automotive products or supplies in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Knowingly inducing or knowingly receiving or accepting any discrimination in the price of such products and supplies, by directly or indirectly inducing, receiving, or accepting from any seller a net price known by respondents to be below the net price at which said products and supplies of like grade and quality are being sold by such seller to other customers, where the seller is competing with any other seller for respondents' business, or where respondents are competing with other customers of the seller.

For the purpose of determining "net price" under the terms of this order, there shall be taken into account discounts, rebates, allowances, deductions or other terms and conditions of sale by which net prices are effected.

FINAL ORDER

The hearing examiner, on January 20, 1959, having filed in this proceeding, two initial decisions wherein he accepted agreements containing identical orders to cease and desist, theretofore executed by the respondents and counsel in support of the complaint, and entered his order in conformity therewith; and

It appearing that counsel for all respondents, except Pomona Motor Parts, a corporation, and its officers, Joseph K. Wilkinson and Helen Bates, has filed a motion requesting, in effect, that the Commission withhold its decision or stay the effective date of the initial decisions insofar as said respondents are concerned, until certain of the respondents' competitors are made subject to

orders to cease and desist similar to those provisionally entered herein; and

The Commission having considered the initial decisions and said motion and answer thereto, and being of the opinion that the initial decisions constitute an adequate and appropriate disposition of this matter and that no sufficient grounds have been established to justify the requested stay:

It is ordered, That the aforesaid motion to stay filed on behalf of certain of the respondents be, and it hereby is, denied.

It is further ordered, That the two aforesaid initial decisions shall upon the 27th day of March 1959, become the decisions of the Commission.

It is further ordered, That all respondents herein not specifically dismissed in said initial decisions 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 orders to cease and desist contained in the aforesaid initial decisions.

IN THE MATTER OF

SMITH FUR COMPANY

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

Docket 7205. Complaint, July 23, 1958—Decision, Mar. 27, 1959

Consent order requiring furriers in Chicago to cease violating the Fur Products Labeling Act by failing to label and invoice fur products as "second-hand" when that was the case, and failing in other respects to comply with the labeling and invoicing requirements; by advertising which represented prices of fur products falsely to be "Wholesale Cost or Below" and as "60% below retail"; and by failing to maintain adequate records on which such pricing claims were based.

Mr. William A. Somers for the Commission.
Mr. Norman H. Arons, of Chicago, Ill., for respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated July 23, 1958, the respondents are charged with violating the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and the Rules and Regulations made pursuant thereto.

On January 8, 1959, the respondents and their attorney entered into an agreement with counsel in support of the complaint for a consent order.

The hearing examiner finds that the content of the agreement meets all of the requirements of Section 3.25(b) of the Rules of the Commission.

The hearing examiner being of the opinion that the agreement and the proposed order provide an appropriate basis for disposition of this proceeding as to all of the parties, the agreement is hereby accepted and it is ordered that the 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 following jurisdictional findings are made and the following order issued:

1. Respondents Mac Smith and Libbie Smith are individuals and copartners trading as Smith Fur Company, with offices and principal place of business located at 333 West Adams Street, Chicago, Ill.

2. The Federal Trade Commission has jurisdiction of the sub-

ject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Mac Smith and Libbie Smith, individually and as copartners, trading as Smith Fur Company, or under any other name, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, 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:

1. Misbranding fur products by:

A. Failing to affix labels to fur products showing:

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

(2) That the fur product contains or is composed of secondhand 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 contained in a fur product.

B. Failing to disclose that fur products contain or are composed of "Secondhand fur," when such is the fact.

C. Setting forth on labels affixed to fur products:

(1) Information required under Section 4(2) of the Fur Prod-

ucts Labeling Act and the Rules and Regulations thereunder, mingled with nonrequired information;

(2) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated 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 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 secondhand 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;

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

B. Failing to disclose that fur products contain or are composed of "secondhand fur," when such is the fact.

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. Represents, directly or by implication, that the prices of fur products are at "Wholesale Cost or Below," when such is not the fact.

4. Making price claims and representations respecting percentage savings unless there is maintained by respondents full and adequate records disclosing the facts upon which such claims and representations are based.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

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

27th day of March 1959, 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

MARKET FORGE COMPANY

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

Docket 7243. Complaint, Aug. 28, 1958—Decision, Mar. 27, 1959

Consent order requiring the largest manufacturer of auto luggage carriers in the United States, with main office in Everett, Mass., to cease discriminating in price in violation of Sec. 2(a) of the Clayton Act by such practices as arbitrarily classifying customers as jobbers and distributors and thereby charging some competing retailers different prices; classifying some larger purchasers, but not all, as "Key Accounts" and quoting prices to them 5% lower than to distributors and making them other price reductions and freight allowances; and charging large chain store customers, classified as "National Chain Key Accounts," slightly less than they charged "Key Account" customers and making them more liberal freight allowances.

COMPLAINT

The Federal Trade Commission, having reason to believe that the 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 Market Forge Company is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its principal place of business located at 25 Garvey Street, Everett, Mass.

PAR. 2. Respondent is engaged in the manufacture, sale and distribution of various types of equipment, including refrigeration equipment, commercial steam pressure cookers, hospital equipment, mop wringing equipment, and auto luggage carriers, to various wholesale and retail customers throughout the United States. The sale of auto luggage carriers represents a substantial part of respondent's annual sales of all products. The respondent has become the largest manufacturer of auto luggage carriers in the United States in the eight years since it began to manufacture said auto luggage carriers.

PAR. 3. Respondent sells and distributes its auto luggage carriers principally through manufacturers' agents to jobbers or distributors and retailers.

In some cases the respondent sells its auto luggage carriers directly to large retailers and other key accounts.

In some cases the respondent sells to jobbers or distributors and retailers through its own salesmen.

PAR. 4. In the course and conduct of its business, as aforesaid, respondent is now and for the past several years has been continuously engaged in commerce, as "commerce" is defined in the aforesaid Clayton Act, in that it has sold and distributed its automobile luggage carriers and other products to wholesale and retail purchasers of the same located in the various States of the United States and the District of Columbia for use, consumption or resale within the United States and the District of Columbia, and the respondent causes said automobile luggage carriers and other products so sold to be shipped and transported from the Commonwealth of Massachusetts, where the respondent's place of business is located, to various other States of the United States wherein the aforesaid purchasers are located.

PAR. 5. In the course and conduct of its business in commerce, as described above, the respondent is now and for the past several years has been in substantial competition with other firms, partnerships and corporations engaged in the manufacture, sale and distribution of auto luggage carriers and other products in commerce between and among the various States of the United States or the District of Columbia.

PAR. 6. In the course and conduct of its business, as hereinabove described, the respondent has discriminated in price between different purchasers of its auto luggage carriers and other products of like grade and quality by selling said products to some of its customers at higher prices than said products of like grade and quality are sold to other customers who are and have been in competition with the favored customers.

Some representative examples of respondent's pricing practices which constitute price discriminations are:

(a) Respondent circulates generally to prospective customers a price list which gives different prices for "jobbers" and "distributors." Theoretically, the "jobbers" are retailers and the "distributors" are wholesalers. The price differential is about 10% lower in favor of the distributors. However, neither classification has rigid standards and, in fact, many retailers are

classified as distributors and thus pay the 10% lower price for auto luggage carriers. In some cases, competing retailers are placed in different classifications and thus purchase at different prices.

