IN THE MATTER OF

HOWARD NUSSBAUM, INC., TRADING AS BENTON FURS ET AL.

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

Docket 7382. Complaint, Feb. 2, 1959—Decision, May 20, 1959

Consent order requiring furriers in Los Angeles to cease violating the Fur Products Labeling Act by such practices as labeling certain fur products with the names of animals other than those which produced the fur, affixing tags bearing excessive fictitious prices represented thereby as usual retail prices, advertising which represented prices of fur products falsely as reduced, and failing in other respects to comply with the labeling, invoicing, and other requirements of the Act.

Mr. Eugene Kaplan for the Commission.

Harry Cohen, Esq., for *Jerome Weber*, of Los Angeles, Calif., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on February 2, 1959, issued its complaint herein, charging the above-named respondents with having violated the provisions of both the Federal Trade Commission Act and the Fur Products Labeling Act, together with the Rules and Regulations promulgated thereunder, and the respondents were duly served with process.

On March 27, 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 March 25, 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 Howard Nussbaum, Inc., is a corporation existing and doing business under and by virtue of the laws of the

State of California, with its office and principal place of business located at 714 South Hill Street, Los Angeles 14, Calif.

Respondent Howard Nussbaum is president of said corporate respondent and formulates, directs, and controls the acts, policies, and practices of said corporate respondent. His address and principal place of business is the same as that of said corporate respondent.

2. 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.

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

4. 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.

5. 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.

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

7. 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.

8. 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 proceeding and of each of the respondents herein; that the complaint states a legal cause for complaint under the Federal Trade Commission Act and the Fur Products Labeling Act and the Rules and Regulations promulgated by the Commission under the latter 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 Howard Nussbaum, Inc., a corporation, trading as Benton Furs, or under any other name, and its officers, and Howard Nussbaum, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce of fur products, or in connection with the sale, advertising, offering for sale, transportation, or distribution of fur products which 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:

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.

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

C. Falsely or deceptively labeling or otherwise identifying such products as to the regular prices thereof by any representation that the regular or usual prices of such products are any amount in excess of the prices at which respondents have usually and customarily sold such products in the recent regular course of business.

D. Setting forth on labels affixed to fur products:

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

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

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

E. Failing to set forth the information required under §4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder on one side of labels.

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

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 substan-

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

3. Making price claims and representations respecting price reductions 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 20th day of May 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

KEELE HAIR & SCALP SPECIALISTS, INC., ET AL.

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

Docket 6589. Complaint, July 17, 1956—Decision, May 21, 1959

Order requiring two distributors of hair and scalp preparations in Oklahoma City, Okla., and Wichita, Kans., respectively, along with their advertising agency, to cease advertising falsely that their said preparations would be effective in checking thinning hair and overcoming baldness, including male pattern baldness; to reveal clearly that the great majority of cases of thinning hair and baldness are of the male pattern type and that their preparation would be ineffective in such cases; and to cease claiming that they and their agents were "Trichologists" or had training in dermatology or other branches of medicine.

Mr. Harold A. Kennedy for the Commission.

Mr. Richard M. Welling, of Charlotte, N.C., for respondents Keele Hair & Scalp Specialists, Inc., William L. Keele, Thelma P. Keele, J. H. Keele, Rogers Hair Experts, Inc., and American Advertising Bureau, Inc.

No appearance for respondents Lorene Firsching, Vangie Clendenin, J. Wayne Green, John Shiflet, Mrs. Lorraine Shiflet and David A. Miller.

John H. Kennedy, *pro se*.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

1. The Commission's complaint in this matter charges the respondents with disseminating false advertisements in connection with various cosmetic and drug preparations intended for use in the treatment of the hair and scalp. After the filing by certain of the respondents of their answers to the complaint, hearings were held at which evidence both in support of and in opposition to the complaint was received. Proposed findings and conclusions have been submitted by counsel supporting the complaint, and a motion to dismiss the complaint has been filed by counsel for respondents Keele Hair & Scalp Specialists, Inc., Rogers Hair Experts, Inc., American Advertising Bureau, Inc., William L. Keele, Thelma P. Keele and J. H. Keele. The case has been argued orally and is now before the hearing examiner for final consideration. Any proposed findings and conclusions not included herein have been rejected.

2. Respondent Keele Hair & Scalp Specialists, Inc., is a corporation organized and existing under the laws of the State of Oklahoma, with its office and principal place of business located at 710 Leonhardt Building, Oklahoma City, Okla. Respondents William L. Keele, Thelma P. Keele, and J. H. Keele are officers of the corporation, their addresses being as follows: William L. Keele, 710 Leonhardt Building, Oklahoma City, Okla.; Thelma P. Keele, 905 NW. 40th Street, Oklahoma City, Okla.; and J. H. Keele, Red Rock, Okla. These individuals control the policies, acts and practices of the corporation, including those hereinafter described.

3. Respondent Rogers Hair Experts, Inc., is a corporation organized and existing under the laws of the State of Kansas, with its office and principal place of business at 426 East Central Avenue, Wichita, Kans. Respondents Lorene Firsching and Vangie Clendenin are officers of the corporation, their addresses being as follows: Lorene Firsching, Range Road, Wichita, Kans.; Vangie Clendenin, Michigan, Kans. These individuals control the policies, acts and practices of the corporation, including those hereinafter described.

4. Respondent J. Wayne Green, joined as a respondent individually and as an officer of Rogers Hair Experts, Inc., was not served with process, and the complaint must therefore be dismissed as to him. The term respondents as used hereinafter will not include this individual.

5. Respondent American Advertising Bureau, Inc., is a corporation organized and existing under the laws of the State of Oklahoma, with its office and principal place of business located at 704 Leonhardt Building, Oklahoma City, Okla. Respondents John Shiflet, Mrs. Lorraine Shiflet and David A. Miller are officers of the corporation, their address being the same as that of the corporation. These individuals control the policies, acts and practices of the corporation, including those hereinafter described.

6. Respondent John H. Kennedy, joined as a respondent individually and as an officer of American Advertising Bureau, Inc., is a practicing attorney in Oklahoma City, Okla. While for a period of approximately three months (September 1 to December 3, 1954) he was vice president of the corporation, he has at no time participated actively in the management of its affairs. Since December 3, 1954, he has had no connection whatever with the company. The complaint is therefore being dismissed

as to him, and the term respondents as used hereinafter will not include this individual.

7. The respondents answering the complaint and contesting the proceeding are the three corporate respondents and William L. Keele, Thelma P. Keele and J. H. Keele. The other respondents are in default, having neither filed answers to the complaint nor appeared at any of the hearings.

8. Respondents Keele Hair & Scalp Specialists, Inc., and Rogers Hair Experts, Inc., are engaged in the business of selling and distributing various cosmetic and drug preparations intended for external use in the treatment of conditions of the hair and scalp. The sales of the preparations include sales made in connection with and as a part of treatments administered by respondents and their employees. Respondents have caused their preparations, when sold, to be transported from their respective places of business in the States of Oklahoma and Kansas to purchasers located in various other States of the United States. Respondents have maintained a course of trade in the preparations in commerce between and among the various States of the United States.

9. Respondents Keele Hair & Scalp Specialists, Inc., Rogers Hair Experts, Inc., William L. Keele, Thelma P. Keele, J. H. Keele, Lorene Firsching, and Vangie Clendenin have acted in conjunction and cooperation with one another in the performance of the acts and practices hereinafter set forth.

10. One of the methods used by respondents Keele Hair & Scalp Specialists, Inc., and Rogers Hair Experts, Inc., in operating their business is as follows: Employees of the two corporations, and also respondent William L. Keele, travel extensively in the United States, with stops at various cities. Through newspaper advertisements respondents invite members of the public in each locality to visit a temporary office set up by respondents in that location, the office usually being set up in a hotel room. Members of the public are invited to visit the office in order that they may receive diagnosis and advice by respondents as to their hair and scalp conditions. Frequently, as a result of such interviews the use of certain of respondents' preparations is recommended by them. If successful in their efforts, respondents sell the preparations to such customers for use by them in their homes. The preparations, together with instructions for their use, are shipped to the purchasers from the place of business of one of the corporate respondents.

Respondent Keele Hair & Scalp Specialists, Inc., by means of newspaper advertisements also invites members of the public to come to its place of business in Oklahoma City for diagnosis and treatment. To those coming to such place of business a certain series of treatments is usually recommended. If the treatments are agreed to, they are administered by respondent, and in connection with and as a part of the treatments certain of the preparations are used. Respondent also sells home treatment kits, along with instructions for the use thereof, to individuals visiting its place of business as a result of the advertisements. These home treatment kits include certain of the preparations.

11. The following ingredients are used in respondents' preparations, the ingredients being used in various combinations in the several preparations:

Ammoniated Mercury
Ammonium Lauryl Sulfate
Benzoyl Peroxide
Beta Naphthol
Boric Acid
Carbowax 1500 (a solid polyethylene glycol made by Carbide & Carbon Chemicals Co.)
Castor Oil
#77 Detergent (a general household and industrial cleaner made by Peck's Products Co.)
Dyes
Emcol 5130 (an alkanolamine condensate detergent made by Emulsol Chemical Co.)
Eucalyptol
Glycerol 40% Liquid Soap
Hyamine #1622 (di-isobutyl phenoxy ethoxy ethyl dimethyl benzyl ammonium chloride made by The Rohm & Haas Co.)
Hydrophilic Ointment Base
Isopropyl Alcohol
Lanolin
Methylcellulose
Methyl Para Hydroxy Benzoate
Mineral Oil
Nopco #1034 (a sulfonated oil made by Nopco Chemical Co.)
Oil of Bay, Terpeneless
Oil of Cade
Oil of Tar, Rectified
Oil of Thyme
Oxyquinolin
Petrolatum
Perfume
Phenol
Propylene Glycol

Resorcinol
Salicylic Acid
Sulfonated Caster Oil
Sulfur, Precipitated
Tincture Capsicum
Tincture Green Soap
Tween 60 (Polyoxyethylene Sorbitan Monostearate made by Atlas Powder Co.)
Unsaturated Fatty Acid
Veegum (Colloidal Magnesium silicate made by R. T. Vanderbilt Co., Inc.
Water

12. Respondents American Advertising Bureau, Inc., John Shiflet, Mrs. Lorraine Shiflet and David A. Miller are engaged in the business of conducting an advertising agency. In the operation of such agency they have prepared, disseminated and caused the dissemination of advertising for the preparations in question. They have acted in conjunction and cooperation with the other corporate and individual respondents in the performance of the acts and practices hereinafter described.

13. In the course and conduct of their business all of the respondents have disseminated and caused the dissemination of advertisements concerning the preparations by means of the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and repondents have also disseminated and caused the dissemination of advertisements concerning such preparations by various means for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of the preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act.

By means of these advertisements, respondents have represented, directly or by implication, that through the use of their preparations thinning hair will be checked, baldness prevented and overcome, new hair induced to grow, and the hair become thicker.

By referring to respondent William L. Keele and certain of their other representatives as "trichologists," respondents have also represented in their advertisements that such persons have had competent training in dermatology and other branches of medicine having to do with the diagnosis and treatment of disorders of the hair and scalp.

14. The scientific evidence in support of the complaint consists of testimony from three highly qualified and experienced

physicians. In substance their testimony is that the great majority of cases of baldness and thinning hair fall in the category of "male pattern baldness." While scientists are not entirely certain as to the cause of this type of baldness, the consensus is that the condition is due to hereditary factors. In any event, the witnesses are unanimous in their opinion that there is no known cure or effective treatment for the condition (except possibly hormone injection and castration).

While two highly qualified physicians were called as witnesses by respondents, their testimony was not in conflict with the opinions expressed by the witnesses called in support of the complaint. On the contrary, the testimony of respondents' witnesses in substance was corroborative of the testimony of the three witnesses called on behalf of the Commission.

15. The record clearly shows that the great majority of all cases of baldness fall within the type known to dermatologists as male pattern baldness. There is uncontradicted testimony that male pattern baldness accounts for 90% or more of all baldness. Respondents' advertisements, however, include claims such as "95% of all cases of hair loss can be helped" and "The real truth is that most bald men need not have lost their hair at all." The total impression gained from respondents' advertisements is that everyone or almost everyone suffering from baldness or excessive hair fall will be aided by the preparations. Some of the respondents' advertisements, but not all, seem to exclude from claims for effectiveness the cases in which a man is completely, shiny bald, but make it clear that those who cannot be aided are very few. Since the great majority of baldness cases are male pattern baldness, it is plain that respondents have represented their preparations to be effective in such cases. Respondents' preparations, whether used singly or in combination, and regardless of the method of treatment followed in connection with the preparations, will have no effect upon male pattern baldness. In such cases the preparations are wholly incapable of checking thinning hair, preventing or overcoming baldness, inducing new hair to grow, or causing the hair to become thicker. It follows, therefore, that the representations in respondents' advertisements to the contrary are misleading in a material respect.

Respondents' representation that respondent William L. Keele and certain of their other representatives are trichologists is also misleading in a material respect. None of these individuals

is a trichologist. None is a physician and none has had any competent training in dermatology or other branches of medicine having to do with the diagnosis and treatment of disorders of the hair and scalp.

16. Respondents' advertisements are misleading in a further material respect in that they fail to reveal facts material in the light of the advertisements' other representations respecting baldness or hair loss. As noted above, the theme of respondents' advertisements has been that in the great majority of cases thinning hair and baldness is an unnecessary condition which, by the use of respondents' preparations, could have been prevented and may yet be overcome. In all except a few "hopeless cases," they have said, amounting to no more than 5%, a full head of healthy hair can be grown and the condition of baldness relieved. Obviously, such advertisements, when read by a person who has lost or is losing his hair, suggests to him a high probability that he is threatened with, or already has, a type of baldness which may be prevented or overcome by the use of respondents' preparations. The record clearly shows, however, that the suggestion so made is completely false. The undisputed evidence is that the great majority of cases of thinning hair and baldness, at least 90%, fall within the category of "male pattern baldness," and that in such cases the respondents' preparations, whether used singly or in combination, and regardless of the method of treatment employed, will have no effect. Clearly, the knowledge of such limitations on the possible effectiveness of the preparations is necessary for an evaluation of the other representations made with respect to thinning hair and baldness, and since the advertisements have contained no adequate revelation with respect thereto, they fall within the category of "false advertisements" as defined by the statute.

As the record discloses, there are in addition to "male pattern baldness" many other types of baldness, including those caused by ringworm, systemic diseases, glandular defects and local infections. A proper diagnosis of any particular case can be made only by a trained physician. Without the training and experience of a professional in the field, the ordinary layman would have no way of knowing whether his case is one of male pattern baldness or one of the many other types of baldness. Only if a prospective purchaser is informed of the relative frequency of occurrence of male pattern baldness and the consequent relative infrequency of occurrence of other types of baldness, and of the

further fact that in cases of male pattern baldness the preparations will not be effective, will the likelihood of deception of the advertisements be eliminated.

17. It is therefore concluded that respondents' advertisements, as charged by the complaint, constitute false advertisements within the meaning of the Federal Trade Commission Act.

18. The use by respondents of the false advertisements described above has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondents' preparations and the benefits to be derived from the use thereof, and to cause such persons to purchase such preparations as a result of the erroneous and mistaken belief so engendered. The present proceeding is therefore in the public interest.

19. The acts and practices of respondents as herein found are to the prejudice of the public, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondents Keele Hair & Scalp Specialists, Inc., a corporation, and its officers, and William L. Keele, Thelma P. Keele, and J. H. Keele, individually and as officers of said corporation, and Rogers Hair Experts, Inc., a corporation, and its officers, and Lorene Firsching and Vangie Clendenin, individually and as officers of said corporation, and American Advertising Bureau, Inc., a corporation, and its officers, and John Shiflet, Mrs. Lorraine Shiflet, and David A. Miller, 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 the various cosmetic or drug preparations referred to in the findings herein, or any other preparations intended for use in the treatment of hair or scalp conditions, do forthwith cease and desist from:

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

Will check thinning hair, prevent or overcome baldness, cause new hair to grow, or cause the hair to become thicker, unless such representations be expressly limited to cases other than those of male pattern baldness, and unless the advertisement clearly and conspicuously reveals the fact that the great majority of cases of thinning hair and baldness are the beginning and more fully developed stages of said male pattern baldness and that said preparations will not in such cases check thinning hair, prevent or overcome baldness, cause new hair to grow, or cause hair to become thicker.

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

That respondents or any of their agents or employees are trichologists, or that they have had competent training in dermatology or other branches of medicine having to do with the diagnosis and treatment of disorders of the hair or scalp.

3. Disseminating or causing to be disseminated by any means any advertisement for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any representation prohibited in paragraphs 1 and 2 hereof.

It is further ordered, That the complaint be, and it hereby is, dismissed as to respondents J. Wayne Green and John H. Kennedy.

It is further ordered, That the motion of respondents, Keele Hair & Scalp Specialists, Inc., Rogers Hair Experts, Inc., American Advertising Bureau, Inc., William L. Keele, Thelma P. Keele, and J. H. Keele, to dismiss the complaint be, and it hereby is, denied.

OPINION OF THE COMMISSION

By SECREST, Commissioner:

The complaint in this matter charges the respondents with violating the Federal Trade Commission Act in connection with the dissemination of false advertisements concerning various cosmetic and drug preparations intended for use in the treatment

of the hair and scalp. In an initial decision, filed August 28, 1958, the hearing examiner held that the charges in the complaint were sustained in part and included in his decision an order directing certain of the respondents to cease and desist the practices found to be unlawful.[1]

Counsel for the respondents and counsel in support of the complaint have filed cross-appeals from the aforesaid initial decision. The contentions of each will be separately considered below.

