

IN THE MATTER OF
KENNEBEC MILLS CORPORATION, ET AL.

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

Docket 7353. Complaint, Jan. 9, 1959—Decision, June 27, 1959

Consent order requiring two affiliated manufacturers with offices in Fairfield, Maine, and New York City, respectively to cease violating the Wool Products Labeling Act by tagging as "50% reprocessed wool, 50% wool," fabrics which contained a substantial quantity of fibers other than wool, and by failing to label certain wool products as required.

Mr. Garland S. Ferguson for the Commission.

Mr. Frederick E. M. Ballou, of New York, N.Y., for respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated January 9, 1959, the respondents are charged with violating the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act and the Rules and Regulations made pursuant thereto.

On May 7, 1959, the respondents and their attorney entered into an agreement with counsel in support of the complaint for a consent order.

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

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

The hearing examiner being of the opinion that the agreement and the proposed order provide an appropriate basis for disposition of this proceeding as to all of the parties, the agreement is hereby accepted and it is ordered that the agreement shall not become a part of the official record of the proceeding

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unless and until it becomes a part of the decision of the Commission. The following jurisdictional findings are made and the following order issued.

1. Respondent Kennebec Mills Corporation is a corporation existing and doing business under and by virtue of the laws of the State of Maine, with its office and principal place of business located at Fairfield, Maine.

Respondent R. G. Fromkin Co., Inc. is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 450 Seventh Avenue, New York, N.Y.

Respondent Robert G. Fromkin is an individual and an officer of said corporations. He formulates, directs and controls the policies and practices of the corporate respondents. The address of the individual respondent is the same as that of the corporate respondent R. G. Fromkin Co., Inc.

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

ORDER

It is ordered, That respondents Kennebec Mills Corporation, a corporation, and its officers, and R. G. Fromkin Co., Inc., a corporation, and its officers, and Robert G. Fromkin, individually and as an officer of said corporations, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939 of woolen fabrics or other "wool products" as such products are defined in, and subject to the said Wool Products Labeling Act, do forthwith cease and desist from misbranding such products by:

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

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

(a) The percentage of the total weight of such wool product, exclusive of ornamentation not exceeding five percentum of said

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total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage, by weight of such fiber, is five percentum or more, and (5) the aggregate of all other fibers;

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

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

It is further ordered, That respondents Kennebec Mills Corporation, a corporation, and its officers, and R. G. Fromkin Co., Inc., a corporation, and its officers, and Robert G. Fromkin, individually and as an officer of said corporations, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of woolen fabrics or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the constituent fibers of which their products are composed or the percentages or amounts thereof, in sales invoices, shipping memoranda, or in any other manner.

DECISION OF THE COMMISSION AND ORDER TO FILE
REPORT OF COMPLIANCE

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

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

INTERLOCUTORY ORDERS, ETC.

SHEFFIELD MERCHANDISE, INC., ET AL. Docket 6627.
Order and opinion, July 7, 1958.

Order vacating hearing examiner's dismissal, based on abandonment of challenged practices prior to complaint, and remanding case for further proceedings.

OPINION OF THE COMMISSION

By ANDERSON, Commissioner :

Complaint in this proceeding issued September 11, 1956, charging respondents with violation of the Federal Trade Commission Act in two respects. One was the deceptive use of the word "jeweled" on the faces of one-jewel watches and in advertising material, it being alleged that a jeweled watch is generally understood to be one containing at least seven jewels serving as frictional bearings. The other was misrepresentation through use of the term "guaranteed for one year" without adequate disclosure of the terms, conditions and limitations of the guarantee. The hearing examiner in an initial decision dated May 5, 1958, granted respondents' motion to dismiss and found that respondents abandoned the practices about five months prior to issuance of the complaint; that there is no likelihood that the practices will be resumed; and that everything which could be accomplished by a cease and desist order has already been accomplished by the voluntary act of respondents.

The Commission is of the opinion that the hearing examiner was in error in dismissing the complaint. The initial decision is, therefore, being vacated and the case remanded for further proceedings for the following reasons:

The Commission disagrees with the hearing examiner's application of the principles heretofore announced in the *Argus Cameras, Inc.* (D. 6199), *Wildroot Company, Inc.* (D. 5928), and *Bell & Howell Co.* (D. 6729) cases. In the *Argus Cameras* case, Chairman Gwynne, speaking for the Commission, stated:

"Dismissal of a complaint in cases of this general character is not the usual procedure. It should not be done unless there is a clear showing of unusual circumstances which in the interest of justice require it. Those circumstances exist in this case."

What are the circumstances in the instant case? Respondents admittedly engaged in the practices questioned in this proceeding and had done so over a considerable period. The practices were widespread in the industry and apparently were adopted by respondents for business and competitive reasons. Investigation of respondents was commenced in 1953 and respondents certainly were aware of the Commission's "hand upon their shoulders" and the reasons therefor. Assuming that discontinuance occurred as contended, respondents have never unequivocally receded from their position that use of the practices involved did not result in deception of confiding buyers. Furthermore, there is not present in the situation surrounding the abandonment the "unusual circumstances" which obtained in the *Argus Cameras* and other cases referred to in the initial decision upon which dismissal of the complaint here can be justified. In those cases, the Commission had definite assurances, by reason of existing industry-wide business conditions and other circumstances, that the practices involved surely would not be resumed. In the instant case, we have the promise of respondents that certain practices will not be engaged in again. That promise, though given in good faith, must be weighed in the light of attending facts, including the continued existence in the industry of the practices that led respondents initially to employ the questioned representations. In such setting, respondents for compelling competitive reasons would be free again to adopt the same or similar practices, absent some effective legal restraint. Clearly, in such a situation, the Commission would be remiss in its duty to prevent deceptive and misleading practices in their incipiency if in reliance on a mere promise not to resume questioned acts, it dismissed the complaint.¹ As the court stated in *C. Howard Hunt Pen Co. v. Federal Trade Commission*, 197 F. 2d 273 (C.A. 3, 1952), where discontinuance had been effected two years before issuance of the complaint:

"Petitioner's sole objection * * * is that its former practice * * * was discontinued in 1941, 2 years before the Commission's complaint was filed in this proceeding. Petitioner alleged in its answer to the complaint that it has no intention of resuming that practice but there is no specific testimony to that effect. We see no reason why even if there had been the Commission

¹ *Sears Roebuck & Co. v. Federal Trade Commission*, 258 Fed. 307 (C.A. 7, 1919); *Moir, et al. v. Federal Trade Commission*, 12 F.2d 22 (C.A. 1, 1926); *Perma-Maid, Inc. v. Federal Trade Commission*, 121 F.2d 232 (C.A. 6, 1941).

would have been bound simply by the promise of the petitioner."²

In a situation where practices were discontinued shortly before complaint issued, the Commission's cease and desist order was affirmed in *Hershey Chocolate Corp. v. Federal Trade Commission*, cited n. 2, where the Court said:

"The Commission would have no power at all if it lost jurisdiction every time a competitor halted an unfair practice just as the Commission was about to act. The practice may have been discontinued but without the Commission's order it could be immediately resumed." [at page 971]

Let it be clearly understood that we are not adjudicating here the merits of this case. The Commission, "having reason to believe" that respondents' practices were violative of the Federal Trade Commission Act, issued its complaint pursuant to that Act. Respondents answered, stating that the purchasing public understands a jeweled movement to be one that contains one or more jewels serving a functional purpose and denied that through their use of the word "jeweled" they represented, directly or by implication, that their watches contained at least seven jewels, as alleged in the complaint. There is no evidence of record to permit determination of the issue. Nor has there been any determination by the hearing examiner of the adequacy of disclosure of the terms and conditions of respondents' guarantee; and none is intended to be made here.

As indicated above, the Commission through issuance of its complaint made its administrative determination that the public-interest requires the disposition of this matter by adversary proceedings. By its order of July 23, 1957, denying respondents' motion to refer the proceeding to the Division of Stipulations, the Commission reaffirmed that decision and it is still of the opinion that the issues as to "jeweled" and the use of the term "guarantee," still remaining unlitigated, should be resolved on the basis of available evidence.

Respondents in advancing their motion to dismiss before the hearing examiner rely upon *Stokely Van Camp, Inc. v. Federal Trade Commission*, 246 F. 2d 458 (C.A. 7, 1957). We think that case is readily distinguishable from the circumstances presented

² See also *Federal Trade Commission v. Goodyear Tire & Rubber Co.*, 304 U.S. 257, 260 (1938); *Hershey Chocolate Corp. v. Federal Trade Commission*, 121 F.2d 968, 971 (C.A. 3, 1941); *Consumer Sales Corp v. Federal Trade Commission*, 198 F.2d 404, 407 (C.A. 2, 1952), cert. denied 344 U.S. 912 (1953); *Consolidated Royal Chemical Corp. v. Federal Trade Commission*, 191 F.2d 896, 900 (C.A. 7, 1951); *Keaseby and Mattison Co. v. Federal Trade Commission*, 159 F.2d 940, 952 (C.A. 6, 1947).

in the instant proceeding and that it applies recognized legal principles to an entirely different situation than we have here.

In the order to accompany this opinion, the initial decision will be vacated and set aside and the case remanded to the hearing examiner for further proceedings consistent with this opinion.

ORDER VACATING INITIAL DECISION AND REMANDING
CASE TO HEARING EXAMINER

It appearing that the hearing examiner filed, on May 5, 1958, an initial decision dismissing the complaint in this proceeding; and

The Commission, for the reasons stated in the accompanying opinion, having determined that the hearing examiner was in error in dismissing the complaint:

It is ordered, That the aforesaid initial decision be, and it hereby is, vacated and set aside.

It is further ordered, That this case be, and it hereby is, remanded to the hearing examiner for further proceedings.

GULF OIL CORPORATION. Docket 6689. Order and opinion, July 8, 1958.

Interlocutory order remanding respondent's motion alleging undue delay in presenting case-in-chief, transmitted by hearing examiner to Commission as raising issues beyond his authority to rule upon.

OPINION OF THE COMMISSION

By TAIT, Commissioner:

The respondent filed a motion alleging undue delay by staff counsel in presenting the case-in-chief and requesting that the hearing examiner order that submission of proof in support of the complaint be closed, or, alternatively, that an early date for termination of evidence be fixed by him. Counsel supporting the complaint then filed their answer in opposition denying various of the motion's averments. Under the order filed by him on May 19, 1958, the hearing examiner transmitted the motion to the Commission for its disposition as one raising issues and asking relief beyond his authority to rule upon.

Section 3.8 of the Commission's Rules prescribes that during pendency of proceedings before hearing examiners, all motions, except for one category not here material, shall be addressed to and ruled upon by the hearing examiner. A companion rule, §3.15, confers authority on such officers to regulate the course of

hearings and to rule upon procedural motions. The hearing examiner, therefore, erred in concluding that he lacked power to rule upon the merits of the respondent's motion. The motion accordingly is being remanded to the hearing examiner for disposition.

We note that this proceeding has been marked by the filing of an unusually large number of requests for us to consider various aspects of the case prior to final decision. The considerations of public policy militating against piecemeal adjudications are obvious and require no further comment. The Commission's Rules accordingly contemplate that rulings within the jurisdiction of the hearing examiner be made by him and that such rulings be accepted by the parties as governing except in unusual circumstances. Illustrating this is the fact that the category of interlocutory appeals qualifying to be granted under §3.20 of the Rules is a limited one. Hence, routine recourse to the Commission by interlocutory appeal or similarly authorized procedures prior to presentation of cases for final determination departs from the spirit of the rules.

ORDER REMANDING MOTION TO HEARING EXAMINER

The Commission having determined, for reasons stated in the accompanying opinion, that the hearing examiner erred in holding that he lacked authority to rule on the motion transmitted to the Commission for its consideration under his order filed on May 19, 1958:

It is ordered, That such motion be, and it hereby is, remanded to the hearing examiner.

MYTINGER & CASSELBERRY, INC., ET AL. Docket 6962.
Order and opinion, July 15, 1958.

Interlocutory order denying respondents' appeal from hearing examiner's order granting complaint counsel's motion for modification of order directing compliance with modified subpoena duces tecum.

ON INTERLOCUTORY APPEAL

By the COMMISSION:

Counsel for respondents have appealed from the hearing examiner's order of May 22, 1958, granting the motion of counsel supporting the complaint for reconsideration and modification of an order directing compliance by respondents with a modified subpoena duces tecum. Counsel supporting the complaint answered and respondent filed a reply thereto. The order appealed from directs compliance with a previously modified subpoena

duces tecum and substitutes two paragraphs for three items of the original subpoena which have been quashed. The two substitute paragraphs require respondents to produce the originals, or copies, of statements of policy and instructions and correspondence which the corporate respondent has issued, or received, during 1954 to 1957 with regard to implementation and enforcement of its alleged policy of exclusive dealing. The scope of time coverage is two years shorter than in other items of the modified subpoena which respondents do not now contend to be unreasonable and from which no appeal has been taken.

Respondents argue that the two substitute paragraphs are vague, ambiguous, oppressive, burdensome and unreasonable, and constitute an improper attempt to use a subpoena for purposes of discovery.

The hearing examiner's ruling recognizes that compliance with the substitute paragraphs will impose a burden upon the respondents, but concludes that the modified requests are clearer and less burdensome than the quashed items of the original subpoena and expresses the view that the records sought are sufficiently relevant and material to the issues herein to justify the difficulties involved in producing them. The examiner was of the further opinion that such records should facilitate a just adjudication of this proceeding.

Under Section 9 of the Federal Trade Commission Act¹, the Commission has clear statutory authority to require by subpoena the production of documentary evidence of any corporation being investigated or proceeded against. This authority extends to proceedings initiated under that Act and under the Clayton Act, as amended.² *John T. Menzies v. Federal Trade Commission*, 242 F. 2d 81 (C.A. 4, 1957). The complaint in this proceeding is in three counts. Count I charges violation of Section 3 of the Clayton Act. Count II charges violation of Section 5 of the Federal Trade Commission Act. Both Count I and Count II involve alleged exclusive dealing. Count III charges violation of Section 5 of the Federal Trade Commission Act through misrepresentation of the effect of a consent decree of injunction issued by the United States District Court for the Southern District of California. The specifications of the modified subpoena with which we are concerned here relate only to Counts I and II of the complaint.

Clearly, the documents sought under the contested items of

¹ 15 U.S.C.A. 49.

² 15 U.S.C.A. 12-27.

the subpoena are sought for a lawful purpose and are relevant and material to the issues of respondents' alleged policy of exclusive dealing and the enforcement of that policy. The period of time covered is reasonable, and the documents are specified with reasonable particularity. This is apparent both on the face of the subpoena and from the allegations of the complaint. Under such circumstances, respondents' contentions must be rejected. *Endicott Johnson Corp. v. Perkins*, 317 U.S. 501 (1943); *Oklahoma Press Publishing Company v. Walling*, 327 U.S. 186 (1946); *United States v. Morton Salt Co.*, 338 U.S. 632 (1950).

Like the examiner, the Commission is aware of the fact that compliance with the modified subpoena may be burdensome to some extent, but does not believe it will be oppressively so. Compliance therewith is but a concomitant of adjudicatory proceedings of the nature here involved.

Respondents' appeal from the hearing examiner's order of May 22, 1958, should be denied. The Commission having further concluded that no good purpose would be served by oral argument, respondents' request therefor will also be denied. An appropriate order will be entered.

ORDER DENYING INTERLOCUTORY APPEAL

The respondents having filed an interlocutory appeal from the hearing examiner's order of May 22, 1958, granting the motion of counsel supporting the complaint for reconsideration and modification of an order directing compliance by respondents with a modified subpoena duces tecum; and

The Commission, for the reasons stated in the accompanying opinion, having determined that the ruling appealed from is not erroneous:

It is ordered, That respondents' appeal and their request for oral argument thereon be, and they hereby are, denied.

NATIONAL DAIRY PRODUCTS CORP. Docket 7018. Order, July 17, 1958.

Interlocutory order sustaining hearing examiner's denial of respondent's motion for leave to amend answer to protest against Commission's entry of desist order without issuing like orders simultaneously against its competitors.

The respondent having filed an interlocutory appeal from the hearing examiner's ruling of June 18, 1958, denying respondent's motion for leave to amend its answer to the complaint; and

It appearing that the proposed amendment consists of allegations that practices similar to those set forth in the complaint are widely employed by respondent's competitors and that respondent would be seriously injured if the Commission should enter a cease and desist order requiring it to discontinue such practices without issuing like orders simultaneously against its competitors; and

It further appearing that such allegations even if established by proof would not constitute a defense to the charges of the complaint; and

The Commission being of the opinion that the respondent's appeal, being directed to the Commission's administrative discretion, is not one to be granted under §3.20 of the Rules of Practice:

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

THE TEXAS CO. Docket 6898. Order, July 29, 1958.

Interlocutory order sustaining denial of motion to quash subpoena duces tecum on ground that counsel had stipulated that production of documents in question would not be required.

Counsel for respondent having filed an interlocutory appeal from the hearing examiner's refusal to quash a subpoena duces tecum calling for production of certain documents in respondent's possession upon the principal ground that counsel had stipulated in writing that production of such documents would not be required; and

The Commission having examined the exchange of correspondence between counsel, purporting to embody the aforesaid stipulation, and the pertinent portions of the transcript of record relative thereto, and having concluded that said stipulation was not intended to, and by its terms does not, preclude counsel supporting the complaint, at the proper time and through appropriate process, from seeking production of the documents included in the specifications of the subpoena duces tecum:

It is ordered, That respondent's appeal from the hearing examiner's ruling denying respondent's motion to quash the subpoena duces tecum be, and it hereby is, denied.

LURIA BROTHERS & COMPANY, INC., ET AL. Docket 6156. Order and opinion, July 30, 1958.

Interlocutory order denying complaint counsel's appeal from hearing examiner's rulings closing case before disposing of motions to strike evidence and requiring complaint counsel's findings to be filed before respondents'.

OPINION OF THE COMMISSION

By the COMMISSION:

When closing the record for the reception of evidence, the hearing examiner allotted counsel supporting the complaint four months' time within which to file their proposed findings and conclusions. The hearing examiner accorded the respondents six months' time for that purpose and additionally granted the respondents leave within that period to make or renew motions to strike certain evidence which had been received into the record over their objections. The appeal asks reversal of the action closing the case without disposing of all motions to strike evidence and of the action requiring that suggested findings be filed by counsel supporting the complaint prior to the date when respondents' proposals and motions are due to be submitted. These rulings, the appeal contends, violate basic concepts of orderly procedure and due process.

Orderly trial procedure ordinarily entails timely rulings on motions to strike prior to submission of the case for decision on its merits. At any stage of proceedings pending before them, however, hearing examiners may duly entertain requests for reconsideration of prior evidentiary rulings when warranted by the circumstances. Here, the examiner decided to defer the filing of motions to strike and to decline to rule thereon until after the case was closed. He attempted to eliminate cause for a renewal and reargument of respondents' prior exceptions to rulings on the reception of evidence. Throughout his rulings the hearing examiner laid stress upon the unusual number of severable allegations set forth in the Commission's complaint and the resulting complexity of the issues. He emphasized the need of having the evidence adduced during course of trial, and to be relied upon by counsel in support of the complaint, directed to and connected up with the issues to which it may be deemed relevant. The hearing examiner considered that the course taken by him in these circumstances would expedite the proceeding and be of material aid in rendering a sound decision on the merits.

It is true, as argued by counsel supporting the complaint, that if subsequently filed motions to strike are ruled upon adversely to them, the record for decision will differ from that existing when the proceeding was closed and submitted for decision. In such case, however, counsel would not be foreclosed on appeal from pressing exceptions to those rulings, irrespective of the manner of disposition by the hearing examiner of any motion to

reopen filed in recognition of rulings striking evidence. We do not believe, in the circumstances here presented, that the ruling closing the record and permitting filing of motions to strike contemporaneously with submission of respondents' proposed findings affected counsel's substantial rights or prejudicially departed from orderly procedure. This aspect of the appeal, accordingly, is denied.

Under the companion ruling to which the appeal likewise excepts, the hearing examiner, as previously noted, accorded the respondents six months' time for filing of their proposed findings; and, to counsel supporting the complaint, who had suggested at the outset that three months be allotted, the hearing examiner granted four months. Parties are authorized under §3.19 of the Commission's Rules to file their respective proposed findings at the close of the reception of evidence or "within a reasonable time thereafter" as fixed by the hearing examiner. Both periods fixed under the ruling exceed those customarily granted in Commission proceedings. However, the appeal's exceptions center on the time disparity feature. Inasmuch as the ruling is not attacked as according an unreasonable time for the submissions, the question of whether it essentially serves to prolong the proceeding unduly is not before us for review and not decided.

The appeal contends that the failure to fix the same expiration date for filing of proposals by all parties contravenes the Commission's rule and that the time afforded respondents handicaps counsel supporting the complaint in the presentation of their case. The fact that the respondents may be enabled to prepare their proposals in the form of counter-findings does not, however, deny counsel supporting the complaint opportunity to fully present their case. The rule itself does not require that the time fixed permit simultaneous filings by parties. It is, however, equitable and proper that parties be afforded equal time, running concurrently, for the submission of suggested findings. This has been the customary practice in Commission proceedings and it is one to be departed from only in unusual circumstances. While recognizing this, the hearing examiner deemed another course warranted by exigencies of the case and his statement in that regard included the following:

"The complaint is very involved. * * *

"* * * My impression at this time is that with respect to some of the allegations there is either no evidence or very, very marginal evidence. * * *

"I think that we can proceed more expeditiously in the long

run if we have counsel supporting the complaint file their proposals and have counsel for respondents file their answering or reply proposals—counter proposals. * * *

“* * * if I were to require you both to file your proposals at the same time, insofar as respondents are concerned they would be shooting somewhat in the dark and having to anticipate what your proposals would be—that is counsel supporting the complaint’s proposals—and I would feel obligated to permit an additional time thereafter for answering proposals. I think under all circumstances that I am going to fix a time for the filing of the proposals by counsel supporting the complaint, fix an additional time thereafter within which counsel for respondents shall file their counter proposals.”

The ruling clearly related to matters committed to the sound discretion of the hearing examiner. We cannot say that his action constituted an abuse of any discretionary limitations. This aspect of the interlocutory appeal accordingly is denied.

The appeal additionally excepts to the hearing examiner’s order of May 7, 1958, denying the motion of counsel supporting the complaint to reconsider a prior ruling concerning Commission Exhibit 985. In the original ruling, the hearing examiner indicated he would grant a motion by respondents to strike such exhibit unless its underlying records were made available to respondents; and it appears from the appeal and respondents’ answers that those data were duly made available for consideration. Hence, the hearing examiner has not stricken the exhibit and the contingency apparently is foreclosed which he stated would warrant its striking. Because the ruling nowise involves substantial rights affecting final decision, this part of the appeal also is denied.

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

ORDER DENYING INTERLOCUTORY APPEAL

This matter having come on for hearing upon the interlocutory appeal filed by counsel supporting the complaint from rulings contained in two orders filed by the hearing examiner on May 7, 1958, and upon the answers of respondents in opposition to the appeal; and

The Commission having determined, for reasons stated in the accompanying opinion, that the appeal should not be granted.

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

Commissioner Kern not participating.

EXQUISITE FORM BRASSIERE, INC. Docket 6966. Order, Aug. 1, 1958.

Order granting motion of complaint counsel, certified by the hearing examiner, and ordering complaint amended and supplemented by adding charges of violation of Section 2(e) of the Clayton Act.

This matter having come on to be heard upon the motion certified by the hearing examiner to the Commission for its determination, which motion was filed by counsel supporting the complaint and requested, among other things, that the Commission amend and supplement its complaint in this proceeding by adding allegations charging that the respondent has violated subsection (e) of Section 2 of the Clayton Act, as amended; and

The Commission having duly considered the motion and the respondent's answer in opposition thereto, and it appearing that the record contains information constituting adequate grounds for preliminary administrative determinations or "reason to believe" that the respondent has furnished the services of special personnel, known as "stylists," to some of its purchasers and has not accorded such services or facilities to other purchasers upon proportionally equal terms, in violation of the public policy expressed in subsection (e) of Section 2 of the Clayton Act, as amended; and

The Commission having determined that exercise of its administrative responsibility to issue an amended and supplemental complaint is required in the public interest and it appearing that the right of the respondent to full and fair hearing on the charges against it is protected under procedures provided for the conduct of the Commission's adjudicative proceedings:

It is ordered, That the motion be, and it hereby is, granted.

It is further ordered, That the amended and supplemental complaint of the Commission issue herewith and be served upon the respondent Exquisite Form Brassiere, Inc.

It is further ordered, That the evidence heretofore introduced in support of and in opposition to the original complaint shall have the same force and effect as though received at hearings under the complaint, as amended and supplemented, this action being without prejudice to the hearing examiner's authority and duty to rule upon the merits of any motion which may be filed requesting opportunity to further cross-examine witnesses heretofore appearing in the proceeding or to take such further action as may be appropriate to protect any of the respondent's rights.

INDIANA FUR CO., INC. Docket 6585. Order, Aug. 15, 1958.

Order denying, as untimely, petition requesting modification of desist order in fur products case to conform to Seventh Circuit's decision in *Mandel Brothers, Inc.*, case pending in the Supreme Court on review.

Respondents having filed a petition requesting the Commission to reopen this proceeding and modify the cease and desist order contained in the initial decision, which was adopted as the decision of the Commission on December 27, 1957, so as to conform the order to the judgment of the United States Court of Appeal for the Seventh Circuit, entered in the case of *Mandel Brothers, Inc. v. Federal Trade Commission* on April 1, 1958 (254 F. 2d 18); and

It appearing that the case of *Mandel Brothers, Inc. v. Federal Trade Commission* is now pending in the United States Supreme Court on a petition for a writ of certiorari to review the aforesaid judgment; and

The Commission being of the opinion that respondents' petition is untimely:

It is ordered, That said petition be, and it hereby is, denied, without prejudice, however, to respondents' right to renew it if and when the judgment of the Court of Appeals for the Seventh Circuit in the *Mandel Brothers* case becomes final.

GLICKMAN BROTHERS. Docket 6713. Order, Aug. 15, 1958.

