IN THE MATTER OF

SUNWAY VITAMIN COMPANY, ET AL.

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

Docket 6872. Complaint, Aug. 21, 1957—Decision, Aug. 14, 1958

Consent order requiring Chicago sellers to cease representing falsely in pamphlets, circulars, and other advertising matter that use of their "Sunway Super Vitamin Tablets With Iron" would be effective in providing pep, zip, vitality, and more red blood, and in relieving nervousness and restlessness.

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

Mr. John S. Hall and *Mr. James McKeag*, of Chicago, Ill., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

On August 21, 1957, the Federal Trade Commission issued a complaint alleging that the Sunway Vitamin Company, a corporation, Ethel P. Heyman and Daniel J. Haskell, individually and as officers of said corporation, hereinafter called respondents, had violated the provisions of the Federal Trade Commission Act by making false, misleading and deceptive statements and representations in advertisements of their product "Sunway Super Vitamin Tablets with Iron" which they distributed.

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

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

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

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

JURISDICTIONAL FINDINGS

1. Respondent Sunway Vitamin Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 314 W. Institute Place, Chicago, Ill.

2. Respondents Ethel P. Heyman and Daniel J. Haskell are individuals and officers of said corporation. Their address is the same as the corporate respondent.

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

ORDER

It is ordered, That the respondents Sunway Vitamin Company, a corporation, and its officers, and Ethel P. Heyman and Daniel J. Haskell, individually and as officers of said corporation, their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of Sunway Super Vitamin Tablets With Iron, or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated, 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:

(a) That the use of said product is of value in providing pep, zip or vitality or in relieving nervousness or restlessness, unless expressly limited, in a clear and conspicuous manner, to those cases where the lack of pep, zip or vitality or nervousness or restlessness are due solely to a deficiency of vitamins;

(b) That the use of said product will be of value in providing benefits for or relief from any condition or disorder, unless expressly limited, in a clear and conspicuous manner, to those cases where such conditions or disorders are due solely to a deficiency of vitamins;

(c) That the use of said product will provide red blood, or that it will have any significant beneficial effect on the blood.

2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the representations prohibited in paragraph one 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 14th day of August 1958, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

CONSOLIDATED RETAIL STORES, INC.

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

Docket 6947. Complaint, Nov. 19, 1957—Decision, Aug. 14, 1958

Order dismissing—for the reason that the charges of wrongdoing involved a period during which respondent company was under the jurisdiction of the District Court and was controlled by the executive officers appointed by the Court—complaint charging violation of labeling, invoicing, and advertising requirements of the Fur Products Labeling Act.

Before: *Mr. John Lewis,* hearing examiner.
Mr. John T. Walker supporting the complaint.
Respondent, *pro se.*

INITIAL DECISION AND ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE

This proceeding is before the hearing examiner, for final consideration, upon motion of respondent to dismiss the complaint. The complaint, which was issued November 19, 1957, charges respondent with having violated the Fur Products Labeling Act and the Rules and Regulations issued thereunder, and the Federal Trade Commission Act, through the misbranding of certain fur products and the false and deceptive invoicing and advertising thereof. After being served with said complaint, respondent filed a motion seeking the dismissal thereof on the ground that the acts and practices charged therein occurred while respondent was a debtor-in-possession in a proceeding in the United States District Court, under Chapter XI of the Bankruptcy Act, and that it has since been reorganized under new management and control. Counsel supporting the complaint filed answer to said motion requesting a hearing to determine the facts alleged in respondent's motion, and to afford him an opportunity to cross-examine appropriate officials of respondent with regard to such facts.

Thereafter, pursuant to order of the undersigned, a hearing was held on April 29, 1958, in Washington, D.C. At said hearing respondent appeared by its secretary, a member of the Bar of the State of New York, and testimony and other evidence were offered through said official and another official of respondent. Counsel supporting the complaint was afforded full opportunity

to cross-examine said witnesses and to call witnesses on his own behalf with respect to the issues raised by respondent's motion. Following the close of said hearing, and pursuant to leave granted by the undersigned, memoranda in support of and in opposition to the motion to dismiss were filed by the parties.

The undersigned has carefully considered the testimony and other evidence offered at the hearing and the memoranda filed by the parties, and makes the following findings with respect to the facts involved in respondent's motion to dismiss:

1. On September 28, 1956, respondent filed a petition in the United States District Court for the Southern District of New York, proposing an arrangement with its creditors under Chapter XI of the Bankruptcy Act. As a result of the filing of said petition, the company came under the jurisdiction and supervision of the District Court. It was not permitted to pay any of its debts incurred prior to September 28, 1956, and the employment of officers and executives was subject to approval of the Referee in Bankruptcy for the United States District Court.

2. The company's chief executive officer having resigned prior to the filing of the petition in the District Court, a new chief executive officer, David M. Freudenthal, was appointed on October 10, 1956, by order of the court. Freudenthal acted as the executive operating head of respondent from the date of his appointment until October 2, 1957, when respondent was discharged from the supervision and jurisdiction of the court.

3. Meanwhile, on July 25, 1957, one, A. M. Sonnabend of Boston, Mass., entered into an agreement with the company providing for the advancing of substantial funds by him which would permit the company to enter into appropriate financial arrangements with its creditors, and providing, further, for a reorganization and recapitalization of the company under which Sonnabend and his associates would assume the controlling interest therein. Said agreement and the plan for reorganization and recapitalization of the company were approved at a special meeting of stockholders held September 10, 1957. On October 2, 1957, an order confirming arrangement was entered by the Referee in Bankruptcy discharging respondent from the control and supervision of the court.

4. Following the signing of the order, the entire board of directors of the company and the chief executive officer appointed by the court resigned. A. M. Sonnabend became chairman of the board and treasurer of the company and various associates of

his became president and vice president, and members of the company's new board of directors. The controlling interest in the company passed to A. M. Sonnabend and his associates, none of whom were stockholders or had any connection with respondent prior to the filing of the petition for an arrangement in the District Court. None of the former officers and directors who held stock in the company prior to September 28, 1956, were retained by the company in any executive capacity. The former treasurer and secretary, neither of whom owned any stock in the company, remained in its employ, but neither had, nor now has, any part in the formulation of policy with respect to the sale or labeling of fur coats.

5. Following the assumption of control by the new officers and directors on October 2, 1957, the company instituted new procedures and controls in an effort to insure compliance with the law in the sale of fur products. A number of the store managers were changed and some of the stores were closed. A new promotion director was employed and advertisements prepared in connection with the sale of furs were required to be submitted to the fur buyer for his approval. Basic changes in the company's merchandising policy have been instituted pursuant to which respondent's stores will handle and sell merchandise at price lines above those previously handled.

CONTENTIONS AND CONCLUSIONS

Respondent contends that the complaint herein should be dismissed for the reason (a) that a new and different entity came into being on October 2, 1957, with the signing of the Order of Confirmation, which company had not engaged in the acts and practices charged in the complaint, and (b) even assuming the reorganized company cannot be considered to constitute a new entity, that the examiner and the Commission, in the exercise of their discretion, should order the complaint dismissed in view of the complete change of management and control and the steps taken to insure compliance with the law. Counsel supporting the complaint contends that the reorganization did not change the respondent into a new legal entity and that the complaint should not be dismissed since there is no assurance that the acts and practices charged will not be continued despite the establishment of new controls.

While it is true, as contended by counsel supporting the complaint, that respondent is still the same legal entity, it is also

clear that it has undergone so substantial a change in management, control and operations that little remains of the old corporation other than the legal shell. The question therefore arises whether the public interest requires a continuation of this proceeding against a respondent so substantially metamorphosed. Just as the Commission has not hesitated to disregard the fiction of the corporate entity in order to pursue those actually responsible for perpetrating a wrong against the public, so, conversely, there may be circumstances where the Commission may not feel it is in the public interest to take advantage of the technical continuation of a legal entity in which the guiding forces responsible for the violation of law have been completely displaced. See *The LeBlanc Corp.*, 50 FTC 1028; cf. *Seaboard Equipment Co.*, Doc. No. 6632, April 16, 1957.

While no actual evidence of the violations charged was adduced at the hearing, counsel supporting the complaint conceded that the bulk of the evidence which he would offer involved the period between September 1956 and October 1957, when the respondent was under the control of the court-appointed chief executive officer. He further conceded that none of the evidence which would be offered involved the period after October 2, 1957, when the new officers and directors took control of the corporate respondent under the reorganization.

In view of the fact that the charges of wrongdoing involve primarily a period during which the company was under the jurisdiction of the District Court and was controlled by the executive officer appointed by the court, and considering the complete change of management and control following the company's discharge from the supervision of the District Court and the changes in policy which have been undertaken since that date, and also the lack of any proposed evidence indicating a continuation of the alleged wrongful practices by the reorganized company, it is the opinion and finding of the undersigned that the public interest does not require a continuation of this proceeding. The situation here present can hardly be distinguished from *The LeBlanc Corp.*, *supra*, in which the Commission reached a similar conclusion. Accordingly,

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

DECISION OF THE COMMISSION

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 14th day of August 1958, become the decision of the Commission.

IN THE MATTER OF

MORRIS LOBER & ASSOCIATES, INC., ET AL.

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

Docket 7003. Complaint, Dec. 19, 1957—Decision, Aug. 14, 1958

Order requiring two associated corporations in New York City to cease misrepresenting prices of the power lawn mowers they sold to dealers and others for resale to the public, by suggested list prices far in excess of the actual selling prices, disseminated in newspaper advertisements and reprints of customers' advertising, on distributors' price sheets furnished their retail customers, and on shipping cartons.

Mr. Eugene Kaplan for the Commission.
Segan & Culhane, of New York, N.Y., for respondents.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

On December 19, 1957, complaint herein was issued by the Commission charging respondents with violation of the Federal Trade Commission Act in the use of fictitious prices in the sale of its lawn mowers by furnishing retailers and resellers the means and instrumentalities whereby the retailers may mislead and deceive members of the purchasing public as to the regular and usual prices of their lawn mowers. Answer was filed and thereafter four hearings were held at which testimony and other evidence was received in support of the allegations of the complaint. Respondents presented no evidence by way of defense relying instead on a number of motions to strike or dismiss, all of which, save one, were denied. The record consists of 297 pages of transcript and 41 exhibits. At the close of the hearings counsel for the Commission submitted proposed findings of fact, although counsel for respondents did not. Upon the entire record, as so constituted, and from his observation of the witnesses, the undersigned makes the following findings of fact.

FINDINGS OF FACT

1. Respondents Morris Lober & Associates, Inc., and Handy Andy Products, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of Delaware, with their principal office and place of business for-

merely at 730 Fifth Avenue, New York 19, N.Y., and currently at 7 Central Park West, New York, N.Y.

Respondents Morris Lober, Leona Lober and Marcia Wilner (subsequently married and presently Marcia Wilner Pava) are president and treasurer, vice president, and secretary, respectively, of both corporations. The individual respondent Morris Lober formulates, directs and solely controls the policies, acts and practices of the corporate respondents. His address is the same as that of the corporate respondents.

Leona Lober and Marcia Wilner Pava are vice president and secretary in name only and do not formulate, direct or control the policies, acts and practices of the corporate respondents.

2. Respondents are now, and have been for several years last past, engaged in the sale and distribution of power lawn mowers to various dealers and others for resale to the public.

In the regular and usual course and conduct of their business, respondents cause, and for the past several years have caused, their products, when sold, to be transported from places in the States of Ohio and Indiana, among others, to purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act, among and between the various states of the United States and the District of Columbia. Respondents' volume of business in said power lawn mowers in said commerce is, and has been, substantial.

3. Respondents at all times mentioned herein have been in competition with other corporations, firms and individuals engaged in the sale of power mowers in commerce between and among the various States of the United States and the District of Columbia.

4. In the course and conduct of their business as outlined and for the purpose of inducing the purchase and promoting the sale of their power lawn mowers in commerce, respondents have placed in the hands of their purchasing retailer customers, who resell these power lawn mowers to the public, a means and instrumentality whereby such retailers or resellers may mislead and deceive members of the purchasing public as to the usual and regular retail prices of their lawn mowers.

5. These instrumentalities consist of newspaper advertise-

ments placed by the respondents in various newspapers for circulation and dissemination in the trade, all of which carry the manufacturer's list prices or suggested list prices. Typical of these is an advertisement placed by respondents in Retailing Daily, Thursday, October 18, 1956, as follows:

Big New '57 Models with 4-Cycle Clinton Engines. Recoil Starters.
19" Mower, 1¾ H.P. Suggested list $109.95 can retail with full markup for only $59.95.
21" Mower, 2½ H.P. Suggested list $139.95 can retail with full markup for only $69.95
23" Mower, 2¾ H.P. Suggested list $154.95 can retail with full markup for only $79.95.

6. Second among these instrumentalities disseminated by the respondents are glossy prints picturing respondents' power mower, each of which contains suggested list prices for the respective mowers far in excess of the actual selling price of these mowers.

7. Third among these instrumentalities disseminated by respondents are reprints of retail store advertisements placed in local newspapers by customers of respondents containing a suggested list price together with the actual selling price in each advertisement. These advertisements or copies thereof, and tear sheets, are apparently collected by respondents for dissemination to new customers indicating what respondents' other customers are doing in the sale of respondents' power lawn mowers.

8. Fourth among these instrumentalities are cartons in which respondents' power lawn mowers are shipped, imprinted with the model number or the cutting width, and respondents' corporate names together with the suggested list price, which again is far above that at which the mowers are in fact sold or to be sold.

9. The fifth means used by respondents to disseminate their fictitious prices was by way of distributor's price sheets and other literature each of which conveys the suggested list prices to potential resellers.

10. The testimony of several purchasers from respondents, who were officials of department stores, indicates that the individual respondent Morris Lober on sales visits discussed suggested list prices as well as actual resale prices indicating clearly knowledge of the use to which his suggested list prices were being put and for which they were designed to be used by him.

11. The testimony of the buyers who appeared as witnesses is unanimous, with the exception of one or two instances, that

respondents' power lawn mowers were never sold at or anywhere near these suggested list prices. These exceptions were new sample models which were sold at the full suggested price off the floor by happenstance.

12. In most instances, purchasers for resale of respondents' mowers used respondents' suggested list prices to compare with the price at which they actually resold the mowers. It matters not that several others shaved the suggested list price to a figure different and lower than that of respondents' suggested list price. The resultant figure was, nevertheless, far higher than the sale price advertised.

13. The testimony is also unanimous that the use of these fictitious suggested list prices disseminated by respondents was a potent sales aid in moving these power lawn mowers into the hands of the consumer. It is also clear from the record that the normal markup for power lawn mowers runs from 25 to 40 percent above purchase cost depending upon seasonal demand and that respondents were well aware of this. In any event respondents' suggested list price was far in excess not only of the actual consumer sales price, but also of this normal markup in the trade. Thus, a mower bought from respondents for $47 and resold for $77 at the start of the season, and at $68 as a close-out price at the end of the season, nevertheless, carried repondents' suggested list price of $154.95. This was typical of these price relationships throughout several years in a number of stores and localities.

14. Respondents' suggested list prices are fictitious and exaggerated constituting a powerful inducement and enticement to to the consumer public to buy at what they think therefrom is a great bargain, and the consumer public is as a result repeatedly deceived and mislead thereby.

15. Use by the respondents of the aforementioned false, misleading and deceptive representations and statements has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were, and are, true and into the purchase of a substantial number of respondents' power mowers because of said erroneous and mistaken belief that they are acquiring such mowers at great bargains.

CONCLUSIONS

1. It is immaterial whether or not respondents' suggested list

prices represented, in comparison with other competitive lawn mowers, the value or true value of respondents' lawn mowers. (*Ma-Ro Hosiery Co., Inc.*, Docket No. 6436.)

2. It is likewise immaterial that respondents' purchasers were free to use or not use respondents' suggested list prices. (*Orloff Company, Inc.*, Docket No. 6184.)

3. This proceeding is in the public interest.

4. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public 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.

ORDER

It is ordered, That respondents Morris Lober & Associates, Inc., Handy Andy Products, Inc., corporations, and Morris Lober, individually and as an officer of said corporations, and respondents' agents, representatives, employees, successors and assigns, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of power mowers, or other merchandise in commerce, as "commerce" is defined in the Act, do forthwith cease and desist from:

1. Representing in any manner that certain amounts are the regular and usual retail prices of their power mowers, or other merchandise, when such amounts are in excess of the prices at which such products are regularly and usually sold at retail.

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

It is further ordered, That the complaint be, and the same hereby is, dismissed as to Leona Lober and Marcia Wilner Pava individually and as officers of the corporate respondents.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 14th day of August 1958, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents Morris Lober & Associates, Inc., and Handy Andy Products, Inc., corporations, and Morris Lober, individually and as officer of said corporations, shall, within

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

IN THE MATTER OF

GERSHCOW FUR COMPANY ET AL.