(b) In addition to the above-mentioned and generally known classifications, the respondent further classifies some customers as Key Accounts. Respondent does not circulate to the trade generally the information about the existence of this pricing classification.

The customers which are classified as key accounts may be either wholesalers or retailers and are generally the larger purchasers from the respondent, although a large volume of purchases does not guarantee that the respondent will place the purchaser in this classification.

Generally, the prices quoted to customers who are classified as key accounts are 5% below the prices quoted to "distributors." In some cases the prices to various key accounts are more or less than 5%. In addition to the 5% lower price, the key accounts receive certain other price reductions or allowances in order to pay freight or part of the freight from Boston to the locations of the purchaser.

In some cases key accounts are allowed extended billings.

(c) In addition to the above-mentioned classifications, some accounts are classified as National Chain Key Accounts. Information concerning this classification is not circulated generally to prospective or existing customers.

In general, the customers in this classification are large chain store customers.

The prices of auto luggage carriers sold to customers in National Chain Key Accounts are slightly less than prices of goods of like grade and quality sold key account customers.

The price to customers who are classified as National Chain Key Accounts varies within this classification from 10¢ to 25¢ per item.

In addition to the price differentials above-mentioned, more liberal freight allowances, or price reductions in lieu thereof, are granted to customers in this classification than to customers in any other classification.

PAR. 7. In many cases the customers who are in different classifications are in competition with one another and, in some cases, customers within a classification who purchase goods at varying prices are in competition with one another.

PAR. 8. An effect of such discriminations in price, as alleged in paragraph 6, has been and is sufficient to divert substantial business from respondent's competitors to the respondent, and the effects of respondent's said discriminations in price may be substantially to lessen competition in the line of commerce in which respondent and its competitors are engaged. The pricing practices of the respondent also may tend to create a monopoly in the line of commerce in which respondent and its competitors are respectively engaged, or to injure, destroy or prevent competition with respondent.

Furthermore, the aforesaid discriminatory pricing practices of respondent may substantially lessen competition or tend toward monopoly in the respective lines of commerce in which the purchasers receiving the preferential prices are engaged, to the injury of those purchasers from the respondent who are in competition with said favored purchasers; and, furthermore, said discriminatory prices of the respondent tend to injure, destroy and prevent competition between and among the favored purchasers and other purchasers from the respondent.

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

John T. Walker, Esq., for the Commission.
Melvin Richter, Esq., of Washington, D.C., for respondent.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on August 28, 1958, charging it with having violated the Clayton Act (15 U.S.C. 13), as amended by the Robinson-Patman Act, by discriminating in the price of its auto luggage carriers and other products. Respondent appeared by counsel and entered into an agreement, dated January 26, 1959, containing a consent order to cease and desist, disposing of all the issues in this proceeding without further hearings, 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 §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 §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 Market Forge Company is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its principal place of business located at 25 Garvey Street, Everett, Mass.

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, and this proceeding is in the interest of the public.

ORDER

It is ordered, That respondent Market Forge Company, a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in, or in con-

nection with, the sale of auto luggage carriers, in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from discriminating, directly or indirectly, in the price of such products of like grade and quality by selling said products to any purchaser at net prices higher than said products of like grade and quality are sold to any other competing purchaser.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 27th day of March 1959, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

DAY'S TAILOR-D CLOTHING, INC.

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

Docket 7288. Complaint, Nov. 5, 1958—Decision, Mar. 27, 1959

Consent order requiring a distributor of men's and boys' sportswear and work clothes in Tacoma, Wash., to cease discriminating among its retailer customers by paying promotional allowances for cooperative advertising and furnishing storage and display racks to certain favored customers but not to their competitors and not to all competing cutomers on proportionally equal terms.

COMPLAINT

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

Count I

PARAGRAPH 1. Respondent Day's Tailor-D Clothing, Inc., is a corporation, organized, existing and doing business under and corporation, organized, existing and doing business under and by virtue of the laws of the State of Washington, with its offices and principal place of business located at 29th and Pacific Streets, Tacoma 1, Wash.

PAR. 2. Respondent is now, and for many years last past has been, engaged in the sale and distribution of men's and boys' sportswear, industrial uniforms and work clothing which it designs and manufactures or causes to be manufactured.

Respondent sells such products for resale to many customers such as department stores, men's specialty shops and clothing stores, which sell at retail from their places of business located throughout the western United States, Alaska and Hawaii, with major emphasis upon the Pacific Northwest area and the San Francisco-Oakland "Bay" area.

Respondent is a substantial factor in the sale of such products in said areas, with sales in excess of $2,000,000.00 annually.

Among its product lines are "Iron Duke" whipcord trousers and jackets, "College Cords" and "Klondike King" trousers, and "San Juan" slacks.

PAR. 3. Respondent, in the course and conduct of its business, is engaged in commerce, as "commerce" is defined in the Clayton Act, as amended, having sold, distributed and transported, or caused the transportation of such products, from its place of business in the State of Washington to purchasers thereof located in other states of the United States and in other places under the jurisdiction of the United States.

PAR. 4. In the course and conduct of its said business respondent has been, and is now, paying and contracting for the payment of money, goods, or other things of value to or for the benefit of some of its customers as compensation or in consideration for services and facilities furnished by and through such favored customers in connection with the sale or offering for sale of respondent's products. Said payments and contracts for payment to and for the benefit of such favored customers are not made available on proportionally equal terms by the respondent to all of its customers competing in the sale and distribution of said products.

PAR. 5. Among and included in the payments referred to in paragraph 4 hereof are credits or sums of money paid by respondent by way of allowances, rebates, or deductions, as compensation or in consideration for promotional services or facilities furnished by its customers in connection with the offering for sale or sale of respondent's products. These include payments or allowances for cooperative advertising which were made available to some but not all of respondent's customers competing in the resale of its products. In addition, among those competing customers who did receive such allowances from respondent, the allowances were frequently made available at varying times, on varying terms and in varying amounts.

PAR. 6. The aforesaid acts and practices of respondent as alleged in paragraph 1 through paragraph 5 hereof constitute violations of the provisions of subsection (d) of Section 2 of the Clayton Act (Title 15, U.S.C. Sec. 13) as amended by the Robinson-Patman Act, approved June 19, 1936.

Count II

PAR. 7. Incorporated herein by reference are paragraph 1 through paragraph 3 of Count I of this complaint.

PAR. 8. Respondent, for several years last past, has been discriminating in favor of some of its customers competing in the resale of its products by contracting to furnish or furnishing, or by contributing to the furnishing, of services or facilities connected with the handling, sale, or offering for sale, of its said products upon terms not accorded to all of its competing purchasers on proportionally equal terms.

PAR. 9. Among and included in the discriminations as referred to in paragraph 8 above is the furnishing by respondent of racks used for the storage and display of certain of respondent's products by retailers. Respondent has made such services and facilities available to some but not to all of its customers competing in the resale of its products. In addition, among those competing purchasers who did receive such services and facilities from respondent, they were furnished on varying nonproportional terms. For example, they were furnished at no cost to certain customers whereas other competing purchasers were required to contribute to the cost thereof.