Order denying, as untimely, petition requesting modification of desist order in fur products case to conform to Seventh Circuit's decision in *Mandel Brothers, Inc.*, case pending in the Supreme Court on review.

Respondents having filed a petition requesting the Commission to reopen this proceeding and modify the cease and desist order contained in the initial decision, which was adopted as the decision of the Commission on December 27, 1957, so as to conform the order to the judgment of the United States Court of Appeals for the Seventh Circuit, entered in the case of *Mandel Brothers, Inc. v. Federal Trade Commission* on April 1, 1958 (254 F. 2d 18); and

It appearing that the case of *Mandel Brothers, Inc. v. Federal Trade Commission* is now pending in the United States Supreme Court on a petition for a writ of certiorari to review the aforesaid judgment; and

The Commission being of the opinion that respondents' petition is untimely:

It is ordered, That said petition be, and it hereby is, denied, without prejudice, however, to respondents' right to renew it if and when the judgment of the Court of Appeals for the Seventh Circuit in the *Mandel Brothers* case becomes final.

REYNOLDS METALS CO. Docket 7009. Order, Aug. 21, 1958.

Interlocutory order sustaining hearing examiner's denial of respondent's motion to dismiss.

This matter having come on for hearing upon the interlocutory appeal filed by the respondent from the hearing examiner's ruling denying its motion to dismiss the complaint for alleged failure to establish a *prima facie* case; and

It appearing that the hearing examiner's ruling is not a final decision on the merits of the proceeding and nowise affects the respondent's substantial rights and there being no showing that a determination of the correctness of such ruling before the conclusion of the trial would better serve the interests of justice; and

The Commission having determined that the respondent's appeal does not come within the category of those to be granted under §3.20 of the Commission's Rules of Practice and that the respondent's request to present oral argument in support of the appeal should be denied:

It is ordered, That the respondent's appeal be, and it hereby is, denied.

FREEMAN & FREEMAN. Docket 4735. Order, Aug. 27, 1958.

Order granting respondents' motion to reopen proceeding¹ and designating a hearing examiner to receive evidence.

Respondents, pursuant to Section 5(b) of the Federal Trade Commission Act and §3.27 of the Commission's Rules of Practice, having filed a motion to reopen this proceeding seeking to modify the order to cease and desist; and counsel supporting the complaint having filed answer in opposition thereto; and

The Commission being of the opinion that reasons set forth in respondents' motion constitute a sufficient showing to warrant reopening the proceeding to determine whether conditions of law

¹ Cease and desist order, prohibiting representations that "Porcelainize" product was not an automobile polish, dated May 2, 1945, 40 F.T.C. 512.

or fact have so changed as to require modification of the order or if the public interest so requires:

It is ordered, That this case be, and it hereby is, reopened.

It is further ordered, That a hearing examiner be designated for the purpose of receiving such evidence as may be offered by respondents with respect to the aforesaid question.

It is further ordered, That the hearings shall be conducted in accordance with the Commission's Rules of Practice for Adjudicative Proceedings insofar as such Rules are applicable; that the hearing examiner shall have all the powers and duties as provided for in §3.15 of said Rules, except that of making and filing an initial decision; and that counsel in support of the complaint shall have the usual rights of due notice, cross-examination and the presentation of evidence in rebuttal.

It is further ordered, That upon completion of the hearings the hearing examiner shall certify the record to the Commission with his report and recommendation thereon.

FOREMOST DAIRIES, INC. Docket 6495. Order and opinion, Sept. 10, 1958.

Interlocutory order in merger proceeding vacating—as precluding any final decision on the eliminated acquisitions short of a remand—hearing examiner's ruling that respondent need not put in a defense as to challenged acquisitions of corporations not engaged in interstate commerce and those involving proprietorships.

ON INTERLOCUTORY APPEAL

By the COMMISSION:

The complaint in this proceeding (as amended on the record) charges respondent with violations of both Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act in connection with the making of a series of acquisitions of dairy products concerns.

The question raised in this interlocutory appeal by counsel supporting the complaint is whether the hearing examiner properly ruled that respondent need not put in a defense as to certain acquisitions challenged by the Commission's complaint, including those acquisitions of corporations not engaged in interstate commerce and those involving proprietorships.

The examiner, it is noted, has not ruled that counsel supporting the complaint has failed to make a prima facie case as to the allegations in the complaint.

The effect of the ruling is to preclude any final decision on the

acquisitions so eliminated, short of a remand, since respondent may rightfully claim hereafter that it had no opportunity to defend as to these. The Section 5 charge presents questions of law and fact which the Commission prefers to determine upon a complete record. This includes as to such charge any proper defense of the acquisitions concerned which the respondent may wish to offer.

We hold, therefore, that it was error for the examiner to rule that the acquisitions other than those he listed need not be defended. Accordingly, the appeal of counsel supporting the complaint is granted and appropriate order vacating the examiner's ruling will be entered.

ORDER DISPOSING OF INTERLOCUTORY APPEAL OF COUNSEL
SUPPORTING THE COMPLAINT

This matter having come on to be heard upon the interlocutory appeal of counsel supporting the complaint from the hearing examiner's ruling of July 10, 1958, limiting the record in this proceeding; and

The Commission, for the reasons stated in the accompanying opinion, having granted the appeal and having determined that the ruling of the examiner should be vacated:

It is ordered, That the hearing examiner's ruling of July 10, 1958, limiting the record in this proceeding be, and it hereby is, vacated and set aside.

SANDURA CO. Docket 7042. Order, Sept. 15, 1958.

Interlocutory order sustaining hearing examiner's denial of motion to strike testimony of witnesses shown Commission investigator's report of prior interview.

The respondent having filed an interlocutory appeal from the hearing examiner's ruling of July 30, 1958, denying the respondent's motion to strike from the record the testimony of a witness to whom counsel in support of the complaint allegedly had exhibited the written report of an interview with said witness, theretofore prepared by a Commission investigator, and to dismiss other proposed witnesses to whom such reports had likewise been exhibited; and

It appearing that no showing has been made that said ruling will materially affect the final decision in this proceeding or that a determination of the correctness thereof before the conclusion of the trial would better serve the interests of justice; and

The Commission being of the opinion that the appeal is not one to be granted under the provisions of §3.20 of the Rules of Practice:

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

HUTCHINSON CHEMICAL CORP. Docket 7140. Order, Sept. 15, 1958.

Interlocutory order sustaining hearing examiner's denial of respondents' motion to dismiss complaint.

This matter having been heard on the respondents' interlocutory appeal from the hearing examiner's ruling denying their motion, made at the close of the case in chief, for dismissal of the complaint; and

It appearing that the ruling appealed from, in effect that a *prima facie* case has been established, will not affect the final decision in the proceeding, and there being no showing that such ruling involves the respondents' substantial rights or that a determination of the correctness thereof before the conclusion of the trial would better serve the interests of justice; and

The Commission being of the opinion that the appeal does not come within the category of those to be granted under §3.20 of the Rules of Practice.

It is ordered that said appeal be, and it hereby is, denied.

FRED BONNER CORP., ET AL. Docket 7068. Order, Sept. 17, 1958.

Interlocutory order sustaining hearing examiner's denial of motion to dismiss complaint and ruling that factual issues may not properly be disposed of on the basis of ex parte affidavits prior to introduction of evidence.

Respondents having filed on August 15, 1958, an interlocutory appeal from the hearing examiner's ruling of August 1, 1958, denying their motion to dismiss the complaint, and having included therein a motion requesting the Commission to dismiss the complaint; and

It appearing that the ruling appealed from, in effect that factual issues raised by the pleadings may not properly be disposed of on the basis of ex parte affidavits prior to the introduction of evidence, will not under any circumstances materially affect the final decision of the case, and no showing having been made that a determination of the correctness of said ruling before the conclusion of the trial would better serve the interests of

justice within the meaning of §3.20 of the Commission's Rules of Practice; and

The Commission having separately considered the motion to dismiss the complaint and being of the opinion that the issues presented can best be resolved after the development of a complete factual record:

It is ordered, That the respondents' appeal from the hearing examiner's ruling be, and it hereby is, denied.

It is further ordered, That the accompanying motion to dismiss the complaint be, and it hereby is, also denied.

SUNSHINE BISCUITS, INC. Docket 6597. Order, Sept. 24, 1958.

Order denying motion to reopen proceeding and modify desist order for lack of showing which would require reconsideration of the issues.

This matter having come on to be heard by the Commission upon respondent's motion to reopen this proceeding for the purpose of modifying the order to cease and desist contained in the initial decision, as adopted by the Commission on May 7, 1958 [54 F.T.C. 1514], and upon answer in opposition to said motion filed by counsel supporting the complaint; and

It appearing that the grounds for the motion are (1) that respondent upon service of the complaint discontinued the practice alleged therein to be violative of Section 2(d) of the Clayton Act, as amended, and (2) that the scope of the order sought to be modified is so broad and general in nature as to render it difficult for respondent to conduct its business in compliance therewith; and

It further appearing that respondent's motion raises issues which heretofore have been considered by the Commission and disposed of in its decision rendered May 7, 1958, which was based on the entire record herein, including identical contentions by respondent's counsel presented in oral argument before the full Commission on such issues; and

The Commission having concluded that no showing has been made which would now require reconsideration of such issues:

It is ordered, That respondent's motion to reopen this proceeding for the purpose of modifying the Commission's order issued May 7, 1958, be, and it hereby is, denied.

SHEFFIELD MERCHANDISE, INC., ET AL. Docket 6627.
Order, Oct. 2, 1958.

Order denying motion for reconsideration of Commission's review of initial decision which resulted in vacating hearing examiner's dismissal of complaint and remanding case for further proceedings.

This matter having come on to be heard upon respondents' motion for an order setting down for reconsideration and hearing the Commission's review of the hearing examiner's initial decision dismissing the complaint, resulting in the order of July 7, 1958, vacating the initial decision and remanding to the hearing examiner for further proceedings; and

It appearing that the principal grounds for the motion are that the Commission's action allegedly conflicts with ruling case law and is without support in the record, and that the Commission allegedly has failed to comply with the Administrative Procedure Act as to certain of its provisions which require an opportunity to be heard prior to decisions; and

The Commission having determined that respondents, pursuant to the Commission's Rules of Practice, have had such opportunity for hearing in this proceeding as would fully meet the requirements of the Administrative Procedure Act, and having further determined that respondents have shown no sufficient grounds otherwise for their request:

It is ordered, That respondents' motion for reconsideration and hearing be, and it hereby is, denied.

GUARANTEE RESERVE LIFE INSURANCE CO. OF
HAMMOND, ET AL. Docket 6243. Order, Oct. 3, 1958.

Order denying, for lack of showing that the instant case falls within the doctrine of the Supreme Court decision in the *National Casualty Co.* case, motion to dismiss complaint in insurance proceeding.

Respondents, on January 27, 1958, having filed their appeal from the hearing examiner's initial decision, and thereafter having filed, on September 18, 1958, a motion to dismiss the complaint in this proceeding upon the authority of the United States Supreme Court's ruling in *Federal Trade Commission v. National Casualty Company*, 357 U.S. 560 (1958), which motion further asserts that such dismissal would be in accord with the Commission's action in dismissing the complaint in the matter of *North American Accident Insurance Company*, Docket No. 6456; and

The Commission having concluded that respondents have made no showing that the instant case falls within the doctrine of the

aforesaid Supreme Court decision, or that granting of respondents' motion would be in accord with the Commission's action in dismissing the complaint against said North American Accident Insurance Company:

It is ordered, That respondents' motion to dismiss the complaint in this proceeding, filed September 18, 1958, be, and it hereby is, denied.

PRUVO PHARMACAL CO., ET AL. Docket 5778. Order, Oct. 9, 1958.

Order denying—for lack of adequate preliminary showing of any change in therapeutic value of preparation concerned—petition for revision of desist order.

This matter having come on for hearing upon the petition filed by respondents under §3.27(b) of the Commission's Rules of Practice, which petition requests that the order to cease and desist contained in the Commission's decision of May 15, 1953 [49 F.T.C. 1365], be modified so as to permit the respondents to state in advertising that their preparation contains vitamin C and that such vitamin is "essential for maintaining stability of elasticity in connecting tissues in joints and body generally"; and

It appearing that when this proceeding was instituted the respondents were offering their product, called Pruvo, for the treatment and complete relief of arthritis and related pathological conditions and their symptoms, and the Commission having determined on the basis of the record that the therapeutic value of Pruvo, as then constituted, was that supplied by its salicylate content as an analgesic and antipyretic, and the Commission having thereupon issued its decision, including its order forbidding the respondents from representing, among other things, that Pruvo will have any therapeutic effect in arthritic or rheumatic conditions in excess of that afforded by an analgesic and antipyretic for temporarily relieving minor aches, pains or fever; and

It appearing to the Commission that nothing contained in its order, which has become final by operation of law, prohibits the respondents from truthfully and nondeceptively setting forth in their advertising the ingredients contained in the preparation, including the vitamin C supplied under the revised formula, but it further appearing, however, that respondents' petition includes no showing or offer of proof that arthritis or the other conditions

named in the order are caused by or associated with deficiencies of vitamin C, and the Commission having accordingly determined that such petition makes no adequate preliminary showing of any change in therapeutic value being afforded when the preparation is used for the diseases and conditions to which the order refers; and

The Commission having additionally determined, therefore, that the petition fails to establish a reasonable probability that changes in conditions of fact or law have occurred since entry of order herein or to demonstrate a probability that the public interest requires the modification requested:

It is ordered, That the respondents' petition be, and it hereby is, denied.

AMERICAN PACKING CO., ET AL. Docket 6904. Order, Oct. 15, 1958.

Order denying motion to stay effective date of desist order until conclusion of all similar proceedings involving industrywide violations of Sec. 2(c). Clayton Act.

This matter having come on to be heard upon respondents' motion requesting a stay in the effective date of the order to cease and desist issued herein until such time as all similar proceedings involving certain industrywide practices have been concluded, stating in effect that equity requires the simultaneous disposition of these cases; and

The Commission having determined that respondents' motion presents no adequate basis for the relief requested:

It is ordered, That respondents' motion to stay the effective date of the order be, and it hereby is, denied.

BENEFICIAL STANDARD LIFE INSURANCE CO. Docket 6309. Order, Oct. 16, 1958.

Order denying, for lack of showing that the instant case falls within the doctrine of the Supreme Court decision in the *National Casualty Co.* case, motion to dismiss complaint in insurance proceeding.

The respondent, on October 3, 1958, having filed a motion requesting that this proceeding be reopened and that the Commission's decision of September 23, 1955, be vacated, on the authority of the United States Supreme Court's ruling in *Federal Trade Commission v. The American Hospital and Life Insurance Company*, 357 U.S. 560 (1958); and

It appearing that the respondent has made no showing that this case falls within the doctrine of the aforesaid Supreme Court decision, and there being no record herein on the basis of which the necessary determinations could be made:

It is ordered, That the respondent's motion be, and it hereby is, denied, without prejudice, however, to the respondent's right to file a new motion setting forth such facts as it may care to present in support thereof.

GULF OIL CORP. Docket 6689. Order, Dec. 14, 1958.

Interlocutory order sustaining appeal from hearing examiner's ruling limiting to two months the period for completion of presentation of evidence in support of complaint.

This matter having been heard on an interlocutory appeal, filed by counsel in support of the complaint, from the hearing examiner's ruling of October 30, 1958, fixing December 31, 1958, as the date on or before which presentation of evidence in support of the complaint shall be completed; and

It appearing that the examiner based his ruling, in part, at least, on the opinion that "* * * by the energetic and efficient use of the two months remaining between now and the end of the year all evidence available and necessary to be adduced in support of the allegations of the complaint can be presented"; and

Counsel in support of the complaint having shown that, contrary to the examiner's impression, the preparation and submission on or before December 31 of certain additional evidence, the presence of which in the record is, or may be, essential for an informed decision of the case, is physically impossible; and

The Commission noting its displeasure concerning the lack of progress in the trial of this case:

It is ordered, That the hearing examiner's ruling of October 30, fixing December 31, 1958, as the date on or before which presentation of evidence in support of the complaint shall be completed be, and it hereby is, vacated.

It is further ordered, That counsel in support of the complaint shall, with all possible dispatch, proceed to prepare and submit their evidence to the end that the case-in-chief may be concluded at the earliest practicable date.

AMERICAN CYANAMID CO., ET AL. Docket 7211. Order, Dec. 19, 1958.

Interlocutory order sustaining, as in the public interest, hearing examiner's denial of motions to quash certain specifications of subpoenas duces tecum.

This matter having come on for hearing upon the interlocutory appeals filed by all respondents, save respondent The Upjohn Company, from the hearing examiner's rulings denying appellants' motions to quash certain specifications of the subpoenas duces tecum which issued herein; and

It appearing that the challenged specifications direct the respondents to produce, among other matters, data and documents relating to their respective production and selling costs for designated antibiotic preparations, and that the respondents oppose such requirements on grounds, among others, that the information is irrelevant and constitutes valuable trade secrets which, if disclosed to their co-respondents or the public, would irreparably injure their businesses; and

The Commission having determined that the hearing examiner correctly ruled that the information and data called for under all of the specifications objected to are relevant and that, in the circumstances presented, disclosure of such information for study by staff counsel and their accountant advisors will serve the public interest, and the Commission having further determined that the rulings appealed from should be affirmed; and

The Commission having additionally noted the alternative requests of the appealing respondents that the subpoenas be quashed or limited on condition that the respondents furnish designated information relating to their respective total costs for each dosage form of certain antibiotics pursuant to the procedures, conditions and restrictions specified in the appendices to the briefs, but it appearing that such proposals were not presented to the hearing examiner and that he has had no opportunity to consider them; and the Commission having accordingly determined that it should decline to pass upon or hear oral argument on those substitute proposals:

It is ordered, That the interlocutory appeals of the respondents be, and the same hereby are, denied.

It is further ordered, That the respondents' substitute proposals with respect to compliance with the subpoenas be, and they hereby are, referred to the hearing examiner for ruling thereon in the exercise of his sound discretion.

SCOTT PAPER COMPANY. Docket 6559. Order and opinion, Jan. 5, 1959.

Order vacating initial decision and remanding merger case for further proceedings, on appeal of complaint counsel from hearing examiner's dismissal of complaint for want of proof.

OPINION OF THE COMMISSION

By TAIT, Commissioner:

This matter is not before the Commission for final adjudication on the merits. It is presented on appeal by counsel in support of the complaint from the initial decision of the hearing examiner which granted respondent's motion, made at close of the case in chief, to dismiss the complaint for want of proof. In such circumstances the sole question for decision at this time is whether a prima facie showing of the complained violations has been made.

The proper standard for determining the existence or non-existence of a prima facie showing has been set forth in previous Commission opinions.¹ Not only is it apparent that the hearing examiner failed to apply such standard here but also that he, in effect, adjudicated the merits of the case rather than the issue raised by respondent's motion. The test to be applied was explained in our *Vulcanized Rubber* opinion:²

"The ruling of a hearing examiner denying a motion to dismiss a complaint for failure of proof, made at the conclusion of the case in chief, obviously is not a decision on the merits of the case. Such a ruling is merely a determination that there is in the record reliable evidence which, when considered in connection with reasonable inferences which may be drawn therefrom, and if not overcome by the respondent's evidence, would support an order to cease and desist. The ultimate decision of whether an order to cease and desist will be issued, even in the absence of further evidence, is not reached; and it could well be that a hearing officer, upon full consideration of a proceeding submitted for final decision, after making appropriate determinations concerning the credibility of witnesses, the weight to be given conflicting evidence, and other pertinent questions involved, would dismiss the complaint even though he had theretofore denied a motion to dismiss for failure of the record to establish a prima facie case.

"A hearing examiner in ruling on a motion to dismiss for

¹ *Vulcanized Rubber and Plastics Company*, Docket No. 6222 (Nov. 29, 1955); *The Timken Roller Bearing Company*, Docket No. 6504 (May 27, 1958).

² *Supra*.

failure of proof, made at the close of the case in chief, like a Federal district court in ruling on a similar motion in a nonjury trial, views the evidence and inferences reasonably to be drawn therefrom in the light most favorable to the complaint."

From the foregoing it can be seen that situations may arise where several reasonable but rebuttable inferences may be drawn from the record—some unfavorable, others favorable, to the complaint. In establishing a prima facie case we view the evidence and inferences reasonably to be drawn therefrom in the light most favorable to the complaint. Of course a respondent also has the further opportunity, at later stages of the proceeding, to rebut, dispel, or explain away the inferences in support of the allegations. Here the Examiner gave but little if any recognition to favorable inferences and, moreover, emphasized those inferences against the complaint's allegations.

The complaint charges Scott Paper Company (Scott), a corporation, with violating Section 7 of the Clayton Act (15 U.S.C. Sec. 18) and also Section 5 of the Federal Trade Commission Act (15 U.S.C. Sec. 45) by the acquisition of three other corporations: Soundview Pulp Company, Everett, Washington (Soundview); Detroit Sulphite Pulp & Paper Company, Detroit, Michigan (Detroit); and Hollingsworth & Whitney Company, Boston, Massachusetts (Hollingsworth).

Scott is a leading producer and seller of toilet tissue, facial tissue, paper napkins, paper towels and household waxed paper. In 1955 Scott's sales of all products, including those enumerated, amounted to approximately \$245 million. Its sales of the listed products, herein referred to as "sanitary paper products," approximated some \$189 million. Scott sells these sanitary paper products to numerous firms for resale, including grocery chains. Although it also sells to industrial users, by far the greater share of its business is from sales for resale purposes.

The complaint, as noted above, specifically challenges three acquisitions. The first is Soundview which was merged into Scott in November 1951. At the time of the acquisition Soundview was engaged in producing and selling bleached sulphite pulp, some of which was purchased by Scott. Soundview had no paper making machines and did not produce sanitary paper products or any other kind of paper product. Detroit was acquired September 2, 1954. Detroit produced base paper stock, including wax base stock, which it sold to other manufacturers for further processing. Most, if not all, of Detroit's production of wax base stock was purchased by Scott. The third acquisition, Hol-

lingsworth, occurred October 27, 1954. Hollingsworth produced special industrial and converting papers. Neither Detroit nor Hollingsworth produced or sold sanitary paper products. Each of the three acquired corporations had pulp mills and, in the case of Soundview and Hollingsworth, substantial timber holdings. The acquisitions constituted so-called "backward vertical integrations" and initially provided Scott with additional facilities for producing its own raw materials. Scott is widely engaged in interstate commerce as were the three acquired firms.

Since acquiring these firms Scott has spent large sums of money in expanding and improving the facilities of each. The stock issued to acquire the companies was valued at approximately \$109 million. Through June 1956 Scott had spent for new construction and improvements an amount in excess of \$70 million.

In the posture of this proceeding where the inquiry concerns only prima facie aspects, we agree with the hearing examiner that the existence of the lines of commerce as alleged in the complaint appears to have been established. These lines are comprised of the sanitary paper products listed. Each of the several products involved might be considered a product market, but it is sufficient, at least for this determination, to view the sanitary paper products industry as a relevant market. The industry involved will be hereinafter referred to as the sanitary paper products industry.

The "section of the country" alleged is the entire United States. The hearing examiner found that in this industry there is no effective nationwide area of competition, but he appears to have overlooked the fact that only a prima facie showing is required. Scott is doing business throughout the entire United States, and so are its leading competitors. There is but little question that one of the acquisitions (Soundview) was made, in part, to put Scott on a more secure national footing. Also Scott's advertising appeal is directed to the whole nation and its resulting success appears to be inextricably tied to national merchandising efforts. We recognize, of course, that freight barriers and other competitive factors alluded to by respondent's counsel may confine many competitors to specific regions of the country; but whether this means that the nation, geographically, cannot be an effective area of competition does not now have to be finally determined. In our opinion, a prima facie showing of the nation as a section of the country has been made.

The sanitary paper products industry is substantial. Shipments in 1955 of all the products for the industry amounted to 1,123,616 tons in the resale market alone. Scott's share of such market was substantial. Its shipments of industry products in 1955 total 504,216 tons, having a dollar value of approximately \$189,700,000. In resale products, Scott's shipments in 1955 amounted to 452,668 tons.

The statutory test for determining illegality under amended Section 7 is whether the effect of the acquisitions (1) may be substantially to lessen competition or (2) may be to tend to create a monopoly. Thus the section is violated whether or not actual monopoly, or a substantial lessening of competition, has in fact occurred or is intended. Section 7 is designed to arrest in their incipiency the potential effects noted; absolute proof of neither is required. Reasonable probabilities are the criteria. Cf. *United States v. E. I. duPont de Nemours & Co.*, 353 U.S. 586 (1957).

As we have indicated heretofore, there is no slide rule guide in the making of the necessary determinations. Competitive factors must be examined.³ Of significance, for example, is the size and market share of the acquiring company, *Brillo Manufacturing Company, Inc.*, Docket No. 6557 (May 23, 1958), as well as prices and conditions of entry into the market, *American Crystal Sugar Company v. The Cuban-American Sugar Company*, 259 F. 2d 524 (2d Cir., 1958). Foreclosure of competitors from the market, if present, such as shown in the *duPont* case, supra, is also highly significant. However, the presence or absence of any one competitive factor may not be determinative of the lawfulness or unlawfulness of an acquisition.

The hearing examiner, although holding that counsel in support of the complaint need only produce substantial evidence showing reasonable probabilities that the challenged acquisitions will have one or both of the prohibited effects, failed to apply any such standard in his evaluation of the evidence. The examiner, in essence, looked for market control as such. There need be no showing that Scott had the power to fix prices or the power to control entry of new competitors; or that Scott had control of raw materials or the channels of distribution. Such power and control would amount to monopoly condemned by the Sherman Act. Applying the appropriate test we conclude that

³ *Pillsbury Mills, Inc.*, Docket No. 6000 (Dec. 21, 1953); *Crown Zellerbach Corporation*, Docket No. 6180 (Dec. 26, 1957).

counsel in support of the complaint has made a prima facie showing of the effects proscribed by Section 7 of the Clayton Act.