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

Docket 7047. Complaint, Jan. 21, 1958—Decision, Aug. 14, 1958

Consent order requiring a furrier in St. Paul, Minn., to cease violating the Fur Products Labeling Act by failing to comply with the labeling and invoicing requirements; by advertising in newspapers which failed to disclose the names of animals producing certain furs, the country of origin of imported furs, or that some products contained artificially colored or cheap fur, and which named animals other than those producing certain furs; and by failing to maintain adequate records as a basis for pricing claims in advertising.

Mr. William A. Somers for the Commission.

Milton Gray, Esq., for *Gray & Gray*, of St. Paul, Minn., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on January 21, 1958, 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 June 17, 1958, 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 June 9, 1958, 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 Gershcow Fur Company is a corporation, existing and doing business under and by virtue of the laws of the

State of Minnesota. Respondent Joseph Gershcow is an individual and officer of the corporate respondent. Said corporate and individual respondent have their office and principal place of business located at 26 East Sixth Street, St. Paul, Minn.

2. Pursuant to the provisions of the Fur Products Labeling Act and the Federal Trade Commission Act, the Federal Trade Commission, on January 21, 1958, issued its complaint in this proceeding against the respondents and a true copy was thereafter duly served on the respondents.

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

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

5. The 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 the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

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

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

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

9. The following order to cease and desist may be entered in this proceeding by the Commission without further notice to the 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 the persons 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 respondents, Gershcow Fur Company, a corporation, and its officers, and Joseph Gershcow, individually and as president 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 in the transportation and 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 has been made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur," and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

1. Failing to affix labels to fur products showing:

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

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

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

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

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

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

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

2. Setting forth on labels attached to fur product:

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

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

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

B. Falsely or deceptively invoicing fur products by:

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

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

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

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

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

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

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

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

1. Fails to disclose:

(a) The name or names of the animal or animals producing

the fur or furs contained in the fur product as set forth in the Fur Products Name Guide and as prescribed under the Rules and Regulations;

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

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

2. Contains the name of an animal or animals other than the name or names of the animal or animals that produced the fur.

D. Makes claims or representations in advertisements respecting comparative prices or values of fur products unless there are maintained by respondents full and adequate records disclosing the facts upon which such claims and representations are based.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the intial decision of the hearing examiner shall, on the 14th day of August 1958, become the decision of the Commission; and, accordingly:

It is ordered, That the above-named respondents shall, within sixth (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

LEO WALZER ET AL. TRADING AS H. WALZER & COMPANY

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

Docket 7088. Complaint, Mar. 20, 1958—Decision, Aug. 14, 1958

Consent order requiring Chicago furriers to cease violating the Fur Products Labeling Act by attaching to fur products tags bearing fictitious prices purporting to be regular retail prices; by advertising in newspapers which failed to disclose the names of animals producing the fur in certain products or that some products contained artificially colored fur, which misused the term "blended," and which falsely advertised percentage savings and distress sales; by failing to maintain adequate records as the basis for such pricing claims; and by failing in other respects to comply with the labeling, invoicing, and advertising requirements of the Act.

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

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

The complaint in this proceeding, issued March 20, 1958, charges the respondents above-named with violation of the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and the Rules and Regulations promulgated under the last-named Act, in connection with the introduction into commerce, and in the sale, advertising, and offering for sale in commerce, and in the transportation and distribution, shipping and receiving in commerce, of fur and fur products, as the designations "commerce," "fur," and "fur product" are defined in the Fur Products Labeling Act.

After the issuance of said complaint respondents, on May 27, 1958, entered into an agreement for a consent order with counsel in support of the complaint, disposing of all of the issues in this proceeding, which agreement was duly approved by the director and assistant director of the Bureau of Litigation of the Federal Trade Commission. It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

By the terms of said agreement, the respondents admitted all the jurisdictional allegations of the complaint and agreed that

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

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

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

Said agreement recites that respondents Leo Walzer and Joseph Walzer are individuals and copartners trading as H. Walzer & Company with offices and principal place of business located at 190 North State Street, Chicago, Ill.

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

ORDER

It is ordered, That respondents, Leo Walzer and Joseph Walzer, individually and as co-partners trading as H. Walzer & Company,

or under any other name, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the introduction into commerce or the sale, advertising, 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. Representing on labels attached to fur products, or in any other manner, that certain amounts are the regular and usual prices of fur products when such amounts are in excess of the prices at which such products are usually and customarily sold by respondents in the recent regular course of their business.

2. 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.

3. 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 by the Rules and Regulations.

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

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

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

(e) The name, 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 it in commerce.

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

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

4. Setting forth on labels attached to fur products:

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

ucts Labeling Act and the Rules and Regulations thereunder in abbreviated form.

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

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

5. Failing to show separately on labels attached to a fur product composed of two or more sections containing different animal furs information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations thereunder with respect to the furs comprising each section.

B. Falsely or deceptively invoicing fur products by:

1. Failing to furnish invoices 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 the fur products.

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 products contain or are composed of bleached, dyed or otherwise artificially colored fur, when such is the fact.

(c) All the information required under Section 5(a) of the

Fur Products Labeling Act and the Rules and Regulations thereunder in type of equal size and conspicuousness and in close proximity with each other.

2. Contains the term "blended" as part of the information required under Section 5(a) of the Fur Products Labeling Act and the Rules and Regulations thereunder to describe the pointing, bleaching, dyeing or tip-dyeing of furs.

3. Represents directly or by implication that respondents' regular price of any fur product is any amount which is in excess of the price at which respondents have regularly or customarily sold such products in the recent regular course of their business.

4. Represents directly or by implication through percentage savings claims that the regular or usual retail prices charged by respondents for fur products in the recent regular course of their business were reduced in direct proportion to the amount of savings stated, when contrary to the fact.

5. Represents directly or by implication that any fur products offered for sale are from the stock of a business in a state of liquidation, when contrary to the fact.

D. Making claims and representations in advertisements respecting comparative prices, percentage savings claims or claims that prices are reduced from regular or usual prices unless there is maintained by respondents full and adequate records disclosing the facts upon which such claims and representations are based.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 14th day of August 1958, become the decision of the Commission; and, accordingly:

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

Decision

IN THE MATTER OF
TOWNECRAFT INDUSTRIES, INC., ET AL.

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

Docket 7041. Complaint, Jan. 15, 1958—Decision, Aug. 15, 1958

Consent order requiring distributors in Ridgefield, N.J., of stainless steel cooking utensils known as "Chef's Ware" designed to employ the so-called "waterless" method of cooking, to cease representing falsely—in advertising and through salesmen furnished by it with sales manuals, talks, and sales talk visualizers—that use of its cooking utensils and waterless cooking preserved all food elements, was more conducive to health than other cooking utensils, and would assure good health; that odors in cooking meant that vitamins and minerals were being cooked out of food; and that food cooked in aluminumware becomes tainted because of previously cooked food retained in the porous metal.

INITIAL DECISION AS TO RESPONDENTS TOWNECRAFT INDUSTRIES, INC., HENRY ZADIKOFF, MICHAEL G. NAKASH, AND ERNEST BARBARIS

Before *William L. Pack*, hearing examiner.

Mr. Kent P. Kratz for the Commission.

Guggenheimer & Untermyer, of New York, N.Y., by *Mr. Louis Newman* for Townecraft Industries, Inc.; Henry Zadikoff, Michael G. Nakash, and Ernest Barbaris.

Mr. Joseph G. Abramson, of New York, N.Y., for Arthur I. Meyer.

The complaint in this matter charges the respondents with the making of certain misrepresentations in connection with stainless steel cooking utensils sold by them. An agreement has now been entered into by all of the respondents, except Arthur I. Meyer, providing for disposition of the proceeding as to these respondents by means of a consent order. The word respondents as used hereinafter will not include respondent Meyer.

The agreement provides, among other things, that respondents admit all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hear-

ing, respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

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

1. Respondent Townecraft Industries, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York. Individual respondents Henry Zadikoff and Michael G. Nakash are president-secretary and vice-president-treasurer respectively of the corporate respondent. Individual respondent Ernest Barbaris is a member of the board of directors of the corporate respondent. The individual respondents, formulate, direct and control the policies, acts, and practices of the corporate respondent. The address of all the respondents is 521 Oritan Avenue, Ridgefield, N.J.

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

ORDER

It is ordered, That the respondent Townecraft Industries, Inc., a corporation, and its officers, and respondents Henry Zadikoff, Michael Nakash, and Ernest Barbaris, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of stainless steel cooking utensils or any other cooking utensils of substantially similar composition, design, construction or purpose, do forthwith cease and desist from representing, directly or by implication:

(1) That all food elements are preserved in food when respondents' cooking utensils and the "waterless" method of cooking are used.

(2) That most illnesses are the direct or indirect result of vitamin and mineral deficiencies brought about by the improper preparation of food or misrepresenting in any manner the percentage of illnesses that may be so caused.

(3) That the use of respondents' cooking utensils and the "waterless" method of cooking is more conducive to health than other modern cooking utensils employing the "waterless" method of cooking and those utensils known as pressure cookers and steamers; however nothing contained herein shall prevent respondents from representing that more vitamins and minerals are retained in food cooked in their utensils utilizing the modern "waterless" method of cooking than when cooked in other utensils requiring substantially larger quantities of water.

(4) That the use of respondents' cooking utensils and the "waterless" method of cooking will promote or is conducive to better health except for the benefit to health accomplished by the additional vitamins and minerals retained through use of the modern "waterless" method of cooking.

(5) That odor emanating from food when it is being cooked means that vitamins or minerals are being cooked out of the food.

(6) That food cooked in aluminum cooking utensils becomes tainted.

(7) That food cooked or kept in aluminum cooking utensils becomes poisonous.

(8) That the use of aluminum cooking utensils will cause ill health.

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 Townecraft Industries, Inc., Henry Zadikoff, Michael G. Nakash, and Ernest Barbaris shall, on the 15th day of August 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Townecraft Industries, Inc., a corporation, and Henry Zadikoff, Michael G. Nakash, and Ernest Barbaris, individually and as officers and directors 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.

INITIAL DECISION AS TO RESPONDENT ARTHUR I. MEYER

Before *William L. Pack,* hearing examiner.

Respondent Arthur I. Meyer (erroneously referred to in the complaint as Arthur R. Meyer) was joined as a respondent in this proceeding upon the theory that he was a member of the board of directors of the corporate respondent and, along with the other individual respondents, formulated, directed and controlled the policies, acts and practices of the corporation, including those challenged in the complaint.

It now appears from an affidavit submitted by the said Arthur I. Meyer that he severed his official connection with the corporation in February 1957, almost a year prior to the issuance of the complaint, and that during the period of his connection with the corporation his duties were solely in connection with the supervision of financing, the purchasing of merchandise and the collection of accounts receivable. He had no responsibility for, nor did he participate in, the formulation of sales policies or sales techniques, nor did he participate in the supervision of sales personnel.

The affidavit further states that since February 1957, said individual has not participated in any way in the management of the corporation, his only connection with the corporation at the present being that he is a minority stockholder, and that he has no intention of resuming his official connection with the corporation in the future.

Upon the basis of the affidavit, said respondent requests that the complaint be dismissed as to him.

Counsel supporting the complaint has filed an answer to the request stating that he has no evidence available with which to refute the averments of the affidavit, and that he therefore does not oppose the request for dismissal.

It appearing to the hearing examiner that in the circumstances the request is appropriate and should be granted,

It is ordered, That the complaint be, and it hereby is, dismissed as to respondent Arthur I. Meyer.

DECISION OF THE COMMISSION

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner as to respondent Arthur I. Meyer shall, on August 15, 1958, become the decision of the Commission.

IN THE MATTER OF

FLEISHER'S, INC., ET AL.

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

Docket 7120. Complaint, Apr. 15, 1958—Decision, Aug. 22, 1958

Consent order requiring a furrier in Hagerstown, Md., to cease violating the Fur Products Labeling Act by advertising in newspapers which failed to reveal the proper names of fur-producing animals or when fur products were made of cheap or waste fur; by failing to keep proper records supporting price and savings claims; and by failing in other respects to comply with the invoicing and advertising requirements of the Act.

Thomas A. Ziebarth, Esq., for the Commission.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

The complaint in this proceeding, issued April 15, 1958, charges the respondents above-named with violation of the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and the Rules and Regulations promulgated under the last-named Act, in connection with the introduction into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution, shipping and receiving in commerce of fur and fur products, as the designations "commerce," "fur," and "fur product" are defined in the Fur Products Labeling Act.

After the issuance of said complaint respondents, on June 20, 1958, entered into an agreement for a consent order with counsel in support of the complaint, disposing of all of the issues in this proceeding, which agreement was duly approved by the director and assistant director of the Bureau of Litigation of the Federal Trade Commission. It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

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

ing of findings of fact or conclusions of law by the hearing examiner or the Commission, the filing of exceptions and oral argument before the Commission, and all further and other procedure before the hearing examiner and the Commission to which the respondents may otherwise be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission.

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

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

Said agreement recites that Respondent Fleisher's, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 20 Public Square, Hagerstown, Md.

Individual Respondents Max Fleisher, Martin Fleisher, and Ralph Goldman are president, vice president, and secretary, respectively, of the corporate respondent. Their address is the same as the corporate respondent.

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

ORDER

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

A. Falsely or deceptively invoicing fur products by:

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

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

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

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

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

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

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

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

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

1. Fails to disclose:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur product as set forth in the

Fur Products Name Guide and as prescribed under the Rules and Regulations;

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

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

2. Fails to set out the information required under Section 5(a) of the Fur Products Labeling Act and the Rules and Regulations thereunder in type of equal size and conspicuousness and in close proximity with each other.

C. Making pricing claims or representations in advertisements respecting reduced prices, comparative prices or percentage savings claims unless respondents maintain 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 22d day of August 1958, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

LOUIS SEAMON ET AL. D/B/A A & L SEAMON

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

Docket 7051. Complaint, Jan. 27, 1958—Decision, Aug. 23, 1958

Consent order requiring manufacturers in Brooklyn, N.Y., to cease stamping wallets and billfolds as "genuine leather" or "top grain cowhide" which were not entirely made of either, and attaching to them price tickets with purported retail prices which were fictitiously high.

Mr. Harry E. Middleton, Jr., supporting the complaint.
Mr. Irving Leavitt, of New York, N.Y., for respondents.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on January 27, 1958, charging them with the use of unfair and deceptive acts and practices and unfair methods of competition, in commerce, in violation of the Federal Trade Commission Act, by making false, misleading and deceptive representations with respect to wallets and billfolds manufactured and sold by them. After being served with said complaint respondents appeared by counsel and filed their answer thereto. Thereafter they entered into an agreement, dated May 22, 1958, 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 all respondents, by counsel for said respondents, and by counsel supporting the complaint, and approved by the director and assistant director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Respondents, pursuant to the aforesaid agreement, have admitted all the jurisdictional facts alleged in the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that respondents waive any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or 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 such agreement. It has been agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full hearing and that the complaint may be used in construing the terms of said order. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, and that said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

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

1. Respondents Louis Seamon, Irene Seamon, Al Seamon, and Bessie Seamon are individuals and co-partners doing business as A & L Seamon with their office and principal place of business located at 2635 Pitkin Avenue, Brooklyn 6, N.Y.

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

ORDER

It is ordered, That the respondents Louis Seamon, Irene Seamon, Al Seamon and Bessie Seamon, individually and as copartners doing business as A & L Seamon or under any other name and respondents' representatives, agents and employees directly or through any corporate or other device in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of wallets and billfolds or other articles of merchandise, do forthwith cease and desist from:

1. Representing directly or by implication that billfolds and

wallets or other articles made in whole or in part of substance other than leather are made of leather.

2. Representing directly or by implication that billfolds and wallets or other articles made in whole or in part of substance other than top grain cowhide are made of top grain cowhide.

3. Supplying purchasers of billfolds, wallets or other merchandise with price tags having prices or amounts which are in excess of the usual or regular retail selling prices of said billfolds, wallets or other merchandise or otherwise representing that the usual or regular retail price of merchandise is any amount greater than the price at which such merchandise is usually and regularly sold.

4. Putting into operation any plan whereby retailers or others may misrepresent the regular and usual retail price of their products.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 23d day of August 1958, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

CARL V. TORREY
DOING BUSINESS AS ECONOMY PUBLISHERS

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

Docket 7022. Complaint, Jan. 8, 1958—Decision, Aug. 27, 1958

Consent order requiring a publisher in Clearwater, Fla., to cease using deceptive employment offers—such as "cutting wanted items from your newspapers," "copying names for advertisers," "addressing envelopes," etc.—in newspapers and periodicals as a means of selling his pamphlets, booklets, and other printed materials.

Mr. Thomas A. Ziebarth for the Commission.
Frank J. Delany, Esq., of Washington, D.C., for respondent.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

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

On June 19, 1958, 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 respondent and the attorneys for both parties, under date of June 16, 1958, 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 Carl V. Torrey, is an individual doing business as Economy Publishers, with his office and principal place of business located at 205 Live Oak Lane, Clearwater, Fla.