Respondents' Appeal

Respondents take exception to the examiner's finding that by referring to respondent William T. Keele and some other representatives as "trichologists" in their advertisements they have represented that such persons have had competent training in dermatology and other branches of medicine having to do with the diagnosis and treatment of disorders of the hair and scalp. The respondents' position is that "trichologist" means nothing more than one experienced in the hair. The record, however, supports the finding of the examiner. There is evidence that a trichologist is one who has had medical training, a medical degree and some special training in dermatology. Moreover, in the context in which the word "trichologist" appears in respondents' advertisements, the impression created thereby that certain personnel have special training in medicine is further enhanced by picturing a representative in a white coat before an enlarged photograph of hair follicles and by the use of words with medical associations, such as "specialists." The examiner's finding in this connection is consistent with prior Commission rulings as to the meaning conveyed by the use of such term. *Cf. William T. Loesch, et al.*, Docket No. 6305 (decided November 14, 1957), affirmed C.A. 4, 257 F. 2d 882 (1958).

The respondents' next exception is directed to the hearing examiner's finding that respondents have falsely advertised that their preparations will be effective in cases of male pattern baldness.

The record clearly shows that the great majority of all cases of baldness fall within the type known to dermatologists as male pattern baldness. There is uncontradicted testimony that male pattern baldness accounts for 90% or more of all baldness. It is also shown by the great weight of the evidence that respondents' preparations, in such cases, are incapable of checking thinning

[1] The examiner dismissed the complaint as to respondents J. Wayne Green and John H. Kennedy.

hair, preventing or overcoming baldness, inducing new hair to grow, or causing hair to become thicker. It remains only to be determined, therefore, whether respondents have represented that their preparations would be effective in male pattern baldness cases. On this point we believe the record is entirely sufficient. Respondents' advertisements include claims such as: "95% of all cases of hair loss can be helped" and "The real truth is that most bald men need not have lost their hair at all." The total impression gained from respondents' advertisements is that everyone or almost everyone suffering from baldness or hair loss will be aided by their preparations. Some, but not all, of respondents' advertisements seem to exclude from claims for effectiveness the cases in which a man is completely, shiny bald, but make it clear that those who cannot be aided are very few. Since the great majority of baldness cases are male pattern baldness, it is plain that respondents have represented that their preparations will be effective in such cases. These advertisements, therefore, are misleading in a material respect. We do not believe that respondents' exception in this connection is well taken; nevertheless, the examiner's findings relative thereto will be modified in the interest of clarity.

Respondents finally assert that, beginning in May, 1955, respondents' advertisements were materially changed to conform to the alleged wishes of the Commission, and that the advertisements offered in evidence in support of the complaint were never thereafter used by respondents. There are no circumstances shown in this case, however, which would justify considering the matter as one for dismissal of the complaint on the ground of a discontinuance of unlawful practices, if that is what respondents are seeking. Respondents have not even established that the practices challenged by the complaint have been abandoned. Merely because there have been some changes in advertising copy, if such is the fact, does not justify a conclusion that the representations found to be false have been discontinued.

Appeal of Counsel in Support of the Complaint

Counsel in support of the complaint takes exception to the examiner's failure to find that respondents' advertising is misleading because of its failure to reveal that the great majority of cases of thinning hair and baldness are the beginning and more fully developed stages of male pattern baldness and that in such cases respondents' preparations will not check thinning

hair or prevent or overcome baldness, and to enter an order requiring such disclosure. The examiner refused to enter an order with a provision of this nature, as requested, because of his apparent conclusion that such would be inconsistent with a principle discussed and adopted in *Alberty* v. *Federal Trade Commission*, 182 F. 2d 36 (1950). The examiner also ruled that to include the requested provision in the order, he would have to make a finding substantially the same as the pertinent allegation in the complaint, and this he said he could not do.

The basis of counsel's position is an allegation in the complaint, which he maintains has been sustained, that respondents' advertisements constitute "false advertisements" within the meaning of Section 15 of the Federal Trade Commission Act by reason of their failure to reveal facts material in the light of other statements and claims contained in the advertising. Under that section of the Act, every advertisement of a food, drug, cosmetic or device, other than labeling, which is misleading in a material respect is a "false advertisement," and under Section 12 the dissemination of such an advertisement by the means or for the purpose therein set forth is unlawful. Moreover, the statute expressly provides that in determining whether an advertisement is misleading, there shall be taken into account not only representations affirmatively made therein, but also the extent to which the advertisement fails to reveal other facts which are material in the light of affirmative representations which are made. It thus becomes important to determine here whether, in the light of respondents' affirmative claims for their preparations, it is material that the vast majority of cases of thinning hair and baldness are in fact the beginning or more fully developed stages of male pattern baldness and that in such cases the respondents' preparations will be wholly ineffective, and if such facts are material, whether the revelation of them is necessary to avoid the likelihood of deception of the affirmative claims.

As noted above, the theme of respondents' advertisements has been that in the great majority of cases thinning hair and baldness is an unnecessary condition which, by the use of respondents' preparations could have been prevented and may yet be overcome. In all except a few "hopeless cases," amounting to no more than 5%, they have said, a full head of healthy hair can be grown and the condition of baldness relieved. Obviously, such advertisements, when read by a person who has lost or is

losing his hair, suggests to him a high probability that he is threatened with, or already has, a type of baldness which may be prevented or overcome by the use of respondents' preparations. The record clearly shows, however, that the suggestion so made is completely false. The undisputed evidence is that the great majority of cases of thinning hair and baldness, at least 90%, fall within the category of "male pattern baldness," and that in such cases the respondents' preparations, whether used singly or in combination, and regardless of the method of treatment employed, will have no effect. Clearly, the knowledge of such limitations on the possible effectiveness of the preparations is necessary for an evaluation of the other representations made with respect to thinning hair and baldness, and since the advertisements have contained no adequate revelation with respect thereto, they fall within the category of "false advertisements" as defined in the statute.

Under the order to cease and desist entered by the hearing examiner, respondents would be prohibited, among other things, from representing that the use of their preparations will check thinning hair, cause new hair to grow, or cause the hair to become thicker, unless such representations be limited to cases other than those of male pattern baldness. Thus, the order would prohibit the broad, unqualified claims of benefits which have characterized respondents' former advertisements. Future advertisements would at least have to be limited to "cases other than male pattern baldness." This, however, would not reach the real source of the deception. As noted in the Commission's opinion in the *Loesch* case, *supra*, a limitation on claims of benefits of the preparations to cases other than those of male pattern baldness may be informative to a trained dermatologist, fully cognizant of the symptoms and frequency of occurrence of this type of baldness, but this is not true as to the members of the purchasing public to whom the advertisements will be addressed. As the record discloses, there are in addition to "male pattern baldness" many other types of baldness, including those caused by ringworm, systemic diseases, glandular defects and local infections. A proper diagnosis of any particular case can be made only by a trained physician. Without the training and experience of a professional in the field, the ordinary layman would have no way of knowing whether his case is one of male pattern baldness or one of the many other types of baldness. Hence, a limitation in an advertisement that the preparations therein described will be

effective, for example, "in cases other than those of male pattern baldness" would be of limited value. Only if a prospective purchaser is informed of the relative frequency of occurrence of male pattern baldness and the consequent relative infrequency of occurrence of other types of baldness, and of the further fact that in cases of male pattern baldness the preparations will not be effective, will the likelihood of deception of the advertisements be eliminated.

In light of these considerations, an order with a provision such as requested by counsel in support of the complaint is fully justified. This is not in conflict with the holding in the *Alberty* case, *supra.* The court there recognized that the Commission has the authority to require an affirmative disclosure in cases such as where the representations made in the advertising demand further explanation. This is just such a case as noted above. In the exercise of this authority the Commission has required such disclosure in other similar matters, including *William T. Loesch, supra; Collins Hair and Scalp Experts, Inc., et al.,* Docket No. 6707; *The Wybrant System Products Corporation, et al.,* Docket No. 6472; and *Leo O. Johnson, et al.,* Docket No. 6497. The examiner erred in failing or refusing to follow the precedent established and in basing his ruling on an incorrect interpretation of the *Alberty* holding. His initial decision will be modified accordingly.

The appeal of respondents is denied and the appeal of counsel in support of the complaint is granted. An appropriate order will be entered.

Commissioners Gwynne and Anderson did not participate in the decision of this matter.

FINAL ORDER

This matter having been heard by the Commission upon the cross-appeals of respondents and counsel supporting the complaint from the initial decision of the hearing examiner, and upon briefs and oral argument in support of and in opposition to the appeals; and

The Commission, for reasons stated in its accompanying opinion, having denied respondents' appeal and granted the appeal of counsel supporting the complaint, and having determined that said initial decision should be modified:

It is ordered, That paragraphs 15, 16 and 17 contained in the initial decision be, and they hereby are, modified to read as follows:

15. The record clearly shows that the great majority of all cases of baldness fall within the type known to dermatologists as male pattern baldness. There is uncontradicted testimony that male pattern baldness accounts for 90% or more of all baldness. Respondents' advertisements, however, include claims such as "95% of all cases of hair loss can be helped" and "The real truth is that most bald men need not have lost their hair at all." The total impression gained from respondents' advertisements is that everyone or almost everyone suffering from baldness or excessive hair fall will be aided by the preparations. Some of the respondents' advertisements, but not all, seem to exclude from claims for effectiveness the cases in which a man is completely, shiny bald, but make it clear that those who cannot be aided are very few. Since the great majority of baldness cases are male pattern baldness, it is plain that respondents have represented their preparations to be effective in such cases. Respondents' preparations, whether used singly or in combination, and regardless of the method of treatment followed in connection with the preparations, will have no effect upon male pattern baldness. In such cases the preparations are wholly incapable of checking thinning hair, preventing or overcoming baldness, inducing new hair to grow, or causing the hair to become thicker. It follows, therefore, that the representations in respondents' advertisements to the contrary are misleading in a material respect.

Respondents' representation that respondent William L. Keele and certain of their other representatives are trichologists is also misleading in a material respect. None of these individuals is a trichologist. None is a physician and none has had any competent training in dermatology or other branches of medicine having to do with the diagnosis and treatment of disorders of the hair and scalp.

16. Respondents' advertisements are misleading in a further material respect in that they fail to reveal facts material in the light of the advertisements' other representations respecting baldness or hair loss. As noted above, the theme of respondents' advertisements has been that in the great majority of cases thinning hair and baldness is an unnecessary condition which, by the use of respondents' preparations, could have been prevented and may yet be overcome. In all except a few "hopeless cases," they have said, amounting to no more than 5%, a full head of healthy hair can be grown and the condition of baldness relieved. Ob-

viously, such advertisements, when read by a person who has lost or is losing his hair, suggests to him a high probability that he is threatened with, or already has, a type of baldness which may be prevented or overcome by the use of respondents' preparations. The record clearly shows, however, that the suggestion so made is completely false. The undisputed evidence is that the great majority of cases of thinning hair and baldness, at least 90%, fall within the category of "male pattern baldness," and that in such cases the respondents' preparations, whether used singly or in combination, and regardless of the method of treatment employed, will have no effect. Clearly, the knowledge of such limitations on the possible effectiveness of the preparations is necessary for an evaluation of the other representations made with respect to thinning hair and baldness, and since the advertisements have contained no adequate revelation with respect thereto, they fall within the category of "false advertisements" as defined by the statute.

As the record discloses, there are in addition to "male pattern baldness" many other types of baldness, including those caused by ringworm, systemic diseases, glandular defects and local infections. A proper diagnosis of any particular case can be made only by a trained physician. Without the training and experience of a professional in the field, the ordinary layman would have no way of knowing whether his case is one of male pattern baldness or one of the many other types of baldness. Only if a prospective purchaser is informed of the relative frequency of occurrence of male pattern baldness and the consequent relative infrequency of occurrence of other types of baldness, and of the further fact that in cases of male pattern baldness the preparations will not be effective, will the likelihood of deception of the advertisements be eliminated.

17. It is therefore concluded that respondents' advertisements, as charged by the complaint, constitute false advertisements within the meaning of the Federal Trade Commission Act.

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

ORDER

It is ordered, That respondents Keele Hair & Scalp Specialists, Inc., a corporation, and its officers, and William L. Keele, Thelma P. Keele, and J. H. Keele, individually and as officers of said corporation, and Rogers Hair Experts, Inc., a corporation, and

its officers, and Lorene Firsching and Vangie Clendenin, individually and as officers of said corporation, and American Advertising Bureau, Inc., a corporation, and its officers, and John Shiflet, Mrs. Lorraine Shiflet, and David A. Miller, 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 the various cosmetic or drug preparations referred to in the findings herein, or any other preparations intended for use in the treatment of hair or scalp conditions, do forthwith cease and desist from:

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

Will check thinning hair, prevent or overcome baldness, cause new hair to grow, or cause the hair to become thicker, unless such representations be expressly limited to cases other than those of male pattern baldness, and unless the advertisement clearly and conspicuously reveals the fact that the great majority of cases of thinning hair and baldness are the beginning and more fully developed stages of said male pattern baldness and that said preparations will not in such cases check thinning hair, prevent or overcome baldness, cause new hair to grow, or cause hair to become thicker.

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

That respondents or any of their agents or employees are trichologists, or that they have had competent training in dermatology or other branches of medicine having to do with the diagnosis and treatment of disorders of the hair or scalp.

3. Disseminating or causing to be disseminated by any means any advertisement for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any representation prohibited in paragraphs 1 and 2 hereof.

It is further ordered, That the complaint be, and it hereby is, dismissed as to respondents J. Wayne Green and John H. Kennedy.

It is further ordered, That the motion of respondents, Keele Hair & Scalp Specialists, Inc., Rogers Hair Experts, Inc., American Advertising Bureau, Inc., William L. Keele, Thelma P. Keele, and J. H. Keele, to dismiss the complaint be, and it hereby is. denied.

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

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

Commissioners Gwynne and Anderson not participating.

IN THE MATTER OF

NORKON PHARMACAL, INC., ET AL.

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

Docket 6885. Complaint, Sept. 11, 1957—Decision, May 21, 1959

Order requiring New York City distributors of a drug preparation designated "Norkon Tablets" to cease representing falsely in advertisements in newspapers, magazines, etc., that said preparation was an effective treatment for the symptoms of arthritis and similar ailments and would afford complete relief from the pains thereof; that it had an antacid or buffer effect and prevented digestive or stomach upsets; and that it afforded faster and longer relief than competitive products, and prevented loss of calcium.

Harold A. Kennedy, Esq. for the Commission.
Arthur D. Herrick, Esq., of New York, N.Y., for respondents.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

STATEMENT OF THE CASE

On September 11, 1957, the Federal Trade Commission issued its complaint against Norkon Pharmacal, Inc., and Paul McCoy, individually and as an officer of said corporation, (hereinafter collectively called respondents), charging them with disseminating false advertisements in violation of Sections 5 and 12 of the Federal Trade Commission Act (hereinafter called the Act), 15 U.S.C. 41, *et seq.* Copies of said complaint together with a notice of hearing were duly served on respondents.

The complaint alleges in substance that respondents sell a drug preparation, called Norkon tablets, in commerce, and in connection therewith disseminate and cause to be disseminated false advertisements through the United States mail and by various other means in commerce, for the purpose of inducing the purchase of said product. Respondents appeared by counsel and filed an answer admitting the corporate, commerce, and advertising allegations of the complaint as well as the representations set forth therein, but denying any false advertisements or violations of the Act. Pursuant to notice, hearings were thereafter held on January 27 and 28, 1958, before the undersigned hearing examiner duly designated by the Commission to hear this proceeding. After allotting time for the presentation of defense, some months

thereafter counsel for respondents notified the undersigned that he did not desire to offer any proof, and accordingly the hearings were then concluded.

All parties were represented by counsel, participated in the hearings, and were afforded full opportunity to be heard, to examine and cross-examine the witnesses, to introduce evidence pertinent to the issues, to argue orally upon the record, and to file proposed findings of fact, conclusions of law, and orders, together with reasons in support thereof. All parties filed proposed findings of fact, conclusions of law, and orders together with reasons in support thereof. Counsel for respondents requested oral argument thereon, which request is hereby denied, because the proposed findings of fact, conclusions of law, and reasons in support thereof adequately and fully present the position and contentions of the parties. 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 Norkon Pharmacal, Inc., is a corporation organized under the laws of the State of Delaware, with its office and principal place of business located at 522 Fifth Avenue, New York, N.Y. Respondent Paul McCoy is the president of said corporation and maintains his office at the same address. The complaint alleged, respondents denied, but the record establishes and it is found that respondent Paul McCoy formulates and controls the policies, activities, and practices of the corporate respondent.

II. Interstate Commerce and Dissemination of Advertising

The complaint alleged, respondents admitted, and it is found that for more than one year preceding the issuance of the complaint, they were engaged in the sale and distribution in commerce between and among the various States of the United States and the District of Columbia of their preparation, Norkon tablets, containing drugs, as "drug" is defined in the Act. Respondents cause the said preparation, when sold, to be transported from

[1] 5 U.S.C. § 1007(b).

their place of business in the State of New York to purchasers thereof located in other States of the United States and in the District of Columbia. Respondents maintain and at all times mentioned herein have maintained a course of trade in said preparations in commerce, as "commerce" is defined in the Act.

Respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, advertisements concerning Norkon tablets by means of the United States mails and by various means in commerce, including advertisements inserted in newspapers, magazines, pamphlets, and letters for the purpose of inducing, and which were and are likely to induce, directly or indirectly, the purchase of Norkon tablets; and respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, advertisements concerning Norkon tablets by various means for the purpose of inducing, and which were and are likely to induce, directly or indirectly, the purchase of said preparation in commerce.

III. The Unlawful Practices

A. *The Issues Framed*

Inasmuch as respondents admit the sale of the product in commerce, the dissemination of their advertising in commerce, and the representations contained in said advertising as alleged in the complaint, the basic issue is whether or not such representations constitute false advertisements as that term is defined in Section 15 of the Act. There is no dispute that Norkon tablets are composed of drugs within the meaning of the Act.

B. *The False Representations*

The complaint included certain excerpts from advertisements of respondents which were received in evidence. Respondents admitted the correctness of such excerpts but contended that they were unfairly selected and that the advertisements should be read as a whole. An examination of the advertisements reveals the contrary. If anything the excerpts were on the conservative side, and the advertisements themselves make claims in excess of those set forth in the excerpts. The complaint further alleged, and respondents admitted, that the aforesaid advertisements contained, directly and by implication, certain representations, considered *seriatim*:

1. Norkon tablets are an adequate, effective, and reliable treatment for the symptoms and manifestations of arthritis, rheuma-

tism, neuralgia, neuritis, lumbago, bursitis, and sciatica, and will afford immediate and complete relief from the aches, pains and discomforts of such conditions and disorders, including the severe aches, pains and discomforts thereof.

As previously found, respondents admitted this representation but denied representing the product as a treatment, unless by treatment was meant symptomatic relief. In this respect respondents' contention is probably correct, inasmuch as counsel supporting the complaint concededly does not contend that respondents falsely represented their product as a treatment for the enumerated ailments, but instead apparently equates the phraseology, "adequate, effective and reliable treatment for the symptoms and manifestations," as a representation concerning relief of the severe aches, pains and discomforts of such ailments. This is further borne out by the fact that the advertising representations of respondents do not include any claim that Norkon tablets constitute a treatment or cure for the listed ailments but limit their claim to fast, effective, safer and longer relief of the severe pains caused thereby. In this respect, respondents argued that because the complaint concedes that Norkon tablets do afford temporary relief of the minor aches and pains of such ailments, the representation is not false because the pain associated with such ailments is relatively minor. This contention is completely negatived by respondents' own advertising, which characterizes such pain as "awful" and "agonizing." In addition, the record establishes that the pain associated with the enumerated ailments is anything but minor.

Norkon tablets are composed of the following drugs: each tablet contains 5 grains of aspirin (acetylsalicylic acid), 2 grains of calcium glutamate, and 25 milligrams of ascorbic acid (vitamin C). Respondents' directions state that the user should take two Norkon tablets with a glass of water every three hours until the pain is relieved, and if the pain persists for two days to consult a physician.

Counsel in support of the complaint called Dr. Richard T. Smith, a physician specializing in the field of arthritis and rheumatic diseases. In addition thereto respondents stipulated that Doctors Robinson and Lockie, equally well qualified specialists in the field, if called would testify to the same effect as Dr. Smith. The record establishes that the only pain-relieving ingredient in respondents' tablets is the aspirin, and since regular or ordinary aspirin tablets contain 5 grains, the pain-relieving properties of

Norkon tablets in the same dosages would be exactly the same as ordinary aspirin.

The gist of the expert testimony is that treatment for the various listed ailments must be individualized and varies with each person, and that the only relief which can be obtained from the taking of Norkon tablets (or aspirin) is limited to temporary relief of the minor aches and pains of such ailments. In view of this undisputed expert medical evidence, and in the light of the fact that respondents represented their product as affording immediate, effective, and complete relief from the severe aches, pains, and discomforts of the listed ailments, it is concluded and found that Norkon tablets do not afford immediate, effective, and complete relief from the aches, pains, and discomforts of arthritis, rheumatism, neuralgia, neuritis, lumbago, bursitis, and sciatica, and will not have any therapeutic effect upon any of the symptoms or manifestations of any such conditions in excess of affording temporary relief of the minor aches or pains thereof.[2] It is further concluded and found that such statements and representations are false and misleading in material respects, and constitute "false advertisements" within the meaning of the Act.

2. Norkon tablets have an antacid or buffer effect and prevent digestive or stomach upsets.

Respondents admitted this representation. Lewellyn H. Welsh, a research chemist with the U.S. Food & Drug Administration, was called in support of the complaint and testified that he made four chemical tests to ascertain whether or not Norkon tablets are an antacid or a buffer. Without encumbering this decision with the highly technical details of Mr. Welsh's analysis, suffice it to say that he found that Norkon is itself primarily an acid, since both aspirin and vitamin C are acids, and that it is neither an antacid nor a buffer within the accepted meaning of those terms. In addition thereto, Dr. Smith, as well as the other two physicians, testified that the tablets would not be effective as an antacid or buffer, and would not prevent digestive or stomach upsets. Accordingly, it is concluded and found that the aforesaid statements and representations are false and misleading in material respects and constitute false advertisements within the meaning of the Act.

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[2] For a similar conclusion with respect to a similar product and representation, see *Rhodes Pharmacal Company* v. *FTC*, 208 F. 2d 382 (C.A. 7, 1953), affirmed with directions to reinstate Commission order, 348 U.S. 940 (1955); and *Dolcin Corporation* v. *FTC*, 219 F.2d 742 (C.A.D.C., 1954).

3. Norkon tablets provide faster, safer, and longer relief from pain than ordinary salicylate analgesics and prevent loss of calcium.

Again, respondents admitted making these representations. The testimony of the three physicians specializing in this field establishes that Norkon tablets do not provide any faster, safer, or longer relief from pain than ordinary salicylate analgesics, and do not prevent the loss of calcium. In addition, the administering of ordinary salicylates, such as aspirin, does not cause any loss of calcium. Accordingly, it is concluded and found that the aforesaid statements and representations are false and misleading in material respects and constitute false advertisements within the meaning of the Act.

C. *The Effect of the Unlawful Practices*

The use by respondents of the foregoing false advertisements has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the statements contained therein are true and cause the purchase of substantial quantities of Norkon tablets because of such erroneous and mistaken belief.

CONCLUSIONS OF LAW

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

2. Respondents' preparations contain drugs, as that term is defined in the Act.

3. The acts and practices of respondents hereinabove found are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices 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 practices should issue against respondents.

ORDER

It is ordered, That respondent Norkon Pharmacal, Inc., a corporation, and its officers, and Paul McCoy, individually and as an officer of said corporation, their representatives, agents and employees, directly of through any corporate or other device, in connection with the offering for sale, sale or distribution of the preparation "Norkon tablets," or any product of substantially similar composition or possessing substantially similar proper-

ties, 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 by means of the United States mails or by any means in commerce, as "commerce" is defined in the Act, any advertisement which represents, directly or by implication, that such product:

a. Will afford any relief of severe aches, pains, and discomfort of arthritis, rheumatism, neuralgia, neuritis, lumbago, bursitis, and sciatica, or will have any therapeutic effect upon any of the symptoms or manifestations of any such conditions or disorders in excess of affording temporary relief of the minor aches or pains thereof;

b. Is an antacid or buffer, has an antacid or buffer effect, or prevents digestive or stomach upsets; and

c. Provides faster, safer, or longer relief from pain than ordinary salicylate analgesics, or prevents loss of calcium.

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

This matter having been heard on the respondents' appeal from the hearing examiner's initial decision; and

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

It is ordered, That the aforesaid appeal be, and it hereby is, denied.

It is further ordered, That the hearing examiner's initial decision, filed October 24, 1958, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the respondents, Norkon Pharmacal, Inc., and Paul McCoy, shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order contained in said initial decision.

IN THE MATTER OF

NUT-DISTRIBUTORS, INC., ET AL.

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

Docket 7335. Complaint, Dec. 15, 1958—Decision, May 21, 1959

Consent order requiring White Plains, N.Y., sellers of peanut vending machines and electron tube testing devices and supplies and equipment used therewith, to cease making, in newspaper advertisements and through their salesmen, a variety of false offers of employment, sales assistance, investment required, profits, etc., as in the order below set forth.

Mr. Terral A. Jordan for the Commission.

Mr. Isaac Kaplan, of New York, N.Y., for respondents, except Pat Simone.

Respondent Pat Simone, for himself.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

On December 15, 1958, the complaint herein was issued, charging respondents with the use of false, misleading and deceptive representations in connection with the advertising, offering for sale and sale in commerce of vending machines, electron tube-testing devices, machines or devices used in connection with the sale of merchandise, and the supplies and equipment used in connection therewith, which representations constitute unfair and deceptive acts and practices in commerce, in violation of the Federal Trade Commission Act.

Thereafter, on March 31, 1959, respondents, their counsel, and counsel supporting the complaint entered into an Agreement Containing Consent Order to Cease and Desist, which was approved by the director and an assistant director of the Commission's Bureau of Litigation, and thereafter submitted to the Hearing Examiner for consideration.

Respondent I.E.M. Corp. is identified in the agreement as a New York corporation, of which individual respondent Margaret Hynes is president. The agreement identifies respondents Pat Simone and Michael Hynes as individuals, and states that the office and principal place of business of each of the respondents, except Pat Simone, is located at 19 Old Mamaroneck Road, White Plains, N.Y.; that the address of respondent Pat Simone is 58 Parkway South, Mount Vernon, N.Y.; and that the office and prin-

cipal place of business of each of the respondents was formerly located at 100 West 72d Street, New York, N.Y.

All parties agree that the complaint may be dismissed with respect to respondent Nut-Distributors, Inc., a corporation, which has been dissolved, as set forth in a copy of a certificate by the Department of State of the State of New York, dated April 29, 1958, which certificate is incorporated into and made a part of the agreement; and that the complaint may likewise be dismissed with respect to respondent Paul Conant, who was merely an officer of convenience while an employee of the I.E.M. Corp., made no sales or representations in that capacity, owns no stock and has no interest therein, and has not formulated, directed or controlled the acts, practices or policies thereof, as set forth in an affidavit also incorporated into and made a part of the agreement.

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

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

spondents 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 I.E.M. Corp., a corporation, and its officers, and Margaret Hynes, individually and as an officer of said corporation, and Pat Simone and Michael Hynes, individuals, and their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of machines or devices which vend or dispense merchandise or which are accessory to the vending or dispensing of merchandise or the supplies and equipment used in connection therewith, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly, that:

1. Employment is offered either by respondents or by any other person, firm or corporation;

2. Established and profitable routes of said machines or devices are offered for sale;

3. Respondents will locate or relocate said machines or devices to assure desirable, suitable or profitable locations therefor;

4. Any amount of money is the total amount required to purchase or establish a route of said machines or devices which does not include all of the charges or expenses incident thereto;

5. The earnings or profits derived from the operation of respondents' said machines or devices will be any amount greater than that usually and customarily earned by operators of respondents' said machines or devices;

6. The cash investment required to purchase respondents' said machines or devices is secured;

7. Persons purchasing respondents' said machines or devices will not be required to engage in selling or soliciting;

8. The sale of merchandise by, through, or in connection with respondents' said machines or devices is a permanent business or is unaffected by economic depression;

9. Respondents will repurchase or find purchasers for or otherwise assist in the sale or disposition of said machines or devices sold by them;

10. Surveys or any other kind of investigations have been conducted by respondents to ascertain the feasibility of establishing a route of said machines or devices in any locality or that

arrangements have been completed to establish a route of said machines or devices.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to Nut-Distributors, Inc., and Margaret Hynes and Pat Simone as officers of said Nut-Distributors, Inc., and Paul Conant.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 21st day of May 1959, become the decision of the Commission; and, accordingly:

It is ordered, That respondents I.E.M. Corp., a corporation; Margaret Hynes, individually and as an officer of said corporation; and Pat Simone and Michael Hynes, individuals, 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

HENRY KLOUS COMPANY, INC., ET AL.

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

Docket 7371. Complaint, Jan. 23, 1959—Decision, May 21, 1959

Consent order requiring a manufacturer in Lawrence, Mass., to cease violating the Wool Products Labeling Act by labeling as "Wool," bales of wool stock which contained a substantial quantity of reprocessed wool, and by failing to label other wool products as required.

Mr. Alvin D. Edelson for the Commission.
Respondents, for themselves.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents with misbranding certain of their wool products, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and of the Federal Trade Commission Act.

After the issuance of the complaint, respondents Henry Klous Company, Inc., a corporation, and Aylward W. Corcoran, individually and as an officer of said corporation, and counsel supporting the complaint entered into an agreement containing consent order to cease and desist, which was approved by the director and an assistant director of the Commission's Bureau of Litigation, and thereafter transmitted to the hearing examiner for consideration.

The agreement states that respondent Henry Klous Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its principal place of business at 500 Merrimack Street, Lawrence, Mass., and that individual respondent Aylward W. Corcoran is president of the said corporate respondent and maintains a business address at the same address as the corporate respondent.

The agreement disposes of all of this proceeding as to all parties save repondent G. Ernest Chiras, as to whom it is recommended therein that this proceeding be dismissed, for reasons set forth in an affidavit attached to the agreement.

The agreement provides, among other things, that the respondents signatory thereto admit all the jurisdictional facts alleged

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

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

The order agreed upon fully disposes of all the issues raised in the complaint, and adequately prohibits the acts and practices charged therein as being in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and of the Federal Trade Commission Act. Accordingly, the hearing examiner finds this proceeding to be in the public interest, and accepts the agreement containing consent order to cease and desist as part of the record upon which this decision is based. Therefore,

It is ordered, That respondents Henry Klous Company, Inc., a corporation, and its officers, and Aylward W. Corcoran, individually and as an officer of the corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the 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, 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 a manufacturer of such wool product or of one or more purchasers engaged in introducing such wool products in commerce, or in the offering for sale, sale, transportation, distribution or delivery for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939.

It is further ordered, That the complaint as to G. Ernest Chiras should be, and same hereby is, dismissed.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 21st day of May 1959, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

STEWART & STEVENSON SERVICES, INC., ET AL.

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

Docket 7002. Complaint, Dec. 19, 1957—Decision, May 23, 1959 [1]

Consent order requiring five franchised wholesale distributors of General Motors diesel engines and replacement parts to cease conspiring to fix or maintain prices, terms, and conditions of sale for such replacement parts.

Before *Mr. Frank Hier*, hearing examiner.

Mr. F. C. Mayer, Mr. W. W. Rogal, and *Mr. F. A. Snyder* for the Commission.

Fulbright, Crooker, Freeman, Bates & Jaworski, by *Mr. W. N. Arnold, Jr.*, of Houston, Tex., for Stewart & Stevenson Services, Inc.

Taylor, Costen & Taylor, by *Mr. Hillman Taylor,* of Memphis Tenn., for Lewis Diesel Engine Company (Inc.) of Memphis, Tenn., and Lewis Diesel Engine Company (Inc.) of Little Rock, Ark.

Monnet, Hayes, Bullis, Grubb & Thompson, by *Mr. Coleman Hayes,* of Oklahoma City, Okla., for Diesel Power Company.

Adams & Reese, by *Mr. W. Ford Reese,* of New Orleans, La., for George Engine Company, Inc.

INITIAL DECISION AS TO CERTAIN RESPONDENTS

Pursuant to the provisions of Section 5 of the Federal Trade Commission Act, the Federal Trade Commission on December 19, 1957, issued and subsequently served its complaint in this proceeding against respondents Stewart & Stevenson Services, Inc.; Lewis Diesel Engine Company (Inc.), of Memphis, Tenn.; Lewis Diesel Engine Company (Inc.), of Little Rock, Ark.; Diesel Power Company; and George Engine Company Inc.

On March 10, 1959, there were submitted to the undersigned hearing examiner separate agreements by the above-named respondents and counsel supporting the complaint providing for the entry of a consent order. By the terms of said agreements, the signatory respondents admit all the jurisdictional facts al-

[1] A similar order as to three other wholesalers was issued Nov. 20, 1959, 56 F. T. C. ...., at which time the complaint was dismissed at to Kennedy Marine Engine Co., Inc.

leged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. By such agreements, signatory respondents waive any further procedural steps before the hearing examiner and the Commission; waive the making of findings of fact and conclusions of law; and waive all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with these agreements.

Such agreements further provide that they dispose of all of this proceeding as to said parties; that the record on which this initial decision and the decision of the Commission shall be based shall consist solely of the complaint and these agreements; that the latter shall not become a part of the official record unless and until they become a part of the decision of the Commission; that these agreements are for settlement purposes only and do not constitute an admission by the signatory respondents that they have violated the law as alleged in the complaint; and that the following order to cease and desist may be entered in this proceeding by the Commission without further notice to said respondents, and, when so entered, it shall have the same force and effect as if entered after a full hearing, and may be altered, modified, or set aside in the manner provided for other orders; and that the complaint may be used in construing the terms of the order.

The hearing examiner having considered the agreements and proposed orders, and being of the opinion that they provide an appropriate basis for settlement and disposition of this proceeding as to the signatory respondents, the agreements are hereby accepted, the following jurisdictional findings made, and the following order issued.

1. Respondent Stewart & Stevenson Services, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Texas, with its principal place of business located at 1718 Congress Street, Houston, Tex.

Respondent Lewis Diesel Engine Company (Inc.), of Memphis, Tenn., is a corporation existing and doing business under and by virtue of the laws of the State of Tennessee, with its office and principal place of business located at 92 West Carolina Street, Memphis, Tenn.

Respondent Lewis Diesel Engine Company (Inc.), of Little Rock, Ark., is a subsidiary of Lewis Diesel Engine Company

(Inc.), of Memphis, Tenn., and is a corporation existing and doing business under and by virtue of the laws of the State of Arkansas, with its office and principal place of business located at 3021 East Broadway, in North Little Rock, Ark.