Scott is a principal factor in the sanitary paper products industry. In point of sales, as the examiner found, Scott might properly be called the leader. Scott's share of the market for all sanitary paper products was 26.76% in 1950 and 32.72% in 1955. It is the number one ranking company in the industry. As to resale industry products alone, in which field Scott did approximately 88% of its business in 1955, its share of such market was about 32% in 1950 and about 40% in 1955. Just how much of this increment may have resulted from the acquisitions we do not know with certainty. The record does not contain statistics for the intervening years 1951, 1952, 1953 and 1954 which would be of considerable benefit to a decision on the merits. We recognize that Soundview was acquired in 1951, and that apparently it did not enter into Scott's production and distribution picture until 1954; and that Detroit and Hollingsworth were not acquired until the fall of 1954, with production and distribution entry in the Scott picture in the latter part of that year or in early 1955. Here, however, we are dealing only with rebuttable inferences, and in the absence of rebuttal, one of several reasonable inferences is that the acquisitions may have been significant factors in bringing about Scott's increased share of the relevant market as well as its market position.

Market concentration in the sanitary paper products industry is high. The four largest companies, including Scott, had two-thirds of all of such business among them in 1955. The inference is that the probability of the entry of any substantial new competitors is remote. The high cost of breaking into the market with a new product and the problems of opening channels of distribution contribute to this difficulty of entry.

The challenged acquisitions considered together constituted a major step for Scott in the completion of backward integration. Soundview was operating an efficient modern pulp mill with a rated capacity of 200,000 tons a year. This amount was a substantial portion of Scott's pulp requirements for the period. Soundview also had timber resources sufficient to provide enough raw material to sustain its then production capacity for the foreseeable future and remain as an independent source of supply to its various customers. Although Scott may have needed a paper mill site on the Pacific Coast to construct a modern paper mill to take care of the expanding sanitary paper products market in the area, the acquisition of Soundview did much more. This

merger resulted in a major change in the nature and size of Scott's business. Scott thereby became a substantial seller of pulp on the open market.

The succeeding mergers likewise contributed to this change. Detroit added pulp production and paper production facilities. Hollingsworth added a going business which, among other facilities, included: an integrated pulp and paper plant at Winslow, Maine, with six paper machines and capacity for producing 275 tons of sulphite pulp per day; an integrated pulp and paper mill at Mobile, Ala., with three large paper machines and capacity for producing 420 tons of sulphite pulp per day, and approximately one million acres of timber land.

Comparing before and after the mergers, Scott's total sales which were \$97,724,407 in 1950 increased to \$246,684,301 in 1955; its assets which were about \$50 million in 1950 increased to \$225 million in 1955; and its pulp production went from about 139,000 tons in 1950 to approximately 775,000 tons in 1955. Again it is possible to infer that several factors entirely apart from the mergers may have contributed significantly to these increases. Efficiency of operation, production methods, management skills and general business conditions, for example, cannot be disregarded. But in the absence of rebuttal evidence it is reasonable to infer that the mergers have also played an important part.

The challenged mergers also appear to have rounded out the organization of Scott as a national concern. Pulp plants and sites for paper production were obtained in strategic locations on the West Coast, in the Middle West, in the South and in the East. In particular, the acquisition of Soundview gave to Scott the springboard from which to develop an integrated West Coast operation. In this connection we do not lose sight of the fact that Scott has been over the years a substantial purchaser of paper pulp in the open market. In 1950, 53% of its requirements were supplied by firms competing for this business, among them Soundview and Detroit. This competition has been reduced.

Soundview prior to its being merged into Scott was a substantial paper pulp supplier. Its pulp was shipped to approximately 100 various purchasers for use in the manufacture of high grade paper and paper products. The record does not clearly disclose whether any of these numerous purchasers were competitors of Scott. But since Soundview was a substantial pulp producer in the West, the acquisition thereof affected at least an important alternative or potential source of supply. Scott has

apparently continued to supply the former customers of Soundview but it now holds the power to eliminate an important supplier. While the foregoing will support inferences that, as a result of the acquisitions, competition in the production and sale of pulp may also be adversely affected, it does not appear that this particular phase of the record has been sufficiently developed. In order that the record may be clarified, the examiner should permit the receipt of such probative evidence as may be offered regarding the identification of paper manufacturers which relied upon the acquired firms as a source of pulp supply, whether they were competitors of the respondent, and other pertinent information as to this industry.

At the risk of being repetitious we say in final analysis that the question is not whether these acquisitions have resulted in monopoly or have actually substantially lessened competition; rather, it is whether there is a reasonable probability of a tendency toward monopoly or of the substantial lessening of competition. As was said in the *Vulcanized Rubber* case, *supra*, we must "view the evidence and inferences reasonably to be drawn therefrom in the light most favorable to the complaint." Giving consideration to all the factors, including favorable inferences which now stand un rebutted, we are unable to conclude that the necessary *prima facie* showing has not been made.

There is one further matter to be considered. The complaint additionally alleges that a substantial portion of Scott's growth has been accomplished through mergers or acquisitions and that the constant and continuous acquisition of companies engaged in the pulp and paper manufacturing industry and the conversion of such companies to the manufacture of Scott's paper products, as alleged, constitute a violation of Section 5 of the Federal Trade Commission Act. Under this charge, it may be important whether Scott attained its present position in the market substantially by acquisitions. The hearing examiner's refusal of offers of proof on this point by counsel in support of the complaint was error. The available evidence in support of counsel's contention in this connection is to be received and considered by the Hearing Examiner upon remand.

The appeal of counsel in support of the complaint is granted. We direct that an appropriate order be entered vacating the initial decision and remanding the case for further proceedings in accordance with the views herein expressed.

ORDER VACATING INITIAL DECISION AND REMANDING CASE
TO HEARING EXAMINER

This matter having come on to be heard by the Commission upon the appeal of counsel in support of the complaint from the hearing examiner's initial decision dismissing the complaint at the close of the case in chief; and

The Commission, for the reasons appearing in the accompanying opinion, having granted the aforesaid appeal, and having directed that an order be entered vacating the initial decision and remanding the case for further proceedings in accordance with the views therein expressed:

It is ordered, That the initial decision in this proceeding be and it hereby is, vacated and set aside.

It is further ordered, That this matter be, and it hereby is, reopened and remanded to the hearing examiner for further proceedings in conformity with the views of the Commission expressed in the accompanying opinion.

BEARINGS, INC. (Delaware), ET AL. Docket 7134. Order, Jan. 29, 1959.

Interlocutory order denying appeal of complaint counsel from rulings sustaining respondents' objections to receipt of certain exhibits in evidence.

Counsel in support of the complaint having filed an interlocutory appeal from certain rulings of the hearing examiner sustaining the respondents' objections to the receipt in evidence of a number of exhibits offering as memoranda or records of occurrences made in the regular course of business within the meaning of the Federal Shop Book Rule (Title 28, U.S.C.A., §1732); and

It appearing that no showing has been made that the effect of said rulings is more serious than to require counsel to prove by other available evidence the facts sought to be established by said exhibits; and

Counsel having thus failed to demonstrate that the rulings involve substantial rights or will materially affect the final decision of the case, or that a determination of the correctness of said rulings before conclusion of the trial would better serve the interests of justice, as required by §3.20 of the Commission's Rules of Practice:

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

GIANT FOOD SHOPPING CENTER, INC. Docket 6459.
Order and opinion, Feb. 10, 1959.

Order vacating and setting aside initial decision—which dismissed as subject only to jurisdiction of the Secretary of Agriculture under the Packers and Stockyards Act, complaint charging operator of a chain of supermarkets in Washington, D.C., with inducing discriminatory advertising allowances from its suppliers—and remanding the case for further proceedings.

OPINION OF THE COMMISSION

By KERN, Commissioner:

The complaint, as amended, charged violations by the respondent of the Federal Trade Commission Act. During the hearings, the respondent moved for dismissal on grounds that it is a packer within the meaning of the Packers and Stockyards Act, 1921,¹ and that the acts and practices charged as violative of law are matters committed to the exclusive jurisdiction of the Secretary of Agriculture. The motion was granted by the hearing examiner and counsel supporting the complaint have appealed from the hearing examiner's initial decision which provides for dismissal of this proceeding for lack of jurisdiction.

The respondent operates a chain of supermarkets for retailing food—including meat, poultry and dairy products—and household articles. On March 28, 1958, which date was after this proceeding began, the respondent purchased 100 shares of the common stock of Armour & Company. The latter is a meat packer and distributes its products on a national scale.

As effective when this action began, the Packers and Stockyards Act provided, among other things, that it shall be unlawful for a packer or other designated persons to engage in acts and practices there enumerated and duly conferred jurisdiction on the Secretary of Agriculture to institute proceedings against violators of its proscriptions. Under Section 201,² a packer is defined as any person engaged in the business (a) of buying live-

¹ 42 Stat. 159; 7 U.S.C. 181, *et seq.*

² "When used in this act—

The term 'packer' means any person engaged in the business (a) of buying livestock in commerce for purposes of slaughter, or (b) of manufacturing or preparing meats or meat food products for sale or shipment in commerce, or (c) of manufacturing or preparing livestock products for sale or shipment in commerce, or (d) of marketing meats, meat food products, livestock products, dairy products, poultry, poultry products, or eggs in commerce; but no person engaged in such business of manufacturing or preparing livestock products or in such marketing business shall be considered a packer unless—

(1) Such person is also engaged in any business referred to in clause (a) or (b) above, or unless

(2) Such person owns or controls, directly or indirectly, through stock ownership or control

stock in commerce for purposes of slaughter, or (b) of manufacturing or preparing meats or meat food products for sale or shipment therein; and additionally included in such definition are persons engaged in the business of marketing meats, dairy, poultry or other enumerated products in the event they also engage in meat packing or have the packer relationships specified in subparagraphs 2, 3 and 4. Of these, subparagraph 2 recites that such a marketer shall be deemed a packer within the meaning of the Act if he owns "any interest" in any business in categories (a) and (b) above. Section 406(b), as effective when the hearing examiner filed his initial decision, further provided that the Commission shall have no jurisdiction relating to matters subject to the Secretary's jurisdiction. The amended and supplemental complaint in this proceeding charges the respondent with violating Section 5 of the Federal Trade Commission Act through, among other things, inducing payments of discriminatory advertising allowances by suppliers of its groceries, including meat and dairy products, which allowances it knew or should have known were discriminatory. Counsel's appeal accordingly presents the question of whether the respondent's acquisition of stock in Armour & Company has served to divest the Commission of jurisdiction over practices by the respondent charged as violative of the Federal Trade Commission Act.

Since filing of initial decision by the hearing examiner, the United States Court of Appeals for the Fourth Circuit has rendered its decision in the case of *Crosse & Blackwell Company v. Federal Trade Commission*,³ which construes the Packers and Stockyards Act as effective prior to the recent amendment of September 2, 1958. The Court there noted that the Act, together with the exclusions of Section 406(b)⁴ and additional exclu-

or otherwise, by himself or through his agents, servants, or employees, any interest in any business referred to in clause (a) or (b) above, or unless

(3) Any interest in such business of manufacturing or preparing livestock products, or in such marketing business is owned or controlled, directly or indirectly, through stock ownership or control or otherwise, by himself or through his agents, servants, or employees by any person engaged in any business referred to in clause (a) or (b) above; or unless

(4) Any person or persons jointly or severally, directly or indirectly, through stock ownership or control or otherwise, by themselves or through their agents, servants, or employees, own or control in the aggregate 20 per centum or more of the voting power or control in such business of manufacturing or preparing livestock products, or in such marketing business and also 20 per centum or more of such power or control in any business referred to in clause (a) or (b) above."

³ 262 F.2d 600 (decided January 5, 1959).

⁴ "On and after the enactment of this Act, and so long as it remains in effect, the Federal Trade Commission shall have no power or jurisdiction so far as relating to any matter which by this Act is made subject to the jurisdiction of the Secretary, except in cases in which, before the enactment of this Act, complaint has been served under section 5 of the Act entitled 'An Act

sionary language contained in Section 5(a)(6)⁵ of the Federal Trade Commission Act, was susceptible to a construction that a processor of meats is subject to regulation by the Secretary of Agriculture as a packer under the Packers and Stockyards Act, but that jurisdiction over the activities of persons within the Act was not removed from the Commission except for commercial activities integral to the conduct of their packing or stockyard businesses and operations. In this connection, the Court further stated:

“* * * Harmonious reconciliation of the several statutory provisions can be achieved in the light of the apparent statutory scheme to subject the business of the packer and the stockyard operator to the regulatory control of the Secretary of Agriculture, whose department was particularly concerned with the problem and who had the means of effectively discharging the responsibility, while enforcement of the general antitrust laws, as they applied to other businesses than that of packers and stockyard operators, was left to the Federal Trade Commission, each exercising its particular functions in its own special field where a single corporation was engaged in activities, some of which were and some of which were not subject to regulation under the Packers and Stockyards Act.”

It thus is clear that jurisdiction to proceed against practices violative of the national policy expressed in the antitrust laws which may be used by persons subject to the Act for carrying on businesses and commercial pursuits in fields outside or additional to the packing and stockyards industry remains in the Commission. In the instant proceeding, the practices to which the charges of the amended and supplemental complaint pertain are not limited to activities engaged in for carrying on that portion of the business concerned with respondent's over-the-counter sale of meats and dairy and poultry products. They instead relate primarily to practices used for effectuating distribution of the company's products in general. Hence, the Commission has jurisdiction to act in this proceeding.

to create a Federal Trade Commission, to define its power and duties, and for other purposes,' approved September 26, 1914, or under section 11 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, and except when the Secretary of Agriculture, in the exercise of his duties hereunder, shall request of the said Federal Trade Commission that it make investigations and report in any case.”

⁵ “The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except * * * persons, partnerships, or corporations subject to the Packers and Stockyards Act, 1921, except as provided in section 406(b) of said Act, from using unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce.”

Even though a contrary interpretation of the statutory language were adopted, it would not follow that the stock purchase here considered has served to confer packer status upon respondent and to divest the Commission of jurisdiction as held by the hearing examiner. It is evident that Congress intended not only to regulate the meat packer in all phases of his activities in such field, but also wished to exclude from the operation of the Act all marketers of the packing industry's products who were not packer affiliates. In the event of integrated operations being engaged in, subparagraph 2 and its companion subparagraphs impose joint liability on packers and affiliated marketers for practices violative of the Act. We think the language of subparagraph 2 contemplates that the nature of the marketer's holding or interest in the packer present at least a potential for his exercise of a role of responsibility or participation in the packer's practices or possibilities for sharing more than trivially in the fruits of the packing enterprise.

No such integration of commercial activities on the part of two corporations appears here, however. On November 2, 1957, there were outstanding 4,677,410.5 shares of Armour & Company common stock,⁶ the class of security acquired by Giant. On the day of Giant's 100-share purchase, the price of Armour common ranged from $14\frac{1}{4}$ to $14\frac{5}{8}$ on the New York Stock Exchange.⁷ We think that Giant's interest in Armour through stock ownership is so infinitesimal as to fall far short of constituting "any interest" whatever in the contemplation of the Packers and Stockyards Act. In the *Crosse & Blackwell* case just cited, the Court declared:

"A literal interpretation of the exemption of §5(a)(6) of the Federal Trade Commission Act must be laid aside for it is 'plainly at variance with the policy of the legislation as a whole,' *Ozawa v. United States*, 260 U.S. 178; *United States v. Rosenblum Truck Lines*, 315 U.S. 50; *United States v. American Trucking Associations*, 310 U.S. 534, and if held to grant a more extensive exemption than the Secretary's regulatory power would produce an absurd result. *United States v. American Trucking Associations*, *supra*; *Sorrells v. United States*, 287 U.S. 435; *United States v. Edward Ryan*, 284 U.S. 167; *The Church of the Holy Trinity v. United States*, 143 U.S. 457."

It would be equally absurd, we believe, for Giant to gain immunity from the jurisdiction of the Federal Trade Commission

⁶ Moody's Industrial Manual, 1958, p. 1349.

⁷ Wall Street Journal, March 31, 1958.

by purchasing a paltry .002137 of one percent of the outstanding Armour common stock for the meager sum of about \$1,450. We therefore hold that the hearing examiner erred in his determination that respondent's acquisition of Armour & Company shares conferred an interest in that packing business within the intent and meaning of the Packers and Stockyards Act.

On September 2, 1958, Public Law 85-909 amending both the Packers and Stockyards Act and the Federal Trade Commission Act became effective. For reasons stated in our opinion in the matter of *Renaire Corporation (Pennsylvania), et al.*, Docket No. 6555 (decided February 3, 1959), we construe that amendment to be retrospective in its operation and, hence, applicable to proceedings pending before the Commission at the time it became effective. This legislation confers jurisdiction on the Commission over unfair trade practices in commerce in connection with all transactions by packers involving (1) commodities other than livestock, meats, meat food products, livestock products in unmanufactured form, poultry and poultry products, and (2) with exceptions not here material, retail sales by packers of all products. Our conclusion that Public Law 85-909 is retrospective in its operation likewise requires reversal of the initial decision's holding that the Commission lacks authority to proceed in this matter.

The appeal is being granted accordingly. The initial decision will be vacated and the case remanded for further proceedings.

ORDER VACATING INITIAL DECISION AND REMANDING CASE
TO HEARING EXAMINER

This cause having come on to be heard upon the appeal of counsel supporting the complaint from the hearing examiner's initial decision granting the motion of the respondent to dismiss the complaint for lack of jurisdiction; and

The Commission, for reasons stated in the accompanying opinion, having determined that the hearing examiner erred in granting said motion:

It is ordered, That the initial decision be, and it hereby is, vacated and set aside.

It is further ordered, That this case be remanded to the hearing examiner for further proceedings in accordance with the Commission's opinion.

FOREMOST DAIRIES, INC. Docket 6495. Order and opinion, Feb. 11, 1959.

Interlocutory order granting appeal of Attorney General of California from hearing examiner's denial of motion to quash subpoena duces tecum issued at instance of Foremost Dairies, Inc., and quashing said subpoena.

OPINION OF THE COMMISSION

The Attorney General of the State of California, on behalf of the Director of Agriculture of that State, has appealed from a ruling by the hearing examiner in this proceeding denying a motion filed by the Attorney General to quash or limit a subpoena duces tecum, issued by the examiner at the instance of respondent Foremost Dairies, Inc. The subpoena would require the Director of Agriculture to produce documents, or verified summaries thereof, disclosing sales of fluid milk, by plants, in certain market areas for the years 1953, 1955 and 1957.

Before the hearing examiner it was argued on behalf of the director substantially as follows: (1) that the material required to be produced by the subpoena is privileged and confidential under the laws of the State of California; (2) that the subpoena is invalid since it fails to describe adequately the documents sought, or their relevancy; (3) that the subpoena is invalid since it was issued by a hearing examiner rather than by a Commissioner of the Federal Trade Commission; (4) that the information and documents sought are available from the corporations or firms who process fluid milk in the designated market areas and recourse should first be made to these sources; and (5) that, in the alternative, the subpoena should be limited in its terms to official publications of the State Department of Agriculture which show total sales of fluid milk by marketing areas for the years in question.

The hearing examiner held that the confidential nature of the material covered by it is not sufficient grounds for quashing the subpoena since similar information furnished by the director is in evidence in this proceeding and that this evidence is being held *in camera* to preserve its confidential nature. He further held that the documents sought are relevant to the issues in the proceeding and that he, the examiner, is duly authorized by law by the Administrative Procedure Act to issue said subpoena. Finally, he ruled that it is not necessary to make recourse to other sources a prerequisite to requiring the Director of Agriculture to supply the information and material sought under the subpoena. In denying, as he did, the motion to quash or limit the subpoena,

the examiner made no specific determination as to whether or not the information covered by it is available in official publications of the California Department of Agriculture and that point is not before us for decision on this interlocutory appeal.

Contrary to contentions made on behalf of the Director of Agriculture, the hearing examiner does have the power to issue subpoenas *duces tecum*. Section 6(g) of the organic Federal Trade Commission Act, 15 U.S.C.A. 46(g), grants to the Commission power to make rules and regulations. Furthermore, Section 7(b) of the Administrative Procedure Act, 5 U.S.C.A. 1006 (b), provides that "Officers presiding at hearings shall have authority, subject to published rules of the agency and within its powers, to * * * issue subpoenas authorized by law." And the Commission has adopted and promulgated its Rules of Practice for Adjudicative Proceedings, Section 3.15(c) of which specifically grants hearing examiners authority to issue subpoenas.¹ In a situation analogous to that before us now it was held that the National Labor Relations Board was authorized to formulate rules pursuant to which authority was delegated to its examiners to issue subpoenas and to rule upon motions to quash so long as the Board itself was given such powers by statute, *N.L.R.B. v. International Typographical Union*, 76 F. Supp. 895 (S.D.N.Y. 1948). In view of the similarity of the statute involved in that case with pertinent provisions of the Federal Trade Commission Act, the Commission is of the opinion that no further discussion of hearing examiners' authority with regard to subpoenas is warranted here.

As to the issues of the adequacy of the description of the documents sought and the general relevancy of the information contained therein, those are matters initially to be determined by the hearing examiner. And, in view of the disposition herein made of the interlocutory appeal presently before us, the Commission finds it unnecessary to rule finally upon the correctness of the hearing examiner's ruling in these respects.

Two points remain to be considered. They involve, respectively, the asserted privileged and confidential nature of matters covered by the subpoena in question and the availability of the information sought from sources other than the Director of Agriculture.

¹ The complaint in this proceeding alleges violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C.A. 45, as well as violation of Section 7 of the Clayton Act, as amended, 15 U.S.C.A. 18. The Commission's subpoena powers under the Federal Trade Commission Act equally are available to it in proceedings under Section 7 of the Clayton Act, as amended, *Federal Trade Commission v. Tuttle*, 244 F.2d 605 (C.A. 9, 1957), *cert. den.* 354 U.S. 925 (1957).

The Attorney General for the State of California forcefully contends it to be the public policy of the State, as set forth in designated provisions of the California Code, to preserve the asserted privileged and confidential character of the documents and information sought. Counsel for respondent Foremost Dairies, Inc., vigorously opposes the claim of privilege. The hearing examiner's ruling adverse to the contentions of the Attorney General in this respect is predicated on the fact that similar information had been produced by the Director of Agriculture and is now in evidence in this proceeding, being held *in camera* by the examiner to preserve its confidential nature. That similar information was furnished to Commission attorneys by the Director of Agriculture may well be. If so, however, it appears to have been in connection with proceedings other than the one now before us, and the record discloses nothing to indicate that the request for such information was resisted in any manner. In other words, that information does not appear to have been forthcoming in response to a contested subpoena such as we have here.

In the exercise of its subpoena powers the Commission is invested with broad quasi-judicial discretion, *Independent Directory Corp. v. Federal Trade Commission*, 188 F. 2d 468 (C.A. 2, 1951), and cases there cited. An exercise of that discretion involves, among other things, consideration of the overall public interest. Aside from the question of whether the information sought by the instant subpoena is in fact privileged or confidential under the California statutes it does seem likely, as contended by the Attorney General, that its production would seriously impair the operations of the State Department of Agriculture. Such impairment is not to be regarded lightly. The Commission is not convinced that the pertinent data is not available to respondent from other sources, including corporations and firms processing fluid milk in the market areas listed in the subpoena.

Accordingly, the interlocutory appeal of the Director of Agriculture will be granted. Order to that effect will be entered.

Chairman Gwynne and Commissioner Kern dissented.

ORDER GRANTING INTERLOCUTORY APPEAL FROM
EXAMINER'S DENIAL OF MOTION TO QUASH SUBPOENA

This matter having come on to be heard upon the interlocutory appeal filed by the Attorney General of California on behalf of the Director of Agriculture of that State from the hearing examiner's order dated November 14, 1958, denying a motion to quash

or limit a subpoena duces tecum issued by the examiner at the instance of respondent Foremost Dairies, Inc.; and

The Commission, for the reasons stated in the accompanying opinion, having concluded that said interlocutory appeal should be granted:

It is ordered, That the aforesaid interlocutory appeal of the Director of Agriculture, State of California, be, and it hereby is, granted.

It is further ordered, That the said subpoena duces tecum issued by the hearing examiner be, and it hereby is, quashed.

Chairman Gwynne and Commissioner Kern dissenting.

FEDERATED DEPARTMENT STORES, INC. Docket 6836.
Order, Mar. 4, 1959.

Denial of motion to stay effective date of order in fur products case until 60 days after Supreme Court's decision in the *Mandel Brothers, Inc.*, case.

This matter having come on to be heard upon respondent's motion requesting a stay of the effective date of the order to cease and desist issued herein until sixty days following the decision of the Supreme Court in *Federal Trade Commission v. Mandel Brothers, Inc.*, No. 234; and

It appearing that the reason for such request is that certain rulings made by the Court of Appeals for the Seventh Circuit with respect to two issues involved in the *Mandel* case are alleged to be contrary to rulings made by the Commission with respect to identical issues involved in this matter; and

It further appearing that the order herein embraces a number of practices not involved in the Supreme Court's review of the *Mandel* case and that insofar as these practices are concerned, at least, no valid reason exists for the postponement of the effective date of the order; and

The Commission, therefore, being of the opinion that respondent's motion presents no adequate basis for the relief requested:

It is ordered, That respondent's motion to stay the effective date of the order be, and it hereby is, denied, it being understood, however, that this shall not be construed as preventing respondent from negotiating with the Office of General Counsel of the Commission for the purpose of showing any inequity which may result from the operation of the order to cease and desist and to obtain such appropriate administrative relief as may be warranted by the circumstances.

HOVING CORP. Docket 7195. Order, Mar. 9, 1959.

Order granting motion certified by the hearing examiner, and directing issuance of amended and supplemental complaint in fur products case.