2. Pursuant to the provisions of the Federal Trade Commission Act, the Commission, on January 8, 1958, issued its complaint in this proceeding against respondent and a true copy was thereafter duly served on respondent.

3. Respondent admits all the jurisdictional facts alleged in

the complaint and agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

4. Respondent waives:

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

b. The making of findings of fact or conclusions of law; and

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

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

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

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

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

Upon due consideration of the complaint filed herein and the said "Agreement Containing Consent Order to Cease and Desist," said agreement is hereby approved and accepted and is ordered filed if and when said agreement shall have become a part of the Commission's decision. The hearing examiner finds from the complaint and the said agreement that the Commission has jurisdiction of the subject matter of this proceeding and of the person of the respondent herein; that the complaint states legal causes for complaint under the Federal Trade Commission Act against the respondent, both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; whereby the following order as proposed in said agreement is appropriate for the just disposition of all the issues in this proceeding as to all of the parties hereto; and that said order, therefore, should be and hereby is entered as follows:

ORDER

It is ordered, That respondent Carl V. Torrey, doing business

as Economy Publishers or under any other trade name, and respondent's representatives, agents and employees, directly or through any corporate device, in connection with the offering for sale, sale or distribution of publications or other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from using any advertising matter which represents, directly or by implication, that employment is offered by respondent or that payment will be made by respondent for services to be rendered when, in fact, the advertisement is only an offer to sell a product.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner did, on the 27th day of August 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Carl V. Torrey, doing business as Economy Publishers 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

ALEX SALES COMPANY ET AL.

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

Docket 7104. Complaint, Apr. 3, 1958—Decision, Aug. 28, 1958

Consent order requiring sellers in Oklahoma City, Okla., of a preparation known as "Don's Hair Formula," to cease representing falsely in advertising that the great majority of cases of excessive hair fall and baldness are caused by disease of the scalp; that use of their preparation would cure such diseased condition and thereby prevent excessive hair fall and baldness, grow new hair, and cure baldness.

Mr. Ames W. Williams supporting the complaint.
Mr. Robert D. Allen, of Oklahoma City, Okla., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

On April 3, 1958, the Federal Trade Commission issued a complaint alleging that Alex Sales Company, a corporation, T. O. Whitten, Darwin Frayer, Gussie Singleton and Faye Whitten, individually and as officers of Alex Sales Company, hereinafter referred to as respondents, had violated the provisions of the Federal Trade Commission Act by making false, misleading and deceptive statements and representations in advertisements concerning their product "Don's Hair Formula" which they sell and distribute.

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

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

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

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

JURISDICTIONAL FINDINGS

1. Respondent Alex Sales Company is a corporation existing and doing business under and by virtue of the laws of the State of Oklahoma, with its office and principal place of business located at 2816 NW. 19th Street, Oklahoma City, Okla.

2. Respondents T. O. Whitten, Darwin Frayer, Gussie Singleton, and Faye Whitten are individuals and officers of the said corporate respondent, serving respectively as president, vice president, secretary and treasurer, with their office and principal place of business located at the same place as that of the corporate respondent.

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

ORDER

It is ordered, That the respondents Alex Sales Company, a corporation, and its officers, and T. O. Whitten, Darwin Frayer, Gussie Singleton, and Faye Whitten, individually and as officers of said corporation, and their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of Don's Hair Formula or any other cosmetic or medicinal preparation for use in the treatment of disorders of the hair and scalp, 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 "com-

merce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or by implication:

(a) That diseased scalp conditions are a major cause of excessive hair fall or baldness or misrepresenting in any manner the extent to which diseased scalp conditions may be a cause of excessive hair fall or baldness.

2. Representing that the use of respondent's preparation alone or in conjunction with any method or treatment will:

(a) Prevent excessive hair fall or baldness or cause the growth of new hair unless such representations are expressly limited to cases other than those known to dermatologists as male pattern baldness, and unless the advertisement clearly and conspicuously reveals that the great majority of cases of excessive hair fall and baldness are of the male pattern type and that in such cases the use of respondents' product will not be of value in preventing excessive hair loss, preventing baldness or in growing new hair.

(b) Cure dandruff or have any beneficial effect upon dandruff in excess of the temporary removal thereof.

3. Disseminating or causing the dissemination by any means, any advertisement for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of respondents' preparation, in commerce, as commerce is defined in the Federal Trade Commission Act, which advertisement contains any of the representations prohibited by paragraphs 1 and 2 hereof or which fails to comply with the affirmative requirements of paragraph 2(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 28th day of August 1958, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

JOSEPH JAYKO
TRADING AS CRAMWELL INSTITUTE, ETC.

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

Docket 6696. Complaint, Dec. 26, 1956—Decision, Sept. 3, 1958

Order requiring an individual in Adams, Mass., engaged in selling printed tests designed to determine the knowledge and ability of persons regarding certain subjects, and awarding to persons passing them degrees such as Bachelor of Science, Bachelor of Arts, and Bachelor of Laws, and diplomas designated as "College Equivalent Diplomas" and "High School Equivalency Diplomas," to cease representing falsely that he had authority to award such degrees and diplomas; that the educational qualifications of recipients were equivalent to those acquired by attendance at accredited institutions of learning; that his diplomas were recognized by industry, commerce and Government, had been awarded to thousands of persons, and would guarantee better paid jobs; and to cease misrepresenting the nature of his business by use of the word "Institute" in his trade name.

Mr. Morton Nesmith and *Mr. John Mathias* for the Commission.
Mr. Andrew J. Dilk, of Adams, Mass., for respondent.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

This proceeding, in substance, involves charges that respondent has violated the Federal Trade Commission Act by advertising, soliciting, and selling commercially in interstate commerce various types of alleged educational material, such as tests of the knowledge and ability of persons and unauthorized and unrecognized diplomas, including so-called high school "equivalency diplomas" and college level "equivalency diplomas," awarding the college degrees of "Bachelor" and "Master" in a large and practically unlimited variety of academic, professional, scientific and business subjects. It is charged that the said material has deceived and has the tendency to deceive the public into believing that respondent's diplomas and degrees are in fact equivalent to those issued by recognized institutions of learning. In short, respondent is charged with running "a diploma mill." Respondent, while admitting certain matters charged, denies others and, in substance, denies that he has violated the Act in any way. This initial decision finds generally that the allegations of the

complaint are amply sustained upon the whole record by a preponderance of the reliable, probative, and substantial evidence as required by Section 7(c) of the Administrative Procedure Act and the Commission's Rules of Practice for Adjudicative Proceedings adopted pursuant thereto, and that the respondent has violated the Federal Trade Commission Act in each of the several particulars charged. A cease and desist order is issued appropriate to the findings and conclusions which are hereinafter set forth.

This case was instituted by the filing of a complaint on December 26, 1956, legal service of which was duly had upon the respondent, who in due course filed his answer on March 7, 1957. Thereafter, hearings wherein evidence was presented were held in Boston, Mass., on March 28 and 29, 1957, and in New York, N.Y., on May 6, 1957, at which latter time Commission's counsel rested their case-in-chief and respondent also completed the presentation of evidence in his defense and rested. On June 19, 1957, Commission's counsel elected not to present any rebuttal evidence and upon their motion to close the case for the taking of evidence, such an order was entered on July 11, 1957, the parties being given to and including August 1, 1957, in which to prepare and file of record their respective proposed findings of fact, conclusions of law, and order.

Commission's counsel filed their proposals on July 24, 1957, and thereafter respondent's counsel filed a document entitled, "Respondent's Summary of Law and the Evidence." Since the evidence supports the proposed findings, conclusions and order submitted by Commission's counsel, the examiner has adopted them either in *haec verbae* or in substance and effect. The contentions of respondent made in his counsel's said filing, however, are not presented in such an orderly form as to admit of their being considered or passed upon as specific proposed findings of fact and conclusions of law. Such filing consists essentially of an argument ending in a prayer for dismissal of the complaint on the ground that the complaint is not sustained by a fair preponderance of the evidence. Such presentation is, therefore, not a set of findings, conclusions, and order as is required by Section 3.19 of the Commission's Rules of Practice for Adjudicative Proceedings, and it is rejected *in toto* as such, although it has been given full consideration.

The complaint charges, in substance, that respondent as an individual, trading and doing business under several trade names,

"Cramwell Institute" and "Cramwell Research Institute" at Adams, Mass., has printed, used and sold certain testing material allegedly designed to determine the knowledge and ability of persons regarding certain specific subjects, and, if the purchasers thereof pass respondent's said tests, alleged degrees, such as Bachelor of Science, Bachelor of Arts, and Bachelor of Laws, are awarded to such persons, and diplomas certifying such alleged degrees designated as "College Equivalency Diplomas" are issued to such persons as purportedly valuable evidence of the awarding of such degrees and the attainments of the respective holders thereof. It is further charged that high school "Equivalency Diplomas" are likewise so awarded and issued by the respondent. It is alleged that respondent causes certain of his printed material, including advertising matter, testing materials and diplomas, to be transported in interstate commerce from Adams, Mass., to such purchasers in various States of the United States other than the Commonwealth of Massachusetts. Respondent in his answer admits certain allegations of the complaint and denies others. The specific allegations, admissions, and denials of the pleadings and the issues thereby raised are each hereinafter fully discussed and decided.

The hearing examiner, after hearing and observing the witnesses, has given full, careful, and impartial consideration to the testimony and to all the other evidence presented on the record and to the fair and reasonable inferences arising therefrom, as well as to any and all facts pleaded in the complaint which are admitted by the answer. He has also given proper recognition to relevant matters of official notice as to which "any party shall on timely request be afforded an opportunity to show the contrary," as provided by Section 7(d) of the Administrative Procedure Act and Section 3.14(c) of the Commission's Rules of Practice for Adjudicative Proceedings. All arguments and contentions of counsel have likewise been fully considered. Upon the whole record thus evaluated and weighed, it is found that the material allegations of the complaint are each and all fully and fairly established by the preponderance of the evidence, the examiner specifically finding as follows:

Respondent, Joseph Jayko, is an individual trading and doing business as "The Cramwell Institute" and "The Cramwell Research Institute," with his office and principal place of business located in the First National Bank Building, 26 Center Street,

Adams, Mass. (Complaint, Par. One, Answer, Par. One.) The evidence also not only precisely supports this finding but further discloses that respondent, more or less in conjunction with and as a part of his business complained of in this proceeding, has operated for several years and now operates collaterally from the same place under other trade names, such as "Cramwell Institute Educational Testing Service," "Cramwell," "Cramwell Books," "Cramwell Books: Publications," and "Cramwell Publications." He also formerly operated under the name of "Air Institute," which he testified is now merged into and under his present trade names of "Cramwell Institute," and "Cramwell Research Institute."

It is the testimony of respondent, Joseph Jayko, that he was born in Adams, Mass., in 1917; that he attended Cheshire Grammar School, from which he graduated, thereafter enrolling in the Adams Junior High School, which he left after probably one year or so while he was still in the seventh grade because, as he stated it, "I was a little bored with the situation and I decided that I could do a better job myself and I studied at home"; that he then worked on the family farm, taking home study courses, some of which lasted a few months; that he later took short courses in a vocational training school at Pittsfield, Mass., which he believes was a "joint operation between the General Electric Company" and "The Federal Government or the State Government," it being an evening program that lasted some 6 or 8 months; that just prior to World War II he took an examination and qualified for pilot training under a reserve scholarship at the University of Massachusetts, passing the examinations at three different places and being notified he was qualified to enter "either Amherst or Massachusetts State" College; that after a quarter's enforced wait he enrolled at his first opportunity in "Massachusetts State" College, where he spent one semester; that subsequently he was assigned to Northeastern University in Boston as a student of aeronautical science in connection with pilot training and where he took an accelerated 12-week course, receiving a certificate of completion in aeronautical science; that (for some undisclosed reason) his "health was failing at that time," and about two months later he was discharged from the program. He contends that finding it difficult to obtain employment while on the reserve list he resigned therefrom. He was never regularly inducted into the military service but went to work on a government project in an aircraft factory in Cleveland, Ohio, as a flight

test inspector in the experimental division where he stayed for a few months; that since that project terminated around 1943, he then, about 1944, first became interested in his "Institute Testing Service"; that in 1945 he took the college entrance examination as a student for a degree at North Adams Teachers College, North Adams, Mass., where he spent 2 years, after which he took a year off to work, some 4 years later finally acquiring a Bachelor of Science degree from said college in 1951; and that after one full semester as a regular student plus some summer courses he received on August 31, 1955, his Master of Science degree from the College for Teachers at Albany, N.Y., which institution is a part of the State University of New York.

Having first conceived the idea of his "Institute Testing Service" as it particularly related to air navigation, he testified that he engaged in business as "Air Institute," compiling and selling courses in air navigation upon which he states he worked from about 1944 to about 1950 or 1951. While he contends in his testimony that the "Air Institute" had the approval and "blessing" of the Massachusetts Department of Education (R. 139–140), his testimony in this regard is clearly not entitled to credit by reason of respondent's exhibit No. 1, which is a letter to respondent from E. Everett Clark, director of the University Extension Division of the Department of Education of the Commonwealth of Massachusetts. This letter, dated December 17, 1947, addressed to respondent, acknowledges receipt from him of a "Report of Correspondence Schools" relating to his "Air Institute" work, but states that there is no provision in law in Massachusetts for approval of a correspondence school as such, the respondent being also advised, "It is not possible to authorize you to use in your advertising such a statement as you suggested." This letter, in effect, definitely refuses to grant any official approval to respondent's "Air Institute" or its advertising. It must be inferred therefrom that respondent desired to advertise that his program was officially recognized by the Massachusetts Department of Education, thereby qualifying him to receive Government payments for tuition, books, etc., for such veterans as might become his aviation course students under the so-called "G.I. Bill of Rights," which had been enacted near the close of the war to aid such veterans in their post-war education and in other ways. It nowhere appears in the record, however, that respondent's aeronautical correspondence courses were ever officially recognized by the United States Veterans Administration.

And that Jayko's claim to official recognition by the Massachusetts Department of Education is false is further confirmed by respondent's letter of some years later, and long after he had "merged" his "Air Institute" with "Cramwell Research Institute." In this letter, Commission's Exhibit 14-C, dated February 22, 1956, respondent states that his "Institute," "due to the nature of its operation is under Federal rather than State control." By this letter he himself has interpreted the position of the Massachusetts Department of Education to be that it has refused to officially recognize his business. There are also abundant other matters in evidence and of official notice referred to later herein, showing that respondent never had any official recognized status under the sanction and blessing either of State or of Federal law but to the contrary was falsely advertising and offering diplomas of no value contrary to both the Federal Trade Commission Act and the criminal statutes of Massachusetts.

It appears that his "Air Institute" was largely a guidance and counseling program, which he had begun after his discharge from the aeronautical program at Northeastern University. He continued this "Institute" during the period he spent as a student at Massachusetts State Teachers College and later at the College for Teachers at Albany, N.Y. About 1951, however, he states he began to broaden out his program on certain educational testing theories he claims to have evolved himself, whereby he ultimately abandoned the name "Air Institute," merging it with what he had by then decided to call and did call "Cramwell Institute" or "Cramwell Research Institute," the former name being only a convenient contraction of the latter. The exact time that respondent began to advertise in interstate commerce by offering his alleged "tests" and so-called "equivalency" degrees and diplomas under either the name of "Cramwell Research Institute" or that of "Cramwell Institute" in many fields of advanced learning is rather vague although most of such matter in evidence was published and circulated during the years 1955 and 1956.

Respondent's office only consists of a sort of foyer and two larger rooms, comprising in all an area approximately 40 to 50 feet by 25 feet. In this limited space he not only handles his "testing" and "equivalency diploma" business but also handles his publishing business, which is done under the various trade names of "Cramwell Books," or "Cramwell Publishing Company," "Cramwell Books: Publications," or "Cramwell." He meets here

occasionally with one or more of those whom he dignifies as his "consultants." He has no classrooms. His meagre library he estimates to consist of from 300 to 500 volumes, most of which material is related to his work, some being kept in the office and some at his home where he works after hours. He also states that the town library is used when needed. Since his town of Adams, Mass., is a town the census shows has a population of approximately 12,000, it is reasonably inferred that it is the usual town library Jayko has access to and not one with a large and varied assortment of specialized books relating to such technical subjects as law, aeronautical, civil, electronics and mechanical engineering, business administration, accounting, and other advanced and specialized but unnamed subjects which respondent purports to be sufficiently proficient in to qualify him to grant degrees to others in such subjects. Neither does Jayko have a laboratory in which to conduct any scientific experiments but claims that his "consultants" can do so, since each of the two alleged engineer "consultants" work for large concerns whose facilities are available for daily routine work. These "consultants" however, have no independent laboratories of their own and they themselves were not called to testify that they are permitted to use or have used their employers' laboratories, equipment or materiel, with which to prepare scientific engineering test questions or to in any way evaluate the answers students submit in response to such questions in order to obtain their "equivalent" engineering degrees. Therefore, it is only out of respondent's small office, which would scarcely qualify as a single classroom in even a small college, that all the diplomas and degrees awarded by him emanate throughout the United States.