Respondent Diesel Power Company is a corporation existing and doing business under and by virtue of the laws of the State of Oklahoma, with its principal place of business located at 1801 Northeast 9th Street, Oklahoma City, Okla.

Respondent George Engine Company, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Louisiana, with its office and principal place of business located at 630 Destrehan Avenue, Harvey, La.

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 Stewart & Stevenson Services, Inc., Lewis Diesel Engine Company (Inc.), of Memphis, Tenn., and Diesel Power Company, their officers, agents, representatives and employees, in or in connection with the offering for sale, sale or distribution of General Motors replacement parts for diesel engines in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common course of action, understanding, agreement, combination, or conspiracy between or among any two or more of said respondents named in the above-entitled proceeding, or, with any other party, to do or to perform the following:

Establish, fix, or maintain prices, terms, or conditions of sale of General Motors replacement parts for diesel engines, or adhere to any prices, terms, or conditions of sale so fixed or maintained.

Further ordered, That the respondents Lewis Diesel Engine Company (Inc.), of Little Rock, Ark., and George Engine Company, Inc., their respective officers, agents, representatives and employees, in or in connection with the offering for sale, sale or distribution of General Motors replacement parts for diesel engines in commerce, as "commerce," is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common course of action, understanding, agreement, combina-

tion, or conspiracy between or among any two or more of said respondents named in the above-entitled proceeding, or with any other party, or between any one or more of them and others not parties hereto to do or to perform the following:

Establish, fix, or maintain prices, terms, or conditions of sale of General Motors replacement parts for diesel engines, or adhere to any prices, terms, or conditions of sale so fixed or maintained.

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 as to respondents Stewart & Stevenson Services, Inc., Lewis Diesel Engine Company (Inc.), of Memphis, Tenn., Lewis Diesel Engine Company (Inc.), of Little Rock, Ark., Diesel Power Company, and George Engine Company, Inc. did, on the 23d day of May 1959, become the decision of the Commission; and, accordingly:

It is ordered, That said 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

BERNARD J. SIMMONS

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

Docket 7348. Complaint, Jan. 6, 1959—Decision, May 26, 1959

Consent order requiring a seller of contact lenses in Philadelphia, Pa., to cease advertising falsely that his lenses were imported from Germany, were never irritating, could be worn all day with complete comfort by all, stayed in place under all conditions including violent exercise and swimming, were unbreakable, better than eyeglasses, were a new type of contact lenses and could not damage the eye; and that his summary of an Army Medical Research Laboratory Report set out all the disadvantages of contact lenses contained therein.

Mr. Kent P. Kratz supporting the complaint.

Mr. I. Raymond Kremer, of Philadelphia, Pa., for respondent.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on January 6, 1959, charging him with the use of unfair and deceptive acts and practices in commerce, in violation of the Federal Trade Commission Act, by falsely advertising the origin, effectiveness, wearing comfort and safety of the contact lenses sold by him. After being served with said complaint respondent appeared by counsel and entered into an agreement, dated April 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 facts alleged in the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that respondent waives any further procedural steps before the hearing examiner and the Com-

mission, 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 Bernard J. Simmons is an individual with his principal office and place of business located at 13th and Arch Streets, Philadelphia, Pa.

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 Bernard J. Simmons, individually or trading under any name or names, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of his contact lenses, do forthwith cease and desist from, directly or indirectly:

A. 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 advertisement represents, directly or by implication:

(1) That respondent's said contact lenses:

(a) Are imported from Germany;

(b) Are never irritating or will be comfortable to all persons;

(c) Can be worn all day by all persons in complete comfort;

(d) Stay in place under all conditions and cannot be displaced during swimming and other activities involving violent exercise;

(e) Are unbreakable outside the eye;

(f) Provide better vision in all cases than eyeglasses;

(g) Can completely replace eyeglasses;

(h) Are a new type of contact lenses;

(i) Cannot damage the eye.

(2) That respondent's summary of U.S. Army Medical Research Laboratory report No. 99 sets out all the disadvantages of contact lenses contained in said report.

(3) Through the use of a summary made by respondent of a report of any group, organization, or individual, that said summary contains all of the material facts set out in the report, unless such is the fact.

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

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 May 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
LOUIS WEINGEROFF ET AL.
DOING BUSINESS AS WEINGEROFF & SON

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

Docket 7367. Complaint, Jan. 22, 1959—Decision, May 27, 1959

Consent order requiring manufacturers and distributors in Providence, R.I., engaged in the sale of sets of their own costume jewelry packaged with pens and pencils purchased from Waterman Pen Co., Inc., to cease stamping the name "Waterman's" and the company's trade-mark on the display box and an insert; representing falsely on a "seal" type insert in the display box that the contents were "24 Kt Gold Plated"; preticketing the sets with fictitiously high prices; and advertising falsely that they were advertised in Life Magazine and The Saturday Evening Post.

Mr. Charles S. Cox supporting the complaint.
Mr. Ralph P. Semonoff, of Providence, R.I., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

The complaint in this proceeding alleges that Louis Weingeroff and Frederick Weingeroff, individually and as copartners doing business as Weingeroff & Son, hereinafter referred to as respondents, have misrepresented the source, price, and quality of their merchandise, in violation of the provisions of the Federal Trade Commission Act. In addition the complaint charges that respondents have made misleading and deceptive statements by claiming that their products have been advertised in Life Magazine and the Saturday Evening Post when they have not been so advertised.

After issuance and service of the complaint, the respondents, their counsel and counsel supporting the complaint entered into an agreement for a consent order. The order disposes of the matters complained about.

Under the agreement, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing, and the document includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith.

The agreement further recites that it 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.

The hearing examiner finds that the provisions of the agreement comply with all mandatory requirements of Section 3.25(b) of the Rules of Practice for Adjudicative Proceedings.

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

JURISDICTIONAL FINDINGS

1. Respondents Louis Weingeroff and Frederick Weingeroff are individuals and copartners trading as Weingeroff & Son, with their principal office and place of business located at 528 North Main Street, Providence, R.I.

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 Weingeroff and Frederick Weingeroff, individually and as copartners trading as Weingeroff & Son, or trading under any other name, and their agents, representatives and employees, directly or through any corporate or other device, in connection with the manufacture, offering for sale, sale and distribution of jewelry or other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the name of a company in connection with a product that has not been made by said company or representing in any manner, directly or by implication, that a product has been made by a specified company, when such is not the fact.

2. Representing, directly or indirectly:

(a) That a product which has a surface coating of gold or gold alloy applied by an electrolytic process is gold plated; *provided, however*, that a product or a part thereof, upon all significant surfaces of which there has been affixed by an electrolytic process a coating of gold, or of 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.

(b) By preticketing, or in any other manner, that any price is the retail price of a product when such price is in excess of the price at which the product is usually and regularly sold at retail.

(c) That their products, or any of them, have been advertised in Life Magazine or the Saturday Evening Post; or that they, or any of them, have been advertised in any other manner, unless such is the fact.

3. Furnishing means or instrumentalities to retailers or others by or through which they mislead the public with respect to any of the matters set out above.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission having considered the initial decision of the hearing examiner wherein he accepted an agreement containing a consent order to cease and desist executed by the respondents and counsel in support of the complaint, service of which initial decision was completed on April 24, 1959; and

It appearing that the initial decision may be deficient in that it fails to incorporate the substance of certain pertinent provisions of the agreement of the parties:

It is ordered, That said initial decision be, and it hereby is, amended by inserting between the second and third paragraphs thereof the following paragraph:

Under the agreement, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing, and the document includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it 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.

It is further ordered, That the initial decision as so modified shall, on the 27th day of May 1959, become the decision of the Commission.

It is further ordered, That the respondents, Louis Weingeroff and Frederick Weingeroff, shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order contained in said initial decision.

IN THE MATTER OF

KESTENBAUM & RENNERT, INC., ET AL.

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

Docket 7319. Complaint, Dec. 2, 1958—Decision, June 2, 1959

Consent order requiring furriers in Brooklyn, N.Y., to cease violating the Fur Products Labeling Act by representing prices of fur products on invoices as having been reduced from regular prices which were in fact fictitious.

Mr. Alvin D. Edelson supporting the complaint.

Mr. Herbert Yuran of *Derman & Yuran,* of New York, N.Y., for respondents.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on December 2, 1958, charging them with having violated the Fur Products Labeling Act, the rules and regulations issued thereunder, and the Federal Trade Commission Act by falsely and deceptively invoicing certain of their fur products as alleged in the complaint.

After being served with the complaint respondents entered into an agreement, dated February 27, 1959 containing a consent order to cease and desist, disposing of all the issues in this proceeding, without hearing, which agreement has been duly approved by the assistant director and the director of the Bureau of Litigation. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein for his consideration in accordance with Section 3.25 of the Rules of the Commission.

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

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:

1. Respondent Kestenbaum & Rennert, Inc. is a corporation organized, existing and doing business under and by virtue of

the laws of the State of New York with its office and principal place of business at 1869 83d Street, Brooklyn, N.Y., c/o Morris Kestenbaum.

2. Individual respondents George Rennert and Julius Gasper are secretary-treasurer and vice president respectively of said corporate respondent. Individual respondent Jack Kaufman is a salesman for said corporate respondent. The address of the respondent George Rennert is 1950 Daly Avenue, Bronx, New York, N.Y. The address of respondent Julius Gasper is 2771 Bainbridge Avenue, Bronx, New York, N.Y. The address of respondent Jack Kaufman is 1869 83d Street, Brooklyn, N.Y.

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

ORDER

It is ordered, That respondents Kestenbaum & Rennert, Inc., a corporation, and its officers, and George Rennert and Julius Gasper, individually and as officers of said corporation, and Jack Kaufman, individually, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or the manufacture for introduction, into commerce, or the sale, advertising, or offering for sale, or 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. 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.

B. Setting forth certain prices as the regular or usual prices of certain fur products when such prices are in fact in excess of the price at which the respondents have regularly or usually sold said certain fur products in the recent regular course of their business.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

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

THE UNITED STATES BEDDING COMPANY

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

Docket 7332. Complaint, Dec. 11, 1958—Decision, June 2, 1959

Consent order requiring a manufacturer in St. Paul, Minn., to cease attaching to its mattresses, labels bearing fictitious prices, and placing in the hands of dealers for their use, newspaper mats representing falsely that some of its mattresses carried a full ten-year guarantee.

Mr. Alvin D. Edelson supporting the complaint.

Oppenheimer, Hodgson, Brown, Baer and Wolff by *Mr. Benno F. Wolff* and *Mr. John G. Robertson,* of St. Paul, Minn., for respondent.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

The complaint in this proceeding alleges that the United States Bedding Company, a corporation, hereinafter referred to as respondent, has violated the Federal Trade Commission Act by illegally preticketing the mattresses it manufactures and deceptively guaranteeing them.

After issuance and service of the complaint, the respondent, its counsel and counsel supporting the complaint, entered into an agreement for a consent order. The order disposes of the matters complained about.

Under the agreement, the respondent admits the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing, and the document includes a waiver by the respondent of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by the respondent that it has violated the law as alleged in the complaint.

The hearing examiner finds that the provisions of the agreement comply with all mandatory requirements of Section 3.25(b) of the Rules of Practice for Adjudicative Proceedings.

The hearing examiner having considered the agreement and proposed order and being of the opinion that the acceptance there-

of will be in the public interest, hereby accepts such agreement, makes the following jurisdictional findings, and issues the following order:

JURISDICTIONAL FINDINGS

1. Respondent the United States Bedding Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Minnesota, with its principal office and place of business located at 558 Vandalia Street, St. Paul, Minn.

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

ORDER

It is ordered, That respondent the United States Bedding Company, a corporation, and its officers, 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 mattresses or other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

2. Representing, directly or by implication, that their mattresses or other merchandise are guaranteed unless the nature of the guarantee and the manner in which the guarantor will perform are fully and clearly set forth.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission having considered the initial decision of the hearing examiner wherein he accepted an agreement containing a consent order to cease and desist executed by the respondent and counsel in support of the complaint, service of which initial decision was completed on April 30, 1959; and

It appearing that the initial decision may be deficient in that it fails to incorporate the substance of certain pertinent provisions of the agreement of the parties:

It is ordered, That said initial decision be, and it hereby is, amended by inserting between the second and third paragraphs thereof the following paragraph:

Under the agreement, the respondent admits the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing, and the document includes a waiver by the respondent of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by the respondent that it has violated the law as alleged in the complaint.

It is further ordered, That the initial decision as so modified shall, on the 2d day of June 1959, become the decision of the Commission.

It is further ordered, That the respondent the United States Bedding 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 contained in said initial decision.

IN THE MATTER OF

NIRESK INDUSTRIES, INC., ET AL.

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

Docket 6779. Complaint, Apr. 16, 1957—Decision, June 5, 1959

Order requiring Chicago mail order sellers of kitchenware to cease, in advertising in publications of wide distribution, representing fictitious and excessive amounts as usual retail prices of their cooker-fryers and electric skillets and the offered prices as reductions therefrom; misrepresenting the manufacturer of their cooker-fryer through prominent use thereon of the phrase "Westinghouse Automatic Thermostat"; and representing falsely, through the manner of use of the Good Housekeeping Guaranty Seal, that their said cooker-fryer had been awarded such seal.

Mr. John Mathias and *Mr. Morton Nesmith* for the Commission.

Herman & Pollak, by *Mr. William J. Welsh* and *Mr. B. L. Pollak,* of Chicago, Ill., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges that respondents have violated the Federal Trade Commission Act by making false, misleading and deceptive statements and representations in advertisements which they have used in connection with the sale and distribution in commerce of a cooker-fryer and an electric skillet.

There are four specific charges:

1. That the prices advertised as "regular value" and "suggested retail" were not the regular and customary retail prices of the products, but were greatly in excess thereof;

2. That the products were being offered at substantial reductions from the regular and customary retail prices and that such reductions constituted savings to purchasers, whereas in fact there were no reductions and no savings;

3. That by the indiscriminate use of the phrase "Westinghouse Automatic Thermostat," respondents falsely represented that their cooker-fryer was manufactured by Westinghouse Electric Corporation; and

4. That by the improper display of the Good Housekeeping Guaranty Seal, respondents falsely represented that their cooker-

fryer, as a whole, had been awarded this seal and that they were entitled to display it on the product and in their advertising.

In respondents' answer, the allegations of the complaint as to corporate organization and control, the nature of their business, that they were engaged in interstate commerce and in competition with other firms and individuals, and that they have made representations as covered by charges 1 and 2, above, are admitted. The remaining allegations of the complaint are denied.

After hearings, counsel in support of the complaint and counsel for respondents submitted proposed findings, conclusions and orders. Upon the basis of the entire record, the following findings and conclusions are made and order issued:

1. Respondent Niresk Industries, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal place of business located at 2331 North Washtenaw Avenue, Chicago 47, Ill. Respondent Bernice Stone Kahn is president of the corporate respondent, and formulates, directs and controls its policies, acts and practices. Her business address is the same as that of the corporate respondent; her home address is 175 Prospect Avenue, Highland Park, Ill.

2. Respondents are now, and for some time have been, engaged in the mail order sale and distribution of kitchenware, in commerce, to the public. In the regular and usual course and conduct of this business, respondents have caused their products to be advertised in publications having a distribution in the various States of the United States, and have caused said products, when sold, to be transported from their place of business in the State of Illinois to the purchasers thereof located in various other States of the United States. They are in commerce.

3. Respondents' business has been and is substantial, and in its course and conduct they are now and have been in substantial competition in commerce with other corporations, firms and individuals, likewise engaged in the sale and distribution of kitchenware.

4. Although two specific products, a cooker-fryer and an electric skillet, are mentioned in the complaint, no substantial evidence was introduced as to the electric skillet or any of the charges relating thereto. All of the further discussion herein will be limited, therefore, to the evidence as it relates to the cooker-fryer.

5. The cooker-fryer sold by respondents was manufactured by Merit Enterprises, Inc., Queens Village, N.Y., and its unit cost to respondents was $5.25. It is a 6-quart capacity, copper-clad utensil, with black enamel base, Fire-King Oven Glass cover, an automatic heat-control unit built by Westinghouse, and a G.E. cord. It is provided with a colander-type french-fry basket.

6. Among the pricing statements made by respondents during the period from May, 1955 through March, 1958, relating to the cooker-fryer are the following:

> Regular Value $39.95
> While-They-Last Your Cost $8.95
> This is the biggest bargain we
> have ever offered * * * . ;
> Regular Value $29.95
> While-They-Last Your Cost $7.95
> This is the biggest bargain we
> have ever offered * * * . ;
> Regular Value $29.95
> While-They-Last Your Cost $6.95
> This is the biggest bargain we
> have ever offered * * * . ;
> List Price $21.95
> Your Price $ 6.95.

7. Through the use of such statements respondents have represented that the regular and usual selling prices of the cooker-fryer have been $21.95, $29.95 or $39.95, whereas the record shows that respondents have never sold the appliance at any of those prices, and the manager of respondents' business knew of no sales having been made by others at such prices. The lesser prices, $8.95, $7.95 and $6.95, have been the regular prices at which respondents' sales have been made. Reference was made to a small advertisement published in Life Magazine, May 23, 1955, by Merit Enterprises, in which an appliance the same as, or similar to, that sold by respondents was priced at $39.95. Respondents' manager, when asked about this, stated, "I had been convinced that it had been, but I do not know that it was sold at that price." On further direct examination he repeated, "No, I don't have facts that it was sold at $39.95." All the witness knew about the higher price was that he had seen the Life advertisement. It was obvious that he did not believe the appliance had ever been offered in good faith for sale at such a price. Of like character were some "flier" advertisements put out by

Merit Enterprises and by other dealers (Empire Products; Eastern Metal Mfg. Company; Century Enterprises, Inc.), pricing the same or similar cooker-fryers at $39.95. All of these refer to national advertising, and indicate a definite attempt or design to establish a fictitious price upon which a tongue-in-cheek reduced price might be based.