This matter having come on to be heard upon the motion certified by the hearing examiner to the Commission for its determination prior to any hearings having been convened for the reception of testimony, which motion was filed by counsel supporting the complaint and requests that the Commission amend and supplement the complaint in this proceeding in respects there designated; and

The Commission having considered such motion and the answers filed by respondent in opposition to the requested amendment and certification and it appearing that the complaint charges misbranding and false and deceptive invoicing in violation of the Fur Products Labeling Act and rules promulgated thereunder and false and deceptive advertising in violation of subparagraphs 1, 5 and 6 of Section 5(a) of that Act and that the motion requests that the Commission amend and supplement its complaint by adding allegations that the respondent has violated subparagraphs 3 and 4 thereof and Rule 20 of the rules and regulations; and

It further appearing that the matters cited by movant, including the documentary material filed for the record, constitute adequate grounds for preliminary administrative determinations by the Commission or "reason to believe" that the respondent has caused the dissemination in commerce of advertisements which failed to disclose the true facts respecting products which were artificially colored or composed in substantial part of waste fur or other statutorily designated types of fur as required by said subparagraphs 3 and 4 and rule; and

The Commission having determined that exercise of its administrative responsibility to issue an amended and supplemental complaint is required in the public interest:

It is ordered, That the motion be, and it hereby is, granted.

It is further ordered, That the amended and supplemental complaint of the Commission issue herewith and be served upon the respondent Hoving Corporation.

STACEY-WARNER CORP., ET AL. Docket 7305. Order, Mar. 11, 1959.

Interlocutory order sustaining hearing examiner's denial of motion to dismiss complaint as to 13 of 16 respondents upon grounds of discontinuance of

practices alleged, and denying request of respondents' counsel for leave to file reply brief.

Counsel for respondents in this proceeding having filed an interlocutory appeal from the hearing examiner's order of January 27, 1959, denying a motion to dismiss the complaint as to thirteen of sixteen named respondents upon grounds of discontinuance of the practices alleged prior to issuance of the complaint; and counsel supporting the complaint having filed answer in opposition to said interlocutory appeal; and

The Commission being of the opinion that the interlocutory appeal, and answer in opposition thereto, provide an adequate basis for disposition of said interlocutory appeal and that the reply brief sought to be filed on behalf of said respondents is not necessary; and

The Commission being of the further opinion that the ruling appealed from is not a decision on the merits of the case, that no showing has been made that the ruling involves substantial rights or that it will materially affect the final decision in this proceeding and, hence, that the appeal is not one to be granted under §3.20 of the Commission's Rules of Practice:

It is ordered, That the request of counsel for respondents for leave to file a brief in reply to the answer of counsel supporting the complaint opposing said interlocutory appeal be, and it hereby is, denied.

It is further ordered, That the interlocutory appeal from the hearing examiner's order of January 27, 1959, be, and it hereby is, denied.

GOV-MART, a/k/a GOVERNMENT EMPLOYEES' MERCHANDISE MART, INC., ET AL. Docket 7049. Order, Mar. 13, 1959.

Interlocutory order sustaining hearing examiner's denial of motion to dismiss complaint.

This matter having been heard by the Commission upon the interlocutory appeal of respondents Mission Supply Company, Charles E. Klock and Harry Mallen from the hearing examiner's ruling denying said respondents' motion to dismiss the complaint, upon said respondents' request for a hearing on the appeal and upon the answer of counsel supporting the complaint in opposition to the appeal; and

It appearing that said respondents have made no showing that the hearing examiner's ruling involves any substantial rights or

will materially affect the final decision in this matter or that a determination of its correctness before the conclusion of the trial would better serve the interests of justice; and

The Commission, therefore, being of the opinion that said respondents' appeal is not one to be granted under §3.20 of the Commission's Rules of Practice, and that, under the circumstances, the hearing on the appeal, which was requested, is not necessary and would serve no useful purpose:

It is ordered, That said respondents' interlocutory appeal from the aforesaid ruling of the hearing examiner and their request for a hearing on the appeal be, and they hereby are, denied.

BELTONE HEARING AID CO., ET AL. Docket 7359.
Order, Mar. 16, 1959.

Order denying respondents' petition to refer issues to Bureau of Consultation and to stay proceeding pending determination thereby.

The respondents, by a petition filed February 24, 1959, having requested the Commission for an order directing that the issues presented by the complaint in this proceeding be referred to the Bureau of Consultation for settlement and that the proceeding be stayed for a period of six weeks pending a determination by such Bureau, contending, in part, that the matter is one peculiarly suited to disposition through consultation procedures; and

It appearing that the Commission has made its administrative determination to the effect that the public interest requires the disposition of this matter by adversary proceedings, and there having been no showing that this determination was incorrect; and

Respondents having also requested oral argument on their petition if there should be any doubt on their position, and the Commission being of the opinion that it is fully advised as to the issues by respondents' petition and memorandum in support thereof and the reply of counsel in support of the complaint:

It is ordered, That respondents' petition requesting an order directing that the issues presented by the complaint be referred to the Bureau of Consultation for settlement and directing a stay in the proceeding, and the request for oral argument, be, and they hereby are, denied.

NATIONAL DAIRY PRODUCTS CORP. Docket 6651.
THE BORDEN COMPANY. Docket 6652. BEATRICE FOODS
CO. Docket 6653. Order, Mar. 23, 1959.

Interlocutory order sustaining hearing examiner's denial of motions to quash

or limit subpoenas duces tecum requiring production of retained copies of reports to Census Bureau.

Respondents, National Dairy Products Corporation, The Borden Company, Beatrice Foods Company, and nonrespondent, Pet Milk Company, having appealed from the hearing examiner's January 27, 1959, ruling, on the record, denying motions to quash or limit subpoenas duces tecum, returnable in each of the above-captioned cases, which subpoenas, among other things, require production of retained copies of reports (MC-20C) made to the United States Department of Commerce, Bureau of the Census, asserting as grounds for such motions that Sections 8 and 9 of Title 13, United States Code, create in the named appellants express statutory privileges as to said schedules; that disclosure to competitors of certain information contained in said reports will result in irreparable injury; and that the information sought is not material or relevant to the issues in this proceeding; and

The Commission being of the opinion that Sections 8 and 9 of Title 13 prohibit disclosure of the Census reports only by the Secretary of Commerce and employees under his jurisdiction and that the asserted privilege does not extend to copies of the aforesaid reports retained by the named appellants, particularly since the basic data contained therein is not otherwise privileged; and

The Commission being of the further opinion that to the extent disclosure of information contained in the reports may be shown to be harmful to a reporting firm, the hearing examiner can, and should, require that such reports be produced under appropriate protective orders and impounded, or retained under seal, so far as practicable in discharge of the Commission's responsibilities under the law; or, if practicable, that the hearing examiner may permit the desired information to be furnished under an agreement between counsel for all interested parties providing for production of the required information in usable form without disclosure of the basic data with reference to any specific plant; and

The Commission having concluded that the ruling of the hearing examiner was correct in that the information sought under the subpoenas is material and relevant to the issues framed in these proceedings:

It is ordered, That the interlocutory appeals of respondents, National Dairy Products Corporation, The Borden Company, Beatrice Foods Company, and of nonrespondent, Pet Milk Company, be, and they hereby are, denied.

It is further ordered, That the requests of Beatrice Foods Company and of The Borden Company for oral argument be, and they hereby are, denied.

SUN OIL CO. Docket 6934. Order, Apr. 7, 1959.

Order granting complaint counsel's motion certified by hearing examiner and directing issuance of amended and supplemental complaint.

This matter having come on to be heard upon the motion certified by the hearing examiner to the Commission for its determination, which motion was filed by counsel supporting the complaint and requests that the Commission amend and supplement its complaint in this proceeding in respects there designated; and

The Commission having considered such motion and the answer filed by the respondent in opposition to the requested certification and amendment, and it appearing that the complaint charges an unlawful planned common course of action and agreement by respondent acting in combination with its contract dealers to fix and maintain the prices at which gasoline supplied by the respondent is to be sold at retail stations by such dealers to the purchasing public; and

It further appearing that the motion requests that the Commission amend and supplement its complaint by adding allegations to the effect that the respondent, through and together with its dealers, has adopted and followed a predatory and oppressive pricing policy of posting prices uniformly and consistently within one cent of those posted by competing dealers who market unbranded or private brands of gasoline and further charging the effects of such policy to be, among others, a dangerous tendency to unduly restrain and eliminate competition between respondent's retailer dealers and retailers of unbranded or private brands of gasoline; and

It further appearing that the testimony and evidentiary material submitted for the record constitute adequate grounds for preliminary administrative determinations by the Commission or "reason to believe" that the respondent's pricing policies have been so motivated and have unduly suppressed and restrained competition in violation of law, and the Commission having determined that exercise of its administrative responsibility to issue an amended and supplemental complaint is required in the public interest:

It is ordered, That the motion be, and it hereby is, granted.

It is further ordered, That the amended and supplemental com-

plaint of the Commission issue herewith and be served upon the respondent Sun Oil Company.

It is further ordered, That the evidence heretofore introduced in support of and in opposition to the original complaint shall have the same force and effect as though received at hearings under the complaint as amended and supplemented, this action being without prejudice to the hearing examiner's duty to rule on the merits of any motion which may be filed requesting opportunity to further cross-examine witnesses heretofore called in the proceeding or to take such further action as may be appropriate to protect respondent's rights.

AMERICAN CYANAMID CO., ET AL. Docket 7211. Order, May 8, 1959.

Interlocutory order sustaining hearing examiner's ruling quashing a number of specifications of subpoenas duces tecum based on his determination that cost reports submitted by respondents constituted adequate substitutes.

Counsel in support of the complaint having filed an interlocutory appeal from the hearing examiner's ruling of March 24, 1959, quashing a number of specifications of certain subpoenas duces tecum theretofore issued and served on the respondents, which ruling was based on the hearing examiner's determination that cost reports submitted by each of the respondents, except The Upjohn Company, constitute adequate substitutes for the cost data subpoenaed; and

The Commission, in disposing of prior interlocutory appeals from the examiner's rulings denying the respondents' motions to quash said specifications, having referred the respondents' substitute proposals with respect to compliance with the subpoenas to the hearing examiner for ruling thereon in the exercise of his sound discretion; and

It appearing that counsel in support of the complaint has not demonstrated to the satisfaction of the Commission that the hearing examiner in ruling that the cost reports submitted were adequate substitutes for the cost data subpoenaed has abused the discretion so vested in him; and

It further appearing that no showing has been made that said ruling will materially affect the final decision in this proceeding or that a determination of the correctness thereof before conclusion of the trial would better serve the interests of justice; and

The Commission being of the opinion that the appeal is not

one to be granted under the provisions of §3.20 of the Rules of Practice:

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

THE ROBERTS CO., ET AL. Docket 6943. Order, May 11, 1959.

Order disposing of respondent's request to place case on Commission's docket for review and extending time for filing appeal brief.

Respondent United States Tackless, Inc., having requested the Commission to enter an order placing this case on its own docket for review and a further order staying the proceeding pending a ruling on the aforesaid request; and

It appearing from the record that notices of intention to appeal from the hearing examiner's initial decision have been duly filed by counsel supporting the complaint and by certain of the respondents, including respondent United States Tackless, Inc., thus rendering unnecessary the entry of an order placing the case on the Commission's docket for review or an order staying the proceeding:

It is ordered, That the requests for such orders be, and they hereby are, denied.

It is further ordered, however, That the time within which respondent United States Tackless, Inc., may file its brief on appeal be, and it hereby is, extended to and including June 1, 1959.

TRI-VALLEY PACKING ASSOCIATION, INC., and FLO-TILL PRODUCTS, INC., ET AL. Dockets 7225 and 7226. Orders and opinion, May 11, 1959.

Interlocutory orders refusing respondents' appeals from hearing examiner's denial of motions to quash and limit subpoenas duces tecum, directing compliance and remanding matters to hearing examiner for further proceedings.

ON INTERLOCUTORY APPEAL

By the COMMISSION:

This opinion disposes of interlocutory appeals in two cases which raise similar issues.

In Tri-Valley Packing Association, Inc., Docket No. 7225, respondent has appealed from the hearing examiner's order of February 2, 1959, which, among other things, denies, in part, respondent's motion filed January 22, 1959, to quash and limit a

subpoena duces tecum served upon it January 12, 1959, and directs respondent to comply with the subpoena as limited by the aforesaid order. The contentions of this respondent on its appeal are generally that the examiner erred in deciding that the proceeding was of an investigatory nature and thus applied too liberal standards for determining relevancy and reasonable scope; that the examiner erred in calling for some evidence which has no relevance, such as that part of the demand which calls for the names and addresses of all customers sold in a three-year period regardless of whether particular transactions may be relevant; that it was error to require the production of evidence regarding intrastate commerce; and that the application for the subpoena was insufficient because it allegedly did not show the relevance and reasonable scope of the material requested.

In *Flotill Products, Inc., et al.*, Docket No. 7226, respondent, Flotill Products, Inc., appealed from the hearing examiner's order of February 2, 1959, denying, in part, the motion of this respondent filed January 22, 1959, to quash and limit a subpoena duces tecum served upon it January 13, 1959, and directing compliance with the aforesaid subpoena as limited by such order. The contentions of this respondent are that in an adjudicatory proceeding the Commission cannot issue a broad investigatory type of subpoena; that the application for the subpoena was legally insufficient; and that the Commission does not have the power or jurisdiction to call for evidence relating to intrastate commerce, lacking a showing that particular intrastate transactions are relevant.

The complaint in Tri-Valley Packing Association, Inc., charges respondent therein with violating Section 2(a) of the Clayton Act, as amended. The contested specifications of the subpoena involved in the appeal read as follows:

"4. Such books, records, and documents, or certified tabulations thereof, as will disclose:

(a) The names and addresses of each customer of respondent during each of the years 1956, 1957, and 1958;

(b) The method of sale ('direct' or 'indirect') to each customer listed in (a) and the name of the broker, if 'indirect';

(c) The total volume of sales to each customer listed under (a), per year;

(d) The total amount of all rebates, discounts, or allowances, if any, paid or allowed per year to each customer listed in (a), indicating the type for each sum.

"5. All invoices and credit memoranda for all sales during

1956, 1957, and 1958 for all customers in the trade areas of Boston, Mass.; Waterbury, Conn.; Denver-Pueblo, Colo. area; Portland, Maine; Peoria, Ill.; Philadelphia, Pa., and Pittsburgh, Pa.; and Portland, Oreg.

"For the purposes of this specification the words 'trade area' shall be given their commonly accepted definition as including not only the area of the cities named but also contiguous suburbs which are included in that normal trading area."

The complaint in Flotill Products, Inc., charges respondents therein with violating Sections 2(c) and 2(d) of the Clayton Act, as amended. The contested specifications of the subpoena involved in the appeal read as follows:

"3. Such books, records, and documents, or certified tabulations thereof, as will disclose:

(a) The names and addresses of each customer of respondents during each of the years 1956, 1957, and 1958;

(b) The method of sale ('direct' or 'indirect') to each customer listed in (a) and the name of the broker, if 'indirect';

(c) The total volume of sales to each customer listed under (a), per year;

(d) The total amount of all advertising funds, promotional allowances, etc., paid or allowed per year during 1956, 1957, and 1958 to each customer listed under (a).

"4. Regarding all customers in the trade area of Boston, Mass., all invoices and credit memoranda for all sales during 1956, 1957, and 1958.

"For the purposes of this specification the words 'trade area' shall be given their commonly accepted definition as including not only the area of the cities named but also contiguous suburbs which are included in that normal trading area."

The hearing examiner limited the subpoena in each case to the extent of confining the demands to transactions within the continental limits of the United States, including Alaska. He otherwise ruled that the subpoenas were reasonable in scope. He held that the proceedings, while not purely investigatory in nature, were nevertheless an extension of the power of Congress to investigate matters of public concern, and that the Commission is not limited solely to the results of its original investigation.

We do not believe that the hearing examiner abused his quasi-judicial discretion in ruling that the documents called for were relevant to the issues in these cases nor does it appear that compliance with these requests will be unduly burdensome on respondents or that the time covered thereby is unreasonable. Ac-

cordingly, we are denying respondents' appeals and an order will be entered in each case remanding the matter to the hearing examiner for further proceedings.

ORDERS REMANDING MATTERS TO HEARING EXAMINER

Respondents, Tri-Valley Packing Association, Inc. and Flotill Products, Inc., having filed interlocutory appeals from the hearing examiner's orders of February 2, 1959, denying, in part, respondents' motion to quash and limit subpoenas duces tecum served upon them January 12 and 13, 1959, respectively, and directing compliance with the aforesaid subpoenas as limited by such orders; and

The Commission, for the reasons stated in the accompanying opinion, having denied the aforesaid appeals:

It is ordered, That these matters be, and they hereby are, remanded to the hearing examiner for further proceedings.

THOMASVILLE CHAIR COMPANY. Docket 7273. Order and opinion, May 11, 1959.

Interlocutory order denying respondent's appeal from hearing examiner's ruling denying motion to dismiss complaint and remanding matter to afford respondent opportunity to present evidence refuting inferences of violation of Sec. 2(c), Clayton Act.

OPINION OF THE COMMISSION

By the COMMISSION:

This is an interlocutory appeal by the respondent from the hearing examiner's denial of the respondent's motion to dismiss the complaint.

The complaint charges respondent with violating Section 2(c) of the Clayton Act by passing on or granting to some of its retail furniture dealer customers a discount in lieu of a commission or brokerage. After counsel supporting the complaint had rested his case, respondent moved the hearing examiner to dismiss the complaint. The principal ground seems to have been that a *prima facie* case had not been established. Respondent also argued that the hearing examiner had erred in refusing to admit certain cost data proffered by respondent for the purpose of establishing a cost justification defense to the complaint and to negate any inference that part of a sales or brokerage commission had been passed on in the form of a discount to certain customers. The hearing examiner ruled that a *prima facie* case had been made and, in his order denying respondent's motion

to dismiss, reaffirmed the exclusionary rulings to which respondent had taken exception. Respondent has now filed an appeal from the denial of its motion.

The ruling from which respondent has appealed involves, first of all, a determination that a *prima facie* case has been established. As we have previously explained on similar appeals, such a ruling is not a decision on the merits of the case. It does not affect substantial rights of the respondent, nor will it have a material effect on the final decision of the case. *Vulcanized Rubber and Plastics Company*, Docket No. 6222 (November 29, 1955). Consequently, the appeal based on the alleged failure to establish a *prima facie* case is not one to be granted under §3.20 of the Commission's Rules of Practice.

The evidentiary rulings cited by respondent were made by the hearing examiner after respondent had attempted to introduce evidence concerning cost studies during cross-examination of a witness called by counsel supporting the complaint. As we construe the record, the hearing examiner ruled, in effect, that such evidence was admissible only if the underlying records were produced for use by opposing counsel in cross-examination; that, in any event, such evidence was not admissible to establish a cost justification defense to a Section 2(c) charge; and that, in the posture of the case and in the form offered, the evidence was not then admissible even to rebut the inference that part of the price differential granted by respondent represented a discount or allowance in lieu of brokerage.

We are of the opinion that these rulings were correct. The hearing examiner's refusal to allow testimony concerning cost studies unless the records of these studies were made available for inspection and use by counsel supporting the complaint was a proper application of an established rule of evidence. The ruling that respondent could not as a matter of law cost justify a discount or allowance granted to a buyer in lieu of brokerage is in accord with all of the decisions on this point. The cases have consistently held that a respondent charged with violation of Section 2(c) of the Clayton Act may not avail itself of the affirmative defenses afforded by Sections 2(a) and 2(b) of the Act. *The Great Atlantic & Pacific Tea Co. v. Federal Trade Commission*, 106 F. 2d 667; *Biddle Purchasing Co. v. Federal Trade Commission*, 96 F. 2d 687; *Oliver Bros, Inc., et al. v. Federal Trade Commission*, 102 F. 2d 763.

We do not construe the hearing examiner's rulings as prohibiting respondent from properly introducing evidence for the pur-

pose of refuting any inferences which may be legitimately drawn from the evidence of record, that it had passed on to buyers a discount or allowance in lieu of brokerage; nor do we think that such evidence, when offered for this purpose, should be excluded. The *prima facie* case here rests largely upon an inference rather than upon direct evidence that part of the sales commission normally paid by respondent reaches certain buyers in the form of a reduced price. Consequently, all facts which would tend to rebut this inference, including evidence to show that the lower prices charged certain buyers actually did not result from a passing on of a part of salesmen's commissions but was in fact due to some other cost difference, would be relevant to the point in issue and should be received.

The respondent's appeal will be denied and the matter will be remanded to afford respondent an opportunity to present its case in conformity with the views expressed herein. An appropriate order will be entered.

ORDER DENYING RESPONDENT'S INTERLOCUTORY APPEAL

This matter having been heard by the Commission upon respondent's appeal from the hearing examiner's ruling denying respondent's motion to dismiss the complaint; and

The Commission, for the reasons stated in the accompanying opinion, having concluded that this appeal should be denied:

It is ordered, That respondent's appeal be, and it hereby is, denied.

It is further ordered, That this case be, and it hereby is, remanded to the hearing examiner for further proceedings.

ADMIRAL CORP. Docket 7094. Order, May 29, 1959.

Interlocutory order sustaining hearing examiner's denial of respondent's motion for issuance of certain subpoenas duces tecum in Sec. 2(d), Clayton Act case.

This matter having come on to be heard upon the appeal of the respondent from that part of the hearing examiner's order of March 3, 1959, which denied the respondent's motion for issuance of subpoenas duces tecum requiring the production of documentary material by distributors of merchandise showing any payments by them for services or facilities furnished by certain retailers who also were customers of the respondent; and

The Commission having determined that the hearing examiner's challenged ruling has sound legal basis and is consistent with the

Commission's interpretation of the Clayton Act, as amended, as expressed in its decision of June 21, 1956, in the matter of *Henry Rosenfeld, Inc., et al.*, Docket No. 6212, namely, that the defense afforded in subsection (b) of Section 2 to the proceedings there designated does not extend to other proceedings involving proved charges of violation of Section 2(d) :

It is ordered, That the respondent's appeal be, and the same hereby is, denied.

ALLIED MERCHANDISING, INC., ET AL. Docket 7399.
Order, June 16, 1959.

Denial of respondents' motion requesting the Commission to vacate hearing examiner's order scheduling hearings.

This case having come on to be heard upon the motion filed on June 8, 1959, by certain of the respondents, which motion requests that the Commission vacate the hearing examiner's order of May 21, 1959, scheduling hearings to be had in five cities and that it designate St. Louis, Mo., as the sole place of hearings; and

It appearing that such motion is not addressed to the hearing examiner as required by §3.8(a) of the Commission's published Rules and that there is no showing in the motion of abuse of discretion by the hearing examiner in appointing the places of hearings:

It is therefore ordered, That said motion be, and the same hereby is, denied.

GULF OIL CORP. Docket 6689. Order, June 18, 1959.

Interlocutory order upholding hearing examiner's ruling sustaining objection to reception in evidence of tabulations based on industry surveys.

Counsel in support of the complaint having filed an interlocutory appeal from the hearing examiner's ruling of April 17, 1959, sustaining objections to the reception in evidence of certain exhibits (CX 402-473 for identification), offered for the purpose of showing the ranking of companies in the petroleum industry according to production, sales and total availability of natural gasoline for the year 1955; and

It appearing that the ruling appealed from is of such importance and is likely to have such an impact on the future course of this proceeding that a determination of the correctness thereof before conclusion of the trial is warranted; and

The Commission having considered the matter in the light of the generally accepted principles governing the admissibility in evidence of compilations or tabulations made from scientifically conducted surveys as discussed in its opinion rendered May 16, 1955, in the matter of *Crown Zellerbach Corporation*, Docket No. 6180 (51 F.T.C. Decisions 1105), and having in mind the methods and procedures employed in the collection and compilation of the data here involved and the apparent possibilities of errors of interpretation, assumption, calculation and conclusion inherent therein; and

The Commission being of the opinion that the hearing examiner's ruling was in all material respects correct:

It is ordered, That the appeal from said ruling be, and it hereby is, denied.

CONTINENTAL WAX CORP. Docket 7351. Order, June 24 1959.

Interlocutory order sustaining hearing examiner's granting of motion to amend complaint.

Respondents having filed an interlocutory appeal from the hearing examiner's order of May 5, 1959, granting a motion of counsel supporting the complaint to amend the complaint in this proceeding; and

It appearing that the amendment is, in effect, the addition of an allegation of the particular respects in which it is claimed that respondents' advertising representations attacked in the original complaint are false and deceptive; and

It further appearing that under the provisions of §3.9 of the Commission's Rules of Practice the allowance of such an amendment is a matter clearly within the authority of the hearing examiner to be exercised in his sound discretion; and

The Commission being of the opinion that no showing has been made that the hearing examiner in this instance abused that discretion:

It is ordered, That respondents' appeal, including their request for oral argument thereon, be, and it hereby is, denied.

STIPULATIONS

DIGEST OF STIPULATIONS EFFECTED AND HANDLED THROUGH THE COMMISSION'S DIVISION OF STIPULATIONS

02399.¹ **Waterproofing for Roofs and Walls—Effectiveness, Opportunities, etc.**—Consolidated Paint & Varnish Corp., an Ohio corporation with place of business in Cleveland, Ohio, agreed that in connection with the offer and sale of “Goodyear Liquid Roof Cement or Coating” in commerce, it will forthwith cease and desist from representing directly or by implication:

(a) That the product—

(1) Stops leaks instantly or stops all roof leaks and from otherwise representing that its effectiveness in preventing or stopping leaks is greater than is actually the case;

(2) Is not affected by heat or cold in any way;

(3) Will resist vibration from any source;

(4) Is effective or suitable for application to all types of roofs and surfaces, or for any specified type of roof or surface when such is not the fact;

(5) Is an effective or suitable coating for concrete or cement surfaces unless expressly limited to such of those surfaces which are not exposed to foot traffic;

(6) Provides the equivalent of a new roof;

(7) Is a new development or represents a new method of weatherproofing.

(b) That sales agents selling the product may reasonably expect earnings of \$46.20 to \$60.00 a day or \$300.00 weekly, or any amount in excess of the net average earnings made by a substantial number of sales agents selling the product in the ordinary and usual course of business and under normal conditions and circumstances;

(c) That any firms have standardized on the product or purchased or used it when such is not a fact;

(d) That its sales agents are waterproofing engineers or district inspectors and from otherwise representing their status, through any title or designation or in any other manner, except in accord with the facts. (1-13831, Dec. 18, 1958.)

¹ Substitute stipulation. See 29 F.T.C. 1519.