There is no claim that respondent has desisted from or abandoned the advertising practices complained of in this proceeding. The complaint alleges (par. one) and the evidence shows that he is now and for more than one year prior to the filing of the complaint has been engaged in the sale, among other things, of printed material consisting of certain alleged "tests" which are designed to determine the knowledge and ability of persons taking such "tests" regarding specific subjects. Just what the "tests" were which the respondent compiled are shrouded in mystery as he does not disclose their nature in his testimony, claiming, in substance, they are kept confidential and are destroyed after being used. It is indicated by the evidence, however, that some of them at least are pirated from examinations conducted by

various authorities. Respondent testified that he provided his engineering "consultants" "with materials and the library, for example, materials which I use as much as I can tell. Material is usually taken from professional engineering examinations. We draw on those quite a bit. The New York State professional examination is the most difficult in the country, and I have copies of those and use those for reference and *we rewrite the examination* . . . and we use those quite a bit." (Emphasis supplied.) In other words, Jayko himself improved upon the most difficult professional examination in engineering in the entire country! He does not indicate, however, whether this is by making it easier or more difficult for the ones taking his "tests."

In the record Jayko's operations are repeatedly referred to as an "educational service," "educational testing service," "educational testing system," and "educational guidance and counselling service." The examiner has painstakingly studied the entire record to ascertain just what concrete service, if any, the respondent actually does render to his customers. His "service," by whatever name, appears to consist entirely of his so-called "tests" which are merely written examination questions, and his so-called "equivalency" diplomas and degrees. Jayko's testimony is so vague, uncertain, and wrapped up in an obscuring cloud of meaningless words that he expresses nothing that is positive on this main issue. He testified that he prepares certain "test" questions with the aid of certain of his alleged "consultants"; that these "tests" are then sent to a so-called proctor, a friend selected by any given purchaser of the "educational service," who then propounds the questions in the "test" and forwards the answers and questions back to respondent. There is no official supervision of the examinees nor any rules covering their use of answers already copied off, etc. Such transactions occur by means of mail between Jayko in Adams, Massachusetts, and the various places where such purchasers live and take their "tests" throughout the entire United States. Jayko says, "the majority (of his customers) are outside of Massachusetts." He says they are located in "all forty-eight" States. Upon receiving the answers, Jayko then evaluates them and upon payment of the balance due him and not until then, he issues his "equivalency" diplomas. The "tests" are then destroyed as already stated. He contends that he will not accept students who do not appear to have certain basic educational qualifications, but what he considers to be the criteria in such regard are likewise not clearly disclosed by him.

He says that "if" on the application blank "they claim a high school education, they have to present some kind of evidence, either state it on the application blank or if there is any question then I ask him to send some verification." He does not clarify what he does where the applicant claims no high school education and in any event in many cases he accepts at face value the representations made to him respecting the alleged educational background of the applicant. The receipt by Jayko of the required $20 advance fee which must accompany the application completes the applicant's qualification and enrollment.

Jayko takes the position that in each of his "tests" both the "test" and the customers' answers are confidential and are not submitted to the customer's employer unless specially released by the customer himself. He further states that no record is made concerning the marks achieved by students who for any reason fail to pass his "test," and that even the reports of those who are successful are considered confidential. It is true that respondent claims to prepare his "tests" with the very occasional and irregular aid of his said alleged "consultants." He is not clear as to the extent to which the services of such "consultants" are used by him. At most their services are employed by him only a few times a year. He claims that two engineers who are college graduates with degrees in their respective fields of mechanical and electrical engineering are among his "consultants." One is a boyhood and life-long friend who he claims "likes to crack out examinations." There are also two local teachers used by Jayko, evidently from the public or parochial schools of Adams. He does not delineate the qualifications of these two in any way. None of the four alleged "consultants" was called by Jayko as a witness to his or her own qualifications or to the work each did as a "consultant" for Jayko. This is probably immaterial in any event particularly since Jayko does not consider the possession of degrees by anyone in his employ material. His counsel appropriately asked with reference to the many professional and technical subjects in which Jayko issues degrees and diplomas:

You have no personal knowledge of these subject matters?

Jayko answered:

Well, I have a staff of consultants; these people are college graduates, holding degrees from accredited colleges although I don't take a degree as evidence of their qualification to work for me. I usually put them through a test.

Jayko contends he pays fees to each "consultant" for his assistance but does not divulge the amounts thereof. It is not claimed that any of such "consultants" possesses a Master's degree. In any event, Jayko is the final judge of the qualification of those to whom he awards any degrees, however advanced they may be, and the "equivalency" diplomas evidencing the same. Also, in the matter of original evaluation of the students, there is no evidence that he uses any "consultant." He determines for himself from the applicant's own presentation of his prior education and training just what his qualifications to take the alleged "test" are. The real qualification is the applicant's ability to pay the initial fee for the "test" and later to pay whatever balance is required for the "equivalency degree" and "diploma" to be awarded in that case.

He uses the word "psychometrics" freely in his advertising to describe his "service" and also employs it in his testimony. Since he does not even see, let alone personally interview, his customers, it is self-evident that he cannot measure the speed and precision of their mental processes. The applicability of the first two syllables to Jayko's methods, however, is indubitable.

In summary, Jayko's so-called "educational testing system" is not educational and has no system. There evidently is no keeping of permanent test records and related data. Jayko claimed with reference to one point in his testimony that he did not bring his records and he would "have to make a guess," although he had a brief case containing some papers, such as alleged testimonials, at the hearing. And just how the competency of anyone desiring to take such a "test" from Jayko can be compared by Jayko to college standards is apparently a dark secret that will die with Jayko. Since he professes to reduce his customers to an "average," he would undoubtedly be able by some legerdemain to qualify self-educated men of the calibre of Lincoln, Franklin, and Andrew Jackson as "average," provided, of course, they could pass his "test" and pay the price. It would no doubt be an honor for such superior persons to be so rated by Jayko. The examiner takes official notice that there are approximately 1,000 institutions in the United States of the collegiate or university level and that they have about 200,000 educated and qualified teachers possessing varying degrees of competency and advancement in particular subjects obtained after long and arduous courses of study and training in established educational institutions. It is also officially noticed that in 1955 such recognized

colleges and universities granted nearly 300,000 bachelor degrees, some 58,000 Master and second professional degrees, and nearly 9,000 Doctorate degrees. It is the sheerest fantasy to believe that a one-man business such as Jayko is can make competent comparative tests of his customers with the average college graduate at any level. He has no apparent standing with any accredited institution whereby he can receive the latest up-to-date relevant information, and even if he did it would be a mental and physical impossibility for one man, by any mechanical formula, by remote control or otherwise, to arrive at what was the knowledge and ability of the "average" college graduate. The respondent, who uses the high-sounding title, "Director of Education" in all his correspondence and on his "equivalency diplomas," says that in granting degrees and issuing such diplomas to any individual: "We evaluate the individual * * * we evaluate the person's background and give the test." And in the determination of what customer is entitled to his degree and diploma, Jayko also decides to award the same to "the person I feel is qualified." It must necessarily be inferred that respondent is the sole, ultimate authority who determines whether the applicant is sufficiently proficient in any of the numerous technical, scientific, professional, and general subjects wherein Jayko offers to award a diploma and degree. Notwithstanding Jayko's possession of both a Bachelor's and a Master of Science degrees, the examiner from his own background and experience is unable to believe, for example, that Jayko is qualified to evaluate any applicant and award him a degree as a "Bachelor of Laws," even in business law, which Jayko does not profess to have studied. The evidence shows particularly that Jayko was wholly ignorant and unacquainted with the commonly used legal term "eleemosynary institution." When asked as to whether his business was for profit or an "eleemosynary institution," his very confused answer was:

> I wouldn't know what eleemosynary meant [sic]; you got [sic] to get down to earth. You have to use more practical terms; you mean we are a technical institute dependent upon personal education acquired elsewhere? (Rec. 265)

It is evident that Jayko is conducting what he calls an "institute" sans buildings, sans campus, sans classrooms, sans library worthy of the name, sans laboratories, sans faculty, sans courses of study either in residence or by correspondence, and sans students. Stripped to its bare bones, it might as well have been called by him "Jayko's Institute" because there is nothing to it but Jayko. His own counsel said at one point in the record, with

reference to one of the various "Cramwell" names, "it is one and the same thing—Joseph Jayko, director, owner, proprietor, anything you want to call it." But he cannot even legally use the term "Institute" and has deceptively and unlawfully misused the word. He certainly cannot pretend to be "equivalent," for example, to Massachusetts Institute of Technology, Wooster Polytechnic Institute, or Babson Institute, all in Massachusetts, to mention but a few of the highly recognized "Institutes" of the entire country. Jayko actually compares himself to Princeton Testing Institute. But misuse of the word "institute" has been frequently condemned by the Commission as well as by the judiciary. In *Branch* v. *F.T.C.* (C.C.A. 7, 1944), 141 F.2d 31, affirming 36 FTC 1 and 38 FTC 857, the facts were very similar to the case at bar. The respondent there offered many types of courses in engineering, scientific subjects, and law, among many others, and issued diplomas under the name of "Joseph G. Branch Institute of Engineering and Science." The court referred to the business as a "diploma mill" (141 F. 34) and sustained the Commission's cease and desist order against the use of the word "intitute" as well as the word "university" by said repondent, the Commission having determined that the use of either word implied that said respondent operated an educational institution of higher learning with the power to confer degrees and to authenticate diplomas and degrees, as well as doing many other acts similar to those of the respondent herein. The distinction urged by respondent that Branch sold correspondence courses while Jayko does not is of no aid to Jayko here. If the offering both of pretended courses and of sham diplomas is worthless in the *Branch* case, the entire absence of courses here can hardly add value, weight and lustre to respondent's diplomas. Other cases in which the Commission has forbidden the misuse of the word "institute" are : *Preparatory Training Institute* v. *F.T.C.*, 38 FTC 712, 720 (1941, appeal dismissed by C.C.A. 3, 1945) ; *F.T.C.* v. *Career Traning Institute, et al.*, 44 FTC 968, 969, 976 (1948) ; *F.T.C.* v. *National Coaching Institute, Inc., et al.*, 48 FTC 1214, 1219–1220, 1223 (1952) ; and *F.T.C.* v. *Federal Coaching Institute, Inc., et al.*, 49 FTC 1138, 1152 (1953). As the Commission well said in *Federal Coaching Institute, supra* :

> (T)he word "Institute" * * * implies the operation of a resident institution of learning with a staff of competent, experienced, and qualified educators offering instruction in philosophy, the arts and sciences, and other subjects of higher learning.

The evidence manifestly shows that Jayko in no manner can qualify as an "institute" and that his use of the word "Institute" in connection with the sale of his alleged "tests" and fake and unlawful "equivalency diplomas" and "degrees" is in itself false, misleading, and deceptive.

Jayko has conducted the business of selling his so-called "tests" and "equivalency" diplomas and degrees for several years last past in commerce throughout the United States, obtaining his customers by reason of certain advertising which is in the record entirely without objection. In this advertising he has made many statements, representations, and claims with respect to the nature and value of his printed materials and the results to be obtained therefrom in newspapers and magazines having national circulation, such as "Popular Science," "Business Management," and "Army" and "Air Force Times," as well as in letters, circulars, pamphlets, and other advertising material circulated generally through the mails by said respondent. While his advertising media holds forth high promises to the prospective buyers of his so-called "system" or "service," it is false, misleading, and deceptive in so many particulars as to be a complete tissue of falsehoods. The complaint specifically charges, however, but six general types of false statements in respondent's advertising, only one of which respondent denied making in his answer and continued to deny in his testimony, although he denied generally in his answer that any of such statements, representations, and claims were false, misleading, and deceptive. In his "Summary of Law and the Evidence" at its very beginning, inconsistently with his answer, he admits, however: "The individual respondent admits that he personally conducts such an institution under the two trade names (Cramwell Institute and Cramwell Research Institute) and accepts full responsibility for any evidence adduced at the hearing of the case. * * *" This would seem to be a broad waiver of any and all denials in respondent's answer, but the examiner, nevertheless, because of the specific issues drawn by the pleadings, has carefully considered each of the alleged misstatements of respondent in the particular framework in which it appears, with due consideration to the elements of the public to whom it appeals. While Jayko disclaims any attempt to mislead the young, he does offer high school "equivalency" diplomas, and it must be recognized that most of those seeking these are still lacking in maturity. Further, Jayko's advertising must be considered in the light in which it is written, not to be dissected

with a dictionary at hand and weighed carefully, sentence by sentence, clause by clause, and word by word. See *Aronberg* v. *F.T.C.* (C.C.A. 7, 1942), 132 F.2d 165, 167. It is so well established that if the advertising has the capacity or tendency to deceive the ordinary purchaser that voluminous citation upon the subject is unwarranted. See *Charles of the Ritz, et al.* v. *F.T.C.* (C.C.A. 2, 1944), 143 F.2d 676, 679–680. The Federal Trade Commission's duty is to protect the unwary and unsuspecting as well as the knowledgeable and worldly-wise—those who are trusting as well as the suspicious. *F.T.C.* v. *Standard Education Society,* 302 U.S. 112, 116 (1937). The fact that informed and sophisticated persons would readily recognize, laugh off, or even be amused by, obviously false and absurd statements in an advertisement does not detract from their power to deceive the ignorant, gullible, and less experienced. See *Gottlieb* v. *Schaffer, Postmaster* (U.S.D.C., N.Y., 1956), 141 F. Supp. 7, 16.

But Jayko urges that his advertising is directed to businessmen who cannot be deceived. He produced two volunteers, allegedly of such character, who were permitted to testify only on the theory that they might establish Jayko's contention that his diploma was generally recognized by industry and commerce. Among other similar statements, Jayko advertised specifically, "Most employers regard self-educated people holding college equivalency diplomas with far greater esteem than they regard those who drifted through formal college courses under someone else's motivating influence" (CX 9, p. 9, CX 13, p. 2); "Recognition is accorded Cramwell Institute equivalence diplomas by the majority of employers. . ." (CX 9, p. 10, CX 13, p. 4). See also similar claims in CX 14–c; and "Honored by business men" (CX 12). These sweeping claims are in no way established or justified upon the record here. See *Bristol-Myers Co.* v. *F.T.C.* (C.A. 4, 1950), 185 F.2d 58, 60, where an advertisement as to the results of an actual survey of only part of one profession was held misleading and deceptive. The testimony of these two witnesses completely missed the mark of general business recognition and amounted only to the usual inane statements of purportedly satisfied customers whose testimony is entirely irrelevant. See *Independent Directory Corp.* v. *F.T.C.* (C.A. 2, 1951), 188 F.2d 468, 471. One of these witnesses, Ruxton Fox, a social investigator in the New York City Department of Correction, testified, in substance, that he had purchased Jayko's service after becoming interested in it through a friend and that while he had not yet

completed his tests he was hopeful that his "Master of Arts in Psychology Equivalency Diploma" would be accepted by the School of Social Studies, a newly established adult education school, and qualify him therein for more advanced studies in psychology, as his specialized sociology studies in the Graduate School of Fordham University would not so qualify him in psychology. He had not put his "equivalency" diploma as a "Master of Arts" in psychology from "Cramwell Institute" to any trial since he had not even completed his "test" nor was he even proposing to submit his "equivalency diploma" to an accredited institution of learning. His need for adequate instruction in psychology is self-evident. The other witness, Norman Strand, who also voluntarily appeared for respondent, testified that he was a plant engineer and machine designer for a textile manufacturer at a very substantial salary. In January 1957, he read an advertisement of Jayko in a periodical, sent in his background data, and took Jayko's "test" for a Bachelor of Science degree in mechanical engineering. He had passed the "test" and had received his "equivalency" diploma about the last of April 1957, just before testifying. It is, indeed, remarkable that he, without study and by merely taking Jayko's "test" could achieve an engineering degree in 3 months equivalent to what a regular academic student requires at least 4 long years of college attendance to accomplish! On cross-examination Strand admitted that he had written a letter of inquiry (Comm. Exh. 28) on February 11, 1957, to the Board of Education of Massachusetts, which indicated his suspicion of Jayko's offer, and that he had been advised by John J. Desmond, Jr., Commissioner of Education, by letter dated February 15, 1957 (Comm. Exh. 29) that "the diploma described in your letter would have no value in any institution under the Department of Education." Strand, however, disregarded this and spent his money with Jayko. This witness, who also came to sing Jayko's praises, brings to mind an old English adage, "Who is so deafe or so blinde as is he that wilfully will neither heare nor see." It is evident that both of these witnesses were afflicted with a vain desire to acquire a diploma the easy way. Jayko appealed cunningly to their egos and that was his intention. Jayko was asked that if his "tests" do not admit to an accredited college, as he concedes, "(W)hat does it do? What does it render to the public?" He answered: "It gives a person an idea of how he compares with other people. * * * I go on the basis

of what people tell me. * * * I assume the person would have the survey form which I send out and they will say they are satisfied." In these two witnesses' admiration for Jayko, they are like the village yokels who heard the declamations of the local parson in Goldsmith's *Deserted Village,* who lost all his street debates, "And still they gazed, and still the wonder grew that one small head could carry all he knew."