PAR. 10. Also, among and included in the discriminations referred to in paragraph 8 above is the furnishing by respondent of billboard advertisements prominently displaying its name and products, and also featuring the name of certain of its purchasers who sell such products at retail. Respondent has made such services and facilities available to some but not to all of its customers competing in the resale of its products. In addition, among those competing purchasers who did receive such services and facilities from respondent, they were furnished on varying terms such as at no cost to certain customers whereas others were required to and did contribute to the cost thereof.

PAR. 11. The acts and practices of respondent, as alleged in paragraph 7 through paragraph 10 hereof constitute violations of the provisions of subsection (e) of Section 2 of the Clayton Act (Title 15, U.S.C. Sec. 13) as amended by the Robinson-Patman Act, approved June 19, 1936.

Mr. John J. McNally for the Commission.

Hodge, Mann & Peterson, by *Mr. Earl D. Mann,* of Tacoma, Wash., for respondent.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

Count I of the complaint, issued herein by the Federal Trade Commission, charges respondent with violation of subsection (d)

of §2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936, by paying and contracting for the payment of money, goods, or other things of value to or for the benefit of some of its customers as compensation or in consideration for services and facilities furnished by and through such favored customers in connection with the sale or offering for sale of respondent's products including men's and boys' sportswear, industrial uniforms and work clothing. Count II of the complaint charges respondent with discriminating in favor of some of its customers competing in the resale of its said products by contracting to furnish or furnishing or contributing to the furnishing of services or facilities connected with the handling, sale or offering for sale of its said products upon terms not accorded to all of its competing customers on proportionately equal terms, in violation of subsection (e) of §2 of said Act.

On January 23, 1959, there was submitted to the undersigned hearing examiner of the Federal Trade Commission for his consideration and approval an "Agreement Containing Consent Order to Cease and Desist," which had been entered into by and between respondent and the attorneys for both parties, under date of January 14, 1959, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

On due consideration of such agreement, the hearing examiner finds that said agreement, both in form and in content, is in accord with §3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and that by said agreement the parties have specifically agreed to the following matters:

1. Respondent Day's Tailor-D Clothing, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Washington, with its offices and principal place of business located at 29th and Pacific Streets, Tacoma 1, Wash.

2. Pursuant to the provisions of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C., Title 15, §13), the Commission on November 5, 1958, issued its complaint in this proceeding against respondent and a true copy thereof was duly served on respondent.

3. Respondent admits all of 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 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.

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

Upon due consideration of the complaint filed herein and the said "Agreement Containing Consent Order to Cease and Desist," the latter is hereby approved, accepted and ordered filed, the same not to become a part of the record herein, however, unless and until it becomes part of the decision of the Commission. The hearing examiner finds from the complaint and the said "Agreement Containing Consent Order to Cease and Desist" that the Commission has jurisdiction of the subject matter of this proceeding and of the respondent herein; that the complaint states a legal cause for complaint under §2 of the Clayton Act, as amended by the Robinson-Patman Act, both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; that the following order as proposed in said agreement is appropriate for the just disposition of all of the issues in this proceeding as to all of the parties hereto; and that said order therefore should be, and hereby is, entered as follows:

ORDER

It is ordered, That respondent Day's Tailor-D Clothing, Inc., a corporation, and its officers; and respondent's employees, agents and representatives, directly or through any corporate or other device, in, or in connection with, the sale of work clothes, sportswear, or any similar products in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

1. 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 any service or facilities furnished by or through such customer, in connection with the handling, offering for resale, or resale of products sold to him by respondent, or its successors and assigns, unless such payment is affirmatively offered or otherwise made available on proportionally equal terms to all other customers competing in the distribution or resale of such products.

2. Contracting to furnish, or furnishing, or contributing to the furnishing of any services or facilities connected with the handling, sale, or offering for sale of any of respondent's said products to any purchaser from respondent, upon terms not accorded to all competing purchasers on proportionally equal terms.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 27th day of March 1959, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

LOUIS MACKTEZ, INC., ET AL.

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

Docket 7293. Complaint, Nov. 5, 1958—Decision, Mar. 27, 1959

Consent order requiring a manufacturer in Millville, Mass., to cease violating the Wool Products Labeling Act by labeling woolen stocks falsely as "100% wool" and by failing in other respects to comply with the labeling requirements of the Act.

Mr. Garland S. Ferguson for the Commission.

Higgins & Silverstein, by *Mr. Sidney Silverstein,* of Woonsocket, R.I., for respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated November 5, 1958, the respondents are charged with violating the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act and the Rules and Regulations made pursuant thereto.

On January 27, 1959, the respondents and their attorney entered into an agreement with counsel in support of the complaint for a consent order.

The hearing examiner finds that the content of the agreement meets all of the requirements of Section 3.25(b) of the Rules of the Commission.

The hearing examiner being of the opinion that the agreement and the proposed order provide an appropriate basis for disposition of this proceeding as to all of the parties, the agreement is hereby accepted and it is ordered that the 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 following jurisdictional findings are made and the following order issued.

1. Corporate respondent Louis Macktez, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Rhode Island, with its office and principal place of business located at Millville, Mass. Individual respondents Louis Macktez, Philip J. Macktez, and Lester A. Macktez are officers of said corporation. They formulate, direct and control the prac-

tices of the corporate respondent. The address of all individual respondents is the same as that of the corporate respondent.

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

ORDER

It is ordered, That respondents Louis Macktez, Inc., a corporation, and its officers, and Louis Macktez, Philip J. Macktez and Lester A. Macktez, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, of woolen stocks, or other "wool products" as such products are defined in and subject to said Wool Products Labeling Act, do forthwith cease and desist from:

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

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

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

(b) The maximum percentage of the total weight of such wool product of any 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 delivering for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939.

It is further ordered, That respondents Louis Macktez, Inc., a corporation, and its officers, and Louis Macktez, Philip J. Macktez and Lester A. Macktez, individually and as officers of said cor-

poration, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the sale or distribution of woolen stocks or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from directly or indirectly:

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 27th day of March, 1959, 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

MERIT ENTERPRISES, INC., ET AL.

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

Docket 7328. Complaint, Dec. 9, 1958—Decision, Mar. 27, 1959

Consent order requiring Brooklyn, N.Y., distributors of electrical appliances—including percolators, skillets, and cooker-fryers—to cease representing falsely in advertising material disseminated to purchasers for use in resale, in newspaper advertising and on attached tags and labels, that exaggerated and fictitious prices were the usual retail prices of their products; by use of the Good Housekeeping seal of approval, that certain of their products had been approved or guaranteed by the Good Housekeeping Magazine and advertised therein; and through conspicuous use of the name "Westinghouse," that certain of their products were manufactured by Westinghouse Electric Corporation.

Mr. Terral A. Jordan for the Commission.
Mr. Irving L. Stein, of New York, N.Y., for respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on December 9, 1958, charging them with having violated the Federal Trade Commission Act.

On January 22, 1959, the respondents and their attorney entered into an agreement with counsel in support of the complaint for a consent order.

The hearing examiner finds that the content of the agreement meets all of the requirements of Section 3.25(b) of the Rules of the Commission.