3772.² **Athletic Trainers' Supplies—Properties.**—Upon further consideration of the terms of Stipulation No. 3772 as amended, executed by Cramer Chemical Company, a corporation, June 4, 1945, and thereafter approved by the Federal Trade Commission on June 13, 1945, the Commission being of the opinion that an amendment thereof would be appropriate and it appearing that Cramer Chemical Co. agreed that the aforesaid stipulation shall be and the same hereby is amended by striking from page 6 thereof that part which reads:

“Healing is a function of the living tissue and externally applied ointments such as this play no role in the healing process; and it would exert no significant therapeutic effect upon the development or course of a boil.”
and substituting therefor:

“This product serves no material beneficial purpose for use in the case of boils except to provide a protective coating over them.”
and by further striking therefrom that part on page 8 thereof which reads as follows:

“(h) That its Athletic Ointment is a ‘healing’ ointment, promotes rapid healing, has any therapeutic effect on boils; or otherwise, that it performs any function in the healing process.”
and substituting therefor the following:

“(h) That its Athletic Ointment serves any material beneficial purpose for use in the case of boils except to provide a protective coating over them.”
and by further striking therefrom that part on pages 3 and 4 thereof which reads as follows:

“Cramer’s Athletic Antiseptic Powder

ANTISEPTIC POWDER

Prevents galled skin.

Dries perspiration,

reduces friction.

The designation of this product as an ‘antiseptic’ powder is unwarranted inasmuch as it would possess no antiseptic properties under the conditions of use.”

and by further striking therefrom that part on page 9 thereof which reads as follows:

“Cramer Chemical Company also agrees to cease and desist from:

(o) The use of the word ‘Antiseptic’ as part of the trade name, brand or designation of its product heretofore sold as Cramer’s

² Amendment. See 37 F.T.C. 748.

Athletic Antiseptic Powder, or indicating in any way that said preparation, or one of like composition, has antiseptic properties under such conditions of use."

It is further stipulated and agreed, that as thus amended all of the terms and provisions of Stipulation No. 3772 shall remain in full force and effect. (1-16462, Nov. 25, 1958.)

9056. Comforters—Non-compliance with Wool Products Labeling Act, Size of Plant.—Julee Comforter Manufacturing Corp., a Massachusetts corporation with place of business in Holyoke, Mass., and Julius Kaplan, its president, agreed that in connection with the introduction, or manufacture for introduction, into commerce, or the sale, transportation or distribution in commerce of comforters or any other wool product within the meaning of the Wool Products Labeling Act, they and each of them will forthwith cease and desist from:

(1) Stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers included therein in any manner not in accordance with the facts;

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

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

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

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

(3) Failing to separately set forth on the required stamp, tag, label, or other means of identification, the character and amount of the constituent fibers of the covering fabric of any such wool product.

(4) Representing, pictorially or otherwise, that the physical plant owned, used or occupied by the Julee Comforter Manufacturing Corporation is larger than is the fact. (5723356, July 1, 1958.)

9057. Tire Valves, Cores and Caps—Non-disclosure of German Origin.—Myers Tire Supply Co., Inc., an Ohio corporation with

place of business in Akron, Ohio, and Myer Myers, Louis S. Myers and Isidore C. Myers, its officers, also trading as copartners as Tire Equipment Sales Co., agreed that in connection with the offering for sale, sale and distribution of tire valves, cores and caps or other similar products in commerce, as "commerce" is defined by the Federal Trade Commission Act, they and each of them will forthwith cease and desist from:

(1) Representing that foreign made products are made in the United States, or otherwise representing the origin of such products in any manner not in accordance with fact.

(2) Offering for sale tire valves, cores and caps or other similar products imported from a foreign country, without clearly and conspicuously designating the country of origin of such products on the packages or containers in which they are sold and shipped. (5823186, July 1, 1958.)

9058. Civil Service Correspondence Course—Salaries, Educational Requirements and Age Limits.—Thomas R. Engles and John T. Rose, copartners trading as Midwest Training Service with place of business in Lincoln, Nebr., agreed that in connection with the offering for sale, sale and distribution of home study correspondence courses of training for Civil Service in commerce, as "commerce" is defined by the Federal Trade Commission Act, they and each of them will forthwith cease and desist from:

(1) Representing that any Civil Service position has a higher salary or lower educational requirements than those in fact existing at the time such representation is made.

(2) Representing that the age limits of any Civil Service position are other than those in fact existing at the time such representation is made.

(3) Otherwise representing the nature or conditions of any prospective employment or position except in accordance with the facts. (5823007, July 14, 1958.)

9059. Men's and Boys' Suits and Coats—Wool Content.—Andrew Pallack & Co., Inc., a New York corporation with place of business in New York City, and Andrew Pallack and Melvin Hirschberg, its officers, agreed that in connection with the introduction, or manufacture for introduction, into commerce, or the sale, transportation, or distribution in commerce of men's and boys' suits and coats, or any other wool product within the meaning of the Wool Products Labeling Act, they and each of them will forthwith cease and desist from:

(1) Stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers

included therein in any manner not in accordance with the facts;

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

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

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

(c) The name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, distribution or delivery for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939. (5723683, July 14, 1958.)

9060. **Ping Pong Tables—Fictitious Pricing; Blankets and Comforters—Fiber Content.**—Paul M. Rozay, an individual trading as Paro Industries, with place of business in New York City, agreed that in connection with the offering for sale, sale and distribution of ping pong tables, blankets, comforters and other products in commerce as "commerce" is defined by the Federal Trade Commission Act, he will forthwith cease and desist from:

1. Representing that the usual or regular selling price or value of a product is an amount in excess of the price at which said product was sold in recent, regular course of business.

2. Using the word "Nylon," or any word or term indicative of nylon, to designate or describe any product or portion thereof which is not composed wholly of nylon; provided that in the case of products or portions thereof which are composed in substantial part of nylon and in part of other fibers or materials, such terms may be used as descriptive of the nylon content of the product or portion thereof if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully designating each constituent fiber or material thereof in the order of its predominance by weight; provided further, that if any fiber or material so designated is not present in a substantial quantity, the percentage thereof shall be stated.

3. Using the term "taffeta," or other word or term descriptive of a weave or construction, to describe a product or portion thereof which is composed in whole or in part of rayon or of acetate with-

out clear and conspicuous identification of the fiber content set forth with equal prominence and in close conjunction therewith.

4. Advertising or otherwise offering for sale or selling products composed in whole or in part of rayon or of acetate without clearly disclosing such rayon or acetate content in the order of predominance.

5. Representing that an article is certified except under the following conditions:

(a) The identity of the certifier be clearly and plainly disclosed.

(b) The certifier be qualified and competent to know what has been certified is true.

(c) If the certifier is someone other than the seller, any connection between the certifier and the seller be clearly shown. (5823591, July 14, 1958.)

9061. Fur Products—Noncompliance with Labeling Act.—Hochschild, Kohn & Co., a Maryland corporation with place of business in Baltimore, Md., agreed that in connection with the sale, advertising, offering for sale, transportation or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or 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, as the terms "fur," "fur product" and "commerce" are defined in the Fur Products Labeling Act, it will forthwith cease and desist from advertising fur products in any manner or by any means where the advertisement:

(1) Does not show the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to Section 7(c) of the Act;

(2) Fails to set out all of the required information in legible and conspicuous type of equal size;

(3) Represents, directly or by implication, that the price of a fur product will be higher after the sale period than the price at which such product is offered during the sale, unless such product is in fact thereafter to be offered for sale and sold at such higher price. (5823296, July 24, 1958.)

9062. Oil Additive—Civil Aeronautics Administration Approval.—The Lubri-Loy Co., Inc., a Missouri corporation with place of business in St. Louis, Mo., and Gene Brenfleck, Virginia Brenfleck and P. M. Gundlach, its officers, agreed that in connection with the offering for sale, sale and distribution of an oil additive designated Lubri-Loy in commerce, they, and each of them, will forthwith

cease and desist from representing directly or by implication that a product has been approved or accepted by the United States Government or any agency thereof unless the nature and extent of any such approval or acceptance, and any limitations thereon, are clearly and conspicuously disclosed in immediate conjunction therewith. (5723767, July 24, 1958.)

9063. **“Flex Moc” Moccasins—“Hand Sewn”.**—A. Jacobs & Sons Co., Inc., a Massachusetts corporation with place of business in Lynn, Mass., and Louis Jacobs, C. Henry Jacobs and Bertram C. Jacobs, its officers, agreed that in connection with the offering for sale, sale and distribution of shoes in commerce, they, and each of them, will forthwith cease and desist from representing directly or by implication that shoe products are hand sewn except as to such part or parts as may be sewn by hand, or that such products embody hand operations in their manufacture, except in accordance with the facts. (5823417, July 24, 1958.)

9064. **Hair Brushes—Bristle Content.**—Harry D. Koenig, trading as Harry D. Koenig & Co., with place of business in New York City, agreed that in connection with the offering for sale, sale and distribution of hair brushes in commerce, he will forthwith cease and desist from:

1. Using the words “All Bristle” or “Bristle,” or any other word or term of similar import or meaning, either alone or in connection with other words, to designate, describe or refer to any product which is not composed wholly of bristle of the hog or swine: *Provided, however,* that in the case of a product, composed in part of bristle and in part of other fibers, the word “bristle” may be used as descriptive of such fiber content if there are used in immediate conjunction therewith, in letters of equal conspicuousness, words truthfully describing, in the order of their predominance, all constituent materials;

2. Representing in any manner that any brushes sold by him contain bristle in greater quantity than is actually the case. (5723452, July 24, 1958.)

9065. **Fur Products—Noncompliance with Labeling Act.**—The Paris Company, a Utah corporation with place of business in Salt Lake City, Utah, agreed that in connection with the sale, advertising, offering for sale, transportation or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or 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, as the

terms "fur", "fur product" and "commerce" are defined in the Fur Products Labeling Act, it will forthwith cease and desist from:

(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 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;

(d) Such other information as may be required by Section 5(b)(1) of the Fur Products Labeling Act.

(2) Setting forth on invoices required information in abbreviated form.

(3) Failing to set forth on invoices the item number or mark assigned to the fur product for purposes of identification.

(4) Advertising fur products in any manner or by any means where the advertisement:

(a) Does not show the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to Section 7(c) of the Act.

(b) Does not show that the fur product or fur is bleached, dyed or otherwise artificially colored fur when such is the fact.

(c) Does not show the name of the country of origin of any imported furs or those contained in a fur product.

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

(e) Represents, directly or by implication, through the use of percentage savings claims or otherwise, that the prices of the fur products being offered for sale are reduced from the regular or usual prices charged for such products by the amount or percentage stated, when such is not the fact.

(f) Makes use of comparative price representations or percentage savings claims unless there is maintained by said corporation an adequate record disclosing the facts upon which such claims or representations are based. (5723457, Aug. 14, 1958.)

9066. **Fur Products—Noncompliance with Labeling Act.**—Towncliffe, Inc., a New York corporation with place of business in New

York City, and Herbert R. Herbert and Florence Herbert, its officers, agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or 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, as the terms "fur," "fur product" and "commerce" are defined in the Fur Products Labeling Act, they, and each of them, will forthwith cease and desist from:

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

(a) The name or names of the animal or animals producing the fur contained in the fur product as set forth in the Fur Products Name Guide and as permitted 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) Such other information as may be required by Section 4(2) of the Fur Products Labeling Act.

(2) Failing to set forth on labels affixed to fur products an item number or mark assigned to such product for identification purposes.

(3) 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 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;

(d) Such other information as may be required by Section 5(b) (1) of the Fur Products Labeling Act.

(4) Failing to set forth on invoices the item number or mark assigned to the fur product for purposes of identification. (5823476, June 11, 1958.)

9067. Fur Products—Noncompliance with Labeling Act.—William Pinkus, an individual doing business as William Pinkus Furs with place of business in San Francisco, Calif., agreed that in connection with the sale, advertising, offering for sale, transportation or distribution of furs or any fur product made in whole or in part of fur which has been shipped and received in commerce, or the introduction into commerce, or the sale, advertising or offering for

sale in commerce, or the transportation or distribution in commerce of furs or any fur product, as the terms "fur", "fur product" and "commerce" are defined in the Fur Products Labeling Act, he will forthwith cease and desist from:

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

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

(b) Such other information as may be required by Section 4(2) of the Fur Products Labeling Act.

(2) Mingling, on labels, non-required information with required information.

(3) Failing to show on labels affixed to fur products an item number or mark assigned to such product for identification purposes.

(4) Advertising fur products in any manner or by any means where the advertisement:

(a) Does not show the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to Section 7(c) of the Act.

(b) Does not properly show the name of the country of origin of any imported furs or those contained in a fur product.

(c) Represents directly or by implication that the regular or usual price of any fur product is any amount in excess of the price at which said individual has usually and customarily sold such products in the recent regular course of his business. (5823586, Aug. 14, 1958.)

9068. Men's Outerwear—Noncompliance with Wool Products Labeling Act.—Wolverine Sportswear Co., a Michigan corporation with place of business in Ludington, Mich., and A. J. Bosoms and Paul Bosoms, its officers, agreed that in connection with the introduction, or manufacture for introduction, into commerce, or the sale, transportation, or distribution in commerce of men's and boys' outerwear or any other wool product within the meaning of the Wool Products Labeling Act, they and each of them will forthwith cease and desist from:

(1) Stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers included therein in any manner not in accordance with the facts;

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

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

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

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

(3) Failing to maintain proper fiber content records as required by the Wool Products Labeling Act:

(a) Showing the percentage of wool, reprocessed wool, and re-used wool, and of each kind of fiber other than wool, placed in the respective wool products of Wolverine Sportswear Company in the form of fiber, yarn, fabric, or other form;

(b) Showing such numbers, information, marks, or means of identification as will identify the said records with the respective wool products to which they relate; and

(c) By keeping and maintaining as records under the Act all invoices, purchase contracts, orders or duplicate copies thereof, bills of purchase, business correspondence received, factory records, and other pertinent documents and data showing or tending to show (a) the purchase, receipt, or use by said Wolverine Sportswear Company of all fiber, yarn, fabric, or fibrous material, or any part thereof, introduced in or made a part of any such wool products of said Wolverine Sportswear Company; (b) the content, composition or classification of such fiber, yarn, fabric or fibrous material with respect to the information required to appear upon the label of the wool products of said Wolverine Sportswear Company; and (c) the name and address of the person or persons from whom such fiber, yarn, fabric or fibrous materials were purchased or obtained by said Wolverine Sportswear Company. (5723473, Aug. 22, 1958.)

9069. **Drug Product**—"Asian Flu Cure", etc.—C. D. McKinney, an individual trading as McKinney's Laboratory with place of business in Georgetown, S. C., agreed that he will forthwith cease and desist from disseminating or causing to be disseminated any advertisement for the drug product "McKinney's Mixture" or any

other drug product of substantially similar composition or properties which represents:

(a) That the product is of any aid in preventing the contraction of influenza, including the type of influenza known as Asian Flu, or that it is of any aid in treating any such conditions or in relieving any of the symptoms thereof;

(b) That the product is of any aid in creating resistance against colds, chills or fever, including malarial fever, any kindred conditions, or that it is of any aid in preventing or curing any such conditions or in relieving any of the symptoms thereof;

(c) That the product has any therapeutic effect upon the blood or that it cleans or clears one's system of poisons;

(d) That the product serves as a Spring tonic or that it enables one to get rid of tired or lazy feelings;

(e) That any ingredient in the product other than the magnesium sulphate (Epsom Salt) therein contained is responsible for or contributes to the activity of the product. (5823300, Aug. 22, 1958.)

9070. Felt—Misbranding and Falsely Advertising as to Wool Content.—Harry Zeeman, Henry Zeeman and Abraham Zeeman, copartners trading as Artex Felt Co., with place of business in New York City, agreed that in connection with the introduction, or manufacture for introduction, into commerce, or the sale, transportation, or distribution in commerce of felt or any other wool product within the meaning of the Wool Products Labeling Act, they and each of them will forthwith cease and desist from failing to securely affix to or place on each such product a stamp, tag, label or other means of identification showing in a clear and conspicuous manner:

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

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

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

They further agreed that in connection with the offering for sale, sale or distribution of felt or any other product in commerce, as "commerce" is defined in the Federal Trade Commission Act, to forthwith cease and desist from misrepresenting the percentages or amounts of the constituent fibers of which their products are composed, in sales invoices, shipping memoranda or in any other manner. (5723701, Aug. 21, 1958.)

9071. Fur Products—Noncompliance with Labeling Act.—Strode Furriers, a Kentucky corporation with place of business in Louisville, Ky., and Joseph Seligman and Irvin Seligman, its officers, agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or 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, as the terms "fur," "fur product" and "commerce" are defined in the Fur Products Labeling Act, they, and each of them, will forthwith cease and desist from advertising fur products in any manner or by any means where the advertisement:

(1) Does not show the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to Section 7(c) of the Act.

(2) Does not show that the fur product or fur is bleached, dyed or otherwise artificially colored fur when such is the fact.

(3) Does not properly show the name of the country of origin of any imported furs or those contained in a fur product.

(4) Contains the name of an animal other than that producing the fur.

(5) Uses comparative price statements unless there is maintained by said corporation an adequate record disclosing the facts upon which such claims or representations are based. (5823589, Aug. 27, 1958.)

9072. Watches, Diamonds, etc.—Fictitious Pricing; "Gold" Composition.—The Sessions Co., a Texas corporation with place of business in Dallas, Tex., agreed that in connection with the offer and sale of watches, diamonds and other merchandise in commerce, it will forthwith cease and desist from:

(1) Representing as the retail or regular retail price of an article any amount which is in excess of the price at which such article is customarily and regularly sold at retail;

(2) Comparing its own selling or coded prices with quoted

“Retail” prices for articles subject to a federal excise tax, without clearly and conspicuously disclosing that such tax is reflected in the latter price and that its coded prices are exclusive of such tax;

(3) Using the unqualified term “gold” or any term of similar import and meaning to describe watch cases or related articles unless they are composed throughout of fine (24 karat) gold; provided, however, that where the cases or related articles are composed throughout of a gold alloy of at least 10 karat fineness, the same may be described as gold if such term is immediately preceded by a statement of equal conspicuousness showing the karat fineness of the alloy, within the permissible tolerances established by the National Stamping Act (15 U.S. Code, Sec. 294, et seq.). (5823257, Sept. 4, 1958.)

9073. Blankets—Nylon, etc., Content.—Baltimore Distributing Corp. and Retail Store Services, Inc., Maryland corporations with place of business in Baltimore, Md., and Harry Coplan, Marvin L. Coplan and Asher M. Coplan, their officers, agreed that in connection with the offer and sale of blankets and other textile products in commerce, they and each of them will forthwith cease and desist from:

(1) Using the word nylon or any word or term indicative of nylon, to designate or describe any product or portion thereof which is not composed wholly of nylon; provided, that in the case of products or portions thereof which are composed in substantial part of nylon and in part of other fibers or materials such terms may be used as descriptive of the nylon content of the product or portion thereof if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully designating each constituent fiber or material thereof in order of its predominance by weight; provided further, that if any fiber or material so designated is not present in a substantial quantity, the percentage thereof shall be stated.

(2) Using the word “Orlon” or any other word or term indicative of acrylic fiber to designate or describe any product or portion thereof which is not composed wholly of acrylic fiber; provided, that in the case of products or portions thereof which are composed in substantial part of acrylic fiber and in part of other fibers or materials such terms may be used as descriptive of the acrylic fiber content of the product or portion thereof if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully designating each constituent fiber or material thereof in the order of its predominance by weight; provided further, that if any fiber

or material so designated is not present in a substantial quantity, the percentage thereof shall be stated.

(3) Advertising or otherwise offering for sale or selling products composed in whole or in part of rayon or of acetate without clearly disclosing such rayon or acetate content in the order of predominance.

(4) Using the term "satin", or other word or term descriptive of a weave or construction, to describe a product or portion thereof which is composed in whole or in part of rayon or of acetate without clear and conspicuous identification of the fiber content set forth with equal prominence and in close conjunction therewith. (5723784, Sept. 4, 1958.)

9074. Gift Merchandise—Supplying Push Cards.—Lucky Star Associates, Inc., a Pennsylvania corporation with place of business in Philadelphia, Pa., and Isador Lipschutz, its officer, and Sam Lipschutz, its manager, agreed that in connection with the offer and sale of gift merchandise or other merchandise in commerce, they and each of them will forthwith cease and desist from:

(1) Supplying to or placing in the hands of others push cards or any other devices, either with merchandise or separately, which are designed or intended to be used in the sale or distribution of merchandise to the public by means of a game of chance, gift enterprise or lottery scheme.

(2) Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise, or lottery scheme. (5823276, Sept. 4, 1958.)

9075. Bread—Calorie Content.—Omar Incorporated, a Delaware corporation with place of business at Omaha, Nebr., agreed that it will forthwith cease and desist from disseminating or causing to be disseminated any advertisement for the bread product now designated as "FORMULA 40 BREAD", or any other bread product of substantially similar composition or properties, which represents, directly or indirectly, that said bread product is a low calorie food. (5723241, Sept. 9, 1958.)

9076. Shoes—Corrective and Health Qualities.—Margaret A. Wehse, doing business under the trade name A. J. Schoenecker Shoe Co. with place of business at Milwaukee, Wis., agreed that in connection with the offer and sale of shoes in commerce, she will forthwith cease and desist from representing, directly or by implication:

(1) That the shoes will correct or prevent bunions, swollen ankles, varicose veins or any other defect or abnormality of the feet or body;

(2) That the shoes will have a flexing effect on foot muscles or on any muscle;

(3) That the shoes will support body weight correctly or will provide needed support;

(4) That the shoes will keep the inner arch or other parts of the foot in proper position;

(5) That the shoes will assure comfort or relief. (1-17890, Sept. 9, 1958.)

9077. Fur Products—Noncompliance with Labeling Act.—Jacob Klaff, an individual doing business as Francine's with place of business in Boston, Mass., agreed that in connection with the sale, advertising, offering for sale, transportation or distribution of fur or any fur product made in whole or in part of fur which has been shipped and received in commerce, or the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce of furs or any fur product, as the terms "fur", "fur product" and "commerce" are defined in the Fur Products Labeling Act, he will forthwith cease and desist from:

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

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

(b) Such other information as may be required by Section 4(2) of the Fur Products Labeling Act.

(2) Mingling, on labels, nonrequired information with required information.

(3) Setting forth on labels required information in abbreviated form.

(4) Failing to set forth on labels required information in the proper sequence.

(5) Failing to furnish invoices to purchasers of fur products showing:

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

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

(c) Such other information as may be required by Section 5(b) of the Fur Products Labeling Act.

(6) Setting forth on invoices required information in abbreviated form.

(7) Failing to properly disclose on invoices that the fur product is second hand, when such is the fact.

(8) Advertising fur products in any manner or by any means where the advertisement:

(a) Does not show the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to Section 7(c) of the Act.

(b) Does not show that the fur product or fur is bleached, dyed or otherwise artificially colored fur when such is the fact.

(c) Abbreviates required information.

(d) Fails to disclose that the fur products are composed of used fur, when such is the fact.

(e) Fails to use the term "second-hand" when the fur products being offered for sale have been previously used by an ultimate consumer.

(f) Uses comparative pricing claims or representations unless there is maintained by said individual an adequate record disclosing the facts upon which such claims or representations are based. (5823566, Sept. 16, 1958.)

9078. "Cashmere" Coats—Violation of Wool Products Labeling Act.—Isadore N. Stern, an individual trading as I. N. Stern Company with place of business in New York City, agreed that in connection with the introduction, or manufacture for introduction, into commerce, or the sale, transportation, or distribution in commerce of ladies' coats or any other wool product within the meaning of the Wool Products Labeling Act, he will forthwith cease and desist from misbranding wool products by:

(1) Stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers included therein in any manner not in accordance with the facts;

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

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

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

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

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

(3) Failing to maintain proper fiber content records as required by the Wool Products Labeling Act:

(a) Showing the percentage of wool, reprocessed wool, and re-used wool, and of each kind of fiber other than wool, placed in the respective wool products in the form of fiber, yarn, fabric, or other form;

(b) Showing such numbers, information, marks, or means of identification as will identify the said records with the respective wool products to which they relate; and

(c) By keeping and maintaining as records under the Act all invoices, purchase contracts, orders or duplicate copies thereof, bills of purchase, business correspondence received, factory records, and other pertinent documents and data showing or tending to show (a) the purchase, receipt, or use of all fiber, yarn, fabric or fibrous material, or any part thereof, introduced in or made a part of any such wool products, (b) the content, composition or classification of such fiber, yarn, fabric or fibrous material with respect to the information required to appear upon the label of the wool products and (c) the name and address of the person or persons from whom such fiber, yarn, fabric or fibrous materials were purchased or obtained. (5723336, Sept. 16, 1958.)

9079. Fur Products—Noncompliance with Labeling Act.—Bernard M. Abrahams, Sherman Abrahams and Donald M. Abrahams, copartners doing business as Abrahams Brothers with place of business in New York, N.Y., leasing and operating fur departments in a number of department stores, including Westenberger's, Springfield, Ill., agreed that in connection with the sale, advertising, offering for sale, transportation or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or 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, as the terms "fur," "fur product" and "commerce" are defined in the Fur Products Labeling Act, they and each of them will forthwith cease and desist from:

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

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

(b) 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 in commerce, sold it in commerce, advertised or offered it for sale in commerce, or transported or distributed it in commerce;

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

(d) Such other information as may be required by Section 4(2) of the Fur Products Labeling Act.

(2) Mingling, on labels, nonrequired information with required information.

(3) Setting forth on labels required information in handwriting.

(4) Failing to disclose the name of the animal producing the fur used in the trim of a fur product.

(5) Failing to show on labels affixed to fur products an item number or mark assigned to such product for identification purposes.

(6) 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 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;

(d) Such other information as may be required by Section 5(b)(1) of the Fur Products Labeling Act.

(7) Advertising fur products in any manner or by any means where the advertisement:

(a) Does not show the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to Section 7(c) of the Act.

(b) Does not show that the fur product or fur is bleached, dyed or otherwise artificially colored fur when such is the fact.

(c) Does not show that the fur product is composed in whole or in substantial part of paws, tails, bellies, flanks, or waste fur, when such is the fact.