Two witnesses of experience testified that during the period of time involved in this proceeding, a fair market price at retail stores of cooker-fryers which might be considered comparable to those sold by respondents ranged from $12 to $20. Mail order prices would normally be lower.

8. Through such advertising statements respondents have falsely represented that the "Regular Value" and "List Price" prices were the prices at which said products were regularly and customarily sold at retail; that their products were currently being offered for sale at substantial reductions therefrom; and that such reductions constituted substantial savings to purchasers. Such representations, being false, misleading and deceptive, constitute acts and practices which are to the prejudice and injury of the public and respondents' competitors, and are unfair acts and practices and unfair methods of competition, and in violation of the Federal Trade Commission Act.

9. In their early advertising, respondents so conspicuously displayed the name "Westinghouse" as to constitute an implied representation and leave the impression upon a casual or hurried reader that the appliance itself was manufactured by Westinghouse Electric Corporation, whereas Westinghouse manufactured only the thermostat which controlled the heat at which the cooker-fryer would operate. This gave rise to a suit between Westinghouse Electric Corporation and Niresk Industries, Inc. in the United States District Court for the Northern District of Illinois, Eastern Division, which was settled by a consent decree, issued January 25, 1957, in which "Niresk Industries, Inc., its officers, agents, servants, employees, attorneys and all persons in active concert or participation with it [were] * * * permanently enjoined from infringing the trademark rights of plaintiff in its registered trademark 'Westinghouse' " by using the name "Westinghouse" in a manner other than as "set forth in the Plaintiff's SELLING POLICY, No. 27–500, dated October 10, 1956," which provides as follows:

1. When the customer or any of its vendees employs the term "WESTINGHOUSE" on such product or the carton therefor, or in any literature, advertisement or leaflet, the term "WESTINGHOUSE" shall be presented less prominently (with regard to size, style, color-contrasts, position, etc.) than the commercial name (i.e. trade name) of the customer. The term "WESTINGHOUSE" shall not be employed unless the customer's commercial name also appears thereon.

2. The customer and its vendees shall not associate the term "WESTINGHOUSE" with such product, other than to state that such product is "EQUIPPED WITH WESTINGHOUSE (item)." In such statement the words "Equipped With" must immediately precede and appear as prominently as the term "WESTINGHOUSE." In such statement, substitute for parenthetical, the particular item or items purchased from Westinghouse, such as Thermostat, Heating Element, etc. In no case shall a Westinghouse Trademark, including the logotype name "WESTINGHOUSE" be used.

10. The foregoing order, which antedated the complaint dated April 16, 1957, has been complied with, according to statement of respondents' counsel. Since the court order, respondents have issued two catalogs, in which the entire expression "Equipped With Westinghouse Thermostat" is in capital letters of uniform size and style; but in magazine advertising in Royal Neighbor and Woodman of the World magazines for December, 1957, respondents advertised the cooker-fryer as

Equipped With Nationally Famous
WESTINGHOUSE Thermostat.

The word "Westinghouse" is in full caps, conspicuously displayed; the rest is in upper and lower case letters.

11. Respondents assert that the manner of their use of the "Westinghouse" term is a personal matter involving only the rights of the respondents and of Westinghouse Electric Corporation, but in other cases the Commission has decided that there is a preference on the part of the purchasing public for products produced or manufactured by large, well-established business firms, and that it is in the public interest that respondents who do not manufacture such products should not use such names in a manner which would lead the public to believe that the products offered were manufactured by such well-established and well-known firms.

12. In the past respondents have used the name "Westinghouse" in a manner which has had the capacity and tendency to mislead prospective purchasers and cause them to believe, contrary to fact, that their cooker-fryer was manufactured by

Westinghouse Electric Corporation, and so have violated the Federal Trade Commission Act. The discontinuance urged by the respondents as having been effected by them since the issuance of the court order, *supra,* is not of such a nature as to justify a firm finding that it will be permanent. The current advertising of respondents, such as that mentioned in the latter part of paragraph 10, above, seems to indicate a tendency still to use the Westinghouse name in a manner which may be deceptive. In the public interest, with which the Federal Trade Commission is here concerned, the issuance of a cease-and-desist order relating to this practice is, under the circumstances disclosed by the record in this proceeding, fully justified. The court order determines only the rights of the parties who participated in the particular litigation before that court. A cease-and-desist order will protect the rights of the public generally.

13. In respondents' early advertising, the cooker-fryer glass cover, to which was affixed a Good Housekeeping Guaranty Seal was prominently displayed. In some of the advertising, there was a heavy arrow pointing to the pictured cover, and upon this arrow were the words "With Famous FIRE-KING Glass Cover As Guaranteed by Good Housekeeping." To the careful reader this would seem to be adequate disclosure that the seal applied only to the lid, but to a hasty observer of the advertisement this statement might readily be overlooked. The facts are that the right to use the Good Housekeeping Guaranty Seal had been granted to Anchor-Hocking Glass Corporation, to be used by it as to certain specified Fire-King Ovenware under an agreement whereby that corporation agreed *not* to "delegate the right to use the seal or legend to any other individual, firm or corporation or to any other dealer or distributor." The seal was not applicable to or authorized for use as to the separate component parts of such specified ovenware. Niresk Industries, Inc. never had any authority to use the seal, nor did Merit Enterprises, Inc., from whom respondents procured the cooker-fryer. By telegram of March 29, 1956, Niresk Industries, Inc. had been advised by Good Housekeeping of this fact. Respondents' use of the seal in their advertising was not discontinued until late 1957 or early 1958.

14. The Good Housekeeping Guaranty Seal is recognized by those who have knowledge of it as indicative of product quality. As one witness said, "It should be good if it had the Good Housekeeping seal on it." The seal lends confidence to the customer, and purchases are made because of such confidence. The manner

in which respondents used the seal on their product and in their advertising was false, deceptive and misleading, and in violation of the provisions of the Act.

15. On June 23, 1958, more than one year after issuance of the complaint, there was a meeting of the Board of Directors of Niresk Industries, Inc., at which a resolution was adopted reciting that certain types of the advertising which had been complained of by the Federal Trade Commission had been discontinued on specifically named dates, and that it was the intention and policy of the corporation that such advertising be terminated promptly and permanently. No reference is made in the minutes or in the resolution of any discontinuance or intent of discontinuenace of the pricing practices alleged in the complaint and found herein to be misleading and deceptive. In view of the timing of the resolution and other facts and circumstances disclosed in this proceeding, this action of the board of directors cannot be accepted as being entirely in good faith. Certainly the facts of discontinuance or abandonment are not such as to come within the requirements prescribed by Commission practice and precedent for dismissal of the complaint with respect to any false and misleading acts and practices that have been engaged in by the respondents in this proceeding. The defense of discontinuance or abandonment is rejected.

16. The aforesaid acts and practices of respondents found to be false, deceptive and misleading are all to the prejudice and injury of the public and of respondents' competitors, and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act. This proceeding is in the public interest, and the following order is issued:

It is ordered, That respondent Niresk Industries, Inc., a corporation, and its officers, and respondent Bernice Stone Kahn, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of the cooker-fryer or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, that:

1. Certain amounts are the regular and usual retail prices of products when such amounts are in excess of the prices at which

such products are regularly and customarily sold at retail;

2. Any savings are afforded from the retail price of products unless such savings represent a reduction from the price at which said products are regularly and customarily sold at retail;

3. The cooker-fryer is the product of, or manufactured by, the Westinghouse Electric Corporation; or that any other product is the product of, or manufactured by, the Westinghouse Electric Corporation or any other corporation, firm, or individual, when such is not a fact;

4. The cooker-fryer has been awarded the Good Housekeeping Guaranty Seal; or that any other product has been awarded the Good Housekeeping Guaranty Seal, when such is not a fact.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

This matter having been heard on the respondents' appeal from the hearing examiner's initial decision; and

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

It is ordered, That the aforesaid appeal be, and it hereby is, denied.

It is further ordered, That the hearing examiner's initial decision, filed December 12, 1958, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the respondents, Niresk Industries, Inc., and Bernice Stone Kahn, shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order contained in said initial decision.

IN THE MATTER OF

J. JACOB SHANNON & COMPANY

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

Docket 7327. Complaint, Dec. 9, 1958—Decision, June 6, 1959

Consent order requiring a mail order merchandiser in Philadelphia, Pa., to cease advertising fictitious exaggerated amounts as "Reg." prices for purportedly reduced items.

Mr. Harold A. Kennedy for the Commission.

Mr. Oscar Brown, of Philadelphia, Pa., for respondent.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

On December 9, 1958, the Federal Trade Commission issued its complaint against the above-named respondent, charging it with the use of unfair and deceptive acts and practices and unfair methods of competition in the sale of miscellaneous merchandise in commerce in violation of the provisions of the Federal Trade Commission Act.

On April 7, 1959, the respondent, by its duly authorized officer and by its attorney, entered into an agreement for consent order with counsel supporting the complaint in accordance with Section 3.25(a) of the Rules of Practice and Procedure of the Commission, which agreement has been duly approved by the Bureau of Litigation. The hearing examiner finds that the content of the said agreement meets all the requirements of section 3.25(b) of said rules. It is noted that this agreement is for settlement purposes only and does not constitute an admission by the respondent that it has violated the law as alleged in the complaint.

This proceeding having now come on for final consideration by the hearing examiner on the complaint and the aforesaid agreement for consent order, and it appearing that said agreement provides for an appropriate disposition of this proceeding, the aforesaid agreement is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with Section 3.21 of the Rules of Practice; and in consonance with the terms of said agreement, the hearing examiner makes the following jurisdictional findings and order:

1. Respondent J. Jacob Shannon & Company 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 216 North Twenty-Second Street, in the city of Philadelphia, State of Pennsylvania.

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 respondent J. Jacob Shannon & Company, a corporation, and its officers, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that respondent's regular or usual price of any product is any amount which is in excess of the price at which respondent has usually and customarily sold such product in the recent regular course of business;

2. Representing, directly or by implication, that the value of any product is any amount which is in excess of the price at which such product is usually and customarily sold in the trade area, or areas, where the statement is made.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 6th day of June 1959, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

SILF SKIN, INC., ET AL.

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

Docket 6772. Complaint, Apr. 8, 1957[1]*—Decision, June 9, 1959*

Order requiring New York City manufacturers to cease representing that their "Silf Skin" girdles were seamless.

A charge of advertising the girdles falsely as "full-fashioned" was dropped as not established in the record.

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

Mr. Herbert S. Greenberg, New York, N.Y., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

PRELIMINARY STATEMENT

The complaint in this proceeding alleges that Silf Skin, Inc., a corporation, George Lacks and Harold Lacks, individually and as officers of said corporation, hereinafter called respondents, have violated the provisions of the Federal Trade Commission Act by misrepresenting the "Silf Skin" girdles which respondents manufacture, sell and distribute.

Counsel supporting the complaint contends that, through the use of statements made in their advertising, which is hereinafter set out in paragraph 3 of the Findings of Fact, respondents represented directly or by implication that:

(a) Said girdles are "full-fashioned;" that is, that they are knit on a flat bed or bar machine in the course of which flat fabric is shaped in the knitting to conform to the shape of the limb or body, the reduction in size looking to such shaping being effected by a process of narrowing in which the loops of various needles are transferred inward to an adjacent needle which loops are then knit by the transferee needle. The flat fabric at the conclusion of the knitting operation is joined at the edges of selvages to make a garment which conforms to the shape of that part of the body upon which it is worn.

(b) Said girdles are made on the same principle as full-fashioned stockings.

(c) Said girdles are seamless.

[1] Amended May 24, 1957.

Counsel supporting the complaint further contends that the statements and representations used and disseminated by respondents and which are set out in paragraph 3 of the Findings of Fact are false, deceptive and misleading in that said girdles are not "full-fashioned," are not made on the same principle as "full-fashioned" stockings, and are not "seamless."

Respondents deny that the statements made in their advertising are false, deceptive and misleading and contend that their girdles are "full-fashioned" and "seamless." Respondents contend that their girdles are "full-fashioned" for the reason that they are "narrowed" and "widened" in the knitting process to conform to the shape of that part of the body upon which said girdles are intended to be worn; are of uniform and even texture and the shape of such girdles will be retained for the natural life of the garment; that said girdles are "seamless" in that, during the process of manufacture, portions of said girdles are joined together by a knitting operation known as "looping," as contrasted to a sewing operation, whereas, in the terminology of the knitting trade, the term "seam" is a joining resulting from a sewing operation.

Hearings on the complaint have been concluded and the matter is before the hearing examiner for an initial decision. The hearing examiner has considered the evidence, the testimony of witnesses, some of whom are experts in the knitting industry, in support of the complaint and on behalf of respondents. Proposed findings and conclusions have been filed by respective counsel and a memorandum filed on behalf of respondents. These have been considered by the hearing examiner. All proposed findings of fact and conclusions of law not specifically found or concluded herein are rejected. Upon the basis of the entire record the hearing examiner makes the following findings of fact, conclusions and order:

FINDINGS OF FACT

1. The respondent Silf Skin Inc. is a corporation organized and existing under the laws of the State of New York, with its office and principal place of business located at 10 East 39th Street, New York, N.Y. The individual respondents George and Harold Lacks are president and secretary-treasurer, respectively, of said corporation and formulate, direct and control the acts, policies and business affairs of the corporate respondent.

2. Respondents are now and have been for more than five years immediately preceding the issuance of the complaint herein, engaged in the manufacture, sale and distribution of ladies' girdles and panty girdles designated "Silf Skin." Respondents sell and have sold their products to department stores and other retail dealers and have caused and now cause such products, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in the various States of the United States and in the District of Columbia. Respondents' volume of business in such products is substantial.

3. In the course and conduct of their business and for the purpose of inducing the purchase of their "Silf Skin" girdles, respondents have made and are now making, and have caused and are now causing to be made, statements as to the method by which their said girdles are manufactured, said statements appearing in newspapers and magazines distributed throughout the United States, and on letterheads, advertising matter in catalogues, circulars and other advertising material circulated and distributed by respondents to dealers in ladies' apparel, for further distribution by such dealers to the purchasing public throughout the several States of the United States and in the District of Columbia. Some of the statements and representations made in respondents' advertising are the following:

. . . Silf Skin . . . America's most popular seamless full fashioned girdles and panty girdles.

Silf Skin foundations . . . are made on the same principle as fine full fashioned stockings . . .

Silf Skin full fashioned bias knit. Shaped without seams for comfort and control.

Not a seam to cut you anywhere!

Wear a divinely comfortable Silf Skin. Knit by a patented process entirely without seams. Its full fashioned . . .

Once you try the only full fashioned seamless panty girdle in the world—

Its full-fashioned; made of famous seamless SILF SKIN!

Silf-Skin full-fashioned foundations.

Through a revolutionary new double fashioning process, a diamond shaped bias crotch has been knit in ENTIRELY WITHOUT SEAMS.

The only seamless full-fashioned foundations made in America—

AN IMPORTANT MESSAGE TO ALL corset buyers . . . ! from the manufacturers of America's only FULL-FASHIONED SEAMLESS GIRDLES SILF SKIN . . . SILF SKIN is permanently contoured by narrowing . . . is America's only full-fashioned, seamless girdle. Full fashioned means comfort and fit to every woman . . . means extra, easier sales to you . . . Stock FULL-FASHIONED SEAMLESS SILF-SKIN and you stock a sure source of sales, a proved volume and traffic builder.

4. By the use of said statements as above, said respondents have represented that their girdles are "full-fashioned" and "seamless," and that their said girdles are made on the same principle as "full-fashioned" stockings.

5. A preponderance of the reliable, probative and substantial evidence shows that, in the knitting industry, the terms "full-fashioned," "fully-fashioned" and "fashioned" connote and indicate that the product was made on what is known as a flat bed knitting machine, whether the machine be the cotton type or hand operated and hand decked type. The terms mean, generally, that the garment consists of components which have been knitted to shape on a flat bar or flat bed machine in which the contour is as it would be patterned if it were cut out of a piece of woven material, with selvedge edges and has been widened or narrowed by stitch or loop transfer from one needle to an adjacent needle or needles to conform to that pattern.

6. On the other hand, respondents' girdles are manufactured on a circular knitting machine. Near the top of the machine is a cylinder of a given circumference, depending on the size of the garment to be knitted, with a certain number of needles in vertical position around the cylinder. The shaping of respondents' girdles is not accomplished by stitch or loop transfer as "full-fashioned" garments are shaped by widening and narrowing in their manufacture. Unlike the shaping of fabrics in the process of manufacturing "full-fashioned" products such as hosiery on a flat bed knitting machine, the shaping of respondents' girdles in the process of their manufacture on respondents' circular knitting machines is accomplished by inactivating and reactivating needles, the stitch or loop remaining on the needle while it is kept out of action and no stitches or loops are transferred to an adjacent needle or needles, as in the manufacture of "full-fashioned" hosiery. There is no narrowing or widening in the process of manufacturing respondents' girdles in the sense that the terms widening and narrowing are used in the knitting industry when referring to "full-fashioned" products for the reason that there is no stitch or loop transfer from one needle to an adjacent needle or needles. One of the distinctive characteristics of "full-fashioned" products are fashion marks, which are bumps or dots in the knitted fabric resulting from stitch or loop transfer, that is, the placing of two stitches or loops on the same needle and then drawing a single stitch or loop through the two stitches or loops.