The hearing examiner being of the opinion that the agreement and the proposed order provide an appropriate basis for disposition of this proceeding as to all of the parties, the agreement is hereby accepted and it is ordered that the 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 following jurisdictional findings are made and the following order issued.

1. Respondent Merit Enterprises, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York. Respondents David Brill, Frank S. Brill and Martin Brill are individuals and are president, vice presi-

dent and secretary-treasurer, respectively of the corporate respondent. Respondents' office and principal place of business is located at 577 Wortman Avenue, in the city of New York (Brooklyn), State of New York.

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 Merit Enterprises, Inc., a corporation, and its officers and David Brill, Frank S. Brill and Martin Brill, 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 electrical appliances including percolators, skillets or cooker-fryers, or other articles of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing directly or indirectly that any price is the retail selling price of their products which is in excess of the price at which their products are regularly and customarily sold at retail.

2. Using the Good Housekeeping Seal of Approval in connection with their merchandise; or representing in any manner that their merchandise has been awarded said seal of approval, or that their merchandise has been approved by any other group or organization, unless such is the fact, provided, however, that this prohibition shall not be construed as prohibiting a truthful statement that a part of an article of merchandise has been approved by a group or organization, when such part is clearly and conspicuously identified.

3. Using the name of any company in connection with merchandise which has not been manufactured in its entirety by said company, or representing, directly or indirectly, that merchandise not manufactured in its entirety by a specified company, was so manufactured, *provided, however,* that this prohibition shall not be construed as prohibiting a truthful statement that a part of an article of merchandise has been manufactured by a specific company when such part is clearly and conspicuously identified.

4. Providing retailers or distributors of their products with preticketed articles of merchandise or price lists or advertising

or promotional material through or by which said retailers or distributors are enabled to mislead and deceive the purchasing public with respect to the matters set out in paragraph one herein.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 27th day of March 1959, 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

SUN VALLEY AIR COLLEGE, INC., ET AL.

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

Docket 7290. Complaint, Nov. 5, 1958—Decision, Mar. 28, 1959

Consent order requiring a "school" in Boise, Idaho, to cease selling its instruction courses in so-called specialized training for commercial airline positions through the use of deceptive employment offers, some in the Help Wanted columns of newspapers, and through other misrepresentations as to classroom, dormitory, and recreational facilities at Sun Valley, connections with commercial airlines, etc.; and to cease using the word "college" in its trade names and describing its salesmen as "Registrars."

Mr. John J. McNally and *Mr. Ames W. Williams* for the Commission.

Daniel G. Thompson, Eleanor M. Thompson, and *Anna Marie Tabor*, respondents, *pro se* individually and as officers of respondent Sun Valley Air College, Inc., a corporation, and also for said corporate respondent.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on November 5, 1958, issued its complaint herein, charging the above-named respondents with having violated the provisions of the Federal Trade Commission Act, and the respondents were duly served with process.

On January 28, 1959, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an "Agreement Containing Consent Order to Cease and Desist," which had been entered into by and between respondents and the attorney for the Commission, under date of January 15, 1959, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

On due consideration of such agreement, the hearing examiner finds that said agreement, both in form and in content, is in accord with §3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and that by said agreement the parties have specifically agreed to the following matters:

1. Respondent Sun Valley Air College, Inc., is a corporation,

organized, existing and doing business under and by virtue of the laws of the State of Idaho. Its mailing address is care of Daniel G. Thompson, First Idaho Corporation, 906 Jefferson Street, Boise, Idaho.

Respondents Daniel G. Thompson, Eleanor M. Thompson and Anna Marie Tabor are individuals and are officers of said respondent corporation and have the same mailing address as that of said respondent corporation.

2. Pursuant to the provisions of the Federal Trade Commission Act, the Commission, on November 5, 1958, issued its complaint in this proceeding against respondents and a true copy was thereafter duly served on respondents.

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

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

5. Respondents waive:

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

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

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

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

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

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

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

Upon due consideration of the complaint filed herein and the said "Agreement Containing Consent Order to Cease and Desist,"

the latter is hereby approved, accepted and ordered filed. The hearing examiner finds from the complaint and the said "Agreement Containing Consent Order to Cease and Desist" that the Commission has jurisdiction of the subject matter of this proceeding and of the persons of each of the respondents herein; that the complaint states a legal cause for complaint under the Federal Trade Commission Act, against each of the respondents both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; that the following order as proposed in said agreement is appropriate for the just disposition of all of the issues in this proceeding as to all of the parties hereto; and that said order therefore should be, and hereby is, entered as follows:

ORDER

It is ordered, That respondents Sun Valley Air College, Inc., a corporation, and its officers, and Daniel G. Thompson, Eleanor M. Thompson, and Anna Marie Tabor, individually and as officers of the 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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, of courses of study or instruction, do forthwith cease and desist from:

1. Representing, directly or by implication:

(a) That employment is being offered when, in fact, the purpose is to obtain purchasers of a course of study or instruction;

(b) That specific positions are presently available, or will be available, to those who complete such course;

(c) That respondents have connections with commercial airlines;

(d) That said course of study is sold only to selected persons;

(e) That respondents' school is adequately staffed or equipped to teach the specified course of study;

(f) That such course of study is specialized;

(g) That classroom space is limited because of numerous applications for admission; or is limited for any other reason that is not in accordance with the fact;

(h) That the school maintains classroom or dormitory facilities at Sun Valley or that the recreational facilities of Sun Valley are available to students without cost;

(i) That a planned program of social activities is a part of the residence training session;

(j) That a placement service is maintained for the benefit of graduates;

(k) That a professional course in modeling and self-improvement is a part of the residence curriculum.

2. Using the word "college," or any other word of similar meaning, either alone or in conjunction with other words, as a part of their corporate name, or representing in any manner that the corporate respondent constitutes a college or school of higher learning.

3. Using the word "Registrars" in designating or referring to respondents' salesmen.

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 March 1959, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

DRESDEN MILLS, INC., ET AL.

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

Docket 7316. Complaint, Nov. 26, 1958—Decision, Apr. 1, 1959

Consent order requiring a manufacturer in Dresden, Ohio, to cease violating the Wool Products Labeling Act by tagging as "all reprocessed wool," bolts of fabric which contained a substantial quantity of nonwool fibers, and by failing to label certain wool products as required.

Mr. Alvin D. Edelson supporting the complaint.
Respondents, *pro se.*

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on November 26, 1958, 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 misrepresenting the fiber content of certain of their products on invoices. After being served with said complaint, respondents appeared and entered into an agreement containing consent order to cease and desist, dated January 24, 1959, purporting to dispose of all of this proceeding as to all parties. Said agreement, which has been signed by all 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 duly made in accordance with such allegations. Said agreement further provides that respondents waive any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law, and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in

accordance with 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 of 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 Dresden Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio with its principal place of business at Chestnut Street, Dresden, Ohio.

Individual respondents Harry A. Groban and Nathan Groban are president, and vice president-secretary, respectively, of said corporate respondent. The individual respondents have their business address at the same address as that of the corporate respondent.