(d) Does not show the name of the country of origin of any imported furs or those contained in a fur product.

(e) Contains the name of an animal other than that producing the fur.

(f) Abbreviates required information. (5823097, Sept. 16, 1958.)

9080. **"Diet Bread"—Calorie Content.**—William Freihofer Baking Co., a corporation with place of business at Philadelphia, Pa., and Ross D. Miller, George H. Householder, Stanley L. Musselman, Parker A. Robinson, and Raymond M. Dorsch, its officers, engaged in the sale in commerce of bread products designated "Freihofer's White Diet Bread" and "Freihofer's Dark Diet Bread" agreed that they, and each of them, will forthwith cease and desist from disseminating or causing to be disseminated any advertisement for either of the aforesaid bread products or any other bread product of substantially similar composition or properties which:

(a) Represents, directly or indirectly, that said bread is a low calorie food or that the consumption of said bread as part of the diet will cause the consumer to lose weight or will prevent the consumer from gaining weight;

(b) Represents, directly or indirectly, that the caloric value of said bread is significantly less than ordinary bread. (5723390, Sept. 16, 1958.)

9081. **Watch Bands, Jewelry, etc.—Fictitious Pricing, Composition, Foreign Origin.**—Brite Manufacturing Co., Brite Industries, Inc., and B.M.C. Trading Corp., Rhode Island corporations with place of business in Providence, R.I., agreed that in connection with the offering for sale, sale and distribution of watch bands and other merchandise in commerce, they and each of them will forthwith cease and desist from:

(1) Representing directly or by implication that a certain amount is the usual and regular retail price or value of a product when such amount is in excess of the price at which said product is usually and regularly sold at retail.

(2) Representing directly or by implication that an article is composed of alligator, lizard, reptile or other type of leather, when such is not a fact.

(3) Using the term "Hand Crafted" or "Hand Fashioned" or any similar term in such manner as to represent directly or by implication that a product is hand made, when such is not a fact.

(4) Using the term "Gold Electro Plated," or any other term of similar meaning to designate, describe or refer to a product or portion thereof unless it is electroplated with gold to a minimum thickness throughout equivalent to seven millionths of an inch of fine (24 karat) gold.

(5) Representing directly or by implication that a product is guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed in close conjunction therewith.

(6) Offering for sale or selling watch bands which are in whole or substantial part of foreign origin, without clearly and conspicuously disclosing thereon or in immediate connection therewith, in such manner that it will not be hidden or obliterated the country of origin of such watch band or part thereof.

(7) Representing directly or by implication that a product is of domestic origin when it is in whole or substantial part of foreign origin.

(8) Representing directly or by implication that a product has been advertised in a named publication, when such is not a fact.

(9) Using the term "satin" or any other word or term descriptive of a weave or construction to describe a product or portion thereof which is composed in whole or in part of rayon or acetate without clear and conspicuous identification of the fiber content set forth with equal prominence and in close conjunction therewith. (5723074, Sept. 16, 1958.)

9082. Spark Plugs—Durability, Guarantees.—Almquist Engineering Co. and Spark-O-Matic Corp., Pennsylvania corporations with places of business in Milford, Pa., and Edgar W. Almquist, Jonas H. Anchel and Clara B. Anchel, their officers, agreed that in connection with the offer and sale of "Spark-O-Matic" spark plugs, or any other spark plugs, in commerce, they and each of them will forthwith cease and desist from representing directly or by implication:

(1) That use of such spark plugs will end spark plug troubles forever or that purchasers of such spark plugs will be assured of having no further spark plug troubles.

(2) That such spark plugs need never be replaced.

(3) That such spark plugs are guaranteed for life or are sold under a lifetime guarantee.

(4) That such spark plugs are guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed in close conjunction therewith. (5823089, Sept. 18, 1958.)

9083. Blankets, Comforters, Ping Pong Tables—Fictitious Pricing, Fiber Content, Certification.—Reliable Stores Corp., a Maryland corporation with place of business in Baltimore, Md., operating The Hub Furniture Company, agreed that in connection with the offer and sale of blankets, comforters, ping pong tables

and other merchandise in commerce, it will forthwith cease and desist from:

(1) Representing that the usual or regular selling price or value of an article is an amount in excess of the price at which said article has sold in recent, regular course of business.

(2) Describing, designating or in any way referring to any product or portion of any product which is "reprocessed wool" as "wool".

(3) Using the word "wool" or any word or term indicative of wool, to designate or describe any product or portion thereof which is not composed wholly of wool; provided, that in the case of products or portions thereof which are composed in substantial part of wool and in part of other fibers or materials such terms may be used as descriptive of the wool content of the product or portion thereof if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully designating each constituent fiber or material thereof in the order of its predominance by weight; provided further, that if any fiber or material so designated is not present in a substantial quantity, the percentage thereof shall be stated.

(4) Using the word "nylon" or any word or term indicative of nylon, to designate or describe any product or portion thereof which is not composed wholly of nylon; provided, that in the case of products or portions thereof which are composed in substantial part of nylon and in part of other fibers or materials such terms may be used as descriptive of the nylon content of the product or portion thereof if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully designating each constituent fiber or material thereof in the order of its predominance by weight; provided further, that if any fiber or material so designated is not present in a substantial quantity, the percentage thereof shall be stated.

(5) Advertising or otherwise offering for sale or selling products composed in whole or in part of rayon or of acetate without clearly disclosing such rayon or acetate content in the order of predominance.

(6) Using the term "satin" or "taffeta" or other word or term descriptive of a weave or construction, to describe a product or portion thereof which is composed in whole or in part of rayon or of acetate without clear and conspicuous identification of the fiber content set forth with equal prominence and in close conjunction therewith.

(7) Representing that an article is certified except under the following conditions:

(a) The identity of the certifier be clearly and plainly disclosed.

(b) The certifier be qualified and competent to know what has been certified is true.

(c) If the certifier is someone other than the seller, any connection between the certifier and the seller be clearly shown. (5723317, Sept. 16, 1958.)

9084. Fur Products—Dealer as Manufacturer.—Armstrong's, Inc., an Iowa corporation with place of business in Cedar Rapids, Iowa, agreed that in connection with the sale, advertising, offering for sale, transportation or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or 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, as the terms "fur," "fur product" and "commerce" are defined in the Fur Products Labeling Act, it will forthwith cease and desist from advertising fur products in any manner or by any means where the advertisement represents directly or by implication:

(1) That any fur product is created, designed or manufactured by it, when such is not the fact.

(2) That its furrier staff is larger than is the fact. (5823621, Sept. 23, 1958.)

9085. Shoes—Health Features.—Charles H. Bronson and Georgie M. Bronson, copartners doing business under the trade name Bronson Shoe Co., with place of business in Minneapolis, Minn., agreed that in connection with the offer and sale of shoes in commerce, they, and each of them, will forthwith cease and desist from representing, directly or by implication:

(1) That the shoes will rest the nerves, rest the feet, preserve the feet, exercise the muscles, cause the arches to function properly, or prevent the formation of callouses;

(2) That the shoes will correct, prevent, relieve or have any beneficial effect upon headaches, backaches, poor circulation, indigestion, nervous disorders, spinal disorders, kidney pains, neuritis, or rheumatism, or will assure comfort;

(3) That the shoes will prevent, eliminate or relieve fatigue;

(4) That the shoes will mold or conform to the foot or arch, will hold or help hold the foot in correct position, or will provide natural support or needed support;

(5) That the shoes will improve body posture, or will have a beneficial effect upon body balance. (5723010, Sept. 23, 1958.)

9086. **Fur Products—Fictitious Pricing.**—Harry Wallach, Jr., and Jane Wallach, copartners trading as J. Barr Co. with place of business in San Francisco, Calif., agreed that in connection with the sale, advertising, offering for sale, transportation or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or 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, as the terms “fur,” “fur product” and “commerce” are defined in the Fur Products Labeling Act, they and each of them will forthwith cease and desist from representing on labels affixed to fur products, or in any other manner, that the regular or usual price of any fur product is any amount in excess of the price at which they have usually and customarily sold such product in the recent, regular course of business. (5823551, Sept. 25, 1958.)

9087. **Woolen Clips—Failing to Label as to Fiber Content.**—Last Wool Stock Corporation, a New York corporation with place of business in New York City, and Mortko Last and Jacob Last, its officers, agreed that in connection with the introduction, or manufacture for introduction, into commerce, or the sale, transportation, or distribution in commerce of woolen clips or any other wool product within the meaning of the Wool Products Labeling Act, they and each of them will forthwith cease and desist from failing to securely affix to or place on each such product a stamp, tag, label or other means of identification showing in a clear and conspicuous manner:

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

(2) The maximum percentage of the total weight of such wool product of any non-fibrous loading, filling, or adulterating matter;

(3) The name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, distribution or delivery for shipment thereof in commerce, as “commerce” is defined in the Wool Products Labeling Act of 1939. (5723734, Sept. 25, 1958.)

9088. **Vinyl Tile Floor Covering—Permanence.**—American Bilt-rite Rubber Co., a New Jersey corporation with place of business

in Trenton, N.J., agreed that in connection with the offer and sale of all vinyl tile floor covering material in commerce, it will forthwith cease and desist from representing directly or by implication that said material will last for a lifetime or any specified period other than in accordance with fact. (5823430, Sept. 25, 1958.)

9089. Fur Products—Failing to Comply with Labeling Requirements.—George L. Westenberger and Mary E. Westenberger II, copartners doing business as Westenberger's with place of business in Springfield, Ill., agreed that in connection with the sale, advertising, offering for sale, transportation or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or 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, as the terms "fur," "fur product" and "commerce" are defined in the Fur Products Labeling Act, they and each of them will forthwith cease and desist from:

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

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

(b) 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 in commerce, sold it in commerce, advertised or offered it for sale in commerce, or transported or distributed it in commerce;

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

(d) Such other information as may be required by Section 4(2) of the Fur Products Labeling Act.

(2) Mingling, on labels, non-required information with required information.

(3) Setting forth on labels required information in handwriting.

(4) Failing to disclose the name of the animal producing the fur used in the trim of a fur product.

(5) Advertising fur products in any manner or by any means where the advertisement:

(a) Does not show the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to Section 7(c) of the Act.

(b) Does not show that the fur product or fur is bleached, dyed or otherwise artificially colored fur when such is the fact.

(c) Does not show that the fur product is composed in whole or in substantial part of paws, tails, bellies, flanks or waste fur, when such is the fact.

(d) Does not show the name of the country of origin of any imported furs or those contained in a fur product.

(e) Abbreviates required information.

(f) Contains the name of an animal other than that producing the fur. (5823598, Sept. 25, 1958.)

9090. Fur Products—Noncompliance with Labeling Act.—John Wanamaker Philadelphia, Inc., a Pennsylvania corporation with place of business in Philadelphia, Pa.; agreed that in connection with the sale, advertising, offering for sale, transportation or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or 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, as the terms “fur,” “fur product” and “commerce” are defined in the Fur Products Labeling Act, it will forthwith cease and desist from:

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

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

(b) 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 in commerce, sold it in commerce, advertised or offered it for sale in commerce, or transported or distributed it in commerce;

(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 of the country of origin of any imported furs used in a fur product;

(f) Such other information as may be required by Section 4(2) of the Fur Products Labeling Act.

(2) Using on labels attached to fur products the name of an animal other than the name of the animal actually producing the fur.

(3) Mingling, on labels, nonrequired information with required information.

(4) Setting forth on labels required information in handwriting.

(5) Failing to set forth on labels affixed to fur products an item number or mark assigned to such product for identification purposes.

(6) Using labels that do not comply with the minimum size requirements prescribed by Rule 27 of the Regulations under the Fur Products Labeling Act.

(7) 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 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;

(d) Such other information as may be required by Section 5(b)(1) of the Fur Products Labeling Act.

(8) Failing to set forth on invoices the item number or mark assigned to the fur product for purposes of identification.

(9) Advertising fur products in any manner or by any means where the advertisement:

(a) Does not show the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to Section 7(c) of the Act.

(b) Represents that the prices of fur products are "close-to cost" prices when such is not the fact, or otherwise misrepresents the prices of such fur products. (5823237, Sept. 25, 1958.)

9091. Fur Products—Noncompliance with Labeling Act.—Alexander E. Tarlow, an individual doing business as A. E. Tarlow & Company with place of business in San Jose, Calif., agreed that in connection with the sale, advertising, offering for sale, transportation or distribution of furs or any fur product made in whole or in part of fur which has been shipped and received in commerce, or the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce of furs or any fur product, as the terms "fur," "fur product" and "commerce" are defined in the Fur Products Labeling Act, he will forthwith cease and desist from:

- (1) Failing to affix labels to fur products showing:
 - (a) The name or names of the animal or animals producing the fur contained in the fur product as set forth in the Fur Products Name Guide and as permitted under the Rules and Regulations;
 - (b) 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 in commerce, sold it in commerce, advertised or offered it for sale in commerce, or transported or distributed it in commerce;
 - (c) That the fur product contains or is composed of bleached, dyed or otherwise artificially colored fur, when such is the fact;
 - (d) Such other information as may be required by Section 4(2) of the Fur Products Labeling Act.
- (2) Using on labels attached to fur products the name of an animal other than the name of the animal actually producing the fur.
- (3) Mingling, on labels, nonrequired information with required information.
- (4) Setting forth on labels required information in abbreviated form or in handwriting.
- (5) Failing to set out all of the required information on the same side of the label.
- (6) 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 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;
 - (d) Such other information as may be required by Section 5(b)(1) of the Fur Products Labeling Act.
- (7) Setting forth on invoices required information in abbreviated form.
- (8) Failing to set forth on invoices the item number or mark assigned to the fur product for purposes of identification.
- (9) Advertising fur products in any manner or by any means where the advertisement:
 - (a) Does not show the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced

the fur, and such qualifying statement as may be required pursuant to Section 7(c) of the Act.

(b) Does not show that the fur product or fur is bleached, dyed or otherwise artificially colored fur when such is the fact.

(c) Does not show the name of the country of origin of any imported furs or those contained in a fur product.

(d) Contains the name of an animal other than that producing the fur.

(e) 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 said individual has usually and customarily sold such product in the recent regular course of his business.

(10) Using the term "blended" as a part of the required information in labeling, invoicing and advertising to describe the pointing, bleaching, dyeing or tip-dyeing of furs. (5723649, Sept. 25, 1958.)

9092. Fur Products—Noncompliance with Labeling Act.—Allied Stores Corporation, a Delaware corporation with place of business in New York City, operating a department store in Syracuse, N.Y., under the trade name Dey Brothers & Company, and John Fitzgibbons, Mabel Dey and Donald Dunn, employees of Allied Stores Corporation primarily responsible for the acts and practices of Dey Brothers & Company, agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or 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, as the terms "fur," "fur product" and "commerce" are defined in the Fur Products Labeling Act, they, and each of them, will forthwith cease and desist from advertising fur products in any manner or by any means where the advertisement:

(1) Does not show the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to Section 7(c) of the Act;

(2) Does not show that the fur product or fur is bleached, dyed or otherwise artificially colored fur when such is the fact;

(3) Does not properly show the name of the country of origin of any imported furs or those contained in a fur product;

(4) Abbreviates required information. (5823576, Sept. 30, 1958.)

9093. Collection Agency—Obtaining Information by Subterfuge.
—Lee Kay, an individual trading as National Credit Clearing House with place of business in New York City, the record owner of National Credit Clearing House, a collection agency, and Samuel Kay who supervised, controlled and operated it, agreed that in connection with the solicitation of accounts for collection, the collection of accounts, and the obtaining of information concerning delinquent debtors in commerce they, and each of them, will forthwith cease and desist from:

(1) Representing, through use of the name "National Credit Clearing House" or "Office of Employment Classification" that their business is that of a credit clearing house or of employment classification, or otherwise misrepresenting the nature of their business;

(2) Using, or placing in the hands of others for use, any forms, letters, questionnaires or other material which does not clearly and expressly state that the purpose for which the information is requested is that of obtaining information concerning delinquent debtors. (5723623, Sept. 30, 1958.)

9094. Men's Sport Coats—Misbranding as to Wool Content.—Max Siegel, an individual trading as Fleetwood Clothes with place of business in New York City, agreed that in connection with the introduction, or manufacture for introduction, into commerce, or the sale, transportation, or distribution in commerce of men's suits and sport coats or any other wool product within the meaning of the Wool Products Labeling Act, he will forthwith cease and desist from misbranding wool products by:

(1) Stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers included therein in any manner not in accordance with the facts;

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

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

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

(c) The name or the registered identification number of the manufacturer of such wool product or of one or more persons

engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, distribution or delivery for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939. (5723269, Sept. 30, 1958.)

9095. Men's Suits—Misbranding as to Wool Content.—Simon Yusem and Henry Yusem, copartners trading as Silvertex Company with place of business in Philadelphia, Pa., agreed that in connection with the introduction, or manufacture for introduction, into commerce, or the sale, transportation, or distribution in commerce, of men's suits, or any other wool product within the meaning of the Wool Product's Labeling Act, they and each of them will forthwith cease and desist from misbranding wool products by:

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

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

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

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

(2) Failing to show on labels attached to samples, swatches or specimens of wool products which are used to promote or effect sales in commerce, the common generic names of the fibers contained therein as required by the Wool Products Labeling Act and the Rules and Regulations thereunder. (5823567, Sept. 30, 1958.)

9096. Rubber Trays, Bath and Shower Mats—Fictitious Pre-ticketing.—Superior Rubber Products Manufacturing Co. and Globe Rubber Products Corp., Pennsylvania corporations with places of business in Philadelphia, Pa., and Emanuel Meyer, general manager of Superior Rubber Products Manufacturing Co. and an officer of Globe Rubber Products Corp., agreed that in con-

nection with the offer and sale of rubber housewares or other products in commerce, they and each of them will forthwith cease and desist from ticketing such merchandise with prices or amounts which are in excess of the usual or regular retail selling prices of said merchandise, or otherwise representing, directly or indirectly, or placing in the hands of others a means of 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 at retail. (5723195, Sept. 30, 1958.)

9097. Coats and Suits—Noncompliance with Wool and Fur Labeling Acts.—E. J. Korvette, Inc., a New York corporation with place of business in New York City, and William Willensky and Murray Beilenson, its officers, agreed that in connection with the introduction, or manufacture for introduction, into commerce, or the sale, transportation, or distribution in commerce of suits and coats or any other wool product within the meaning of the Wool Products Labeling Act, they and each of them will forthwith cease and desist from failing to securely affix to or place on each such product a stamp, tag, label or other means of identification showing in a clear and conspicuous manner:

(1) The percentage of the total fiber weight of such wool product, exclusive of ornamentation not exceeding five percentum of said total fiber weight, of (a) wool, (b) reprocessed wool, (c) reused wool, (d) each fiber other than wool if said percentage by weight of such fiber is five percentum or more, and (e) the aggregate of all other fibers;

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

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

E. J. Korvette, Inc., William Willensky and Murray Beilenson further agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or 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, as the terms "fur," "fur product" and "commerce" are defined in the

Fur Products Labeling Act, they, and each of them, will forthwith cease and desist from:

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

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

(b) 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 in commerce, sold it in commerce, advertised or offered it for sale in commerce, or transported or distributed it in commerce;

(c) Such other information as may be required by Section 4(2) of the Fur Products Labeling Act.

(2) Mingling, on labels, nonrequired information with required information.

(3) Setting forth on labels required information in handwriting.

(4) Failing to set forth on labels affixed to fur products an item number or mark assigned to such product for identification purposes.

(5) Failing to furnish invoices to purchasers of fur products disclosing the information required by Section 5(b)(1) of the Fur Products Labeling Act.

(6) Using comparative price representations unless there is maintained by said corporation an adequate record disclosing the facts upon which such claims or representations are based. (5823537, Sept. 30, 1958.)

9098. Shoes—Corrective and Health Features.—Julius Altschul, Inc., a New York corporation with place of business in Brooklyn, N.Y., and Jerome A. Altschul and Stephen J. Altschul, its officers, agreed that in connection with the offering for sale, sale and distribution of shoes in commerce, they, and each of them, will forthwith cease and desist from representing directly or by implication:

(1) That their shoe products are orthopedic or corrective shoes, or are made on orthopedic or orthopedic type lasts, or contain orthopedic or corrective features.

(2) That their shoe products will correct or prevent pronation, flat foot, pigeon toes, knock knees, club foot, or any other defect, deformity or abnormality of the feet.

(3) That their shoes provide necessary support, will improve posture, will prevent or protect against foot ills, will provide better foot health, will restore a pronated foot to normal position, or will effect proper distribution of body weight. (5623658, Sept. 30, 1958.)

9099. **Bread—Calorie Content.**—F. H. Peavey & Co., a Minnesota corporation with place of business at Minneapolis, Minn., agreed that it will forthwith cease and desist from disseminating or causing to be disseminated any advertisement for the bread product now designated as “V-10 Protein Bread” or any other bread product of substantially similar composition or properties which represents, directly or indirectly, that said bread is a low calorie food or that the consumption of said bread as part of the diet will cause the consumer to lose weight or will prevent the consumer from gaining weight. (5823478, Oct. 7, 1958).

9100. **Men’s Clothing—Producer Status, Foreign Offices, etc.**—Delta Clothing Stores, Inc., trading as Walker-Adams, a Virginia corporation with place of business in Chicago, Ill., and Maury A. Katzenberg and Richard A. Myer, its officers, agreed that in connection with the offer and sale of clothing and related products in commerce, they and each of them will forthwith cease and desist from representing directly or by implication:

(1) That they purchase fabrics direct from fabric mills, or that they manufacture any of the products which they sell.

(2) That they maintain or operate offices or places of business at London, Glasgow or Rome or at any other place when such is not a fact. (5723460, Oct. 7, 1958.)

9101. **General Merchandise—Prices, Special Offers, etc.**—Coleman Cuttler, an individual trading as Matina Co. with place of business in New York City, agreed that in connection with the offer and sale of jewelry and other merchandise in commerce, as “commerce” is defined by the Federal Trade Commission Act, he will forthwith cease and desist from:

(1) Representing that a credit check or other allowance may be applied toward the purchase of merchandise without a clear and conspicuous disclosure of any conditions to such application.

(2) Representing that an offer of a credit check or of any merchandise is a special offer or is limited as to time or is otherwise limited when such is not a fact.

(3) Representing that he sells regularly to agents only or otherwise representing in any manner that he does not sell regularly to the general public.

(4) Representing that the prices at which he sells and offers his merchandise for sale are lower than the prices charged for the same merchandise by all other dealers or retail outlets, or by any such dealers or outlets when such is not the fact.

(5) Using the word “pearl” to describe, identify, or refer to an

imitation pearl unless such word is immediately preceded, with equal conspicuity, by the words "imitation" or "simulated," or by some other word or phrase of like meaning and connotation, so as to indicate definitely and clearly that the product is not a pearl. (5823238, Oct. 7, 1958.)

9102. Automobile Seat Covers, etc.—Fictitious Pricing and Guarantees.—Jerome Rosner, an individual trading as Circle Seat Cover Center with place of business in Arlington, Va., agreed that in connection with the offer and sale of automobile seat covers and convertible tops in commerce, he will forthwith cease and desist from:

(1) Representing that a certain amount is the usual and regular retail price or value of merchandise being offered for sale when such amount is in excess of the price at which said merchandise is usually and regularly sold at retail;

(2) Representing in any manner that certain amounts are sale or reduced prices when such amounts are in fact the prices at which the products are usually and regularly sold at retail;

(3) Representing that a product is guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed in close conjunction therewith. (5823349, Oct. 9, 1958.)

9103. Automobile Seat Covers, etc.—Fictitious Pricing, "Custom Tailoring".—Silver Spring Tire Corp., a Maryland corporation with place of business in Silver Spring, Md., agreed that in connection with the offer and sale of automobile seat covers and convertible tops in commerce, it will forthwith cease and desist from:

(1) Representing that a certain amount is the usual and regular retail price or value of merchandise being offered for sale when such amount is in excess of the price at which said merchandise is usually and regularly sold at retail;

(2) Representing directly or by implication that advertised prices for convertible tops are applicable to cars of all model years when such is not the fact;

(3) Representing that its seat covers are custom tailored or custom made;

(4) Offering convertible tops at specified prices which do not include the cost of a zipper or rear window curtain, unless clear and conspicuous disclosure of such fact is made. (5823347, Oct. 9, 1958.)

9104. Auto Seat Covers—Fictitious Pricing, "Custom Tailored", Guarantees.—Manhattan Auto, Inc., trading as Manhattan Auto and Radio Co., a Delaware corporation with place of business in

the District of Columbia, agreed that in connection with the offer and sale of automobile seat covers and other automobile accessories in commerce, it will forthwith cease and desist from representing:

(1) That a certain amount is the usual and regular retail price or value of merchandise being offered for sale when such amount is in excess of the price at which said merchandise is usually and regularly sold at retail.

(2) That its seat covers are custom tailored or custom made.

(3) That a product is guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed in close conjunction therewith. (5823346, Oct. 9, 1958.)

9105. **"The Atomic Dust-Chaser" Device—Failing to Warn of Danger in Use.**—Harold Shevers, an individual trading as Hi-Fi Accessories Company with place of business in New York City, engaged in the sale of a device designated "The Atomic Dust-Chaser" designed for installation on the tone arm of record players for use in connection with the reproduction of recorded sounds which contains radium sulfate, a radioactive substance, agreed that:

(1) He will forthwith cease and desist from offering for sale, selling and distributing, in commerce as defined by said Act, the device designated as aforesaid, or any other device containing radium sulfate as an active ingredient, unless adequate cautionary or warning notices are clearly and conspicuously impressed or imprinted upon said device or the carton or permanent container in which it is shipped and kept or permanently attached to the device or the said carton or container, indicating possible harmful effects of ingesting or inhaling radium sulfate and directing the user not to touch the radium sulfate substance and to keep the device away from children; provided, however, that such warning or cautionary notices may be condensed if they clearly refer to and are amplified by adequate directions for use separately printed and enclosed in the carton or permanent container in which said device is shipped and kept;

(2) In connection with the offering for sale, sale and distribution, in commerce as defined by said Act, of the device designated as aforesaid, or any other device containing radium sulfate as an active ingredient, he will forthwith cease and desist from representing, directly or by implication, that the device is safe or harmless, unless in direct connection therewith it is disclosed clearly and conspicuously that the directions for use which must accompany the device at point of sale, including the required cau-

tionary or warning notices, must be followed. (5823512, Oct. 14, 1958.)