7. In the case of *Vawne Foundations, et al.*, 47 F.T.C. 1221, Docket No. 5106, the Commission defined the term "full-fashioned" as follows:

Full-fashioned garments are knit on a flat bed or bar machine in the course of which flat fabric is shaped in the knitting to conform to the limb or body. The reduction in size looking to such shaping is effected by a process of "narrowing" under which the loops of various needles are "transferred" inward to an adjacent needle, which loops are then knit by the transferee needle. The flat fabric at the conclusion of the knitting operation, in the case of hosiery for instance, is joined at the edges or selvedges to make a stocking which conforms to the shape of the leg.

Respondents' girdles are not made on the same principle as "full-fashioned" hosiery for the reason that full-fashioned hosiery is manufactured on flat bed knitting machines, whereas respondents' girdles are manufactured on circular knitting machines in a manner and by a process different from the manufacture of "full-fashioned" hosiery. Respondents' girdles are not seamless. The girdle which is in evidence and identified as Commission Exhibit 8 has seams at the side, top and bottom. The panty girdle, identified as Commission Exhibit 10 has seams at the front, back, top and at the leg openings. The sections of respondents' girdles are joined on a looping machine which forms a seam.

8. The terms "full-fashioned," "fully-fashioned," and "fashioned," as applied to articles of wearing apparel, are regarded as synonymous in the knitting industry and as descriptive of apparel which has been shaped in the knitting by the process of widening and narrowing. "Full-fashioned" articles of wearing apparel are favorably known to the public for holding their shape and as being more valuable and expensive than garments which have been cut and sewn together, and there is a preference on the part of the public for "full-fashioned" articles of wearing apparel, including girdles.

9. In the conduct of their business, respondents are in substantial competition, in commerce, as defined in the Federal Trade Commission Act, with other corporations and individuals and with firms who are engaged in the sale of girdles. The use by respondents of the statements and representations as found in paragraph 3 hereof had and now has the tendency and capacity to mislead and deceive dealers and the public into the erroneous and mistaken belief that said statements were and are true and

into the purchase of substantial quantities of respondents' products because of such erroneous and mistaken belief. As a consequence thereof, trade in commerce has been unfairly diverted to respondents from their competitors and injury has thereby been done to competition in commerce.

The aforesaid acts, practices and methods of the respondents, 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 and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondents Silf Skin, Inc., a corporation, and its officers, and George Lacks and Harold Lacks, individually and as officers of said corporation, and their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of girdles in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing that said girdles are seamless.

OPINION OF THE COMMISSION

By KERN, Commissioner:

The complaint in this proceeding charges the respondents with violating the Federal Trade Commission Act by misrepresentation in connection with the sale and distribution of "Silf Skin" girdles. The matter is before the Commission upon the appeal of the respondents from the hearing examiner's initial decision holding that the charges in the complaint are sustained by the record and containing an order to cease and desist the practices found to be unlawful.

There are two issues raised on this appeal: The first is whether respondents are entitled to use the terms "full-fashioned," "fully-fashioned" and "fashioned" to describe their "Silf Skin" girdles, and the second is whether they are entitled to use the word "seamless" to describe such garments.

On the first issue the hearing examiner found that the terms "full-fashioned," "fully-fashioned" and "fashioned," mean, generally, "that the garment consists of components which have been knitted to shape on a flat bar or flat bed machine in which the

contour is as it would be patterned if it were cut out of a piece of woven material, with selvedge edges and has been widened or narrowed by stitch or loop transfer from one needle to an adjacent needle or needles to conform to that pattern." He further found that respondents' girdles are made by a different process involving the use of a circular knitting machine in which shaping is accomplished by inactivating and reactivating needles and, therefore, that such garments were misrepresented when advertised by the use of terms such as "full-fashioned."

Respondents' position is that the term "full-fashioned" describes a knitted product of uniform texture shaped to the human body by widening and narrowing in such fashion that the given shape will be retained for the useful life of the garment, and that since "Silf Skin" girdles conform to this definition, it was not deceptive to represent them as "full-fashioned."

The substance of testimony by certain witnesses produced by counsel supporting the complaint was that the terms "full-fashioned," "fully-fashioned" and "fashioned" refer to products made on a flat bed or flat bar knitting machine, and are shaped in the knitting by widening or narrowing accomplished by the transfer of stitches or loops from one needle to another. It is apparent from their qualifications and background that these witnesses defined the meaning of the aforesaid terms as they may be understood in the industry rather than upon any apparent familiarity with the consumer's point of view.

Respondents' witnesses gave somewhat varied definitions of "full-fashioned" but similar at least to the extent that none defined the term as being confined in meaning to a fabric knitted on a flat bed or flat bar machine. Among such witnesses were some long closely associated with the retail trade.

The English dictionary definitions cited in the record, to the extent they support the interpretation of either side in this case, seem to support the respondents. An example is the definition found in Webster's New International Dictionary: "full-fashioned: knitted so as to conform to the shape of the leg and foot by dropping stitches as the contour narrows, used in hosiery, underwear, etc."

We believe that to restrict the definition of "full-fashioned," "fully-fashioned," and "fashioned" to a fabric knitted on a particular type of machine constitutes an extremely narrow and quite technical definition—a definition so limited that it should

only be adopted as a result of facts and evidence of record which we do not find here. The manufacturing process by machine methods is not a static but a growing and constantly changing art. To require a term or terms which give prestige to a product to be restricted in their use to products manufactured on a particular type of machine is a matter of serious concern. In all the circumstances, we are of the opinion that the allegations of the complaint in this connection have not been supported by substantial evidence. Counsel cites previous cases in which the Commission has dealt with the word "fashioned" or "full-fashioned," namely, *Chipman Knitting Mills, et al.*, 12 F.T.C. 133 (1928), and *Vawne Foundations, et al.*, 47 F.T.C. 1221 (1951). There is no conflict in our holding in this case and the prior decisions. In the *Chipman* and *Vawne* matters, the garments involved did not have even the elemental characteristics of a full-fashioned garment, which is that the fabric is structurally and with a uniform texture shaped in the knitting to conform to the contour of the limb or body. This formerly could be accomplished only on the flat bed or flat bar machines, but a finding to that effect was not essential to the disposition of either the *Chipman* or *Vawne* matters. In the instant matter there is no question that respondents' garments possess such a characteristic; indeed one of the witnesses in support of the complaint testified that respondents' garments have all the virtues ascribed by him to "full-fashioned" garments including the fact that the fabric is shaped in the knitting to conform to the contour of the limb or body.

Counsel supporting the complaint also cites various court cases including *Federal Trade Commission* v. *Algoma Lumber Co.*, 291 U.S. 67 (1934), and *Benton Announcements, Inc.*, v. *Federal Trade Commission*, 130 F. 2d 254 (1942), to support his contention to the general effect that the public is entitled to get what it chooses. We are thoroughly in accord with this line of cases. The distinction here is that we are unable to determine what the purchaser actually expects to get when buying a full-fashioned girdle. It does appear from this record that the expectation is to receive something more than solely a shaped garment such as one given shape by the simple process of cutting and sewing. Clearly, however, there is no sufficient evidence to justify a finding that the consumer expects the product to be made on a flat bed or flat bar machine and shaped in the knitting

by widening and narrowing accomplished by the transfer of stitches or loops from one needle to another. If such is the understanding of the ordinary purchaser, it has not been established in this record.

In view of our ruling, it is unnecessary to decide whether or not "full-fashioned," "fully-fashioned" and "fashioned" all have the same meaning as applied to wearing apparel. Moreover, since the meaning of "full-fashioned" has not been satisfactorily established, we cannot affirm the hearing examiner's finding that respondents have falsely represented their girdles to be made on the same principle as full-fashioned hosiery.

The other issue raised concerns respondents' use of the word "seamless" to describe their "Silf Skin" girdles. Respondents argue that these girdles in their "essential features" contain no palpable seam or sewed seam. The representation of "seamless," respondents contend, does not apply to the finishing at the top and bottom of their girdles which clearly is seamed. The advertisements, however, are not so qualified.

The components of respondents' girdles are looped together on a looping machine. It is as to this joining that respondents claim there is no palpable seam. However, even the assertion that there is no palpable seam seems to admit there is a seam, although possibly a slight seam. A witness of respondents' conceded that "Silf Skin" girdles have a very slight seam with reference to the parts joined by looping. Witnesses testifying for the complaint were agreed that the looping created seams. Several witnesses testified to the effect that "seamless" means knit in a tube with no joining required.

We conclude upon the record that respondents' "Silf Skin" girdles are not seamless since they contain seams not only in the finishing at the top and bottom of the garments but also in the joining of fabric by looping.

A communication was received from respondents' counsel on May 5, 1959, (after final argument on the merits and while the Commission had the case under advisement pending formal decision) in which he advises that women's stockings sold as "seamless" are joined at the top by "looping" in the same manner as respondents' girdles are joined and makes a qualified request for further hearings on this phase of the case. The request is denied. Hosiery and girdles are obviously in somewhat different fields

and the considerations relative to the one might not necessarily be the considerations relative to the other.

The respondents' appeal is granted as to the issue concerning the terms "full-fashioned," "fully-fashioned" and "fashioned" and denied as to the issue concerning the term "seamless." The initial decision, to the extent that it is contrary to the views expressed herein, is modified to conform with such views. An appropriate order will be entered.

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

FINAL ORDER

This matter having been heard upon the respondents' appeal from the hearing examiner's initial decision; and

The Commission, for the reasons stated in the accompanying opinion, having granted in part and denied in part the aforementioned appeal, and having modified the initial decision to the extent it is contrary to the views expressed in the said opinion:

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

It is ordered, That respondents Silf Skin, Inc., a corporation, and its officers, and George Lacks and Harold Lacks, individually and as officers of said corporation, and their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of girdles in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing that said girdles are seamless.

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

It is further ordered, That the respondents named 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.

Commissioner Tait not participating.

IN THE MATTER OF

THE FIRESTONE TIRE & RUBBER COMPANY

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

Docket 7020. Complaint, Dec. 31, 1957—Decision, June 9, 1959

Order requiring a tire manufacturer to cease advertising falsely that its second-line tires were used by manufacturers of motor vehicles as original equipment.

A charge that respondent's tire names were deceptive was dismissed due to its costly abandonment of the practice and compliance with the Tire Advertising Guides issued to the industry after date of the complaint.

Mr. Michael J. Vitale for the Commission.

Gravelle, Whitlock & Markey, by *Mr. Thomas S. Markey,* of Washington, D.C., and *Mr. Joseph Thomas* and *Mr. Stanley M. Clark,* of Akron, Ohio, for respondent.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

1. Respondent, The Firestone Tire & Rubber Company, charged with having violated §5 of the Federal Trade Commission Act, is a corporation organized, existing and doing business under the laws of the State of Ohio, with its office and principal place of business located at 1200 Firestone Parkway, Akron, Ohio.

2. It is now, and for many years last past has been, engaged in the manufacture of motor vehicle tires and tubes, which it sells through dealers located in the various States of the United States, and in the District of Columbia. It causes said tires and tubes to be shipped from its factories, located in several States, to its dealers located in various other States of the United States, and in the District of Columbia. It maintains, and at all times mentioned herein has maintained, a course of trade in said products, in commerce, as "commerce" is defined in the Federal Trade Commission Act. The volume of trade in said commerce has been and is substantial.

3. At all times mentioned herein, respondent has been, and is now, in direct and substantial competition with other corporations, firms and individuals also engaged in the manufacture, sale and distribution of motor vehicle tires and tubes.

The "First Charge"

4. The complaint charges that in advertising its "Super Champion" and "Deluxe Super Champion" tires, the respondent has falsely and deceptively represented that, at the time of the publication of the advertisements complained of, these tires had been or were currently being used as original equipment on eight million new cars as they left the factory, and were respondent's better-grade or first-line tires.

5. Two newspaper advertisements used nationally by respondent were presented in support of this charge. The first was published in January, 1957, and related to the "Super Champion" tire in the following language:

FIRESTONE'S GREATEST SALE
Save on the tire designed for
ORIGINAL EQUIPMENT
on 8,000,000 of America's Finest Cars
FIRESTONE
SUPER CHAMPION.

The second, published in April, 1957, was a similar advertisement but related to the "Deluxe Super Champion" tire. The relative language for that advertisement follows:

Don't Miss These Low Prices
During Our Great Sale
MAY TIRE SALE
The tire that was
ORIGINAL EQUIPMENT
on 8,000,000 new cars as they left the
factory. Same tread design *PLUS*
Modern Improvements.
FIRESTONE
DELUXE
SUPER CHAMPIONS

Both advertisements are of respondent's second-line tire. Their similarity is due to the fact that between January and April, 1957, the designation of respondent's second-line tire was changed from "Super Champion" to "DeLuxe Super Champion." No change was made in the character or quality of the tires.

6. In the tire industry, tires sold to and used by automobile manufacturers as original equipment on new cars are referred to as first-line or 100-level tires. These are better quality and sell for more than second-line tires, just as second-line tires are of better quality and sell for more than third-line tires. The variance in price between first-line and second-line tires amounts to approximately 25%.

7. During the entire period covered by the complaint, respondent's first-line tire was designated the "DeLuxe Champion." However, late in 1954 respondent began manufacturing a new tire with more improved characteristics than the tire theretofore used and of higher quality as its first-line tire and adopted it as the "DeLuxe Champion" first-line tire. The tire, which prior to this time had been the first-line tire, became respondent's second-line tire, and was named "Super Champion" and later "DeLuxe Super Champion." In all respects as to physical characteristics, tread and quality, the second-line tires were the same, except for some minor improvements normal in the tire-manufacturing process, as the tires which earlier had been sold by respondent and used as first-line tires on more than eight million new automobiles. The only difference was in the change of name. This was the testimony of respondent's representatives called by counsel supporting the complaint, and was supported by an independent tire expert called by the respondent, who testified that these second-line tires were the same as those formerly sold by respondent as first-line tires.

8. Therefore, the advertising statements of respondent that the tire was "designed for original equipment" and "was original equipment" on 8,000,000 new cars were in fact true statements. However, the advertisements were misleading and deceptive, and have the capacity and tendency to mislead and deceive the tire-purchasing public. At first glance and to a technically uninformed reader the impression might readily be conveyed that the tire had been designed as original equipment for use on cars coming off factory lines at the time of the publication of the advertising. The advertising is deceptive and misleading in that the full facts are not disclosed. The advertisements would have been completely and factually correct and not deceptive or misleading if respondent had indicated therein by some appropriate phrase that the tires being advertised were tires which, in fact, had been designed for and used as original equipment on new cars prior to 1955.

9. The actual or potentially misleading and deceptive advertising representations shown by the foregoing facts, and similar representations by other tire manufacturers must have motivated the statement in paragraph 3 of the "Tire Advertising Guides," issued by the Commission in May, 1958, that:

A tire which was formerly but is not currently used as "Original Equipment," should not be described as "Original Equipment" without clear and conspicuous disclosure in close conjunction with the term, of the latest actual year such tire was used as "Original Equipment."

10. Although the respondent has indicated its sincere purpose to conform to and abide by the "Tire Advertising Guides," the unusual circumstances do not appear to be existent in respect to the above-mentioned advertising practices which, under the Commission's policy, would justify a dismissal of the complaint without prejudice as to the charges pertaining thereto.

The "Second Charge"

11. Respondent maintains that there is no second charge in the complaint. The first hearing was conducted on that theory, but prior to the second hearing the hearing examiner, at a conference, informed the parties that he believed the complaint could be interpreted as including a charge, at least inferentially, that the names used on respondent's tires, "DeLuxe Champion," "DeLuxe Super Champion," and "Super Champion," were in themselves confusing, misleading and deceptive.

12. The manner in which the names were used is not in dispute. "DeLuxe Champion" has, during the entire period involved in this proceeding, been the name used for respondent's first-line, original-equipment tire; "Super Champion," from early 1955 through 1956, has been the name for the second-line tire, but since early 1957 has been used as the name for respondent's third-line tire; since early 1957 "Deluxe Super Champion" has been the name used for respondent's second-line tire.

13. This use of names is confusing. Considering names only, the second advertisement quoted in paragraph 5 above might easily lead the reader to believe that the "DeLuxe Super Champion," then and now respondent's second-line tire, is or was an improvement of respondent's current "DeLuxe Champion" first-line, original-equipment tire, which is not the fact. And as between "DeLuxe Champion" and "Super Champion," the current designation of respondent's third-line tire, opinions could well differ as to which signifies the higher quality tire; etymologically, "super" might indicate higher quality than "DeLuxe." Certainly there could be honest differences of opinion as to tire quality if the names alone were the only criterion.

14. To prevent confusion which might arise from the use of designations of this type, the Commission's Tire Advertising Guides specifically provide:

2. DECEPTIVE DESIGNATIONS

In the advertising or labeling of products industry members should not use designations for grades of products they offer to the public:

(1) which have the capacity to deceive purchasers into believing that such products are equal or superior to a better grade or grades of that member's products when such conclusion would be contrary to fact. (For example, if the "first line" tire of a manufacturer is designated as "Standard," "High Standard," or "Deluxe High Standard," the tires of that manufacturer which are of lesser quality should not be designated or described as "Super Standard." "Supreme High Standard," "Super Deluxe High Standard," or "Premium"), * * * .