Two witnesses produced by Commission's counsel, rather young and quite intelligent men, were also deceived and taken in by Jayko's advertising. Robert J. Rocheleau, a high school graduate who during his military service had taken educational courses offered in the Army, after returning to his home in Pawtucket, R.I., read Jayko's advertisement in the *Popular Science* magazine, and being attracted by his college "equivalency diploma" references, subscribed to Jayko's service, paying an advance fee of $20 to $25 to take the "test," took such a "test" in the liberal arts field, and received one of Jayko's "equivalency diplomas." Upon taking it to the University of Rhode Island, he found it had no recognition. He also learned from Dr. Michael F. Walsh, Commissioner of Education of Rhode Island, that the diploma he had received was worthless. Sergeant Albert Bedross, an Air Force recruiting sergeant stationed in Newark, N.J., who had an official "equivalency high school diploma" from the State of New York, similarly subscribed to, took respondent's "tests" successfully, and received his alleged degree as a "Bachelor of Science in Personnel Management." He had paid $50 for this service and had received an "equivalency diploma" signed by Jayko. He had read respondent's advertising, pamphlets and purported testimonials before subscribing, having first read Jayko's lead ad in the "Air Force Times," a publication circulated widely among military personnel. Desiring to proceed with his education, he wrote the Department of Education of Massachusetts for information about the "Cramwell Institute," which department forwarded him a copy of the complaint theretofore issued in the instant proceeding. He had previously made inquiry of the Director of Admissions of Rutgers University and was advised they had no information about Cramwell Institute as it was not listed in any of the standard directories or evaluation manuals relating to higher educational institutions recognized by official authorities throughout the United States and suggested to Bedross that he make further inquiry. Unlike the two witnesses called by Jayko, these two young military men, after some real

investigation, believed and testified that the money they had spent on Jayko's "tests" and diplomas was utterly wasted and valueless. The four witnesses taken together demonstrate clearly how gullible the American public are with respect to "bait" advertising. And that the silly vanity of some will not permit them to admit that they have been hoodwinked and defrauded even when the real facts become known is well demonstrated by Jayko's two satisfied customers, Fox and Strand.

Jayko's advertising consists of two general classes, that which appears in publications of national circulation which brings in "leads" (Commission's Exhs. 11 and 12, for example), and his followup literature such as Commission's Exhibits 5 — 8, 10–B, 19 — 23, 9, and 13. All of such advertising is pregnant with puerility, for one example only—in Commission's Exhibit 5, Jayko has advertised, among other things:

> In these institutions of learning, you do not spend long tedious hours listening to lectures; you do not even attend classes, for there aren't any. The only qualifications you must have to take advantage of the many opportunities offered by these institutions is a DESIRE to acquire a higher education and the ability to learn. *When you sign up, you receive a "membership" card which permits you to take out whatever reading or study material you choose.* You take the material home and do your studying in the comfort of your easy chair.
>
> *These institutions are Public Libraries*, where you will find much of the same material that is used in high schools and colleges, and it is available to you free of charge. * * * (Emphasis supplied.)

It is indeed a unique service Jayko renders that gives his customer a membership card which permits such customer to receive free the service and materials available in a public library! Andrew Carnegie most probably never imagined that it would require Jayko's membership card for members of the public to receive the benefits of his magnificant gifts to countless cities and towns throughout the land.

Jayko's ads, which were published in "Air Force Times," "Army and Navy Times," "Popular Science," and "Business Management," all publications of nationwide circulation, also held forth to the unwary many intriguing promises, such as "Double your chances for promotion with a College Equivalency Diploma—business administration, liberal arts, etc. Wonderful opportunities" and "Get ahead faster! Increase your salary. Gain promotion and prestige. Qualify for executive opportunities with college equivalency certification in business administration, business law; personnel management, advertising, English, liberal arts,

etc. Diplomas granted. Honored by businessmen." As an additional inducement in these advertisements, those desiring an easy short-cut to education are told: "Qualify by comprehensive examination at home. No courses" and "Comprehensive examinations based on your on-the-job experience, administered in your locality. Further study usually unnecessary." In the succeeding followup literature, which is sent upon the prospect's making inquiry of Jayko in response to the said "bait" advertisements, there is much loose and suggestive language pertaining to the merits of respondent's plan and the results obtainable therefrom. Emphasis is cleverly placed upon the "equivalency diploma" to be issued to the applicant, mostly relating to the fine quality of paper on which it is printed, like regular college diplomas, and also it flatteringly draws attention to the fact that it can be enlarged and hung upon the wall where all can see the competency of any such applicant who successfully passes Jayko's "tests." This advertising not only draws innocents into Jayko's net but is also attractive to others with fraud in their hearts who need a diploma of some sort in order to assist them in deceiving the public as to their qualifications. To loosely sell unscrupulous and unqualified persons these worthless diplomas without a close, intelligent, personal survey of their moral and professional capacities is like selling masks and burglar's tools to safebreakers. One who places in the hands of another a means of consummating a fraud or competing unfairly is responsible therefor under the Federal Trade Commission Act. See *Goodman* v. *F.T.C.* (C.A. 9, 1957), 244 F.2d 584, and cases cited in footnote 16.

It is particularly charged in the complaint that respondent's advertisements state and imply that respondent has authority to award degrees and diplomas and that the educational qualifications of persons awarded such degrees and diplomas are equivalent to those acquired by attendance at accredited institutions of learning (Complaint, par. two, subpars. 1 and 2). This is admitted by respondent (Answer, par. two, subpar. 1), although he quite inconsistently denies that he represented his service as being in effect a college education. Respondent's advertisements fully sustain the complaint's said allegations. The ordinary person reading such advertisements would believe that Jayko was a regular "Institute," with its usual concomitance of highly qualified teachers, library, scientific equipment, etc., and such person would also believe that Jayko had authority to award degrees which

would certify that their possessors had education equivalent to those who received authentic degrees from accredited institutions of learning. The record is replete with evidence that these claims are false, misleading, and deceptive. See Commission's Exhibits 16, 18, 27, and 29. Dr. R. A. Fitzgerald, Deputy Commissioner of Education for the Commonwealth of Massachusetts, testified generally with respect to the laws of Massachusetts pertaining to the granting of diplomas and that respondent's diplomas are not recognized by the Commonwealth as entitled to accreditation although the Department of Education itself has no control over respondent's issuance of such diplomas, matters of this kind being for the Attorney General. He agrees with the definitions in *Webster's Dictionary* that a diploma is "a document bearing record of graduation from, or of a degree conferred by an educational institution"; and that an institute is "an organization for the promotion of learning, philosophy, art, science, or the like, as a society, college, or technical school"; and that the phrase "diploma mill" means "an institution or sometimes a business concern that grants diplomas which are fraudulent or because of lack of proper standards are worthless." He further testified that by the word "equivalent" or the like respondent purports to say to the public that such "equivalency diploma" holder possesses an education equal in all respects to that represented by a diploma from a recognized degree-granting educational institution. He further testified that in compliance with Massachusetts laws, Commission's Exhibit 16, before the Commissioner of Corporations of Massachusetts will approve a certificate of organization in connection with the proposed incorporation of a college, junior college, or university, with power to grant degrees, such certificate is referred to the statutory Board of Collegiate Authority which makes a thorough investigation as to the applicants and their qualifications, including the nature of the institution, its faculty, equipment, courses of study, financial organization, leadership, etc. Public notice is given of a public hearing, and, after investigation by the Board following such hearing, it advises the Commissioner of Corporations whether it will approve the certificate or organization, and in the event of disapproval stating reasons therefor, in which case the aggrieved party has recourse to the superior court. He says Massachusetts now has some 60-odd degree-granting institutions of collegiate or university level, and that not more than 10 of them have been au-

thorized since 1943 to engage in educational activities which warrant the issuance of legally authorized diplomas and degrees.

Dr. Roger S. Hamilton, Dean of the College of Business of Northeastern University in Boston, with which institution he has been connected for more than 25 years, testified in this case as the authorized representative of the New England Association of Colleges and Secondary Schools which are qualified for accreditation in work at the high school level and above and to award diplomas and degrees therefor. He testified that an "equivalency" diploma would mean that the person receiving the diploma had pursued a program of study that was a satisfactory substitute for a regular education at recognized schools and at the collegiate level or above was essentially the same as that pursued at Northeastern University or any comparable institution. It would mean something equal to what other students receiving that type of degree from accredited institutions would receive. He further testified that Jayko, under either of his trade names of "Cramwell Institute" or "Cramwell Research Institute" was not a member of the New England Association of Colleges and Secondary Schools and that Jayko was in no way an accredited institution or association, and that in fact there is no such thing as a college "equivalency" diploma. He had examined certain "tests" used by the Cramwell Institute (which fortunately in some way had escaped Jayko's destruction) and in his opinion the student passing such "tests" would show he possessed certain knowledge but that this would not be the equivalent of a college education, and that the value of the diplomas issued by Jayko would be only a personal value in the sense of accomplishment to the individual taking the test but entirely worthless for the purpose of accreditation. He testified that the educational qualifications of an individual receiving Jayko's "College Equivalency Diploma" "would not be the equivalent of a diploma acquired by one who had attended an accredited institution of learning," and that a testing service merely records grades received by a student on examination but does not certify or issue any diploma or award any degree. He further testified that within his knowledge no recognition had ever been afforded Jayko's diplomas by the Commonwealth of Massachusetts, and, after personally hearing Jayko testify as to what his limited place of business and equipment was, he had the opinion that "Cramwell Institute" or "Cramwell Research Institute" was not an institution of higher learning with a staff of competent, experienced, and qualified educators.

Although Dr. Fitzgerald stated that the Commonwealth did issue high school equivalency diplomas to persons who qualified, he testified that these were issued only by institutions which were qualified under the laws of Massachusetts, Jayko admittedly has no such recognition under the laws of Massachusetts to even issue any high school equivalency diplomas.

It is contended by respondent that "the statutory law of Massachusetts is absolutely barren so far as the issue" in the instant case is concerned and that "no adjudication known to him has exposed any case where a court of record has dealt with 'equivalency diplomas or degrees' " (Respondent's "Summary of Law and the Evidence," p. 9). Jayko's counsel quite overlooks the fact that the Federal Trade Commission Act, as amended by the Wheeler-Lea amendment of 1938, fully empowers the Commission in the public interest to proceed against those who commit what are now designated in Section 5 of the Act as "unfair or deceptive acts or practices in commerce." This very important and useful amendment was intended to afford and in fact has afforded an appropriate remedy on behalf of the public against those numerous charlatans, fakirs, and quacks who falsely and deceitfully promise through any media in interstate commerce a purported educational and related business advantage to prospective purchasers of any service. The public is to be protected from this type of exploitation just as much as against those who purvey worthless or harmful nostrums or useless gadgets. The hundreds of successful proceedings brought by the Commission against "diploma mills" of various types are collated in *2 CCH Trade Regulation Reports*, §5083, pages 10,501–10,506. Many of these cases relate to fraudulent correspondence courses. It would serve no useful purpose to recite in detail any of such precedents as the general principles announced therein are controlling here and have been well established for many years.

Jayko further seeks to avoid the application of these principles and their thrust upon him, however, by claiming he no longer offers correspondence courses but only performs "tests" as to the competency of individual purchasers of his service and that he does not issue regular high school or college diplomas or award collegiate degrees, only issuing so-called "equivalency" diplomas and degrees to those whom he personally deems competent and qualified. But the sweeping breadth and comprehension of Section 5 of the Act is such that Jayko's alleged distinctions are wholly without merit. That there are no precise

precedents covering "equivalency" diplomas and degrees is immaterial. In fact, there could be none as Jayko claims to have been the discoverer, initiator, and founder of the terms "equivalency diplomas" and "equivalency degrees." Whether by his own ingenuity or by accident, the fact that Jayko has used the term "equivalency" is of no avail to him.

It is to be inferred that the term "high school equivalency diploma" became known to Jayko at the time he received such a diploma from Adams High School in 1951 when he acquired his Bachelor of Science degree from North Adams Teachers College. He claims, however, that the terms "college equivalency diplomas" and "college equivalency degrees" are his own invention and that he has "developed this technical term which has not yet been used in the field of education, to my knowledge, before, I have a copyright privilege on it * * * in my name, in publications; in other words, a trademark which is worthy of registration and consequently I have a common law property right in this term." While the examiner properly ruled Jayko's alleged definition of "college equivalency degree or diploma" out of the record, it is quoted by respondent in his "Summary of Law and the Evidence" (p. 8). This alleged definition was devised by Jayko between the hearings of this proceeding although he claims he had been using it in different language in his advertising literature for a long time prior to that. He claims this definition is so clear that a grammar school child can understand it. According to him, there are two valid systems of education, "first in the classic manner of class-room education and second, the kind espoused by the theories of Cramwell Institute" (id. p. 9), that respondent "is pioneering honorably in 'unorthodox' education" (id. p. 7); and he urges that the Massachusetts Department of Education should present clarification data on the comparative values of the two systems for legislation which will recognize the respondent's theories (id. p. 9). What Friedrich Froebel did for the kindergarten and Horace Mann did for the common schools, Jayko now proposes to do for higher education by his new, rapid streamlined "system" of "tests," "equivalency diplomas" and "equivalency degrees." Meanwhile, lacking legal recognition of his system for want of a better way, he is obliged to refer in his own "equivalency diplomas" that any holder thereof "having satisfactorily completed the requirements comparable to accredited college curricula in" (any course) with a Degree of Bachelor or Master of Arts or Science as the case may

be "prescribed for certification by this Institution, is awarded this College Equivalency DIPLOMA as an honorable testimonial of attainment." With an ambivalent attitude toward formal education and degrees, he explains that his own creative terms "equivalency diploma" and "equivalency degree" are used to distinguish them from the "formal type of diploma" and "as a reference. We have to compare with something. We used it as a frame of reference." It is clear from this testimony of Jayko that the documents as purported evidences of attainment cannot stand upon their own merits but must be compared with an accepted and well-known standard, namely, legitimate degrees and diplomas from accredited institutions of higher learning. His claimed resourcefulness and ingenuity in this new field of education has utterly failed to develop a distinctive new name for the printed sheet of paper which will describe adequately what he offers and sells as a solemn testimonial to his customers. It is quite evident that what he sells the paper with consists of the words "diploma" and "degree" "comparable to accredited college curricula," without which language he would make no sale.

In offering his own definition of "equivalency diplomas and degrees," respondent rejects a standard dictionary definition of the word "equivalency" as well as of other words. "Equivalency," Webster defines as a noun meaning, "a state of being equivalent; equality of worth, value, means, or force." This noun is evidently used in its adjectival sense of "equivalent," which according to the dictionary means "virtually or in effect; tantamount." Massachusetts has judicially defined the term as meaning "equal in worth or value." *Vianco* v. *Lay* (1943), 313 Mass. 444, 48 N. E. 2d 36, 40. The term to be "equivalent to" means "to be equal in value," "to be the same," "corresponding to," and"to be worth." *Desoe* v. *Desoe* (1939), 304 Mass. 331 23 N. E. 2d 82, 84. Other courts have similarly defined it. In *Knox* v. *O'Brien* (1950), 7 N. J. Super. 608, 72 A. 2d 389, 391, the court held:

> The word "equivalent" appears not to have been directly construed by our courts, but Mr. Justice Schaffer, speaking for the Supreme Court of Pennsylvania In re *Bonsall's Estate*, 288 Pa. 39, 135 A. 724, 725 (Sup. Ct. 1927), placed a judicial interpretation upon the import and meaning of the word by giving it the following effect: "Equal in worth or value, force, power, effect, import and the like." (Quoting from *McLean* v. *Moran*, 38 Mont. 298, 99 P. 836).

Therefore, the accepted dictionary meaning and the judicial interpretation of the word contradict any contention by Jayko that he in no manner has claimed that his diplomas and degrees

are not represented by him in his advertising to be in all respects as valuable, useful, and acceptable as the diplomas and degrees awarded by authentic institutions of higher learning. He disputes vainly, therefore, that evidence of accreditation by such recognized institutions is not an element of his advertising although in smaller type he has stated therein that his "equivalence diplomas are not intended to take the place of formal academic credits."

He makes no explanation as to what the word "Cramwell" means. It is not his own name, the examiner infers that respondent has adopted it as a foxy colloquial indication to the purchasers of his service that they may "well" "cram" or condense into a very short time the equivalent of what students at legitimate institutions of learning could acquire through long and patient study with resident attendance. Such matters Jayko belittles in his advertising, such as the expression above quoted that his "equivalency" diploma holders do not need to "spend long tedious hours listening to lectures."