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

ORDER

It is ordered, That respondents, Dresden Mills, Inc., a corporation, and its officers, and Harry A. Groban and Nathan Groban, individually and as officers of the corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction, into commerce, or the offering for

sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939 of "wool products" as such products are defined in and subject to the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

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

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

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

(b) The maximum percentage of the total weight of such wool products, 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 respondents, Dresden Mills, Inc., a corporation, and its officers, and Harry A. Groban and Nathan Groban, individually and as officers of the 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 textile fabrics, 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 thereof in 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 Prac-

tice, the initial decision of the hearing examiner shall, on the 1st day of April 1959, 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

EMPIRE AMEREX PRODUCTS CORP.

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

Docket 7278. Complaint, Oct. 14, 1958—Decision, Apr. 2, 1959

Consent order requiring a Chicago distributor of a variety of products including steak knives, carving sets, deep fryers, electric skillets, fans, and stainless steel flatware, to cease misrepresenting retail prices by printing fictitious and exaggerated amounts on attached labels and on containers of some of its products; misrepresenting the country of origin of cutlery products by so assembling imported tines that the word "Japan" stamped on the end was entirely covered, and packaging them for resale along with knives having blades made in England, in cartons bearing the words "Made in Sheffield, England"; packaging products equipped with Westinghouse parts in cartons bearing the words "Westinghouse Thermostat" so as to imply association of the entire product with the Westinghouse Company, boxing unapproved products in cartons printed with the "Seal of Approval from Underwriter's Laboratories"; and printing the words "IN 24 KT. GOLD PLATED" deceptively on boxes containing certain cutlery.

Franklin A. Snyder, Esq., for the Commission.

Morrill, Koutsky and Baum, by *Arthur W. Baum*, Esq., of Chicago, Ill., for respondent.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on October 14, 1958, charging it with having violated the Federal Trade Commission Act by misrepresenting (1) the origin of its products, (2) the source of manufacture thereof, (3) the material content thereof, and by the use of fictitious prices in connection with the sale thereof. Respondent appeared by counsel and entered into an agreement, dated February 9, 1959, containing a consent order to cease and desist, disposing of all the issues in this proceeding, without further hearings, 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 §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 §§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 Empire Amerex Products Corp. is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 3636 North Talman Avenue, in the city of Chicago, State of Illinois.

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

ORDER

It is ordered, That the respondent Empire Amerex Products Corp., a corporation, and its officers, 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 cutlery and carving sets, electric deep fryers, electric skillets, fans, or any other product, do forthwith cease and desist from:

1. Representing, directly or indirectly, by preticketing, or in any other manner, that any amount is the usual and regular retail price of a product when such amount is in excess of the price at which the product is 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 such merchandise;

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

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

5. Representing, directly or indirectly, in any manner, on the containers in which cutlery or other products, made in part in Japan, or any country other than England, are shipped or distributed, that such products are of English origin;

6. Using the name of any company in connection with any product which has not been manufactured in its entirety by said company; or representing, directly or indirectly, that any product not manufactured in its entirety by a specified company was so manufactured, provided, however, that this prohibition shall not be construed as preventing a truthful statement that a part of a product has been manufactured by a specific company when such part is clearly and conspicuously identified;

7. Using the seal of Underwriters Laboratories in connection with any product that has not been approved in its entirety by Underwriters Laboratories; or representing, directly or indirectly, that any product not approved in its entirety by Underwriters Laboratories has been so approved, provided, however, that this prohibition shall not be construed as preventing a truth-

ful statement that a part of a product has been so approved when such part is clearly and conspicuously identified;

8. Representing, directly or indirectly, that a product, or any part thereof, is gold plated, unless it has a surface plating of gold or gold alloy applied by a mechanical process, provided, however, that a product, or part thereof, on which there has been affixed by an electrolytic process a coating of gold, or gold alloy of not less than 10 karat fineness, the minimum thickness of which is equivalent to seven one-millionths of an inch of fine gold, may be marked or described as gold electroplate or gold electroplated.

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 2nd day of April 1959, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

THE AMERICAN FOAM LATEX CORPORATION, ET AL.

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

Docket 7313. Complaint, Nov. 19, 1958—Decision, Apr. 2, 1959

Consent order requiring Pittsburgh manufacturers of pillows, stuffed dolls, plastic bags, tablecloths and bedspreads, ironing board pad and cover sets, ironing board covers and beach pads, to cease misrepresenting the composition and prices of their products by affixing to them the words "all new material consisting of shredded latex foam rubber" when they were made of other materials, and by attaching to them tickets printed with exaggerated fictitious amounts represented thereby as the usual retail prices.

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

Max Blecher, Jr., by *Sidney Roth*, Esq., of New York, N.Y., for respondents.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on November 19, 1958, charging them with having violated the Federal Trade Commission Act, by misrepresenting the material content of their products and by the use of fictitious prices in connection with the sale thereof. Respondents appeared by counsel and entered into an agreement, dated February 4, 1959, containing a consent order to cease and desist, disposing of all the issues in this proceeding without further hearings, 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 §3.25 of the Rules of Practice of the Commission.

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

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

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing the consent order, and it appearing that the order and agreement cover all of the allegations of the complaint and provide for appropriate disposition of this proceeding, the agreement is hereby accepted and ordered filed upon this decision and said agreement becoming part of the Commission's decision pursuant to §§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 The American Foam Latex Corporation 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 2840 Liberty Avenue, Pittsburgh, Pa.

The individual respondents Leo Unger, Murray B. Pfeffer, Hugo Unger and Elvira Pfeffer are officers of the corporate respondent and have their office and principal place of business at the same address as the corporate respondent.

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

ORDER

It is ordered, That respondents, The American Foam Latex Corporation, a corporation, and its officers, and Leo Unger, Murray B. Pfeffer, Hugo Unger and Elvira Pfeffer, 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 advertising, offering for sale, or

selling of bed pillows, sofa toss pillows, stuffed plush dolls, stuffed regular dolls, plastic refrigerator bags, plastic table coths, pastic bedspreads, ironing board pad and cover sets, ironing board covers, beach pads or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Misrepresenting their products with respect to the character and condition of the materials used in said products;

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

3. Placing in the hands of retailers and dealers a means and instrumentality by and through which they may deceive and mislead the purchasing public, concerning merchandise in the respects set out in paragraphs 1 and 2 above.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 2nd day of April 1959, become the decision of the Commission; and, accordingly:

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

Decision

IN THE MATTER OF

INTERNATIONAL HOMES, INC., ET AL.

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

Docket 7324. Complaint, Dec. 9, 1958—Decision, Apr. 2, 1959

Consent order requiring Lyndhurst, N.J., distributors of house siding material to cease representing falsely, principally by sales talks, that homes of purchasers of their siding would be used as demonstration homes to sell the products and the commission paid for such use would cover the cost of the siding; that purchasers would receive commissions on other sales made in their vicinity; that the cash price shown on contracts was the total price to be paid; that a blank promissory note, among other papers required to be signed, was for the purpose of credit checking only; that signing of the contract was required by law and that the attached note was a formality; that the siding and installation were "Guaranteed for 25 Years"; and that a cash bonus would be given the purchaser when the installation was completed.

Mr. John W. Brookfield, Jr., for the Commission.
Mr. Morris Bromley, of Newark, N.J., for respondents.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding issued December 9, 1958, charges the respondents with violation of the Federal Trade Commission Act in the sale and distribution of house or building siding material.