15. The complaint in this proceeding was issued December 31, 1957; the first hearing was held March 13, 1958; the case-in-chief in support of the complaint was rested April 8, 1958; after a motion to dismiss had been filed and ruled on, the next hearing was held on September 16, 1958. In the meantime the guides, which had been discussed by the Commission and the tire industry for a year or more, were issued on May 20, 1958, and published in the Federal Register on May 29, 1958. The final hearing was held December 11, 1958. After the issuance of the guides and prior to the final hearing, respondent held several conferences with the Bureau of Consultation of the Federal Trade Commission, and an agreement had been reached with the Bureau as to new names which would be considered by the Bureau to be in compliance with the guides, and which could appropriately be used in place of respondent's previous tire names.

16. Following this agreement and in conformance therewith, respondent took immediate action to change its tire molds, and, by letters dated October 13, 1958, and November 25, 1958, notified its field organization and its dealers as to the name changes of its third-line and second-line tires, respectively, which had then been accomplished. Change of molds to show the new names involved considerable expense; one of respondent's witnesses said that already more than $200,000 has been spent in making the changeover. It also appears that in the changeover Firestone will be put to much other expense and suffer considerable losses. The good faith of respondent in making the changes and attempting to comply with the guides as they relate to tire designations is evident and cannot be impugned.

17. The very fact that the guides were promulgated and are specific as to tire designations is indicative that the practice in which respondent was involved has been of wide extent in the tire industry. There are undisputed statements in the record that

the Bureau of Consultation is negotiating with other major tire companies regarding changes to be made by them in tire designations, and that much progress has been and is being made.

18. Under these circumstances the expediency of the issuance in this proceeding of a cease-and-desist order with respect to tire designations is doubtful. The guides state that they "do not constitute a finding in and will not affect the disposition of any formal or informal matter now pending with the Commission." But it is stated that the guides

> are administrative interpretations by the Commission of the requirements of the laws it enforces applicable to the subject matter of the guides. They have been adopted for the purposes of assisting all affected parties to be in prompt, simultaneous and voluntary compliance with those requirements. Additionally, they are designed to afford continuing guidance to all affected parties.

19. The issuance of a cease and desist order as to tire designations would delay respondent's changeover program that is now nearing completion. It would result in the transfer of future negotiations as to tire names from the Commission's Bureau of Consultation to the Commission's Compliance Division so far as respondent herein is concerned, but would leave with the Bureau of Consultation the completion of negotiations with all other tire companies. There would follow a degree of confusion which might affect the agreement already reached between the Commission's staff members and respondent, and bring into question again the acceptability of the names now agreed upon. Moreover, the continuing guidance of the industry with respect to tire names would thus become a divided guidance—one company, the respondent herein, would be working with the Compliance Division of the Office of the General Counsel, all others would be working with the Commission's Bureau of Consultation. This duplication or paralleling of procedure would appear to be highly unsatisfactory and impractical.

20. Nothing can be gained by the issuance of a cease and desist order forbidding respondent to use the tire designations which were heretofore used but which it already has permanently abandoned. Such an order would, in any event, affect only one member of the tire-manufacturing industry. The public interest will be more completely and better served if the industry as a whole can be brought together under a uniformly satisfactory system of tire designation. This can be accomplished in only two ways—one, through cooperative compliance with rules

such as are suggested by the guides; the other, through litigation, which would involve, not one, but a series of suits against all members of the industry who may have offended in this respect. There are compelling facts and inferences of record to the effect that several tire manufacturers, other than respondent, have engaged in the use of tire designations which, in themselves, are or may be confusing to the public.

21. Respondent has permanently discontinued the use of the tire designations mentioned in the complaint in this proceeding. It has, with the approval of the Bureau of Consultation of the Fedral Trade Commission, agreed upon new tire designations, and has already incurred much expense and will incur still further expense and losses in putting such new designations into effect. The facts and circumstances, so far as respondent is concerned and as they relate to industry practices in general, are of such extensive and unusual nature as to warrant, under the precedents established by the Commission, the dismissal of this phase of the proceeding without prejudice to the right of the Commission to take such further action against respondent as future facts may warrant.

CONCLUSIONS

1. In its advertising relating to original equipment, the respondent has made representations which were misleading and deceptive and had the capacity and tendency to mislead and deceive the purchasing public.

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

3. This proceeding is in the public interest, but the public interest does not require the issuance of a cease and desist order as to respondent's practices with respect to tire designations, and as to any charges pertaining thereto the complaint should be dismissed without prejudice. Accordingly,

It is ordered, That respondent, The Firestone Tire & Rubber Company, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution

of its motor vehicle tires and tubes, or any other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing, directly or by implication, that any tire not currently used as original equipment has been used or designed for use as original equipment, without clear and conspicuous disclosure, in close conjunction therewith, of the latest year such tire was actually sold and used as original equipment, the term "original equipment" tires being defined as "the same brand and quality tires used generally as original equipment on new current models of vehicles of domestic manufacture."

It is further ordered, That the complaint, in all other respects, be, and the same hereby is, dismissed without prejudice to the right of the Commission to take such further action against respondent herein as future facts may warrant.

OPINION OF THE COMMISSION

By TAIT, Commissioner:

The complaint in this matter charged respondent, The Firestone Tire & Rubber Company, with violation of Section 5 of the Federal Trade Commission Act. Counsel supporting the complaint has appealed from the hearing examiner's dismissal of one of the allegations of the complaint and from certain findings and conclusions and the order in the initial decision.

The following allegations were made in the complaint:

PARAGRAPH FIVE: . . . respondent represented, directly and by implication that its motor vehicle tires designated as "Super Champion" and "DeLuxe Super Champion" are now, or have been used by the manufacturers of motor vehicles as original equipment, and that said tires are respondent's better grade or first line tires.

PARAGRAPH SIX: The foregoing statements and representations were and are false, misleading and deceptive. In truth and in fact. [sic] The motor vehicle tires designated as "Super Champion" and "DeLuxe Super Champion" are not now, and never have been, used as original equipment by the manufacturers of motor vehicles. Respondent's tire used by manufacturers of motor vehicles as original equipment is, and has been for several years, a tire designated by respondent as the "DeLuxe Champion," and is referred to by respondent as a first line tire or 100 level tire.

The tires designated as "Super Champion" and "DeLuxe Super Champion" are in fact respondent's second line tires. The use of the names "Super Champion" and "DeLuxe Super Champion" is confusing and misleads purchasers thereof into believing that said tires are superior in grade to the tire designated as the "DeLuxe Champion," which is contrary to the fact.

The hearing examiner found with respect to the first allegation that respondent's advertisements, published in January and April 1957, conveyed the impression that the tires designated as "Super Champion" and later as "DeLuxe Super Champion" had been designed as original equipment for use on cars coming off factory lines at the time of the publication of the advertisements. He also found that these tires were not being used as original equipment at the time the aforementioned advertisements were published, but that they were essentially the same as first line or original equipment tires sold by respondent prior to 1955. The examiner concluded that the advertising was deceptive and misleading only in that it failed to disclose when the tires had been used as original equipment and his order was directed solely to the elimination of the deception resulting from the failure to make this disclosure.

The record reveals that respondent's original equipment or first line tire during the years 1952, 1953 and part of 1954 was the "DeLuxe Champion Super Balloon." In November, 1954, a tire designated "DeLuxe Champion" became respondent's first line tire and the "DeLuxe Champion Super Balloon" was redesignated "Super Champion" and became respondent's second line tire. This tire was sold as "Super Champion" until February, 1957, when its name was changed to "DeLuxe Super Champion." The designation "Super Champion" was given to a third line tire at that time.

Although there is some evidence to the effect that certain changes were made in the tires designated "Super Champion" and later as "DeLuxe Super Champion," the record is not entirely clear as to what these changes were. The evidence also shows that minor changes, or so-called "evolutionary improvements," may be made in any tire sold by respondent without any change being made in the grade designation of the tire. For example, there is evidence to the effect that during the years 1955 and 1956 nine such changes were made in respondent's first line tire, the "DeLuxe Champion." The record does not show that the changes made in the "Super Champion" and the "DeLuxe Super Champion" were anything other than technological improvements ordinarily made within any line or grade of tires. Insofar as we can determine, there was no greater difference between the second line tire sold in 1957 and the original equipment tire sold in 1954 than there was between the original equip-

ment tire sold in 1955 and the same tire sold in 1956. There is no record basis for overruling the hearing examiner and finding that the second line tire designated as "Super Champion" and as "DeLuxe Super Champion" was different in any material respect from a former original equipment tire. We are of the opinion, therefore, that the evidence fails to sustain the allegation that the tire in question had not previously been used as original equipment. The order contained in the initial decision is adequate to prevent the practice found to be unlawful.

The other question presented for the determination of the Commission on this appeal is whether the hearing examiner erred in dismissing without prejudice that part of the complaint charging respondent with the use of deceptive tire designations. The examiner concluded that this charge should be dismissed on the ground that the practice had been permanently abandoned under unusual circumstances and that the public interest, therefore, did not require the issuance of a cease and desist order.

Counsel supporting the complaint points out that respondent did not abandon the practice in question prior to the issuance of the complaint on December 31, 1957. He also contends that the conditions which led to the violation still exist and that there is no real assurance that the practice will not be resumed.

As we stated in the matter of *Ward Baking Company,* Docket No. 6833 (decided June 23, 1958), dismissal is rarely warranted in cases where a party waits until the Commission has acted and only then discontinues his illegal practice. We also pointed out in that case and in the matter of *Argus Cameras, Inc.,* Docket No. 6199 (decided October 20, 1954), that the Commission, in the exercise of its proper discretion, may dismiss a complaint even though the discontinuance takes place after proceedings have been initiated, where there is a clear showing of unusual circumstances which in the interest of justice do not require entry of an order.

We are of the opinion that the circumstances of the discontinuance of the practice in this matter do not indicate a likelihood of resumption.

For some time prior to the issuance of the complaint herein, the use of questionable brand names had been widespread in the tire industry. This practice had not previously been challenged by the Commission in a formal proceeding. On November 22, 1957, the Commission announced that Tire Advertising Guides would be adopted to enable all members of the tire industry to

discontinue voluntarily and simultaneously the deceptive practices then known to be prevalent in the industry. The letter transmitting proposed guides to the industry specifically mentioned use of deceptive tire designations as one of the practices which the guides would seek to eliminate.

Within a few weeks after receiving the proposed guides, officials of respondent met with members of the staff of the Commission's Bureau of Consultation in an effort to work out a suitable change in tire designations under the voluntary procedure which had been made available to the industry. Although there appears to have been no question as to respondent's willingness to correct the practice, its reasons for not doing so at the time are apparent. One of the major problems with which it was confronted was that the correction of the practice was a difficult, expensive and time consuming undertaking, requiring a change in the names embedded in the sidewalls of its tires. Moreover, at that time there had been no change in the competitive situation in the industry insofar as this practice was concerned and no final rule or guide pertaining to the practice had yet been adopted by the Commission.

Shortly after respondent had begun negotiations with the Bureau of Consultation, complaint was issued against it. At first the hearing examiner was of the opinion that the use of deceptive tire designations was not an issue in the proceeding, and he ruled accordingly. Though he later reversed his position, it was not until about September 15, 1958, that respondent was fully aware that it must defend against a charge of having employed deceptive tire designations. On September 16, 1958, shortly after the guides had become operative, the hearing examiner suspended hearings until December 1, 1958, to afford respondent an opportunity to continue its negotiations concerning compliance with the Tire Advertising Guides. As a result of these negotiations, which had begun in December 1957, respondent revised its tire designations in a manner acceptable to the Bureau of Consultation.

The hearing examiner has found that respondent acted in good faith in attempting to comply with the guides as they relate to tire designations. We have no reason to disturb this finding or to doubt respondent's willingness to cooperate when the matter was first brought to the attention of the industry, though these two circumstances alone can hardly constitute an assured discontin-

uance. However, respondent has taken costly steps to bring itself into line with the new standards. Moreover, the competitive conditions that influenced respondent to adopt the practice in the first place have been changed by the industrywide adoption of the guides, and it is to be expected that the continuing guidance to be afforded by this program will prevent a recurrence. These considerations, together with the nature of the correction itself, lead us to believe that there is no "cognizable danger of recurrent violation" and that everything that could be accomplished by a cease and desist order has already been done.

The appeal of counsel supporting the complaint 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 the appeal of counsel in support of the complaint from the hearing examiner's initial decision, and upon briefs and oral argument in support thereof and in opposition thereto; and the Commission having rendered its decision denying the appeal and adopting the initial decision:

It is ordered, That respondent, The Firestone Tire & Rubber Company, 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 HIGBEE COMPANY

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

Docket 7084. Complaint, Mar. 12, 1958—Decision, June 9, 1959

Order requiring a furrier in Cleveland, Ohio, to cease violating the Fur Products Labeling Act by failing to comply with labeling and invoicing requirements, and by advertising which failed to disclose the names of animals producing the fur in some products or that other products were made of artificially colored or cheap or waste fur, and which contained the name of an animal other than that producing certain furs.

Mr. Alvin D. Edelson supporting the complaint.

Mr. Robert W. Poore, of *Jones, Day, Cockley & Reavis,* of Cleveland, Ohio, for respondent.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

PRELIMINARY STATEMENT

The complaint in this proceeding charges the Higbee Company, a corporation, hereinafter called respondent, with violating the Federal Trade Commission Act, the Fur Products Labeling Act, and the rules and regulations promulgated thereunder, by misbranding, falsely invoicing, and falsely advertising its fur products in the operation of its retail department store in Cleveland, Ohio. After service of the complaint respondent filed an answer denying each of the violations alleged. Hearings have been held at which evidence in support of and in opposition to the complaint was received. Proposed findings of fact, conclusions, and order have been filed by respective counsel. All proposed findings and conclusions not found and concluded herein are rejected.

FINDINGS OF FACT

1. Respondent, the Higbee Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 100 Public Square, Cleveland, Ohio.

2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondent has been and is now engaged in the sale, advertising and offering for sale of fur products at retail in the Cleveland area, which said fur products were made

in whole or in part of fur which had been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act.

3. The evidence shows and the examiner finds that respondent misbranded certain of its fur products as alleged in paragraph 3 of the complaint in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act and in the manner and form prescribed in the Rules and Regulations promulgated thereunder. As examples, certain of the labels on fur products did not list the correct animal name as set forth in the Fur Products Name Guide. On one label, the name "Tropical Seal" was listed as the animal producing the fur, whereas it should have been described as "Fur," "Hair," or "Rock Seal" as required by the Name Guide. On another label, the animal producing the fur was listed as "Black Dyed French Lapan," which refers to rabbit and should have been so listed as required in the Name Guide. Another label listed the name "Fur-Dyed Mouton." This is not an animal name but is a process used on lamb. Therefore, the correct animal name was not listed. Still another label listed the animal as "Norwegian Fox." The Name Guide does not contain a designation of fox as "Norwegian Fox." Types of foxes are designated by color in the Name Guide. Other labels listed the animals as "Natural Fox," "Dyed Fox," and "Alaskan Fox." As stated above, types of foxes should be designated by color. Also, some of the labels on fur trimmed garments did not correctly list the name or identification number of the manufacturer of said fur products as required by Section 4(2)(E) of the Act.

4. It is further found that certain of the fur products offered for sale by respondent in its store at Cleveland, Ohio, on January 2 and 3, 1957, and on November 22 and 25, 1957 were misbranded in violation of the Fur Products Labeling Act in that they were not labeled in accordance with the rules and regulations promulgated thereunder in the following respects:

(a) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was abbreviated on labels, in violation of Rule 4 of said Rules and Regulations.

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

thereunder was mingled with nonrequired information on labels, in violation of Rule 29(a) of said Rules and Regulations.

(c) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not completely set out on one side of labels, in violation of Rule 29(a) of said Rules and Regulations.

(d) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in handwriting on labels, in violation of Rule 29(b) of said Rules and Regulations.

However, with respect to the allegations contained in subsection (e) of paragraph 4 of the complaint to the effect that respondent violated Rule 36 of the Rules and Regulations promulgated under the Act, it is found that these allegations have not been established by a preponderance of the evidence. The evidence shows that Commission Exhibit No. 1 purports to be a copy of a label which was on a garment at the time of the investigation of respondent's fur products on November 22 and 25, 1957 by Messrs. Brock and Waller. This label was the manufacturer's label and was received in evidence as respondent's Exhibit No. 10. Mr. McManus, respondent's fur buyer testified that, at the time of the investigation of respondent's fur products on November 22 and 25, 1957, the manufacturer's labels which were then attached to the fur products in respondent's fur department were being replaced with respondent's own labels which, in all respects, complied with the provisions of the Act. At one of the hearings Mr. McManus produced the respondent's own label (respondent's Ex. No. 11) which, he testified, he placed on the garment on November 22, 1957, as a replacement for the manufacturer's label (respondent's Ex. No. 10). He placed respondent's label on the garment after Brock and Waller had inspected the garment. Mr. McManus further testified that the fur product from which he had removed this label (respondent's Ex. No. 11) was still in stock in respondent's fur department on the date of the hearing.

5. In this connection, it will be noted that the violations of Section 4(2) and the Rules and Regulations promulgated thereunder and discussed in paragraphs 3 and 4 hereof, are substantiated by Commission Exhibit Nos. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 17–A, 17–B, 18, 19, 20, 21, 22, 23, 26, 33, 34, 36, and 38, and the testimony of Mr. Brock, Commission attorney-investigator. Counsel for respondent objected to most of these exhibits

on the ground that they are not "primary evidence."[1] Since the investigator's notes were not available, the hearing examiner overruled the objection and received the exhibits in evidence.