Long prior to the establishment by Congress of the Federal Trade Commission, the evil of the "diploma mill" had already become evident to the people of Massachusetts. In 1892, that Commonwealth's legislative body, the General Court, had adopted an act prohibiting such practices and making the violation thereof a crime. The act is now Chapter 266, Section 89, *Annotated Laws of Massachusetts*, as amended. In 1915 the Supreme Judicial Court of Massachusetts spoke unanimously through a great jurist, its then Chief Justice Rugg, who in sustaining a conviction construed this act in a case involving fraudulent chiropractic degrees. In language singularly applicable to Jayko's fraudulent operations in this proceeding, the Court held:

> The provision of R.L. c. 208, § 75, material to the present prosecution is:
> * * * Whoever, without the authority of a special act of the General Court granting the power to give degrees, offers or grants degrees as a school, college, or as a private individual, * * * shall be punished. * * *
>
> Its obvious purpose is to suppress the kind of deceit which arises from the pretense of power to grant academic degrees, and to protect the public from the evils likely to flow from that variety of misrepresentation and imposition. The earlier part of the section deals with the simulated possession of educational distinctions, including college degrees. The section as a whole is an effort to punish the issuing and holding of sham degrees from colleges and other educational institutions. It aims to insure to the people of the commonwealth freedom from deception when dealing with those who put forward

professions of educational achievement such as ordinarily is accompanied by a collegiate degree from an institution authorized to grant it and to make certain that those who use such symbols have had the opportunity of being trained according to prevailing standards in some school of recognized standing, under teachers of reputation for learning. Wright v. Lanckton, 19 Pick. 288, 291. The statute should be interpreted in the light of its design to effectuate its purpose so far as the words used reasonably construed permit of this result. Considered historically and according to present practice, there are three general grades of such degrees, namely, Bachelor, Master and Doctor; although by some institutions intermediate distinctions are granted. * * * It is not to be assumed that the statute was intended to relate only to such degrees as were in use at the time it was enacted. It is comprehensive in its terms and includes whatever properly may be described as a degree at any time. * * * "Degree," as used in this statute, is any academic rank recognized by colleges and universities having a reputable character as institutions of learning, or any form of expression composed in whole or in part of words recognized as indicative of academic rank, alone or in combination with other words, so that there is conveyed to the ordinary mind the idea of some collegiate, university or scholastic distinction. * * * [1]

This decision and this statute are still the law of Massachussetts, Official notice is also taken that Massachusetts has a law prohibiting untrue and misleading advertisements by any person.[2] This act has been held constitutional in *Commonwealth* v. *Riley* (1924), 248 Mass. 1, 142 N. E. 915, and has also been construed in *Attorney General* v. *Pelletier* (1922), 240 Mass. 264, 134 N. E. 407, 420, both opinions also by Chief Justice Rugg. The record does not disclose that any citizen of Massachusetts has paid any money to respondent although one resident of the nearby city of Springfield, Edward A. Dunn, who had read respondent's "Bulletin" (which is not in evidence), made written inquiry of Jayko as to "Cramwell Institute's" standing as an educational institution (Comm. Exhs. 14 and 14-A to C).

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[1] *Commonwealth* v. *New England College of Chiropractic, Inc.* (1915), 221 Mass. 190, 108 N. E. 895-897.

[2] Chapter 266, § 91, *Annotated Laws of Massachusetts*, as amended, provides:

"Any person who, with intent to sell or in any way dispose of merchandise, securities, service, or anything offered by such person, directly or indirectly, to the public for sale or distribution, or who, with intent to increase the consumption of or demand for such merchandise, securities, service or other thing or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or an interest therein, makes, publishes, disseminates, circulates or places before the public, or causes, directly or indirectly, to be made, published, disseminated, circulated or placed before the public within the commonwealth, in a newspaper or other publication, or in the form of a book, notice, handbill, poster, bill, circular, pamphlet or letter, or in any other way, an advertisement of any sort regarding merchandise, securities, service or anything so offered to the public, which advertisement contains any assertion, representation or statement of fact which is untrue, deceptive or misleading, and which such person knew, or might on reasonable investigation have ascertained to be untrue, deceptive or misleading, shall be punished by a fine of not less than ten nor more than five hundred dollars; . . ."

The general reputation of New Englanders for canniness is apparently well justified since of the several hundred "equivalency" diplomas sold by respondent, he admitted that only five had been sold (as of August 29, 1955) to people located in New England (Comm. Exh. 10-A). The Federal Trade Commission's jurisdiction, of course, relates only to respondent's practices in interstate commerce, and Jayko's intrastate relations with others in Massachusetts are entirely matters for the appropriate authorities of that Commonwealth. Dr. Fitzgerald testified that the Department of Education, while not recognizing illegal diplomas and degrees, is not a law-enforcing agency and has no authority to, and does not, take action in matters such as Jayko's issuance of "equivalency" diplomas and degrees, but that if the Massachusetts law is violated in such respects such violators "would be subject to action by the Attorney General." The record is silent as to any action having been taken as to Jayko by that official, although Jayko did refer briefly to some sort of prior hearing as hereinafter set forth. While Dr. Fitzgerald testified that the Department of Education had itself made no complaint against respondent, the record shows that many complaints had been received by that Department concerning the value of respondent's alleged "tests" and "diplomas."

Despite Jayko's glaring deficiencies in many other regards, which are shown upon the record, he does seem to have an aptitude for charging sufficient fees to his customers to keep himself in business and is willing to seek business anywhere he can get it. His own testimony discloses that while his prices for various degrees, as they are stated in his advertising, are fixed originally at amounts to "cover expenses of the program * * * (but * * * if at the end of the year the program is in the red, well, we figure we better [sic] raise the price a little bit." He wrote to the Commissioner of Education of Massachusetts with reference to his so-called "educational service" that "it is financed by funds derived from a privately operated business, not a corporation. The fees charged in conjunction with the testing service are utilized for educational research purposes, and do not meet the expenses incurred." In his advertising he also professes, "in some cases the fees charged fail to cover the operational costs involved. Money received is used not only to pay the operational costs, but to further research in psychometrics. Thus the money you

pay in fees constitutes an important contribution to scientific research in this field." (See Comm. Exh. 9, p. 6) For reasons hereinafter stated, the hearing examiner does not believe these statements as to the eleemosynary character of Jayko's business. Jayko charges a fee of $47.50 now "for an educational rating at * * * the undergraduate level," $20 of which is payable upon the filing of the application. "The price or the fee on a high school level is * * * $27.50; * * * on the Master rating it's $57.50. * * *" He offers in special cases by arrangement to give examinations in various nonlisted subjects which will lead to college equivalence certification and indicates higher charges may be made in such case. The evidence shows that Jayko's wife acts as his secretary, and that while he does not enumerate any of his expenses it is quite evident that the business is run more or less on a shoestring, in a small office in a small town, so far as expenses go. Since he also sells courses and tests, and in the comparatively short time he has been in the "equivalency diploma and degree"-granting business he has, according to his testimony, had 302 paying customers, although only about "200 some" were actually issued diplomas, it is inferred that his earnings are substantial. While it is yet a long way from having become an enterprise of monumental proportions, it is still a business of sufficient size and interstate spread as well as of character to justify this proceeding in the public interest. Jayko does not confine himself to the retail business of selling equivalency diplomas and degrees but he is also a wholesaler of such products. He offers "club rates" to all sorts of organizations which may use his "testing service," such as commercial, industrial, civic, social, educational, and other groups, and states in his advertising: "Special discounts are available to candidates applying in groups of two or more." (See Comm. Exh. 9, p. 13) Since those who successfully pass his "tests" are then entitled to their "equivalency degrees and diplomas" upon paying the required additional amount, mass graduation even at a discount would be profitable to the individual applicants therefor as well as to Jayko. There is no evidence that this extensive program has yet been successful, however, but Jayko continues to offer it. In his advertising he slyly invites attention to the cheapness of his "equivalency degrees and diplomas" by so-called "comparison of costs (not including loss of income while attending classes)," purporting to show how expensive it is on an annual basis to be educated by various types of accredited educational institutions

which give either residence or correspondence instruction to their students. See Comm. Exh. 13, p. 4, where for one example only attendance at an "Ivy League" university is stated by Jayko to cost an annual average of $2,000. In 4 years this would amount to $8,000, plus loss of income as against Jayko's "college equivalency diplomas and degrees" obtained for a very nominal sum. It is the policy of the Federal Trade Commission Act and the duty of the Commission to prevent potential injury to the public by stopping unfair and deceptive acts and practices in their very inception. See *Goodman* v. *F.T.C., supra*; *Lichtenstein* v. *F.T.C.* (C.A. 9, 1952), 194 F. 2d 607, 610; *Progress Tailoring Co* v. *F.T.C.* (C.A. 7, 1946), 153 F. 2d 103, 105. See also, *F.T.C.* v. *Raladam Company* (1942), 316 U.S. 149, 152 and *Fashion Originator's Guild* v. *F.T.C.* (1941), 312 U.S. 457, 466, as to stopping unfair methods of competition in their inception.

The evidence shows that degrees are lawfully conferred only by duly authorized, accredited and recognized educational institutions of higher learning as evidence of, and in recognition of, prescribed and substantially standardized scholastic attainments in various fields by students of said institutions. Unless such degrees are so well earned and conferred, they do not constitute degrees in the accepted meaning of said term and are of no meaning and effect whatever. A diploma is a mere paper evidence of the attainment of the degree. All of the evidence in this connection not only shows that respondent has no authority to award degrees or diplomas but also shows that the educational qualifications of persons receiving respondent's "equivalency degrees and diplomas" are in no manner equivalent to those acquired by attendance at accredited institutions of learning, as alleged in the second charge of paragraph 2 of the complaint. The evidence also shows that the use of the word "Institute" as a part of respondent's trade names and references to the words "Institute" and "institution" in his advertising make false representation that respondent is conducting an institution of higher learning with an adequate and competent staff offering instruction in subjects of higher learning, as alleged in the sixth charge of paragraph 2 of the complaint.

The third charge of paragraph 2 of the complaint further alleges that respondent has falsely represented in his advertising that his "equivalency diplomas" are recognized by industry, commerce, and by federal and state organizations. Reference to such representations has already been made herein. Certainly such a

broad statement is not sustained. The respondent was unable to establish the acceptance of his "equivalency diplomas and degrees" by commerce and business, and the evidence not only shows his operations are not recognized by Federal and State authorities but establishes that they are in violation of both Federal and State laws. In the fifth charge of the second paragraph of the complaint, it is alleged that respondent represents his degrees and diplomas will guarantee better paid positions. Respondent's answer admits that he made such representations but in his evidence he denies that he ever guaranteed anything in such regard. Respondent's advertising states: "Recognition is accorded Cramwell Institute equivalence diplomas by the majority of employers * * *"; set out under a larger printed heading: "Employer recognition * * * or your money refunded." (See Comm. Exhs. 9, p. 10, and 13, p. 4.) This is merely the old "Satisfaction guaranteed or money refunded" dodge which has been employed by the unscrupulous for ages past. Carefully studied in connection with the correlated language under the foregoing exhibits, pages 7 and 3, respectively, "our guarantee" in large print, it would appear that the only so-called guarantee is a warranty of return of money "if at any time within 30 days from date of issue" the applicant feels he does "not wish to keep * * * [his] college equivalency diploma, return it and your money will be refunded in full." Of course, the advertisements as read by the average person convey the idea and impression that jobs are guaranteed as a result of obtaining such "equivalency diplomas and degrees." But Jayko apparently does not even live up to this money guarantee strictly construed. Despite his advertising that money would be refunded if the customer is dissatisfied even after the diploma is issued, he testified that he had had only one complaint in his experience, and that the money was promptly refunded, but in his later testimony he indicates that it is only the $20 initial payment that is returned. He says that after the examination has been scored, "a notice goes to the person that he has either passed or failed; if he has passed, we will notify him that he has passed and he is at liberty from that point on either to send us the rest of the money if he wants to complete his examination or he can drop the matter * * * I can't think of anyone failing to come back with the balance if he has passed." In other words, if he passes and wants his diploma he pays the rest of the money due Jayko and gets the diploma.

In his "Summary of Law and the Evidence," page 6, respondent

urges as to his customers that it "was their constitutional prerogative to part with their money, and a modest fee at that, just as they please without the intercession of the Federal Trade Commission." He also urges that his advertising is mere "puffing language" which "has long been accepted and certainly * * * [is] not the subject of any policing action by this Commission or any other enforcement agency, State wise or Federal wise." The respondent is sadly in error in both of these contentions. The advertising far exceeds legitimate "puffing" and "in sum, *capacity to deceive and not actual deception* is the criterion by which practices are tested under the Federal Trade Commission Act." *Goodman* v. *F.T.C., supra,* at page 604. And it is well established that the old rule of "caveat emptor" does not apply in Federal Trade Commission proceedings and even in the realm of civil torts it "has been abandoned, in favor of the more ethical attitude that one dealing with another in business had the right to rely upon representations of facts as the truth." *Goodman* v. *F.T.C., supra,* also at page 604.

Respondent advertised that "Cramwell Institute of Massachusetts has devised an Educational Testing System that has helped thousands of students and mature adults to obtain evidence of their educational level and specialized knowledge * * * this test, if passed successfully leads to the College Equivalency Diploma"—Bachelor degrees in several subjects of higher learning. Respondent, in the face of this plain advertisement which he admitted he published, denies it totally in his testimony. He was asked if "through the medium of oral or written advertising" he ever represented to the public that he had issued thousands of diplomas, and his answer was: "Never; nowhere in our literature is that statement made and I have never stated such thing with reference to diplomas." It is the printed word against his self-serving denial. This establishes the truth of the fourth charge in paragraph 2 of the complaint.

The evidence shows that all of the charges of the complaint are fully established and that respondent has made fraudulent claims respecting his authority to award degrees and diplomas, that those receiving his diplomas have educational qualifications equivalent to those granted from accredited institutions of learning, that his business is not an institute but is a commercial enterprise awarding degrees and diplomas for profit, that he has grossly exaggerated the number of persons who have been awarded his diplomas and degrees, that such diplomas are not

generally recognized by industrial, commercial, Federal or State organizations, and respondent does not in fact guarantee his customers better paid positions when they receive his "equivalency diplomas."

The evidence shows further that in the course and conduct of his business respondent is in direct and substantial competition in commerce with other individuals and with corporations, firms, and accredited institutions of learning which are engaged in the sale of legitimate printed test materials, and is particularly in competition with accredited institutions of learning in selling his false and pretended "equivalency diplomas and degrees." The use by the respondent of the several false, misleading, and deceptive statements, representations, and claims set forth in his advertising matter has had, and now has, the tendency and capacity to mislead and deceive members of the public into the belief that such statements, representations, and claims were, and are, true and to induce a substantial number thereof to subscribe to, and to purchase, respondent's said printed test materials. The evidence also shows that members of the public have actually been misled to their damage by respondent's said advertising. As a result thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondent from his competitors, and substantial injury has been, and is being, done to competition in commerce.

The examiner has already recited much of the testimony and statements of Jayko which clearly disclose his lack of competence and ability to conduct his business which is challenged in this proceeding. It also shows his desire to operate such business free from any State or Federal regulation. In evaluating these matters, however, the examiner has had the additional advantage of an excellent opportunity to observe the respondent closely, both on and off the witness stand throughout the three days of hearing. Respondent testified extensively on three occasions, once on each day of the hearing. The cold record does not reveal respondent's deficiencies as a witness. Giving due credit to Jayko for the tension which is usually attendant upon one under charges such as those in this proceeding, he was, nevertheless, unusually vague, hesitant, and uncertain in his testimony, and the record itself is replete with answers which show that he did not seem to understand some of the simplest and clearest questions put to him by either counsel. His own counsel was frequently and somewhat testily required to stop his "speeches" and get him back

to answering the question. In substance, he evaded many pertinent inquiries by long, irrelevant, and equivocal answers. This was undoubtedly because he was attempting to discuss and explain something which was so speculative and nebulous that he could not give true responses. Even a wise man cannot make something out of nothing. Frequent recesses were required because of Jayko's uncertainties and his inability to find certain documents he thought were in his brief case and to which he wished to refer, which documents were apparently poorly arranged. By permission of the examiner and with generosity on the part of counsel supporting the complaint, his own counsel used leading questions extensively in order to ultimately terminate his evasive, lengthy, and largely irrelevant testimony. His wife was near at hand to assist him and frequently did so with suggestions and promptings. His testimony with respect to the material matters inquired of him was so vague, rambling, and uncertain as to fully warrant the finding, and the examiner does find, that it is not of credible value on material matters except in such few particulars as it is corroborated by other reliable evidence in the record. While it is unnecessary under the law to determine herein that the respondent has deliberately sought to deceive the public, it is certainly evident from the record that he has succeeded in deluding himself as to his own importance in the field of education. From the most charitable viewpoint, Jayko's testimonial assertions, by and large, indicate that Truth and he are utter strangers. There are many instances in the record of his recklessness with the facts in his advertising in addition to those already discussed in this initial decision. For example, among such representations, he blatantly told the public: "Remember: This system of service advancement is guaranteed * * * it helps you toward promotions and better pay, or your money is refunded in full. This guarantee is backed by the U.S. Government Postal Laws." (See Commission's Exhibit 21A.) The examiner takes official notice that there is no such guarantee.