Respondent International Homes, Inc., is a corporation organized, existing and doing business under the laws of the State of New Jersey, with its office and principal place of business located at 601 Ridge Road, Lyndhurst, N.J.

Respondent Harold Schreier is an individual and president of the corporate respondent, and respondent Alton Waldstein is an individual and manager of the corporate respondent. The office and principal place of business of said individual respondents is the same as that of the corporate respondent.

After the issuance of the complaint, respondents entered into an agreement containing consent order to cease and desist with counsel in support of the complaint, disposing of all the issues as to all parties in this proceeding, which agreement was duly approved by the director and assistant director of the Bureau of Litigation.

It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

By the terms of said agreement, the respondents admitted all the jurisdictional facts alleged in the complaint and agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with the allegations.

By said agreement, the parties expressly waived any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

Respondents further agreed that the order to cease and desist, issued in accordance with said agreement, shall have the same force and effect as if made after a full hearing.

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

The hearing examiner has considered such agreement and the order therein contained, and, it appearing that said agreement and order provides for an appropriate disposition of this proceeding, the same is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice, and, in consonance with the terms of said agreement, the hearing examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents named herein, that this proceeding is in the interest of the public, and issues the following order:

ORDER

It is ordered, That respondents International Homes, Inc., a corporation, and its officers, and Harold Schreier, individually and as an officer of said corporate respondent, and Alton Waldstein, individually, 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

house or building siding material, or any similar product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly, that:

1. The homes of purchasers of their siding material will be used as model or demonstration houses or buildings to advertise or sell the aforesaid products.

2. Commissions will be paid the purchasers of such products, or that commissions paid to the owners of homes who purchase respondents' products will be sufficient to cover the cost of respondents' products and their installation.

3. Purchasers of respondents' products will receive commissions or fees on other sales made in their vicinity or area.

4. The cash price shown on contracts for the sale of respondents' products is the total to be paid for such products.

5. Documents required to be signed by purchasers of respondents' products are for credit checking purposes only, when in fact such documents include promissory notes or other evidences of debt.

6. Respondents' siding and the installation thereof are "guaranteed" unless the terms of such "guarantee" are fully set forth.

7. Purchasers of respondents' siding will be paid a cash bonus or payment unless it is revealed that such payment is included in the price charged for such product.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 2d day of April 1959, 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

JACK WIEDERHORN & SON

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

Docket 7331. Complaint, Dec. 11, 1958—Decision, Apr. 2, 1959

Consent order requiring a New York City furrier to cease violating the Fur Products Labeling Act by failing to set forth in invoices the term "Dyed Mouton-processed Lamb" and required item numbers, and by advertising in letters to customers representing the "wholesale market value" of fur products to be certain designated amounts without maintaining adequate records as a basis for such pricing claims.

Mr. Floyd O. Collins, counsel supporting the complaint.
Respondents, *pro se*.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

On December 11, 1958, the Federal Trade Commission issued a complaint charging Jack Wiederhorn and Edward Wiederhorn, individually and as copartners trading as Jack Wiederhorn & Son, hereinafter referred to as respondents, with falsely and deceptively advertising and invoicing certain of their fur products in violation of the Federal Trade Commission Act and the Fur Products Labeling Act.

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

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

manner provided by statute for other orders; respondents waive any right to challenge or 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. Respondents Jack Wiederhorn and Edward Wiederhorn are individuals and copartners trading and doing business as Jack Wiederhorn & Son. Respondents' place of business is located at 333 Seventh Avenue, New York, N.Y.

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 Jack Wiederhorn and Edward Wiederhorn as individuals and as copartners, trading as Jack Wiederhorn & Son, or under any other name, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, manufacture for introduction, 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, manufacture for sale, advertising, offering for sale, transportation or distribution of fur products which have been made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act do forthwith cease and desist from:

1. 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 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 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;

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

B. Failing to set forth the term "Dyed Mouton processed Lamb" in the manner required by Rule 9 of the Regulations.

2. Making price claims and representations in advertisements concerning wholesale market values of fur products unless there are maintained by respondents full and adequate records disclosing the facts upon which such claims or representations are based.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 2d day of April 1959, 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

JACOB BRICKER TRADING AS BRICKER BROS.

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

Docket 7334. Complaint, Dec. 15, 1958—Decision, Apr. 3, 1959

Consent order requiring a furrier in Detroit, Mich., to cease violating the Fur Products Labeling Act by failing to comply with the labeling and invoicing requirements, and by representations in advertising concerning comparative prices, percentage savings, and reductions from regular prices which were not based on adequate records, as required.

Mr. S. F. House supporting the complaint.
Mr. Louis E. Barden, of Detroit, Mich., for respondent.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on December 15, 1958, charging him with having violated the Fur Products Labeling Act and the Rules and Regulations issued thereunder, and the Federal Trade Commission Act, through the misbranding of certain fur products and the false and deceptive invoicing and advertising thereof. After being served with said complaint, respondent appeared by counsel and entered into an agreement, dated February 2, 1959, containing a consent order to cease and desist purporting to dispose of all of this proceeding as to all parties. Said agreement, which has been signed by respondent, by counsel for said respondent, and by counsel supporting the complaint, and approved by the director and assistant director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

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

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

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

1. Respondent Jacob Bricker is an individual trading as Bricker Bros., with his office and principal place of business located at 1420 Farmer Street, in the city of Detroit, State of Michigan.

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

ORDER

It is ordered, That respondent Jacob Bricker, an individual trading as Bricker Bros., or under any other name, and his representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the sale, advertising, offering for sale, transportation or distribution in commerce of fur products, or in connection with the sale, manufacture for sale, advertising, offering for sale, transportation or distribution of fur products which have been made in whole or

in part of fur which has been shipped and received in commerce, as "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act do forthwith cease and desist from:

1. Misbranding fur products by:

A. Failing to affix labels to fur products showing:

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

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

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

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

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

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

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

B. Setting forth on labels affixed to fur products:

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

(2) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, mingled with nonrequired information;

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

C. Failing to disclose that fur products contain or are composed of "secondhand fur," when such is the fact.

D. Failing to set forth the information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in the required sequence.

E. Failing to set forth separately on labels attached 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 promulgated thereunder with respect to the fur comprising each section.

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 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 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;

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

B. Failing to set forth the term "Persian Lamb" in the manner required.

C. Failing to set forth the term "Dyed Broadtail Processed Lamb" in the manner required.

D. Failing to set forth the information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations thereunder with respect to "new fur" or "used fur" added to fur products that have been repaired, restyled or remodeled.

3. Making price claims and representations respecting comparative prices, percentage savings claims or claims and representations that prices are reduced from regular or usual prices unless respondent maintains 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

3d day of April 1959, become the decision of the Commission; and, accordingly:

It is ordered, That respondent 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

WALTER MARCYAN TRADING AS THE MARCY CO.

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

Docket 6706. Complaint, Jan. 9, 1957—Decision, Apr. 9, 1959

Ordering requiring a distributor in Los Angeles, Calif., to cease advertising falsely that use of his "DYN-A-PAK Food Supplements" containing vitamins and minerals would cause hair to grow faster and stronger and become thicker and glossier, and that the preparation would develop energy and endurance in persons lacking those qualities.