9106. **Ice Making Machines—Economy of Operation.**—Morris & Associates, Inc., a North Carolina corporation with place of business at Raleigh, N.C., agreed that in connection with the offering for sale, sale and distribution of ice making machines in commerce, it will forthwith cease and desist from representing, directly or by implication, that the Morris ice making machines will produce ice for 75¢ a ton or any other figure not in accordance with the facts. (5823201, Oct. 14, 1958.)

9107. **Fur Products—Noncompliance with Labeling Act.**—Andre-Schwarz-Singer, Inc., an Ohio corporation with place of business in Cleveland, Ohio, and Bernard Goldstein and Leo Goldstein, its officers, agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or 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, as the terms “fur,” “fur product” and “commerce” are defined in the Fur Products Labeling Act, they, and each of them, will forthwith cease and desist from advertising fur products in any manner or by any means where the advertisement:

(1) Does not show the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to section 7(c) of the Act;

(2) Does not show that the fur product or fur is bleached, dyed or otherwise artificially colored fur when such is the fact;

(3) Does not properly show the name of the country of origin of any imported furs or those contained in a fur product;

(4) 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 said corporation has usually and customarily sold such product in the recent regular course of its business. (5823712, Oct. 16, 1958.)

9108. **Fur Products—Noncompliance with Labeling Act.**—Anthony J. Akoury, an individual doing business at Akoury's Furs with place of business in Scranton, Pa., agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of furs or any fur product made in whole or in part of fur which has been shipped and received in commerce, or the introduction into commerce, or the sale, advertising or offering for

sale in commerce, or the transportation or distribution in commerce of furs or any fur product, as the terms "fur," "fur product" and "commerce" are defined in the Fur Products Labeling Act, he will forthwith cease and desist from:

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

(a) 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 in commerce, sold it in commerce, advertised or offered it for sale in commerce, or transported or distributed it in commerce;

(b) Properly, the name of the country of origin of any imported furs used in a fur product;

(2) Advertising fur products in any manner or by any means where the advertisement:

(a) Does not show the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to Section 7(c) of the Act.

(b) Does not show that the fur product or fur is bleached, dyed or otherwise artificially colored fur when such is the fact.

(c) Represents directly or by implication that the regular or usual price of any fur product is any amount in excess of the price at which said individual has usually and customarily sold such product in the recent regular course of his business.

(d) Uses comparative price statements unless there is maintained by said individual an adequate record disclosing the facts upon which such claims or representations are based. (5823376, Oct. 28, 1958.)

9109. **Shoes—"Hand-sewn".**—Ansonia Shoe Corp., a New York corporation with place of business at New York City, agreed that in connection with the offer and sale of shoes in commerce, it will forthwith cease and desist from representing directly or by implication that shoe products are hand sewn except as to such part or parts as may be sewn by hand, or that such products embody hand operations in their manufacture, except in accordance with the facts. (5823480, Oct. 28, 1958.)

9110. **Woolen Stocks—Failing to Comply with Labeling Act.**—Benjamin Matusow, Joshua Matusow and Ida Matusow, copartners trading as Harry Matusow & Sons with place of business in Philadelphia, Pa., agreed that in connection with the introduction, or manufacture for introduction, into commerce, or the sale, transportation, or distribution in commerce of woolen stocks, or any other wool product within the meaning of the Wool Products Label-

ing Act, they and each of them will forthwith cease and desist from:

(1) Stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers included therein in any manner not in accordance with the facts;

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

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

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

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

(3) Failing to maintain proper fiber content records as required by the Wool Products Labeling Act:

(a) Showing the percentage of wool, reprocessed wool, and reused wool, and of each kind of fiber other than wool, placed in the respective wool products of Harry Matusow & Sons, in the form of fiber, yarn, fabric, or other form;

(b) Showing such numbers, information, marks, or means of identification as will identify the said records with the respective wool products to which they relate; and

(c) By keeping and maintaining as records under the act all invoices, purchase contracts, orders or duplicate copies thereof, bills of purchase, business correspondence received, factory records, and other pertinent documents and data showing or tending to show (a) the purchase, receipt, or use by said Harry Matusow & Sons of all fiber, yarn, fabric or fibrous material, or any part thereof, introduced in or made a part of any such wool products of said Harry Matusow & Sons; (b) the content, composition or classification of such fiber, yarn, fabric or fibrous material with respect to the information required to appear upon the label of the wool products of said Harry Matusow & Sons; and (c) the name and address of the person or persons from whom such fiber, yarn,

fabric or fibrous materials were purchased or obtained by said Harry Matusow & Sons. (5823572, Oct. 28, 1958.)

9111. Quilted Interlinings—Noncompliance with Wool Products Labeling Act.—Ben Klein and Fay Klein, copartners trading as Ace Quilting Co. with place of business in Brooklyn, N.Y., agreed that in connection with the introduction, or manufacture for introduction, into commerce, or the sale, transportation, or distribution in commerce of quilted interlinings, or any other wool product within the meaning of the Wool Products Labeling Act, they and each of them will forthwith cease and desist from:

(1) Stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers included therein in any manner not in accordance with the facts;

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

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

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

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

Ben Klein and Fay Klein further agreed that in connection with the offering for sale, sale or distribution of quilted interlining or any other product in commerce, they and each of them will forthwith cease and desist from misrepresenting the percentages or amounts of the constituent fibers of which their products are composed, in sales invoices, shipping memoranda or in any other manner. (5823083, Oct. 28, 1958.)

9112. Delinquent Accounts—Fictitious Collection Agency.—Sears, Roebuck and Co., a New York corporation with place of business at Chicago, Ill., agreed that in connection with the collection of accounts in commerce, it will forthwith cease and desist from:

(1) Using fictitiously any trade or corporate name in collecting past due accounts;

(2) Implying that past due accounts have been referred to an independent organization for collection when such is not the fact. (5823353, Oct. 28, 1958.)

9113. Toys—Nondisclosure of Japanese Origin.—Remco Industries, Inc., a New Jersey corporation with place of business in Newark, N.J., and Saul Robbins and Isaac Heller, its officers, agreed that in connection with the offer and sale of toys or other products in commerce, they, and each of them, will forthwith cease and desist from:

(1) Offering for sale or selling toys or other products containing motors made in Japan without clearly disclosing the country of origin of the motors used in the product;

(2) Offering for sale or selling any product, any substantial part of which was made in Japan, or in any other foreign country, without clearly disclosing the foreign origin of such part. (5823373, Oct. 28, 1958.)

9114. Clothes Dryers—Composition.—Falco Products Co., a Pennsylvania corporation with place of business in Philadelphia, Pa., and Charles Shore and Morton Shore, its officers, agreed that in connection with the offer and sale of clothes dryers and other products in commerce, they and each of them will forthwith cease and desist from using the term "aluminized," or any word or words of similar import or meaning, to designate or describe a product composed of galvanized metal, or otherwise representing the composition of a metallic product or part thereof except in accordance with fact. (5823228, Nov. 6, 1958.)

9115. Screws, Bolts and Nuts—Nondisclosure of Foreign Origin.—Columbia Fasteners, Inc., a New York corporation with principal place of business at Freeport, Long Island, N.Y., and Oscar Solow, Gabriel Miller and Sidney Solow, its officers, agreed that they will forthwith cease and desist from offering for sale, selling and distributing in commerce, any products of foreign origin without clearly and conspicuously disclosing on the packages or other containers in which they are sold to the consuming public the country or countries of origin of such products. (5823521, Nov. 26, 1958.)

9116. Luggage—Fictitious Pricing.—United Products Corp., a Missouri corporation with principal place of business in Kansas City, Mo., and Robert C. Harvey, William H. Harvey and Maurine O. Harvey, its officers, agreed that in connection with the offer and sale of luggage or other products in commerce, they and each

of them will forthwith cease and desist from ticketing merchandise with prices or amounts which are in excess of the usual and regular retail selling prices of said merchandise, or otherwise representing directly or by implication or placing in the hands of others a means of 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 at retail. (5823287, Nov. 6, 1958.)

9117. **"Whitex" Medicinal Cream—Therapeutic Properties.**—Iva Pocisk, an individual trading as Albrite Specialty Co. with her principal place of business in Cincinnati, Ohio, agreed that she will forthwith cease and desist from disseminating or causing to be disseminated any advertisement for a preparation now designated "Whitex," or any other preparation of substantially the same composition or possessing substantially the same properties, whether sold under that name or any other name, which represents directly or by implication:

(1) That the product does away with or cures pimples or has any value in their treatment other than helping to retard the formation of further acne pimples;

(2) That the product will clear the skin of blackheads or is of any value for blackheads other than softening the external portions thereof to facilitate their removal;

(3) That the product will do away with or eliminate wrinkles or bruise marks;

(4) That the product is a new wonder cream or a new type of preparation not heretofore available to the public;

(5) That the product is recommended by doctors. (5823362, Nov. 13, 1958.)

9118. **Picked Stocks—Noncompliance with Wool Products Labeling Act.**—F. W. Stritch Co., a New Jersey corporation with its principal place of business in Passaic, N.J., and Seymour Weber and Sylvia Weber, its officers, agreed that in connection with the introduction, or manufacture for introduction, into commerce, or the sale, transportation, or distribution in commerce of picked stocks or any other wool product within the meaning of the Wool Products Labeling Act, they and each of them will forthwith cease and desist from:

(1) Stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers included therein in any manner not in accordance with the facts;

(2) Failing to securely affix to or place on each such product a

stamp, tag, label or other means of identification showing in a clear and conspicuous manner:

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

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

(c) The name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, distribution or delivery for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939. (5923051, Nov. 13, 1958.)

9119. **Hair Color—Nature.**—Hairtone, Inc., a Florida corporation with its principal place of business at Coral Gables, Fla., and Walter A. Scott, Margaret D. Meyer and Henry W. Meyer, its officers, agreed that they will forthwith cease and desist from disseminating or causing to be disseminated any advertisement for the product now designated as "Scott's Anti-Gray Hair Tone," or any other product of substantially similar composition or properties which represents:

(a) That the product is not a tint or a dye;

(b) That the product will restore the natural color or the youthful color to the hair. (5823601, Nov. 13, 1958.)

9120. **Stationery—"Engraved".**—Thomas Allstopp and Beverly Allstopp, copartners trading as Clinton Press with place of business in Minneapolis, Minn., agreed that in connection with the offer and sale of stationery and allied products in commerce, they and each of them will forthwith cease and desist from using the word "engraved," or any other term of similar import and meaning, to designate, describe, or refer to such products on which the lettering, inscriptions, or designs have been produced by the thermographic process or by any process other than engraving. (5923025, Nov. 13, 1958.)

9121. **Watches—Fictitious Preticketing.**—Federal Wholesalers, Inc., a Maryland corporation with its principal place of business in the District of Columbia, and Abraham Albert Alperstein and Isadore Alperstein, its officers, agreed that in connection with the offer and sale of watches or other products in commerce, they and each of them will forthwith cease and desist from representing

directly or by implication that the usual or regular selling price of merchandise is any amount in excess of the price at which such merchandise has sold in recent, regular course of business. (5823327, Nov. 13, 1958.)

9122. **Automobile and Furniture Polish—Safety.**—James C. Gossett, an individual trading as C&G Chemical Products, with his principal place of business at Wilmore, Ky., agreed that he will forthwith cease and desist from offering for sale, selling and distributing his “clean and gloss” liquid polish for furniture and automobiles, or any other product of substantially the same composition or properties, in commerce, unless an adequate warning notice is clearly and conspicuously displayed on such product disclosing that such product is a combustible mixture and that purchasers thereof should avoid using it near an open flame or extreme heat. (5723713, Nov. 13, 1958.)

9123. **Automobile Seat Covers, etc.—Fictitious Pricing, “Custom Made”.**—Hyman Kaplan and Morris Kaplan, copartners trading as Stewart Auto Upholstering Co. with their principal place of business in the District of Columbia, agreed that in connection with the offer and sale of automobile seat covers and convertible tops in commerce, they and each of them will forthwith cease and desist from:

(1) Representing that a certain amount is the usual and regular retail price or value of merchandise being offered for sale when such amount is in excess of the price at which said merchandise is usually and regularly sold at retail;

(2) Representing that the price at which a product is offered for sale constitutes a reduction of any stated percentage or amount which is in excess of the actual reduction from the price at which said product has sold in recent, regular course of business;

(3) Representing directly or by implication that advertised prices for convertible tops are applicable to cars of all model years when such is not the fact;

(4) Representing in the advertising of ready-made seat covers that they are manufacturers of custom made seat covers unless a clear and conspicuous disclosure is made in such advertising that the seat covers offered for sale are ready-made, or otherwise representing directly or by implication that seat covers are custom made when such is not the fact. (5823348, Nov. 18, 1958.)

9124. **Reclaimed Motor Oil—Nondisclosure of Used Nature.**—Three Rivers Refinery, a Texas corporation with place of business at Tulsa, Okla., Agnes C. Boudreau, Alfred F. Boudreau, Jr., and Robert B. Boudreau, its officers, and Agnes C. Boudreau and Alfred

F. Boudreau, Jr., also trading as Petroleum Trading and Transport Co., agreed that in connection with the offer and sale in commerce of lubricating oil composed in whole or in part of oil which has been previously used and reclaimed, they, and each of them, will forthwith cease and desist from:

(1) Representing, contrary to the fact, that their lubricating oil is refined or processed from other than previously used oil;

(2) Advertising, offering for sale or selling any lubricating oil which is composed in whole or in part of oil which has been reclaimed or in any manner processed from previously used oil, without disclosing such prior use to the purchaser or potential purchaser in advertising and sales promotion material, and by a clear and conspicuous statement to that effect on the container. (5823146, Nov. 18, 1958.)

9125. **Woolen Fabrics—Misrepresenting Fiber Content.**—Hayward Woolen Co., a Massachusetts corporation trading as Douglas Mills, with its principal place of business in East Douglas, Mass., William E. Hayward, its president and selling agent, Douglas Mills Sales Corp., a New York corporation with place of business in New York City, and Leo J. Murray, Thomas Murray and Edward P. Mone, officers of both corporations, agreed that in connection with the introduction, or manufacture for introduction, into commerce, or the sale, transportation, or distribution in commerce, of woolen fabrics, or any other wool product within the meaning of the Wool Products Labeling Act, they and each of them will forthwith cease and desist from:

(1) Stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers included therein in any manner not in accordance with the facts;

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

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

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

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

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

They further agreed that in connection with the offering for sale, sale or distribution of woolen fabrics, or any other product in commerce, they and each of them will forthwith cease and desist from misrepresenting the percentages or amounts of the constituent fibers of which their products are composed, in sales invoices, shipping memoranda or in any other manner. (5723353, Nov. 18, 1958.)

9126. Fruit and Vegetable Shredder-Juicer—Health-producing Qualities.—Nicholas H. Knuth, an individual trading as Knuth Engineering Co. with his principal place of business at Chicago, Ill., agreed that in connection with the offer and sale in commerce of the product now designated "K & K Shredder-Juicer," or any other similar product, he will forthwith cease and desist from representing directly or by implication that the consumption of fruit juices or vegetable juices extracted through the use of the said product will assure health or will prevent poor health. (5823256, Nov. 18, 1958.)

9127. Woolen Fabrics—Fiber Content.—J. J. O'Donnell Woolens, Inc., a Massachusetts corporation with principal place of business in Farnumsville, Mass., and Joseph E. Mee, its vice president and general manager, agreed that in connection with the introduction, or manufacture for introduction, into commerce, or the sale, transportation or distribution in commerce of woolen fabrics or any other wool product within the meaning of the Wool Products Labeling Act, they and each of them will forthwith cease and desist from:

(1) Stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers included therein in any manner not in accordance with the facts;

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

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

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

(c) The name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, distribution or delivery for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939. (5723619, Nov. 25, 1958.)

9128. School Compasses—Foreign Origin.—Sterling Plastics Co., a New Jersey corporation with its principal place of business in Union, N.J., and George J. Staab and Mary D. Staab, its officers, agreed that in connection with the offer and sale of compasses or other school supplies in commerce, they and each of them will forthwith cease and desist from representing directly or by implication that a product is of domestic origin, when in fact the product is manufactured in whole or in substantial part in a foreign country. (5823513, Nov. 25, 1958.)

9129. Fur Products—Noncompliance with Labeling Act.—Broida's, Inc., a West Virginia corporation with its principal place of business in Clarksburg, W. Va., and B. Paul Broida and Madeline B. Cohen, its officers, agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or 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, as the terms "fur," "fur product" and "commerce" are defined in the Fur Products Labeling Act, they, and each of them, will forthwith cease and desist from:

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

(a) 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 in commerce, sold it in commerce, advertised or offered it for sale in commerce, or transported or distributed it in commerce;

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

(c) Such other information as may be required by Section 4(2) of the Fur Products Labeling Act.

(2) Mingling, on labels, nonrequired information with required information.

(3) Failing to show on labels affixed to fur products an item number or mark assigned to such product for identification purposes.

(4) 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 bleached, dyed or otherwise artificially colored fur, when such is the fact;

(c) Such other information as may be required by Section 5(b)(1) of the Fur Products Labeling Act.

(5) Setting forth on invoices required information in abbreviated form.

(6) Failing to set forth on invoices the item number or mark assigned to the fur product for purposes of identification.

(7) Advertising fur products in any manner or by any means where the advertisement:

(a) Does not show the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to Section 7(c) of the Act.

(b) Does not show that the fur product or fur is bleached, dyed or otherwise artificially colored fur when such is the fact.

(c) 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 said corporation has usually and customarily sold such product in the recent regular course of its business.

(d) Makes use of comparative price representations unless there is maintained by said corporation an adequate record disclosing the facts upon which such representations are based. (5823532, Nov. 25, 1958.)

9130. **Correspondence Courses—College Status.**—Pacific International University, a California corporation with its principal place of business in Los Angeles, Calif., and Edmund S. Guerrero, its officer, agreed that in connection with the offer and sale in commerce of courses of study and instruction, they and each of them will forthwith cease and desist from:

(1) Using the word "university" or any abbreviation or simulation thereof, as part of their corporate name or as part of the name of their school, or representing or implying in any manner that their school is a university.

(2) Using the word "college" or any word or words of similar meaning in their corporate name or in any other manner to refer to their school, unless, in all bulletins, lesson material, diplomas,

degrees, advertisements or other material, it is clearly stated in immediate conjunction therewith that their school is primarily a correspondence school or an institution primarily for correspondence students. (5723332, Dec. 2, 1958.)

9131. **Children's Lariats, etc.—“Advertised in Life.”**—Robert J. Rubin and Leonard R. Rubin, copartners trading as Arandell Products Co. with their principal place of business in Philadelphia, Pa., agreed that in connection with the offer and sale of children's lariats, clothes line sets, jumping ropes or other products in commerce, they and each of them will forthwith cease and desist from representing directly or by implication that a product is currently advertised or has in the recent past been advertised in Life Magazine or in any other publication when such is not the fact. (5823672, Dec. 4, 1958.)

9132. **Fur Products—Violation of Labeling Act.**—Jay Thorpe, Inc., a New York corporation with its principal place of business in New York City, and David Fox and Murray Cohen, its officers, agreed that in connection with the sale, advertising, offering for sale, transportation or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or 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, as the terms “fur,” “fur product” and “commerce” are defined in the Fur Products Labeling Act, they, and each of them, will forthwith cease and desist from advertising fur products in any manner or by any means where the advertisement:

(1) Does not show the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to section 7(c) of the Act;

(2) Does not properly show the name of the country of origin of any imported furs or those contained in a fur product;

(3) Makes use of comparative price representations or percentage savings claims unless there is maintained by said corporation an adequate record disclosing the facts upon which such claims or representations are based. (5723511, Dec. 9, 1958.)

9133. **Fur Products—False Advertising and Invoicing.**—Zelenka Furs, Inc., a Texas corporation with its principal place of business in Dallas, Texas, and Alexander Zelenka, Beulah Zelenka, and James Hirsch, its officers, agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product made in whole or in part of fur which has been shipped

and received in commerce, or 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, as the terms "fur," "fur product," and "commerce" are defined in the Fur Products Labeling Act, they, and each of them, will forthwith cease and desist from:

(1) Failing to furnish to purchasers of fur products invoices disclosing the information required by Section 5(b)(1) of the Fur Products Labeling Act.

(2) Advertising fur products in any manner or by any means where the advertisement:

(a) Does not show that the fur product or fur is bleached, dyed or otherwise artificially colored fur when such is the fact.

(b) Abbreviates required information.

(c) 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 said corporation has usually and customarily sold such product in the recent regular course of its business.

(d) Represents, directly or by implication, that the price of a fur product will be higher after the sale period than the price at which such product is offered during the sale, unless such product is in fact thereafter to be offered for sale and sold at such higher price.

(e) Shows, by use of an illustration, a fur or fur product to be a higher priced product than the one so advertised. (5823311, Dec. 9, 1958.)

9134. Sewing Machines—"Automatic," Fictitious Prices.—Necchi Sewing Machine Sales Corp., a New York corporation with its principal place of business in New York City, and Leon Jolson and Benjamin Krisiloff, its officers, agreed that in connection with the offer and sale of sewing machines in commerce, they and each of them will forthwith cease and desist from:

(1) Representing that a sewing machine is completely automatic or that it is automatic except as to such operations as are performed automatically or that it will perform automatically any sewing operation except in accordance with fact;

(2) Representing that the usual and regular selling price or value of a product is any amount in excess of the price at which said product has sold in recent, regular course of business. (5723090, Dec. 9, 1958.)

9135. Wiping Cloths—Composition.—Official Products Company, Inc., a Georgia corporation with principal place of business at Atlanta, Ga., and Grant Roy, Glenn T. Touchstone, Wayman H.

Hefner and Willmar A. Zartman, its officers, agreed that in connection with the offer and sale of wiping cloths and related products in commerce, they and each of them will forthwith cease and desist from using the term "Shamee-Towel" or any similar designation or representation respecting a product which is not made of chamois leather. (5823708, Dec. 11, 1958.)

9136. Fur Products—Noncompliance With Labeling Act.—Albert Stark, Inc., a New York corporation with its principal place of business in Syracuse, N.Y., and Albert Stark and Norma Conlin, its officers, agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or 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, as the terms "fur," "fur product" and "commerce" are defined in the Fur Products Labeling Act, they, and each of them, will forthwith cease and desist from:

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

(a) 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 in commerce, sold it in commerce, advertised or offered it for sale in commerce, or transported or distributed it in commerce;

(b) Such other information as may be required by Section 4(2) of the Fur Products Labeling Act.

(2) Mingling, on labels, nonrequired information with required information.

(3) Using on labels attached to fur products the name of an animal which is fictitious or nonexistent or the name of an animal other than that producing the fur.

(4) Failing to set forth on labels the term "fur origin" preceding the name of the country of origin.

(5) Setting forth on invoices required information in abbreviated form.

(6) Failing to set forth on invoices the item number or mark assigned to the fur product for purposes of identification.

(7) Advertising fur products in any manner or by any means where the advertisement:

(a) Does not show the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to Section 7(c) of the Act.

(b) Does not show that the fur product or fur is bleached, dyed or otherwise artificially colored fur when such is the fact.

(c) Does not properly show the name of the country of origin of any imported furs or those contained in a fur product.

(d) Makes use of comparative price representations or percentage savings claims unless there is maintained by said corporation an adequate record disclosing the facts upon which such claims or representations are based. (5823267, Dec. 23, 1958.)

9137. Insecticide—Effectiveness, etc.—Interstate Chemical Products Co., a Missouri corporation with its principal place of business at Kansas City, Mo., wholly owning Per-Mo Products Co. and doing business under that name, and Henry Snyder and N. D. Krevitt, officers of Interstate Chemical Products Co., agreed that in connection with the offer and sale in commerce of an insecticide now designated Per-Mo Mothproofing Liquid or any other product of substantially the same composition, whether sold under that name or any other name, they and each of them, will forthwith cease and desist from disseminating any advertisement which represents, directly or by implication:

(1) That the product effectively mothproofs woolen fabrics for five years, or any specified period, unless it is clearly disclosed in immediate connection with such representation that the woolen fabrics must be retreated after laundering;

(2) That the product will not be removed by cleaning, unless such representation is limited to dry cleaning. (5823563, Dec. 30, 1958.)

9138. Radio and Television Tubes—Seconds as First Quality.—Electron Tube Corp., a New York corporation with its principal office and place of business at New York City, and Wolf Wolfowski and Rachela Zeitlin, copartners trading as Sky-View Electronics Co., agreed that in connection with the offer and sale in commerce of radio and television tubes, they will forthwith cease and desist from representing directly or by implication that said tubes are first quality tubes, when such is not the fact, and that they will forthwith cease and desist from failing to reveal in advertising, invoices and shipping memoranda, and on tubes and on the cartons in which the tubes are packed, by use of the word "seconds" or the word "rejects" or other words or terms of the same import, that said tubes have been rejected by the manufacturers thereof, when such is the fact. (5723213, Jan. 6, 1959.)

9139. Combs—Dealer Being Manufacturer.—Ludwig Bachrach, doing business under the trade names National Comb Co. and Elbee Products, with his principal place of business in New York

City, agreed that in connection with the offer and sale of combs in commerce, he will forthwith cease and desist from:

Representing through the use of the word "Manufacturers" or any other word or words of similar import or meaning, or in any other manner, that he manufactures the merchandise sold by him. (5823506, Jan. 13, 1959.)

9140. Plastic Table Covers—Composition.—Blossom Manufacturing Co., Inc., a New York corporation with its principal place of business in New York City, and Samuel J. Brandstein, David Schoenfeld, and Jack Antokal, its officers, agreed that in connection with the offer and sale of plastic tablecovers or other similar products in commerce, they and each of them will forthwith cease and desist from representing that a product or part thereof is flannel when such is not the fact. (5823605, Jan. 13, 1959.)