Again, in another advertisement (Exhibit 9, a booklet purporting to be copyrighted in 1956, on p. 8), he boldly asserts: "The college equivalency diplomas awarded by this Institution are backed by an enviable reputation in human resources engineering, a field in which members of its staff have pioneered for over a quarter of a century." This is patently false since Jayko, who is the "Institution," testified that he was born in 1917. A quarter

of a century back of the 1956 copyright date of the said advertising booklet takes one back to the year 1931. The respondent, who claims credit for originating the unique development of "college equivalency diplomas" and "college equivalency degrees" was at that time only about 14 years of age and out on the farm after leaving school in the seventh grade in disgust and boredom.

Jayko is certainly entitled to defend himself in this proceeding and nothing is taken against him by that fact alone. But he wishes to operate entirely free from any regulation. The record shows that he was continuing his advertising even between the hearings when he, for the first time, sent out with his other literature his new definition of "equivalency diplomas and degrees." The examiner also takes official notice that in a further effort to circumvent and to avoid the impact of any decision of the Commission upon him, Jayko has, since the last hearing, filed his application for incorporation of the "Cramwell Research Institute." See North Adams (Massachusetts) *"Transcript"* of July 29, 1957.

Respondent has generated within himself an afflatus which is astounding. He offers his "equivalency college diplomas and degrees" not only in liberal arts and sciences but in many specific areas of professional specialization, in addition to aeronautical science, with which he started and continued for some years although the record does not show that he ever operated an airplane or had any more than a few months of theoretical or practical contact with flying. He offers Bachelors and Masters degrees in accounting, business administration, business law, personnel management, building construction engineering, aeronautical engineering, electronics, mechanical engineering, and general science, as well as a liberal arts education consisting of language, social studies, general science, world literature, and mathematics. (See Commission's Exhibit 9, pages 10–12.) With boundless ambit he also offers college equivalent certification in any areas not specifically listed by him (id. p. 13). He is now developing "tests" in civil engineering and has already flirted with the idea of qualifying students of chiropractic. With his claim to almost universal knowledge, left unrestrained, under his present intentions, as one purportedly learned in physiology he may offer "equivalency" degrees in medicine, and as an alleged physicist, he may offer "equivalency" degrees in the development and use of fissionable materials. While he himself offered correspondence courses in the field of aeronautics for some years, he dropped these

about 1951, so he claims, in favor of his superior and quicker "tests," as he says, because "the superior individual, the people we found didn't need courses. They needed guiding and counseling," which eventually resulted in his "tests." Jayko now looks with strong disfavor on correspondence schools. Furthermore, he has but little regard for, or patience with, regular courses of study in accredited institutions. Although he achieved his own collegiate degrees the hard way and over a very long period of time, he deprecates the students and faculties of established and recognized colleges and universities. For example, after very mildly suggesting to his prospects they should attend college if they could, he then says: "Most employers regard self-educated people holding College Equivalency Diplomas with far greater esteem than they regard those who drifted through formal college courses through someone else's motivating influence." (Com. Exhs. 9, p. 9, and 13, p. 2)

Respondent continues to insist upon his right to operate his business free from any public regulation. He has disclosed in this record that he believes this proceeding is a part of a persecution against him by or on behalf of "certain groups" and not a justified prosecution. He seems to have no conception of the fact that this Commission acts only in the public interest. In his testimony he vaguely states: "It was just about 1951 I was investigated in the other hearing." There is nothing in the record to indicate what this other hearing was, but it may be inferred that since Jayko in 1951 desisted from pushing his correspondence courses in aeronautical science and took a teaching position for a time to develop his theories that some authority, State or Federal, had conducted a hearing with reference to the validity of his said correspondence courses. In referring to the development of his current business, he stated that "because of certain interference from certain groups, our progress has been somewhat slower than what I planned." In line with this testimony and shortly after it was given on the second day of the hearing, while Jayko was still testifying on direct examination, a long recess was necessitated by reason of his suddenly breaking into an apparently uncontrollable flow of tears. After his weeping finally had been stopped by the soothing comfort of his wife, he suddenly strode about the hearing room muttering threats and imprecations against unnamed enemies. Although now 40 years of age, his attitude toward authoritative regulation has not changed in more than a quarter of a century. He is still the young boy who after "one

year or so" in the seventh grade refused to proceed further in school and went home because he knew more than his teachers did. It would be a travesty upon public rights to permit the respondent, as one who admits he has "difficulty in rationalizing his position as to the use of the words 'equivalency degree' " ("Summary of Law and the Evidence," pp. 8–9), to continue selling such degrees under any corporate cloak or otherwise.

The public interest in this proceeding is manifest since it involves a pollution of the whole stream of American educational standards by respondent's false, misleading, and deceitful practices in commerce in regard thereto. This proceeding is not instituted on behalf of either or both of the two categories of competitors which respondent refers to ("Summary of Law and the Evidence," p. 6) as the Massachusetts Department of Education and so-called competitors of his in the testing service business. The evidence relating to the substantial volume of respondent's interstate business and advertising practices fully justify the issuance of the following order.

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

1. The acts and practices of the respondent hereinabove found to be false, misleading, and deceptive are all to the prejudice and injury of the public and constitute unfair and deceptive acts or practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

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

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

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

ORDER

It is ordered, That respondent, Joseph Jayko, individually and now doing business under the names of Cramwell Institute and Cramwell Research Institute, or under any other name, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as "commerce"

is defined in the Federal Trade Commission Act, of printed test material or other printed matter, do forthwith cease and desist from:

1. Representing, directly or by implication:

(a) That respondent has authority to award degrees and diplomas;

(b) That the educational qualifications of persons awarded degrees and diplomas, or either of them, are equivalent to the educational qualifications acquired by those attending accredited institutions of learning;

(c) That the certifications or diplomas issued are recognized by industry or commerce or by Federal or State organizations;

(d) That the degrees and diplomas, or either of them, awarded by respondent will guarantee better paid positions and jobs.

2. Misrepresenting the number of persons who have purchased respondent's tests or the number of diplomas which have been awarded.

3. Using the word "Institute" as a part of any corporate or trade name or in any other manner, or any word of similar import and meaning in connection with his business.

OPINION OF THE COMMISSION

By GWYNNE, Chairman:

This matter is before the Commission on (1) the appeal of respondent from the initial decision and order, and (2) respondent's motion to set aside the initial decision and remand the case, or, in the alternative, reopen the case for the receipt of newly discovered evidence.

I.

Appeal From the Initial Decision and Order

The complaint charges respondent with violation of the Federal Trade Commission Act by the making of false representations in connection with the sale of printed material, consisting of tests designed to determine the knowledge and ability of persons regarding certain specific subjects. The passing of such tests was made the basis for issuance of "equivalency diplomas" and degrees as hereinafter described.

The false statements charged against respondent in the complaint and which are the basis of the initial order are as follows:

1. That respondent has authority to award degrees and diplomas.

2. That the educational qualifications of persons awarded degrees and diplomas by respondent is equivalent to those acquired by attendance at accredited institutions of learning.

3. That the certification or diploma issued by respondent is recognized by industry, commerce and by Federal and State organizations.

4. That thousands of persons have purchased respondent's material and have been awarded diplomas.

5. That the degrees and diplomas awarded by respondent will guarantee better paid positions and jobs.

6. Through the use of the word "Institute" as a part of the trade names "Cramwell Institute" and "Cramwell Research Institute" and references to the use of the words "Institute" and "Institution" in his advertising, that respondent is conducting an institution of higher learning with a staff of competent, experienced and qualified educators offering instruction in the arts, sciences and subjects of higher learning.

In his answer, respondent admits the allegations contained in paragraph 2, subparagraphs 3 and 6, but denies, in whole or in part, the remaining allegations. He also denies in toto that such allegations were false, misleading and deceptive.

The initial decision reviews the evidence as to each matter in controversy. Only a brief summary thereof will be given here.

From about 1944 to 1950 or 1951, respondent engaged in business as "Air Institute." This business consisted of compiling and selling courses in air navigation. In about 1951, respondent broadened his program to include testing procedures and abandoned the name "Air Institute" and adopted the names "Cramwell Institute" or "Cramwell Research Institute." Respondent also claims to have operated a publishing business with various trade names, such as "Cramwell Books," "Cramwell Publishing Company," etc.

At the time of the hearing, respondent operated his testing service in an office consisting of two rooms and a foyer, located in Adams, Mass. He had a reference library of 300 to 500 volumes. He had no laboratory and no class rooms. The staff consisted of his wife as secretary, and four consultants on a part-time basis, two of whom were employed full time commercially as electrical engineers, and the other two as full time teachers. The amount of time and money spent by respondent on these consultants appears to have been relatively small.

Upon receipt of applications, respondent prepares written tests which are mailed to applicants and the questions thereon answered in writing, usually before a designated impartial person. Respondent then grades the papers and in some cases, issues his equivalency diplomas. He has tested 302 persons and issued 200 diplomas.

Respondent offers "college equivalency diplomas" in the following, among other, areas: business administration, business law, personnel management, advertising, English language, aeronautical science and engineering, and general science.

The type of document issued is indicated in the following in evidence as an exhibit.

CRAMWELL INSTITUTE

Educational Testing System
To all before whom these letters may come, greeting
Be It Known That
JOHN ZELEM
having satisfactorily completed the requirements comparable
in accredited college curricula in
GENERAL SCIENCE
Degree of Bachelor of Science
prescribed for certification by this Institution, is awarded
this College Equivalency
DIPLOMA
as an honorable testimonial of attainment. Given at
Adams, Massachusetts, this 4th day of Nov. 1954

(s) Joseph Jayko
Director of Education.

In the educational field, the words "diploma" and "degree" have come to have a well-established meaning. A diploma is a document issued by an educational institution witnessing the fact that the grantee has met certain requirements of the institution. These are often the passing of examinations, together with attendance at classes and compliance generally with the established discipline. It is a matter which is handled by the respective states, either through general law or by agencies to whom the power has been delegated. The respondent does not claim that he has authority to issue diplomas within the above meaning of the term. He claims that through his method of testing, he is able to determine whether an individual's level of intelligence is equivalent to that of a person who has completed the requirements for a standard diploma and that his "diplomas" are issued on that basis. However, his representations go beyond that, and either expressly or impliedly assert that his equivalency diplomas are comparable to those issued by educational institutions and are equally acceptable to interested parties.

For example, in connection with his operations, respondent disseminated in commerce advertising brochures, letters, etc. in which he made statements, of which the following are typical:

Would you like a raise in salary? Would you like a better job? Are you interested in a promotion? Are you always left behind when promotions are made in your department? Do you feel secure in your present job? Are you in constant fear of being laid off to make room for someone else? Do you want more social prestige? * * * You know the answers. But regardless of how you answer these questions, your employment status can be improved by improving your educational status. Have you ever taken the trouble to provide your employer with evidence showing your educational growth since leaving school or coming to work for him?

* * * * * * *

You may possess the equivalent of a college education in your field of endeavor. The Cramwell College Equivalency Diploma will provide the evidence you need to prove you have superior ability and help put you in line for real promotion.

* * * * * * *

Remember: This system of self-advancement is guaranteed. * * * It helps you toward promotions and better pay or your money is refunded in full. This guarantee is backed by the U. S. Government Postal Laws.

* * * * * * *

DOUBLE YOUR CHANCES for promotion with a College Equivalency Diploma—Awarded through certification of your on-the-job educational development. Business Administration, Liberal Arts, etc. Wonderful opportunities. Qualify by comprehensive examination at home. No courses. Free details. Cramwell Institute, A.B.–7, Adams, Massachusetts.

* * * * * * *

Cramwell Institute has devised an educational testing system that has helped thousands of students and mature adults to obtain educational level and specialized knowledge by taking a monitored test * * *.

We agree with the finding of the hearing examiner that the false and deceptive character of the statements alleged in paragraph 2 of the complaint have been established by the evidence.

II.

Respondent's Motion

The motion to set aside the order and remand the case was based in part on the claim that the findings in the initial decision are not made in accordance with the Administrative Procedure Act. We think that the findings cover the ultimate facts and are adequate. *Alabama Great Southern R.R. Co.* v. *U.S.* (1950), 340 U.S. 216; *Capital Transit Co.* v. *U.S.* (1951), 97 F. Supp. 621; *Coyle Lines* v. *U.S.* (1953), 115 F. Supp. 272.

Respondent also objects to the general tone of the initial decision, objects to certain statements and "innuendoes" contained therein and refers to it as "decision by assumption, conclusion and innuendo." We have examined the record with

care, and conclude that respondent had a fair hearing, that the examiner gave him adequate opportunity to present his case and to cross-examine witnesses testifying for the complaint. We conclude that the ultimate findings are well supported by the record. We do not, however, approve of some of the language contained in the initial decision.

Respondent's motion to reopen the case for the receiving of newly discovered evidence is based on three documents.

(1) Copies of portions of the Federal income tax returns of respondent showing that Cramwell Institute operated at a loss.

(2) "Meaning and Use of the Term Institute" prepared by Donald O. Bolander, M.A., Director of Education, Career Institute.

(3) Copies of certificate from the Secretary of Massachusetts showing that, as of July 19, 1957, respondent Joseph Jayko and six others incorporated as Cramwell Research Institute for the following purpose:

> To conduct research in the fields of education industry and commerce. To promote the development of better methods for the identification, evaluation and classification of human aptitudes and achievements related to commercial, industrial, and national defense needs. To develop more efficient methods for the utilization of the educational resources in the United States through human resources engineering.

The Federal income tax returns were obviously known to respondent at all times, or at least the information contained therein could have been discovered by the exercise of reasonable diligence. In any event, the proposed evidence would not be material. The evidence in the record shows that respondent's representations had the tendency and capacity to deceive and that an action to prevent them is in the public interest. Whether respondent made or lost money in carrying on his business would have no bearing on any of the issues in the case.

The document above referred to prepared by Donald O. Bolander was received as an exhibit in Docket 6515, *Chicago School of Nursing, Division of Career Institute.* It contains a list of 629 organizations using the term "institute" as part of their trade name. Included in the list are a large number listed as "Technical, Trade, Vocational and Miscellaneous Private Schools." Included are some correspondence schools. Other organizations are grouped under the heading, "Trade Associations, Research and Product Promotion Groups, Etc."

The word "institute" both as a verb and as a noun has a wide

variety of meanings. It is often used by organizations in the strictly educational field. However, it is also used by other organizations as an examination of the telephone directory of any large city will demonstrate.

When used in the educational field, the word seems to connote a group of people organized for the purpose of education and carrying out that purpose as schools ordinarily do. For example, in *Branch* v. *Federal Trade Commission,* 141 F. 2d 31, in which respondent was charged with misrepresentation by the use of the term in connection with its courses, the Court said: "Petitioner's school is neither a university nor an institute. It has no entrance requirements, no resident teachers, no library, no laboratory, and no faculty."

The word "institute" by itself does not necessarily connote an educational institution, although it is often used by organizations in the educational field. The inquiry in the instant case is limited by the issues presented by the pleadings. The complaint charged that by the use of the word "institute," respondent represented that he "is conducting an institution of higher learning with a staff of competent, experienced and qualified educators offering instructions in the arts, sciences and subjects of higher learning." In his answer, respondent admitted that through the use of "institute," he had made the representations as alleged.

As to the truth or falsity of the representations, there is no substantial dispute. Respondent admitted that he did not provide any courses of instruction in connection with his examination procedure other than recommending titles of books available to applicants through public libraries, etc. His services are limited exclusively to the evaluation of an individual's educational background and intellectual potentialities.

Subsequent to the closing of the case and taking of testimony, respondent joined with others in organizing under Massachusetts law, "Cramwell Research Institute," a corporation not for profit.

The right to issue educational diplomas and degrees in Massachusetts is regulated by the laws of that State which lay down a program and procedure in regard thereto. Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce are by Federal law made matters over which the Federal Trade Commission has jurisdiction. This is true of the acts of respondent in regard to his equivalency diplomas and degrees which are the subject matter of the present complaint. A photostatic copy of the incorporation of Cramwell Research

Institute which respondent now asks to present as newly discovered evidence would have no bearing on the issues in the present case. Nor would any of the documents referred to in his motion have any bearing.