Mr. John J. McNally for the Commission.
Mr. G. G. Baumen, of Los Angeles, Calif., for respondent.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges that respondent has violated the Federal Trade Commission Act by making false, misleading and deceptive statements about a food or drug preparation which he advertises as being beneficial for thinning or falling hair and baldness. Hearings were held at which evidence in support of and in opposition to the allegations of the complaint was received, and proposed findings were submitted by counsel. Upon the basis of the entire record the following findings are made, conclusions reached and order issued.

FINDINGS OF FACT

1. Respondent Walter Marcyan is an individual trading as The Marcy Co., with his office and principal place of business located at 1398 Sunset Boulevard, Los Angeles 26, Calif. Said respondent is now, and for one year and more last past has been, engaged in the sale and distribution of a food or drug preparation, as the terms "food" and "drug" are defined in the Federal Trade Commission Act.

2. Respondent causes the said preparation, when sold, to be transported from his place of business in the State of California to purchasers thereof located in various other States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said preparation, in commerce, among and between various States of the United States. The volume of such trade has been and is substantial.

3. The product is called "DYN-A-PAK Food Supplements," and is marketed in packages of four drawers or compartments each, 30 units per drawer or compartment. In the first drawer the units are in capsule form; in the other three drawers they are in tablet form. The composition of the units varies from drawer to drawer, and is as follows:

Drawer No. One	30 Capsules.
A (Fish Liver Oils)	25,000 i.u.
D (Irradiated Ergosterol)	1,000 i.u.
Thiamin (B1)	3,333 i.u.
Riboflavin (B2)	5,000 mcg.
Ascorbic Acid (C)	3,000 i.u.
Niacinamide	150 mg.
Drawer No. Two	30 tablets.
B12 (Fermentation Process)	2 mcg.
Folic Acid	1 mg.
Liver (N.F.)	388 mg.
Iron (Ferrous Sulfate)	5 mg.
Iodine (Kelp)	0.1 mg.
Cobalt (Sulfate)	0.1 mg.
Copper (Sulfate)	0.1 mg.
Magnesium (Kelp)	.39 mg.
Manganese (Sulfate)	1 mg.
Potassium (Kelp)	10 mg.
Nickel (Sulfate)	0.1 mg.
Chlorine (Kelp)	10 mg.
Sulphur (Kelp)	.63 mg.
Sodium (Kelp)	3.33 mg.
Drawer No. Three	30 tablets.
B1 (Thiamin)	1,000 i.u.
B2 (Riboflavin, Grain ext.)	1,050 mcg.
B6 (Pyridoxin)	100 mcg.
Niacinamide	6.6 mg.
Calcium Pantothenate	600 mcg.
C (Ascorbic Acid)	200 i.u.
E (Tocopherols)	200 mcg.
Inositol	333 mcg.
Biotin	.66 mcg.
Folic Acid	333 mcg.
Brewers Yeast	129 mg.
Drawer No. Four	30 tablets.
Calcium (Calcium)	200 mg.
Phosphorus (Pyrophosphate)	156 mg.
Iron (Ferrous Sulfate)	3.3 mg.
Iodine (Kelp)	.033 mg.
Copper (Sulfate)	.010 mg.
Potassium (Kelp)	3.13 mg.
Manganese (Sulfate)	1.66 mg.

Magnesium (Kelp)	0.2 mg.
Cobalt (Sulfate)	.033 mg.
Nickel (Sulfate)	.033 mg.
Sulphur (Kelp)	0.28 mg.
Sodium (Kelp)	1.12 mg.
Chlorphyllin	100 mg.

The labels state further that, as shown by spectographic analysis, the kelp, which is a component of the units in drawers two and four, contains the following trace elements:

Zinc,	Lithium,	Strontium,
Barium,	Silicon,	Titanium,
Chromium,	Silver,	Vanadium.

According to directions on the package, one tablet or capsule from each drawer is to be taken daily.

4. In advertising his product respondent has used newspapers, periodicals and other means, and has made statements of which the following is typical:

In every case these pupils said they noticed an improvement in energy and endurance within the first 5 days of use. As time went on I noticed that a large percentage of these testimonials mentioned that their finger nails were growing faster and stronger, that their hair was growing thicker and that it had stopped falling out. Previously when they washed their hair in the wash bowl the drain always showed large quantities of hair, but after using Dyn-A-Pak for a month or two there was just a minimum loss. Many women have told me that their hair was growing thicker and glossier.

* * * * * * *

It is possible that somewhere in combining the proportions of this great food supplement we have hit upon something that makes hair grow faster and stronger and keeps it from falling out.

5. By such advertising the respondent has represented, directly and by implication, that through the use of said preparation as directed, thinning or falling hair will be checked and baldness prevented; that hair will grow faster and stronger and become thicker and glossier; and that said preparation will develop energy and endurance in the cases of persons who are tired, weak and lack endurance.

6. Respondent's answer states that "the use of DYN-A-PAK as directed will develop energy and endurance in the cases of persons who are tired, weak and lack endurance when such conditions are the result of a deficiency of one or more of the vitamins or minerals supplied by said preparation." It is generally agreed that favorable results will follow the taking of a vitamin or mineral product *only* when there is a deficiency of one or

more of the vitamins or minerals supplied by the preparation. Such qualification should be clearly stated in respondent's advertising.

7. As to the claimed effectiveness of use of the product to check or alleviate or prevent thinning or falling hair or baldness or to cause the hair to grow faster or stronger or to become thicker and glossier, the testimony of two highly qualified expert medical witnesses is strongly to the effect that such salubrious results could not be anticipated and would not result. Such testimony was unqualified and uncontradicted, except by the testimony of respondent, who said he had been taking DYN-A-PAK for the past seven years; that in 1951 he was losing hair and his hairline was receding; that he now has more and thicker hair, it has "stopped falling out to the degree it had been," and his hair line has not receded since. Respondent also asserted that he had letters from other people which contained statements which would substantiate the claims made in his advertising.

8. As against statements made by respondent in his own behalf, based on his own experience but without corroboration or other supporting facts, and as against statements based only on the contents of commendatory letters of others, the testimony of the expert witnesses must be accepted and the conclusion reached that respondent's product, taken as directed, will not have any effect upon thinning or falling hair or baldness, nor will it cause hair to grow faster and stronger and become thicker and glossier.

CONCLUSIONS

(a) The representations made by respondent as to the beneficial results that will ensue from use of DYN-A-PAK as directed are false, misleading and deceptive.

(b) The statements and representations contained in the advertisements circulated by respondent have had, and now have, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true, and into the purchase of said preparation because of such erroneous and mistaken belief.

(c) The acts and practices of the respondent, as herein found, were and are all to the prejudice and injury of the public and constituted and now constitute unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondent Walter Marcyan, an individual trading as The Marcy Co., or under any other trade name or names, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of the product "DYN-A-PAK," or any product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from, directly or indirectly:

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

(a) Check thinning or falling hair;

(b) Prevent baldness;

(c) Cause the hair to grow faster or stronger or become thicker or glossier;

(d) Develop energy or endurance in the cases of persons who are tired, weak, or lack endurance, unless expressly limited to cases where such conditions are the result of a deficiency of one or more of the vitamins or minerals supplied by respondent's product;

(2) Disseminating or causing to be disseminated any advertisement by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said product in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the representations prohibited in paragraph (1) hereof.