6. Paragraph 5 of the complaint alleges that respondent did not invoice certain of its fur products as required by Section 5(b)(1) of the Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder. Mr. Brock, Commission investigator, testified that he examined respondent's copies of sale slips which respondent had previously issued to retail purchasers of its fur products and noted improper description of the animal name in two sale slips which respondent had issued. One of the sale slips, dated September 14, 1957, issued to Mrs. Adrian Parks, listed "Ember Autumn Haze" as the animal description of the fur product. The Fur Products Name Guide contains no such animal description. The other sale slip was issued to Mrs. Monica Histek, dated July 31, 1957, and described the fur product as "Logwood Processed Dyed Mouton Lamb." The Name Guide does not list such an animal description. The term "Mouton" is a process and not an animal description.

7. Counsel for respondent contends that respondent's retail sales of fur products are not subject to the requirements of the Act with respect to invoicing and are not a sufficient basis upon which to issue a cease and desist order, citing *Mandel Bros., Inc.* v. *F.T.C.*, 254 F. 2d 18, 22–23 (1958). In *Federated Department Stores, Inc.*, Docket No. 6836, this examiner followed the decision of the Court of Appeals for the Seventh Circuit in the *Mandel* case and held that the invoicing requirements of the Act are not applicable to the sale of fur products at retail and, therefore, failure of that respondent to issue sale slips in the manner prescribed by the Act to retail purchasers of its fur products was not a violation of the Act. On appeal to the Commission, the Commission reversed the initial decision of the examiner and stated that, since the issues involved in the *Mandel* case are before the Supreme Court for determination by that Court, the Commission felt compelled not to adopt a position inconsistent with that which it had taken on appeal by *certiorari* before the Supreme Court and, therefore, modified the initial decision of the examiner in

[1] Mr. Brock testified that he made copies on his notes of certain labels in respondent's store which he considered to be defective. After completing his investigation at respondent's store on the afternoon of November 25, 1957, he returned to the Federal Trade Commission office in Cleveland and prepared the exhibits (facsimiles of the labels) from his notes. He then destroyed his notes. There is no contention they were wrongfully destroyed.

this respect. In view of the Commission's announced position, this examiner feels compelled to follow the decision of the Commission in the *Federated Department Stores* case. Accordingly, the examiner finds that the allegations in paragraph 5 of the complaint have been established.

8. Paragraph 6 of the complaint alleges that respondent violated Rule 4 of the Rules and Regulations under the Act by setting forth required information under Section 5(b)(1) of the Act in abbreviated form. The evidence substantiating this allegation consists of the testimony of Mr. William P. Bardwell, Commission Investigator and Commission Exhibit No. 41 which purports to be a facsimile of an invoice or retail sale slip issued by respondent in connection with the sale of a muskrat stole. On respondent's retained copy of the sale slip, the muskrat stole was described as "M Rat Stole." Such an abbreviation is a violation of the Act and it is so found.

9. Paragraphs 7 and 8 of the complaint complain of certain newspaper advertisements by respondent of fur products which appeared in the Cleveland Plain Dealer on October 20, 1957, January 13, 1957, and March 3, 1957, and Cleveland Press of August 6, 1954, and December 11, 1956, and which are alleged to be false and deceptive and in violation of the Act. The first advertisement complained about is one which appeared in the Cleveland Plain Dealer of October 20, 1957, (Comm. Ex. No. 51), where respondent advertised wool coats with "fox" collars. The description "fox" collars is not a correct animal name as prescribed in the Fur Products Name Guide. So-called "fox" descriptions should include the color of the fox. There are two advertisements complained about in the Cleveland Plain Dealer of January 13, 1957. The first advertises misses winter coats as "dyed-processed Mouton trimmed styles," (Comm. Ex. No. 52). As stated in paragraph 6 above, "Mouton" is not an animal name designated in the Fur Products Name Guide. Such a description is a violation of the Act. The second advertisement describes fur scarfs as "Martens." (Comm. Ex. No. 53). Such a designation is not listed in the Fur Products Name Guide. It is found, therefore, that respondent violated the provisions of Section 5(a)(1) of the Act.

10. The complaint alleges that the advertisement in the Cleveland Plain Dealer of March 3, 1957, violates several provisions of the Act. The advertisement describes, (Comm. Ex. No. 54), among other articles, "Starlight and Crown Royal Northern

back muskrat Stole,[2] $115." Obviously, this advertisement does not state that the muskrat was dyed. The evidence shows, however, that these muskrat stoles were dyed. Section 5(a)(3) of the Act provides that advertisements of bleached, dyed, or artificially colored fur products shall so state when such is the fact. Accordingly, it is found that respondent violated Section 5(a)(3) of the Act.

11. The complaint also alleges that the advertisement (Comm. Ex. No. 54) violated Section 5(a)(4) of the Act by failing to disclose that the "Starlight" muskrat stoles were composed of bellies. As stated in paragraph 10 above, the advertisement (Comm. Ex. No. 54) described the stoles as "Starlight and Crown Royal Northern back muskrat" * * *. In support of the allegation that the "Starlight" Northern back muskrat stole advertised in the Cleveland Plain Dealer on March 3, 1957, (Comm. Ex. No. 54) was not manufactured from the back of the muskrat but was manufactured from the flank or belly of the dyed muskrat, counsel supporting the complaint offered the testimony of two furriers, Mr. Nate Weinstein and Mr. Robert Sittner, as expert witnesses, each of whom testified that all "Starlight" color muskrat are manufactured from the flank or belly of the muskrat.

12. In its own defense, respondent offered the testimony of Mr. John T. McManus, manager of respondent's Fur Department, trained in fur workrooms and experienced in the fur business since 1938. Mr. McManus testified that "Starlight" muskrat is manufactured from the back of the muskrat and is of a darker color than the flank or belly. Mr. McManus also produced and identified orders which he had placed for the purchase of all muskrat stoles purchased by respondent during the period August 1956 to August 1957. These orders were placed with the Ardley Fur Company of New York, N.Y., who manufactured the stoles described in Commission Exhibit No. 54. Some of the orders refer to "Starlight" garments, such as "Starlight Dyed Northern back Muskrat." Mr. McManus testified that the dyed muskrat stoles which respondent advertised in Commission Exhibit No. 54 and sold under the "Starlight" descriptive color were "Northern back Muskrats." Some of his orders specify "Starlight" muskrat garments and he produced corresponding invoices from

[2] The evidence shows that respondent intended to advertise two colors of Northern back muskrat stoles in this advertisement. The terms "Starlight" and "Crown Royal" refer to the color of the dyed muskrat. The manufacturer of the muskrat stoles advertised in Commission Exhibit No. 54 testified that "Starlight" is a brown shade, a darker brown than "Crown Royal."

the manufacturer. Mr. McManus testified that he was positive they correspond because the respondent's order number appears on the manufacturer's invoice or bill. Mr. McManus further testified that, when he ordered muskrat garments which were to be composed of skin from the flank or belly of the animal, he so specified in the order. As an example, respondent's Exhibit No. 16 is such an order and respondent's Exhibit No. 17 is the invoice from the manufacturer covering such order and the garments are described on the invoice as "Northern Flank Dyed Muskrat Stoles, Special." Mr. McManus testified that "Starlight" and "Autumn Brown" in the fur trade are the same. They denote a primary color. Upon completion of respondent's testimony in its own behalf, counsel supporting the complaint requested an opportunity to present rebuttal testimony from a representative of Ardley Fur Company, New York, N.Y., manufacturer of the muskrat stoles advertised by respondent in Commission Exhibit No. 54 with respect to whether the "Starlight" color stole was manufactured from the back or flank (belly) of the muskrat.

13. Accordingly, such request was granted and a hearing was held in New York at which time Mr. Arthur Blass, owner and proprietor of Ardley Furs, Inc., New York, appeared and testified as a witness on behalf of the Commission. Mr. Blass' testimony will not be recited in detail. Suffice it to say that he manufactured and sold respondent the muskrat stoles described in the advertisement of March 3, 1957 (Comm. Ex. No. 54). Mr. Blass testified on cross-examination that he applied the term "Starlight" in his fur manufacturing business to the back of the muskrat, not the flank or belly. He corroborated the testimony of Mr. McManus that "Starlight" is a brown shade, something like a mink shade of brown, sometimes a little darker, sometimes a little lighter, but a brown shade. Mr. Blass identified respondent's Exhibit Nos. 25 through 29 as being labels or tags prepared in Mr. Blass' own handwriting which he had attached to fur garments which he manufactured and testified that they correctly described the garments to which they were attached as "Northern back Muskrat" and in each case the color is described on the label as "Starlight." Mr. Blass further testified that, neither in 1955, 1956, nor in the first part of 1957, did his company dye muskrat flank garments the "Starlight" color. Mr. Blass further corroborated the testimony of Mr. McManus by testifying that there is not a substantial difference in color between "Autumn Brown" and "Starlight" and that these colors are from the back

of the muskrat. Certainly, as the manufacturer of the stoles described in Commission Exhibit No. 54, Mr. Blass should know whether the "Starlight" muskrat stole which he manufactured is from the back or flank of the muskrat. From the evidence, this examiner finds that the "Starlight" muskrat stole advertised in Commission Exhibit No. 54 was manufactured from the back of the muskrat. Accordingly, it is found that the allegations contained in subparagraph (c) of paragraph 8 of the complaint have not been established.

14. Subsection (d) of paragraph 8 of the complaint alleges that some of respondents newspaper advertisements of fur products were false and deceptive in that said advertisements contained the name of an animal other than the name of the animal that produced the fur, in violation of Section 5(a)(5) of the Act. In support of this allegation, counsel supporting the complaint relies on two newspaper advertisements which were received in evidence without objection, Commission Exhibit Nos. 55 and 56. Commission Exhibit No. 55 is an advertisement placed by the respondent in the December 11, 1956 issue of the Cleveland Press. The advertisement is a one page advertisement, advertising ladies sweaters, dresses, and dyed muskrat coats, jackets, and stoles. Underneath the heading "Dyed Muskrat coats, jackets, stoles," is some advertising copy about coats, jackets, and stoles, which reads as follows: "If you're the mink type (and who isn't) but the budget begs to differ * * * next best to mink, we think, are these minklike muskrats!" Counsel supporting the complaint contends that, since the mink and muskrat are different and distinct animals named in the Name Guide, the use of the phrase "minklike muskrats" in the advertising copy is a violation of Section 5(a)(5) of the Act. The allegations of subsection (d) of paragraph 8 of the complaint have been established.

15. The remaining advertisement complained about is one which appeared in the August 6, 1954 issue of the Cleveland Press which advertised ladies fur trimmed cloth coats, Commission Exhibit No. 56. The contents of this advertisement which counsel supporting the complaint contends violates the Act is the use of the phrase "lynx-dyed white fox" in describing the collar of the coats. Counsel supporting the complaint again urges that, since the Lynx and Fox are two distinct animals described in the Name Guide, the use of the descriptive language "lynx-

dyed white fox" is in violation of the Act. The use of such language is in violation of Section 5(a) (5) of the Act.

16. Counsel for respondent urges that there is no proof that respondent engaged in any transaction in interstate commerce in fur products nor any evidence that respondent ever sold, delivered, or shipped a fur product to a point outside the local Cleveland trading area. Counsel for respondent is correct in this contention. The evidence is undisputed that respondent's business is restricted to retail sales of fur products and there is no evidence of sales or shipments of fur products outside the State of Ohio. However, the evidence shows that respondent has advertised its fur products in two Cleveland newspapers, the *Cleveland Plain Dealer* and the *Cleveland Press*. The *Plain Dealer* has circulation in the States of Pennsylvania, New York, Illinois, Florida, Michigan, California, Arizona, Washington, D.C., and West Virginia. The *Cleveland Press* has circulation in Pennsylvania, Florida, and New York. The evidence shows that the representative out-of-State circulation of the Sunday edition of the *Plain Dealer* is 4,101 copies out of a total of 510,659, and for the *Cleveland Press*, an out-of-State circulation of 828 copies out of a total of 326,558 copies per issue. Counsel for respondent maintains that the interstate portion of the circulation of these newspapers is so small, amounting to 0.8% and 0.25%, respectively, as to be incidental and insignificant. Even though the out-of-State distribution is relatively small compared to their total distribution, nevertheless, there were 4,101 copies of the *Plain Dealer* and 828 copies of the *Cleveland Press* distributed outside the State of Ohio. This constitutes a substantial distribution of the advertisements in commerce, even though, computed on a percentage basis, the percentage of out-of-State distribution to total distribution is somewhat small. In any event, the examiner finds that the out-of-State distribution is sufficient to establish jurisdiction under the Fur Products Labeling Act.

CONCLUSIONS

17. The acts and practices found herein to have been indulged in by respondent are in violation of the Fur Products Labeling Act, the rules and regulations promulgated thereunder and are unfair and deceptive acts and practices in commerce in violation of the Federal Trade Commission Act. Although the evidence establishes and the examiner has found that respondent only violated some of the provisions of the Act, the order to be

entered herein will cover each of the prohibitions contained under the various subsections of the Sections of the Act in view of the decision of the Commission in the *Federated Department Stores* case, which followed the decision of the Commission in the *Mandel* case. The proceeding is in the public interest.

ORDER

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

A. Misbranding fur products by:

1. Failing to affix labels to fur products showing:

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

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

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

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

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

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

2. Setting forth on labels attached to fur products:

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

(b) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations thereunder mingled with non-required information;

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

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

4. 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 thereunder with respect to each section.

B. Falsely or deceptively invoicing fur products by:

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

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

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

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

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

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

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

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

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

1. Fails to disclose:

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

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

2. Contains the name or names of any animal or animals other than the name or names provided for in paragraph C–1(a) hereof.

OPINION OF THE COMMISSION

This matter has come before the Commission in due course under §3.21 of the Commission's Rules of Practice for consideration of an initial decision of the hearing examiner from which no appeal has been taken. It is a case involving alleged misbranding, false invoicing, and false advertising of fur products in violation of the Fur Products Labeling Act.[1]

The Commission is in agreement with the initial decision with two exceptions involving the hearing examiner's conclusion with regard to one aspect of respondent's advertising. Accordingly, the Commission has concluded that the initial decision must be modified as hereinafter indicated.

In paragraph 14 of the initial decision with regard to the use by respondent in one of its advertisements of the term "minklike muskrats," the hearing examiner concluded in this connection that:

> * * * Certainly no reader of the advertisement could possibly be misled or deceived. If by the wildest stretch and scope of administrative interpretation the use of the quoted language could be considered a violation of the Act, it is a technical violation at best. It should be treated as *de minimis*. In any event, this examiner finds that the allegations of subsection (d) of Paragraph Eight of the complaint have not been established.

Again, in paragraph 15 of the initial decision, the hearing examiner concludes "that the use of such language ['lynx-dyed white fox'] may be misleading and confusing and finds that same is in violation of Section 5(a) (5) of the Act."

We are of the opinion that the hearing examiner's references to the likelihood of deception, or lack of it, are themselves misleading and constitute error. Subsection (d) of paragraph 8 of the complaint charges in the words of the Act that respondent falsely and deceptively advertised its fur products through use

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[1] 15 U.S.C.A. 69.

of advertisements by including therein the "name of an animal other than the name of the animal that produced the fur."

In a proceeding for violation of the Fur Products Labeling Act, it is not necessary to establish that the acts and practices involved are of a false and misleading character, as is required for violation of Section 5 of the Federal Trade Commission Act.[2] In other words, we are not concerned here with the usual misrepresentation case, that is, with false and misleading advertising which may have the capacity and tendency to deceive in violation of Section 5 of the Federal Trade Commission Act, *supra*. Section 5 of the latter Act is involved only to the extent that it is this section that describes the procedure under which the Commission proceeds by complaint and in the proper case issues its order to cease and desist.[3]

We are solely concerned here with the question of whether respondent has complied with the mandatory requirements of the Fur Products Labeling Act or has engaged in any activity which by that Act is made unlawful. The Fur Products Labeling Act is special legislation dealing with particular problems of a specific industry enacted for the protection of consumers. Its purpose, insofar as the specific problem discussed here—fur product nomenclature—is concerned, was to eliminate the possibility of a seller of fur products representing in any manner that fur products offered by him are composed of any fur, or furs, other than those actually contained in a particular garment. One of the methods employed by the Congress to accomplish this result was to prohibit absolutely the use on labels or in invoices or advertising of the name of any animal other than the name of the animal or animals that produced the fur.

In view of the foregoing considerations, paragraphs 14 and 15 of the initial decision will be modified as indicated and, as so modified, the initial decision will be adopted as the decision of the Commission. An appropriate order will be issued.

FINAL ORDER

It appearing that the hearing examiner filed an initial decision in this proceeding on April 27, 1959, and on May 11, 1959, filed an order amending the initial decision; and

The Commission having concluded, for the reasons stated in

[2] 15 U.S.C. 45.

[3] See Section 8(a) of the Fur Products Labeling Act, *supra*.

the accompanying opinion, that the initial decision should be modified in certain respects:

It is ordered, That the last thirteen lines of paragraph 14 of the initial decision be deleted and that the following language be substituted therefor:

"The allegations of subsection (d) of paragraph 8 of the complaint have been established."

It is further ordered, That the last sentence of paragraph 15 of the initial decision be modified to read as follows:

"The use of such language is in violation of Section 5(a)(5) of the Act."

It is further ordered, That, as so modified, the initial decision, including the aforesaid order of May 11, 1959, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That respondent, the Higbee Company, 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 contained in the initial decision as modified.