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

FINAL ORDER

This matter having been heard by the Commission upon respondent's appeal from the hearing examiner's initial decision as well as respondent's motion to set aside the initial decision and remand or to reopen for the receipt of newly discovered evidence, and upon briefs and oral argument in support thereof and in opposition thereto; and the Commission having rendered its decision denying the appeal and the motion and adopting the initial decision as the decision of the Commission:

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

IN THE MATTER OF

TEITELBAUM OF BEVERLY HILLS ET AL.

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

Docket 6998. Complaint, Dec. 18, 1957—Decision, Sept. 3, 1958

Consent order requiring a furrier in Los Angeles, Calif., to cease violating the Fur Products Labeling Act by failing to comply with the invoicing requirements; by advertising in newspapers which failed to disclose the names of animals producing the fur in certain products or the country of origin of imported furs, or that some products were artificially colored; misused the word "blended"; represented prices as reduced from regular prices which were in fact fictitious, and misrepresented percentage savings and appraised values; and by failing to keep adequate records as a basis for such pricing claims.

Mr. John J. McNally supporting the complaint.
Mr. David Blonder of Los Angeles, Calif., for respondents.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on December 18, 1957, charging them with having violated the Fur Products Labeling Act, the rules and regulations issued thereunder, and the Federal Trade Commission Act by falsely advertising and falsely invoicing their fur products. After being served with the complaint respondents entered into an agreement, dated April 15, 1958, 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 Practice of the Commission.

The complaint alleges that respondent David Weisz is not an officer of the corporate respondent. The said agreement states among other things that David Weisz, while not an officer of said corporate respondent at the time of the issuance of the complaint, became president of the corporate respondent on February 12, 1958. The agreement further provides that the agreed order to cease and desist shall run against David Weisz individually and as an officer of said corporation. To that extent the said agree-

ment is, in effect, a motion to amend the complaint, agreed to by respondents, so as to make David Weisz a party respondent in his capacity as an officer of the corporate respondent as well as in his individual capacity. Said motion is granted and the complaint is considered as amended.

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

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

1. Respondent Teitelbaum of Beverly Hills is a corporation organized, existing and doing business under and by virtue of the laws of the State of California.

2. Respondents Milton J. Wershow, individually, and David Weisz, individually and as an officer of said corporate respondent, control, direct, and formulate the acts, practices and policies of corporate respondent. The offices and principal places of business

of all said respondents are located at 7213 Melrose Avenue, Los Angeles, Calif., and 840 San Julian Street, Los Angeles, Calif.

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 Teitelbaum of Beverly Hills, a corporation, and its officers, and David Weisz, individually, and as an officer of said corporation, and Milton J. Wershow, individually, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce of any fur product or in connection with the sale, advertising, offering for sale, transportation or distribution of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce," "fur," and "fur product" are defined in the Fur Products Labeling Act do forthwith cease and desist from:

A. Falsely or deceptively invoicing fur products by:

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

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

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

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

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

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

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

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

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

(h) That the fur product contains "secondhand used fur" when such is a fact.

3. Setting forth on invoices pertaining to fur products:

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

(b) The term "blended" to describe the pointing, bleaching, dyeing or tip-dyeing of furs.

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

1. Fails to disclose:

(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 a fact;

(c) That the fur product contains "secondhand used fur" when such is a fact;

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

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

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

4. Represents directly or by implication through percentage savings claims that the regular or usual retail prices charged by respondents for fur products in the recent regular course of their business were reduced in direct proportion to the amount of savings stated when contrary to the fact.

5. Represents directly or by implication that fur products are of a certain certified appraised value when contrary to fact.

6. Represents directly or by implication that no merchandise has been added to the original inventory obtained from a well-known and famous furrier when such is not the fact.

C. Making pricing claims and representations of the types

referred to in subparagraphs B3 and B4 above unless there are maintained by repondents full and adequate records disclosing the facts upon which such claims or representations are based.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 3d day of September 1958, become the decision of the Commission; and, accordingly,

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

IN THE MATTER OF

HACHMEISTER, INC., ET AL.

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

Docket 7008. Complaint, Dec. 26, 1957—Decision, Sept. 3, 1958

Order dismissing—due to lack of a compelling public interest, removal of the product from the market, and change in formula prior to issuance of complaint—complaint charging manufacturers in Pittsburgh, Pa., with representing falsely, on labels and in promotional literature distributed to dealers and by use of a "hallmark," that their adhesives for the installation of clay tile sold under the name "Hako No. 600 Ceramic Tile Cement" complied with the specifications set forth in Commercial Standard 181–52 promulgated by the U.S. Department of Commerce.

Edward F. Downs and *Garland S. Ferguson*, Esqs., in support of the complaint.

Dickie, McCamey, Chilcote & Robinson, of Pittsburgh, Pa., for respondents.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

On December 26, 1957, the Federal Trade Commission, pursuant to authority vested in it by the provisions of the Federal Trade Commission Act, issued its complaint which, in charging the respondents with certain acts and practices violative of the aforesaid Act, recited that a proceeding by it would be in the public interest, specifically charging respondents with falsely representing that their product, known as "Hako No. 600 Ceramic Tile Cement," being an adhesive used for the installation of clay or ceramic tile, complied with the requirements of Commercial Standard 181–52 promulgated by the United States Department of Commerce and, in furtherance of said false representations, charged that respondents made use of a designated "hallmark," indicative of compliance with said Commercial Standard as authorized and prescribed by said standard for use upon, and to properly identify, such products as do in fact comply with the standard requirement.

A hearing for the purpose of receiving testimony and evidence was held in Philadelphia, Pa., on May 12, 1958, stenographically reported, reduced to writing and filed in the office of the Federal Trade Commission in Washington, D.C., as required by law.

The Commission on its behalf offered the testimony of three witnesses, one being an officer of the respondent corporation and the remaining two being technical experts who testified to the incapacity of respondents' product to meet the requirements of the Commercial Standard aforesaid. The testimony of the officer witness stands unrefuted and unchallenged of record and is devoid of any evidence which could be construed to substantiate the charges of the complaint and thus to form a basis for an order to cease and desist; the testimony of the two technical witnesses, upon direct and cross-examination, was, upon motion of the attorney for the respondents, stricken from the record. The attorney representing the complaint did not close his case-in-chief. No testimony or other evidence was received on behalf of the respondents. Thus stands the record.

On June 19, 1958, the attorney in support of the complaint filed a "Motion to Dismiss Complaint Without Prejudice," copy of which was duly served upon counsel for the respondents as provided by rule 3.8 of the Commission's Rules of Practice, which rule further provides, *inter alia* (c) :

> Within ten days after service of any written motion * * * the opposing party shall answer or be taken to have consented to the granting of the relief asked for in the motion. * * *

On July 10, 1958, respondents not having answered or otherwise opposed the granting of said motion, an order was passed and filed in the formal record of this proceeding, ordering the dismissal of the complaint as moved, upon the grounds set forth in the aforesaid motion and, in conformity with the provisions of rule 3.8(e) this initial decision is made, confirming and finalizing said order.

In moving for dismissal Commission counsel cites (1) the *de minimis* aspect of respondents' sales, (the record disclosing such to be $1,675.50 in the year 1956; $1,890.75 in 1957, none in 1958), thus implying the absence of a compelling public interest in the subject matter of this proceeding; (2) that the product has been removed from the market; (3) that prior to the issuance of the complaint herein respondents changed the formula of their product which they now contend meets the requirements of the Commercial Standard aforementioned so that they are now in compliance and, finally, (4) that the Commission has no evidence presently available to rebut this latter contention of the respondents, the tests upon which the Commission intended to rely having been made upon the product prior to the change in formula.

The undersigned being fully advised in the premises, because of his familiarity with the entire record, and the reasons assigned in the motion being substantiated by the record.

It is ordered, That the complaint herein be, and it hereby is, dismissed without prejudice to the right of the Commission to issue a new complaint or to take such further action against the respondents at any time in the future as may be warranted by then existing circumstances.

DECISION OF THE COMMISSION

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall on the 3d day of September 1958, become the decision of the Commission.

IN THE MATTER OF

RAYCO MANUFACTURING COMPANY, INC., ET AL.

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

Docket 7101. Complaint, Mar. 28, 1958—Decision, Sept. 3, 1958

Consent order requiring manufacturers in Patterson, N.J., to cease representing falsely in advertising materials furnished to retail stores for their use and in advertisements in newspapers, by radio, television, etc., that their auto seat covers and tops had been awarded the Fashion Academy seal for beauty and styling and the U.S. Testing seal for durability; that exaggerated fictitious prices were their regular prices; that their franchised retail dealers were having a "Close-Out" of 4,000 sets of seat covers at sacrifice prices; that their ready-made products were "custom fitted" for the individual buyer; and that purchasers of their convertible tops received the complete top for the advertised price.

Mr. Michael J. Vitale for the Commission.
Mr. Joseph L. Kelin, of New York, N.Y., for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondents with violation of the Federal Trade Commission Act through the making of certain representations in connection with automobile seat covers and convertible tops sold by them. An agreement providing for disposition of the proceeding by means of a consent order has now been entered into by respondents Rayco Manufacturing Company, Inc., Joseph Weiss and Julius Stern and their attorney and counsel supporting the complaint. The agreement contemplates dismissal of the complaint as to respondent Burton B. Weiner, and the term "respondents" as used hereinafter will not include this individual.

The agreement provides, among other things, that all of said respondents admit all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered

after a full hearing, said respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the agreement is for settlement purposes only and does not constitute an admission by said respondents that they have violated the law as alleged in the complaint.

The proposed order covers all of the alleged misrepresentations charged in the complaint except one, and it appears from the agreement that this charge could not be sustained. It further appears from an affidavit attached to the agreement that dismissal of the complaint as to respondent Burton B. Weiner is proper.

The agreement and proposed order are therefore accepted, the following jurisdictional findings made, and the following order issued:

1. Respondent Rayco Manufacturing Company, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its office and principal place of business located at 220 Straight Street, Paterson, N.J. The individual respondents, Joseph Weiss and Julius Stern, are president and secretary-treasurer, respectively, of the corporate respondent, and have the same address as that of the corporate respondent.

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

ORDER

It is ordered, That respondent Rayco Manufacturing Company, Inc., a corporation, and its officers, and Joseph Weiss and Julius Stern, 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 automobile seat covers and convertible tops, or any other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the Fashion Academy Seal or representing, in any manner, that any of their products had been awarded said seal, or an award, by Fashion Academy upon the basis of a contest

in which respondents' products, or any of them, and competitive products had been judged.

2. Using the U.S. Testing Company Seal in such a manner as indicating that any of their products had been found to be of greater durability than competitive products by U.S. Testing Company, or representing in any other manner that the U.S. Testing Company had found that their products, or any of them, were more durable than competitive products, unless such is the fact.

3. Representing, directly or by implication:

(a) That the usual and customary retail price of any of respondents' products is in excess of the price at which such products are regularly and customarily sold by respondents or their franchised dealers in their usual course of business.

(b) That the retail price of a product has been reduced, unless it is a reduction from the price at which this product had been regularly and customarily sold by respondents or their franchised dealers.

(c) That any of respondents' franchised dealers had 4,000 seat covers on hand at a particular time; or misrepresenting the number of seat covers, or any other product, that may be on hand at a particular time.

(d) That the purchasers of respondents' convertible tops receive a complete top for the advertised price, including rear window and curtain, unless such is the fact.

It is further ordered, That the complaint insofar as it relates to respondent Burton B. Weiner and to the charge concerning the words "custom fitted," set out in subparagraph (e) of paragraph 6, be, and the 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 3d day of September 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Rayco Manufacturing Company, Inc., a corporation, and Joseph Weiss and Julius Stern, individually and as officers of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

MASTER FURRIERS, INC., ET AL.[1]

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

Docket 6895. Complaint, Sept. 26, 1957—Decision, Sept. 6, 1958

Consent order requiring furriers in New York City to cease violating the Fur Products Labeling Act by representing that fictitious prices on labels affixed to fur products were the regular retail selling prices; by failing to comply with invoicing requirements; by advertising in newspapers which represented falsely that fur products were being sold "below cost" and were reduced from regular prices which were in fact fictitious, and which used comparative prices and percentage savings claims not based on usual retail prices; and by failing to keep adequate records as a basis for such pricing claims.

Before: *Mr. John Lewis*, hearing examiner.

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

Newman & Bisco, by *Mr. John E. Higgiston, Jr.*, of New York, N.Y., for Frank-Cunningham Stores Corporation and other respondents named individually and as officers of said respondent.

INITIAL DECISION AS TO REMAINING RESPONDENTS

The Federal Trade Commission issued its complaint against the above-named respondents on September 26, 1957, charging them with having violated the Fur Products Labeling Act and the Rules and Regulations issued thereunder, and the Federal Trade Commission Act, through the misbranding of certain fur products and the false and deceptive invoicing and advertising thereof. After being served with said complaint, respondents appeared by their respective counsel and filed their answers thereto. Thereafter respondent Master Furriers, Inc. and certain individual respondents affiliated with it entered into an agreement with counsel supporting the complaint providing for the entry of a consent order to cease and desist as to said respondents. The undersigned filed his initial decision based thereon on April 22, 1958, which decision became the Decision of the Commission on June 10, 1958. Thereafter the respondent Frank-Cunningham Stores Corporation, on June 23, 1958, entered into

[1] The case against respondents Master Furriers, Inc., Ernest E. Marx, Erwin C. Bein, and M. J. Swartz was settled by consent order, identical with that above, dated June 10, 1958, 54 F.T.C. 1774. At the same time, the charges were dismissed as to Sally Marx.

an agreement containing a consent order to cease and desist purporting to dispose of all of this proceeding as to said respondent and as to the remaining respondents named in the complaint individually and as officers of said corporate respondent. Said agreement, which has been signed by respondent Frank-Cunningham Stores Corporation, 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.

The signatory respondent, pursuant to the aforesaid agreement, has admitted all the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that said respondent waives any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law and all of the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has been agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full hearing and that the complaint may be used in construing the terms of said order. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, and that said agreement is for settlement purposes only and does not constitute an admission by the signatory respondent that it has violated the law as alleged in the complaint.

Submitted with the aforesaid agreement containing consent order, and as a part thereof, is an affidavit of respondent I. David Israel, president of respondent Frank-Cunningham Stores Corporation, sworn to June 17, 1958, attesting to the fact that while said respondent and the other respondents named individually and as officers of said corporate respondent do formulate and control the policies and practices of the corporate respondent in their respective capacities as officers and directors of said corporation, none of said individual respondents formulated, directed, controlled or participated in the acts and practices charged in the complaint. It has been agreed in the aforesaid agreement containing consent order that the complaint may be dismissed

as to respondents I. David Israel, Harry Israel, Oscar Israel, Oscar Balamut and Martin Israel.

This proceeding having now come on for final consideration as to respondents Frank-Cunningham Stores Corporation, I. David Israel, Harry Israel, Oscar Israel, Oscar Balamut, and Martin Israel on the complaint, the aforesaid agreement containing consent order and the affidavit of I. David Israel attached to and made a part of said agreement, 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 the parties above named, said agreement and affidavit are hereby accepted and are 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 Frank-Cunningham Stores Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 8 West 30th Street, in the city of New York, State of New York.

Respondent Frank-Cunningham Stores Corporation operates a retail store in Washington, D.C. under the name of L. Frank Company. Respondent Master Furriers, Inc. during all of the times mentioned in the complaint herein conducted a retail fur business in said store under a license or lease agreement with respondent Frank-Cunningham Stores Corporation and in accordance therewith said fur business was operated as though it were a department of the lessor's store.

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

ORDER

It is ordered, That respondent Frank-Cunningham Stores Corporation, a corporation, and its officers, and respondent's agents, representatives 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 or received in commerce as "commerce," "fur" and "fur products" are defined in the Fur Products Labeling Act do forthwith cease and desist from:

A. Misbranding fur products by:

1. Representing on labels affixed to fur products, or in any other manner, that certain amounts are the regular and usual prices of fur products when such amounts are in excess of the prices at which respondent usually and customarily sells such products in the recent regular course of its business.

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 the fur product.

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

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

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

1. Represents, directly or by implication:

(a) That retail prices of fur products were reduced or were being sold "below cost" or "below wholesale cost," when such is not the fact;

(b) That respondent's regular price of any fur product is any

amount which is in excess of the price at which respondent has regularly or customarily sold fur products of similar grade and quality in the recent course of its business.

2. Makes use of comparative prices and percentage savings claims in advertisements unless such compared prices and percentage savings claims are based on the regular and usual retail prices charged by the respondent for fur products of similar grade and quality in the recent regular course of its business.

D. Making pricing claims or representations in advertisements respecting comparative prices, percentage savings claims, or claims that prices are reduced from regular or usual prices, unless respondent maintains full and adequate records disclosing the facts upon which such claims or representations are based.

It is further ordered, That the complaint herein be dismissed as to respondents I. David Israel, Harry Israel, Oscar Israel, Oscar Balamut, and Martin Israel, individually and as officers of said Frank-Cunningham Stores Corporation.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 6th day of September 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Frank-Cunningham Stores Corporation, a corporation, and its officers, 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.