OPINION OF THE COMMISSION

By TAIT, Commissioner:

The complaint charges respondent with violating the Federal Trade Commission Act through the dissemination of false advertisements for inducing the sale of a food supplement preparation. The hearing examiner in his initial decision held that the allegations of the complaint were sustained by the evidence and ordered respondent to cease and desist the advertising found to be unlawful. Respondent has appealed from that decision.

The only question raised on appeal is whether certain find-

ings of fact in the initial decision are supported by the evidence. These findings are based in part on the testimony of two doctors who testified in behalf of the complaint. Respondent points out that neither of the doctors had ever used his preparation or had ever conducted clinical tests with it. He also contends that these doctors were not experts on the subject on which they gave testimony. He, therefore, argues that there was insufficient foundation for the testimony of these witnesses and that such testimony does not constitute substantial evidence to support the findings that his product will not check thinning or falling hair, prevent baldness, cause hair to grow faster or stronger or cause hair to become thicker or glossier.

The contention that the two doctors who testified were not qualified to express an opinion in this matter is refuted by the facts. Without listing their qualifications, it is sufficient to say that both witnesses were well equipped by formal training and experience to testify as experts in the field of their specializations. Each witness had included in his specialization the diagnosis and treatment of conditions affecting the hair and scalp. After years of clinical observation of those factors which influence hair growth and hair loss, they were qualified to speak authoritatively on that subject.

Respondent's argument that a proper foundation was not laid for the witnesses' opinions ignores the fact that both doctors testified after having examined the list of ingredients in respondent's product. Since they had sufficient factual information upon which to give an opinion, it was unnecessary that any other data be presented to them in the form of a hypothetical question, as contended by respondent. Both witnesses expressed the opinion that neither the product nor the ingredients contained therein would have the beneficial effect on hair growth claimed by respondent. The fact that they had not tested or used the product did not make their testimony incompetent or inadmissible. *Charles of the Ritz Dist. Corp.* v. *Federal Trade Commission,* 143 F. 2d 676; *Dr. W. B. Caldwell, Inc.,* v. *Federal Trade Commission,* 111 F. 2d 889.

Respondent's contention that no weight should be given the testimony of the two doctors is likewise rejected. Both men testified on the basis of their clinical observations and experience that there was no evidence that any of the vitamins and minerals contained in respondent's product would have any influence on hair growth or hair loss. The law is well settled that the testi-

mony of an expert based on his general knowledge in a particular field may constitute substantial evidence to support the allegations of a complaint. *Charles of the Ritz Dist. Corp.* v. *Federal Trade Commission, supra; Dr. W. B. Caldwell, Inc.* v. *Federal Trade Commission, supra; Neff* v. *Federal Trade Commission,* 117 F. 2d 495; *Bristol-Meyers Co.* v. *Federal Trade Commission,* 185 F. 2d 58. The testimony of the expert witnesses, opposed only by the uncorroborated testimony of the respondent as a user of the preparation, fully sustains the findings as to the falsity of respondent's advertising representations.

Respondent's appeal is denied, and the initial decision will be adopted as the decision of the Commission.

FINAL ORDER

This matter having been heard by the Commission upon respondent's appeal from the hearing examiner's initial decision, and upon briefs in support thereof and in opposition thereto, no oral argument having been requested; and the Commission having rendered its decision denying the appeal and adopting the initial decision:

It is ordered, That the respondent, Walter Marcyan, 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

NASSAU FASHIONS, INC., ET AL.

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

Docket 7171. Complaint, June 9, 1958—Decision, Apr. 9, 1959

Consent order requiring manufacturers in Cleveland, Ohio, to cease selling their garments made from "Fiocco" rayon fabric simulating wool, without clearly disclosing the rayon content.

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

Mr. William H. Rosenfeld, of *Rosenfeld, Palay & Fallon,* of Cleveland, Ohio, for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) issued its complaint herein, charging the above-named respondents with having violated the provisions of the Federal Trade Commission Act in certain particulars.

On February 5, 1959, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an "Agreement Containing Consent Order to Cease and Desist," which had been entered into by and between respondents and the attorneys for both parties, under date of January 30, 1959, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

On due consideration of such agreement, the hearing examiner finds that said agreement, both in form and in content, is in accord with §3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and that by said agreement the parties have specifically agreed to the following matters:

1. Respondent Nassau Fashions, Inc., is a corporation, organized, 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 1974 East 61st Street, in the city of Cleveland, State of Ohio.

Respondent Max Reiter is president and treasurer of said Nassau Fashions, Inc., and his office and place of business is the same as that of the corporate respondent.

2. Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on June 9, 1958, issued its complaint in this proceeding against respondents, and a true copy was thereafter duly served on respondents.

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

4. This agreement disposes of all of this proceeding as to all parties. It is recommended that the complaint be dismissed as to respondent Elsie Reiter for the reasons set forth in the affidavit which is attached hereto and made a part hereof.

5. Respondents waive:

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

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

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

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

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

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

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

Upon due consideration of the complaint filed herein and the said "Agreement Containing Consent Order to Cease and Desist," the latter is hereby approved, accepted and ordered filed, the same not to become a part of the record herein, however, unless and until it becomes part of the decision of the Commission. The hearing examiner finds from the complaint and the said "Agreement Containing Consent Order to Cease and Desist" that the Commission has jurisdiction of the subject matter of this pro-

ceeding and of each of the respondents herein; that the complaint states a legal cause for complaint under the Federal Trade Commission Act against each of the respondents both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; that the following order as proposed in said agreement is appropriate for the just disposition of all of the issues in this proceeding as to all of the parties hereto; and that said order therefore should be, and hereby is, entered as follows:

ORDER

It is ordered, That respondents Nassau Fashions, Inc., a corporation, and its officers, and Max Reiter, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of garments made from fabrics composed in whole or in part of rayon, do forthwith cease and desist from:

Failing to set forth the rayon content thereof in a clear and conspicuous manner on invoices, labels and in advertising matter concerning such products.

It is further ordered, That the complaint herein be dismissed as to respondent Elsie Reiter.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission having considered the hearing examiner's initial decision, filed February 24, 1959, accepting an agreement containing a consent order to cease and desist, theretofore executed by the respondents and counsel in support of the complaint, and dismissing the complaint as to respondent Elsie Reiter; and

The Commission having determined that the initial decision constitutes an appropriate disposition of this proceeding:

It is ordered, That the initial decision shall, on the 9th day of April, 1959, become the decision of the Commission, with the understanding, however, that nothing therein shall relieve the respondents from their obligation to comply with the requirements of the Textile Fiber Products Identification Act after the effective date thereof or require respondents thereafter to label

or otherwise offer products subject to that Act in any manner contrary to the provisions thereof or the rules and regulations promulgated thereunder by the Commission.

It is further ordered, That the respondents, Nassau Fashions, Inc., a corporation, and Max Reiter, individually and as an officer of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.