9141. Air-cooling Device—Effectiveness, Fictitious Pricing.—Wilco Co., doing business as The Wilson Co., and Hub Auto Supply, Inc., Massachusetts corporations, with their principal place of business in Boston, Mass., and William B. Sandler, an officer of both, agreed that in connection with the offer and sale of the device or apparatus designated "Wilco-Therm," or any other similar device or apparatus, in commerce, they and each of them will forthwith cease and desist from:

(1) Using the term "air conditioner," or any word or words of similar import or meaning, either alone or in combination with any other word or words, to designate, describe or refer to said device or apparatus;

(2) Representing directly or by implication that said device will purify, deodorize, filter or cool air;

(3) Representing that said device originally sold for \$43.95 or any price greater than the actual original price;

(4) Representing that any price is the retail price of their products which is in excess of the price at which said products are regularly and customarily sold at retail. (5823667, Jan. 13, 1959.)

9142. Magazine & Hearing Aids—Misrepresenting Ownership, etc., Disparaging Competitor's Products.—Zenith Radio Corp., an Illinois corporation with its principal place of business in Chicago, Ill., agreed that in connection with the offering for sale, sale and distribution of hearing aids in commerce, it will forthwith cease and desist from:

(1) Representing directly or by implication that "Better Hearing" magazine, or any other publication which it owns, publishes or sponsors, is an independent publication; or that it is usually

sold on subscription or through newsstands or is published or distributed as a public service, when such is not a fact.

(2) Failing to make a clear and conspicuous disclosure of its connection with any publication which it owns, publishes or sponsors.

(3) Disparaging the products of competitors by making any false representation concerning the construction of such products or otherwise making any false and disparaging representation concerning the products of competitors.

(4) Comparing a current model of a Zenith hearing aid with a discontinued model of a competitor's hearing aid, unless a clear and conspicuous disclosure is made of the fact that the competitor's product is a discontinued model. (5823047, Jan. 15, 1959.)

9143. **Catalogs and Price Lists—Fictitious Pricing.**—Paul-Hoffman Publishing Co., Inc., an Illinois corporation with its principal place of business in Chicago, Ill., and Reuben M. Paul, Arlene Hoffman and Morris V. Hoffman, its officers, agreed that in connection with the offer and sale of catalogs and price lists in commerce, they and each of them will forthwith cease and desist from:

1. Using the expression "Confidential Wholesale Dealer Price List" to designate or describe price lists furnished to retail dealers, or otherwise representing that the prices at which merchandise listed in their catalogs is sold to the public are wholesale prices, when such is not the fact;

2. Representing that dealers using the said catalogs and price lists may reasonably expect returns of \$4,000 per day, or \$50.00 for every dollar invested, or any other amount in excess of the returns received by a substantial number of dealers using such catalogs and price lists in the ordinary and usual course of business and under normal conditions and circumstances. (5823443, Jan. 22, 1959.)

9144. **Cigars.—Domestic as "Havana."**—Moses Liverant, an individual trading as Yorkana Cigar Co. with place of business at York, Pa., agreed that in connection with the offer and sale of cigars or other products for smoking, in commerce, he will forthwith cease and desist from representing through the use of the word "Havana," or other word or words connoting Cuban origin, in labeling, invoicing or otherwise that a product is composed entirely of tobacco grown on the Island of Cuba, when such is not a fact. (5923009, Jan. 22, 1959.)

9145. **Health Leaflet—Cancer Cure Information, etc.**—Eugene A. Jakiela, an individual trading as Jakiela Products, with his place of business at Chicago, Ill., agreed that in connection with

the offer and sale of his leaflet, "New Health Secrets," in commerce, he will forthwith cease and desist from disseminating any advertisement with respect to the said leaflet which represents directly or by implication that any information contained in the leaflet represents a means for curing or effectively treating cancer, tuberculosis, heart disease, arthritis, rheumatism, influenza or colds or diseases or ailments in general. (5923097, Jan. 28, 1959.)

9146. Fur Products—Noncompliance With Labeling Act.—Grannick's Furs, Inc., a New Jersey Corporation with place of business in Trenton, N.J., and Mollie Peinik and Norma Grannick, its officers, agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or 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, as the terms "fur," "fur product" and "commerce" are defined in the Fur Products Labeling Act, they, and each of them, will forthwith cease and desist from:

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

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

(b) 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 in commerce, sold it in commerce, advertised or offered it for sale in commerce, or transported or distributed it in commerce;

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

(d) Such other information as may be required by Section 4(2) of the Fur Products Labeling Act.

(2) Mingling, on labels, nonrequired information with required information.

(3) Setting forth on labels required information in abbreviated form or in handwriting.

(4) Failing to show on labels affixed to fur products an item number or mark assigned to such product for identification purposes.

(5) Failing to set forth separately on labels attached to fur products composed of two or more sections containing different animal furs the information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations pro-

mulgated thereunder with respect to the fur comprising each section.

(6) 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) Such other information as may be required by Section 5(b) (1) of the Fur Products Labeling Act.

(7) Failing to set forth on invoices the item number or mark assigned to the fur product for purposes of identification.

(8) Setting forth on invoices required information in abbreviated form. (5923137, Feb. 3, 1959.)

9147. **Fabrics—"Handloomed."**—Eric H. Gerstel, an individual trading as Gerstel-Werber Co. with place of business in New York City, agreed that in connection with the offer and sale in commerce of fabric products, he will forthwith cease and desist from representing, directly or indirectly, that such products are handloomed or handwoven, when such is not the fact. (5723354, Feb. 3, 1959.)

9148. **Table Covers—"Flannel Backed."**—Carlan Products, Inc., a New York corporation with place of business in Brooklyn, N.Y., and Carl Landau, its officer, agreed that in connection with the offer and sale of plastic table covers or other similar products in commerce, they and each of them will forthwith cease and desist from representing that a product or part thereof is flannel when such is not the fact. (5823606, Feb. 12, 1959.)

9149. **Jacket Interlinings—Noncompliance With Wool Products Labeling Act.**—All American Sportwear Company, Inc., a New York corporation with place of business in New York City, and Samuel Werber and Nathan Klimerman, its officers, agreed that in connection with the introduction, or manufacture for introduction, into commerce, or the sale, transportation, or distribution in commerce of men's jackets containing woolen interlinings or any other wool product within the meaning of the Wool Products Labeling Act, they and each of them will forthwith cease and desist from:

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

(a) The percentage of the total fiber weight of such wool product, exclusive of ornamentation not exceeding five percentum of

said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber is five percentum or more, and (5) the aggregate of all other fibers;

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

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

(2) Failing to separately set forth on the required stamp, tag, label or other means of identification, the character and amount of the constituent fibers contained in the outer shell of said wool products. (5923160, Feb. 14, 1959.)

9150. **Jewelry—"Indian," "Hand-made," "Silver."**—Sol Weiner, an individual trading as Fiesta Novelty Company with place of business at Los Angeles, Calif., agreed that in connection with the offer and sale of jewelry and other similar products in commerce, he will forthwith cease and desist from representing directly or by implication:

(1) Through the use of tribal or Indian names, Indian symbols or Indian illustrations, or in any manner, that the said products are made or designed by Indians.

(2) That said products are made by hand.

(3) That said products are composed in whole or in part of jet or turquoise, that they are "silver plated" or have a "silver finish," or otherwise representing the composition thereof except in accordance with fact. (5823575, Feb. 17, 1959.)

9151. **Fur Products—Noncompliance with Labeling Act.**—Benedict Danella, Inc., a New York corporation with place of business in Utica, N.Y., Joseph Sapanaro and Carnelia Danella Sapanaro, its officers, and Benedict Danella, its founder, agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or 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, as the terms "fur," "fur product" and "commerce" are defined in the Fur Products Labeling Act, they, and each of them, will forthwith cease and desist from:

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

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

(b) Such other information as may be required by Section 4(2) of the Fur Products Labeling Act.

(2) Mingling, on labels, nonrequired information with required information.

(3) Setting forth on labels required information in abbreviated form or in handwriting.

(4) Failing to set forth on labels required information in the proper sequence.

(5) Using labels that do not comply with the minimum size requirements as prescribed by Rule 27 of the Regulations under the Fur Products Labeling Act.

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

(7) Advertising fur products in any manner or by any means where the advertisement:

(a) Does not show the name or names of the animal or animals producing the fur contained in the fur product, as set forth in the Fur Products Name Guide and as prescribed under the Rules and Regulations.

(b) Does not show the name of the country of origin of any imported furs or those contained in a fur product.

(c) Fails to set forth all parts of the information required under Section 5(a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, in legible and conspicuous type of equal size and in close proximity with each other.

(d) 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 said corporation has usually and customarily sold such product in the recent regular course of its business.

(e) Makes use of comparative prices unless such compared prices are based upon a bona fide compared price at a designated time. (5923065, Mar. 5, 1959.)

9152. Woolen Batting—Noncompliance with Labeling Act.—Quality Wool Quilting Corp., a New York corporation with place of business in Long Island City, N.Y., and Jacob Miller, Boruch Goldring, Ignatz Brand, and Jacob Weinberg, its officers, agreed that in connection with the introduction, or manufacture for in-

roduction, into commerce, or the sale, transportation, or distribution in commerce of woolen batting, or any other wool product within the meaning of the Wool Products Labeling Act, they and each of them will forthwith cease and desist from:

(1) Stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers included therein in any manner not in accordance with the facts;

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

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

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

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

They further agreed that in connection with the offering for sale, sale or distribution of woolen batting, or any other product in commerce, they and each of them will forthwith cease and desist from misrepresenting the percentages or amounts of the constituent fibers of which their products are composed, in sales invoices, shipping memoranda or in any other manner. (5723776, Mar. 10, 1959.)

9153. Fur Products—Fictitious Pricing and Other Labeling Act Violations.—Rhoades Stores, Inc., a Virginia corporation trading as Jay Aldons, with place of business in Richmond, Va., and Alan L. Rhoades, its officer, agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or 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, as the terms "fur," "fur product" and "commerce" are defined in the Fur Products Labeling Act, they, and each of them, will forthwith cease and desist from:

(1) Representing on labels attached to fur products or in advertisements, that the regular or usual price of any fur product is any amount which is in excess of the price at which said corporation has usually and customarily sold such product in the recent regular course of its business.

(2) Setting forth on labels required information in abbreviated form.

(3) Mingling, on labels, nonrequired information with required information.

(4) Failing to set forth, on labels, all parts of the required information in letters of equal size and conspicuousness.

(5) Failing to set forth on labels required information in the proper sequence.

(6) Failing to furnish to purchasers of fur products invoices disclosing the information required by the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder.

(7) Advertising fur products in any manner or by any means where the advertisement:

(a) Does not show the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to Section 7(c) of the Act.

(b) Does not show that the fur product or fur is bleached, dyed or otherwise artificially colored fur when such is the fact.

(c) Represents that the value of the corporation's stock of furs is any amount not in accordance with the facts.

(d) Makes use of comparative price representations or percentage savings claims unless there is maintained by said corporation an adequate record disclosing the facts upon which such claims or representations are based. (5923139, Mar. 12, 1959.)

9154. **Masonry Drills—Concealing Dutch Origin.**—Hi-Test Premier Products, Inc., a New York corporation with place of business in New York City, agreed that in connection with the offer and sale of foreign-made drills and other foreign-made products in commerce, it will forthwith cease and desist from failing to disclose clearly and conspicuously the country of origin thereof in such manner as to be readily apparent to prospective purchasers of such products. (5823633, Mar. 17, 1959.)

9155. **Watches—"Shock Protected," "Guaranteed."**—Nanasi Company, Inc., a New York corporation with place of business in the City of West New York, N.J.; Nicholas Nanasi, Martin Buckwald and Ely E. Ashkenazi, its officers; Bayer, Pretzfelder & Mills, Inc., a wholly owned subsidiary corporation of Nanasi Company,

Inc., and Yolanda Nanasi and Ely E. Ashkenazi, officers of the latter corporation, agreed that in connection with the offer and sale of watches or other products in commerce, they and each of them will forthwith cease and desist from representing directly or by implication that:

(1) A watch is "shock protected" or otherwise that the extent of shock protection in such watch is greater than is a fact;

(2) A watch or other product is guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed in close conjunction therewith. (5823646, Mar. 17, 1959.)

9156. Rugs—Fiber Content.—A. Leon Capel & Sons, Incorporated, a North Carolina corporation with place of business in Troy, N.C., and A. Leon Capel, Sr., Jesse S. Capel and A. Leon Capel, Jr., its officers, agreed that in connection with the offering for sale, sale and distribution in commerce of rugs or of any other textile product they, and each of them, will forthwith cease and desist from:

(1) Using the terms "Wulon," "Wultex," "Wool Blend" or any other word or term indicative of wool to designate or describe any product or portion thereof which is not composed wholly of wool, the fiber from the fleece of the sheep or lamb, or hair of the Angora or Cashmere goat, or hair of the camel, alpaca, llama, or vicuna, which has never been reclaimed from any woven or felted product; provided, that in the case of products or portions thereof which are composed in substantial part of wool and in part of other fibers or materials, the term wool may be used as descriptive of the wool content of the product or portion thereof if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully designating each constituent fiber or material thereof in the order of its predominance by weight; provided further, that if any fiber or material so designated is not present in a substantial quantity, the percentage thereof shall be stated. Nothing herein shall prohibit the use of the terms "reprocessed wool" or "reused wool" when the products or those portions thereof referred to are composed of such fibers.

(2) Using the term "cotton" or other word or term indicative of cotton to designate or describe any product or portion thereof which is not composed wholly of cotton; provided, that in the case of products or portions thereof which are composed in substantial part of cotton and in part of other fibers or materials, the term cotton may be used as descriptive of the cotton content of the

product or portion thereof if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully designating each constituent fiber or material thereof in the order of its predominance by weight, provided further, that if any fiber or material so designated is not present in a substantial quantity, the percentage thereof shall be stated.

(3) Labeling, advertising or otherwise offering for sale or selling products composed in whole or in part of rayon or acetate without clearly disclosing such rayon and acetate content. (5823317, Mar. 19, 1959.)

9157. **Fur Products—Noncompliance with Labeling Act.**—Harry Korin, an individual doing business as Michigan Fur Matching Co. with place of business in Detroit, Mich., agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of furs or any fur product made in whole or in part of fur which has been shipped and received in commerce, or the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce of furs or any fur product, as the terms “fur,” “fur product” and “commerce” are defined in the Fur Products Labeling Act, he will forthwith cease and desist from:

(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) Such other information as may be required by Section 5(b) (1) of the Fur Products Labeling Act.

(2) Setting forth on invoices required information in abbreviated form.

(3) Using on invoices the name of an animal which is fictitious or nonexistent or the name of an animal other than that producing the fur.

(4) Failing to disclose on invoices that the fur product is second hand when such is the fact.

(5) Failing to set forth on invoices the item number or mark

assigned to the fur product for purposes of identification. (5923155, Mar. 19, 1959.)

9158. Spectacles—Corrective Qualities.—Sunset Glare Guard Corp., a California corporation with place of business at Palm Springs, Calif., and Edwin J. Shaut, Paul E. Shaut and Mary L. Shaut, its officers, agreed that they will forthwith cease and desist from disseminating or causing to be disseminated any advertisement for their "Stenopeic Glare Guard" spectacles or any other spectacles of substantially similar construction, which represents, directly or by implication:

(a) That use of the spectacles will be effective in the treatment of impaired or diseased eyes;

(b) That use of the spectacles will permit 20-20 vision when corrective lenses are required for 20-20 vision;

(c) That the spectacles are of any value as a substitute for corrective eyeglasses except to the limited extent of serving as a temporary emergency replacement therefor. (5923123, Mar. 19, 1959.)

9159. Shoes—"Hand-sewn."—A. S. Beck Shoe Corp., a Delaware corporation with its principal place of business in New York City, agreed that in connection with the offer and sale of shoes in commerce, it will forthwith cease and desist from representing, directly or by implication, that shoe products are hand sewn except as to such part or parts as may be sewn by hand, or that such products embody hand operations in their manufacture, except in accordance with the facts. (5823713, Mar. 26, 1959.)

9160. Fictitious Collection Agency—Independent Status, Size of Business.—Nels Irwin, an individual trading as Screen-Print Products Co. with place of business at Los Angeles, Calif., agreed that in connection with the sale of various merchandise and the collection of accounts, in commerce, he will forthwith cease and desist from:

(1) Using fictitiously any trade or corporate name in collecting past due accounts;

(2) Representing, directly or by implication, that past due accounts have been referred to an independent collection agency or organization for collection when such is not the fact;

(3) Representing, directly or by implication, the size or extent of his business not in accordance with the facts. (5923098, Mar. 31, 1959.)

9161. Arthritis Treatment—Effectiveness, Laboratory Status.—Harry Rowland, an individual trading as Ease Oil Laboratories with place of business at Griffin, Ga., agreed that he will forthwith cease and desist from disseminating or causing to be disseminated

any advertisement for the product now designated "Ease-Oil," or any other product of substantially the same composition or possessing substantially the same properties, which represents, directly or by implication:

(a) That the product is an adequate, effective or reliable treatment for, or will afford complete relief of, any kind of arthritis, rheumatism, or neuralgia, or has a therapeutic effect upon the symptoms or manifestations thereof; or has any beneficial effect in any of such conditions or disorders in excess of affording temporary relief of the minor aches, pains or discomforts thereof;

(b) That the product penetrates into areas or structures below the skin or has a substantial direct effect upon structures of the body underlying the area of application; but this is not to be construed as prohibiting a representation that the product affords temporary relief of the minor aches and pains arising in structures underlying the area of application;

(c) That the product is different from competitive products or that it provides benefits additional to those provided by such products;

(d) That the product brings nourishment to the tissues or that it helps carry away poisons;

(e) That the product is of value for use in cases of asthma except insofar as inhalation of its vapors may assist in expectoration of mucous and to that extent contribute to the comfort of persons suffering from such condition;

(f) Through use of "Laboratories" as a part of his trade name, or in any other manner, that he owns, operates or controls a laboratory, when such is not a fact. (5923056, Mar. 31, 1959.)

9162. **"Logroller Moccasins"—Hand Sewn.**—Jay-Thorpe, Inc., a New York corporation with place of business in New York City; Sommers Shoe Corp., lessee of its shoe department; Jack Sommers, Chairman of the Board of Jay-Thorpe, Inc., and President of Sommers Shoe Corp.; and Irving Sommers and Stella Sommers, the sole owners with Jack Sommers of the stock of Sommers Shoe Corp., agreed that in connection with the offer of shoes in commerce, they, and each of them, will forthwith cease and desist from representing directly or by implication that shoe products are hand sewn except as to such part or parts as may be sewn by hand, or that such products embody hand operations in their manufacture, except in accordance with the facts. (5923095, Apr. 2, 1959.)

9163. **Ladies' Coats and Suits—Noncompliance with Wool and Fur Labeling Acts.**—Louis & Daniel Cohen, Inc., a New York corporation with place of business in New York City, and Louis

Cohen and Daniel Cohen, its officers, agreed that in connection with the introduction, or manufacture for introduction, into commerce, or the sale, transportation, or distribution in commerce of suits and coats or any other wool product within the meaning of the Wool Products Labeling Act, they and each of them will forthwith cease and desist from stamping, tagging, labeling or otherwise identifying wool products as to the character or amount of the constituent fibers included therein in any manner not in accordance with the facts; and further agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or 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, as the term "fur," "fur product" and "commerce" are defined in the Fur Products Labeling Act, they, and each of them, will forthwith cease and desist from:

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

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

(b) Such other information as may be required by Section 4(2) of the Fur Products Labeling Act.

(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) Such other information as may be required by Section 5(b)(1) of the Fur Products Labeling Act. (5923154, Apr. 7, 1959.)

9164. **Fur Products—Noncompliance with Labeling Act.**—Samuel Kayser, Sr., Samuel Kayser, Jr., Edward B. Kayser, Yetta Kayser, Helen M. Kayser, Hannah Palmer, and Mathilde Kayser Cohen, copartners doing business as Kayser's, The Style Shop with place of business in Mobile, Ala., agreed that in connection with the sale, advertising, offering for sale, transportation or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or 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, as the terms "fur," "fur product" and "commerce" are defined in the Fur Products Labeling Act, they and each of them will forthwith cease and desist from:

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

(c) Such other information as may be required by Section 5(b)(1) of the Fur Products Labeling Act.

(2) Advertising fur products in any manner or by any means where the advertisement:

(a) Does not show that the fur product or fur is bleached, dyed or otherwise artificially colored fur when such is the fact;

(b) Represents, directly or by implication, through the use of percentage savings claims or otherwise, that the prices of the fur products being offered for sale are reduced from the regular or usual prices charged for such products by the amount or percentage stated, when such is not the fact.

(c) 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 said corporation has usually and customarily sold such product in the recent regular course of its business.

(d) Makes use of comparative price representations or percentage savings claims unless there is maintained by said individuals an adequate record disclosing the facts upon which such claims or representations are based. (5923219, Apr. 7, 1959.)

9165. Bathroom Scales, etc.—Guarantees.—The Brearley Company, an Illinois corporation with place of business in Rockford, Illinois, agreed that in connection with the offer and sale of bathroom scales, bathroom accessories or other products, in commerce, it will forthwith cease and desist from representing, directly or by implication:

That its products are guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed. (5823688, Apr. 7, 1959.)

9166. Food Blender—Unique Nature and Relevant Facts.—Casman & Weiss Distributing Co., a California corporation with place of business at Los Angeles, Calif., and Louis Casman, Sidney

Weiss and Herbert Gelfand, its officers, agreed that in connection with the offer and sale of the device now designated "Blender Queen," or of any similar device, in commerce, they will forthwith cease and desist from representing in any manner and by any means, directly or indirectly, including through agents or pitchmen:

(a) That raw beets enrich the blood or that raw celery is a nerve tonic;

(b) That raw vegetables can replace tranquilizers in instances where the latter are needed;

(c) That the consumption of egg shell is of any value in the prevention or treatment of polio;

(d) That the consumption of bleached white flour is responsible for heart trouble, kidney trouble or other ailments or that eminent medical authorities are of that opinion;

(e) That bleached white flour, or any ingredient thereof, is harmful or that nutritionists have so found or so consider;

(f) That the device is the only such device available to the public which will reduce foods to a liquid or that competitive devices merely blend foods rather than liquefy them. (5823695, Apr. 7, 1959.)

9167. Fur Products—Noncompliance with Labeling Act.—Stephen F. Selwyn, an individual doing business as S. F. Selwyn with place of business in Roanoke, Va., agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of furs or any fur product made in whole or in part of fur which has been shipped and received in commerce, or the introduction into commerce, or the sale advertising or offering for sale in commerce, or the transportation or distribution in commerce of furs or any fur product, as the terms "fur," "fur product" and "commerce" are defined in the Fur Products Labeling Act he will forthwith cease and desist from:

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

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

(b) 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 in commerce, sold it in commerce, advertised or offered it for sale in commerce, or transported or distributed it in commerce;

(c) Such other information as may be required by Section 4(2) of the Fur Products Labeling Act.

(2) Mingling, on labels, nonrequired information with required information.

(3) Setting forth on labels required information in abbreviated form or in handwriting.

(4) Failing to show on labels affixed to fur products an item number or mark assigned to such product for identification purposes.

(5) Failing to furnish to purchasers of fur products invoices disclosing the information required by Section 5 (b) (1) of the Fur Products Labeling Act, and the Rules and Regulations promulgated thereunder. (5923206, Apr. 9, 1959.)

9168. Light Bulbs, etc.—National Advertising, Dealer as Manufacturer.—Vari-Pac Corp., a New Jersey corporation with place of business in New York City, and Edythe Kendall, its officer, agreed that in connection with the offer and sale of incandescent and fluorescent lamps and bulbs or any other products in commerce, they, and each of them, will forthwith cease and desist from representing, directly or by implication:

(1) That Ever-Glo bulbs or any of the company's products are or have been advertised in Life Magazine or any other medium, when such is not the fact;

(2) That the company manufactures Ever-Glo bulbs or any of the products sold by it, unless and until it actually owns and operates or directly and absolutely controls a manufacturing plant wherein products so represented are manufactured by it. (5823344, Apr. 21, 1959.)

9169. Bed Comforters—Fictitious Pricing, Qualities, "Custom-made."—Lovely Lady Comfort Co., Inc., a Pennsylvania corporation with place of business in Philadelphia, Pa., and Morton Cohen and Shirley Cohen, its officers, agreed that in connection with the offer and sale in commerce of bed comforters or other products, they, and each of them, will forthwith cease and desist from representing, directly or by implication, that:

(1) A product is mothproof, when such is not the fact.

(2) Various prices are the regular and usual retail prices of the products when such prices are in excess of the prices at which such products are usually and regularly sold at retail.

(3) A product is custom-made when not made upon the specific order and to the individual specifications of the person who purchases it for use.

(4) A product is "nonallergic," "allergy resistant" or otherwise that it does not contain or will afford protection from substances

to which the user may be allergic, unless such is the fact. (5723131, May 14, 1959.)

9170. **Cutlery—Nondisclosure of Japanese Origin.**—Washington Forge, Inc., a New Jersey corporation with place of business at Englishtown, N.J., and Milton Berger and Anna Berger, its officers, agreed that in connection with the offer and sale of cutlery or any other product in commerce, they, and each of them, will forthwith cease and desist from:

Offering for sale or selling any product, any substantial part of which was made in Japan or in any other foreign country, without clearly disclosing the foreign origin of such part. (5923069, May 19, 1959.)

9171. **Wallets—Fictitious Preticketing, "Leather."**—Jack Mallon and Bernard Mallon, copartners trading as Accurate Leather & Novelty Co. with place of business at Chicago, Ill., and Edward Long agreed that in connection with the offer and sale of wallets or other merchandise in commerce, they will forthwith cease and desist from:

(a) Supplying purchasers of 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 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 at retail;

(b) Putting into operation any plan whereby retailers or others may misrepresent the regular and usual retail price of wallets or other merchandise;

(c) Representing, directly or by implication, that wallets, or other articles of merchandise made in whole or in part of substance other than leather, are made of leather. (5923116, June 4, 1959.)

9172. **Diapers—Sterility.**—Dy-Dee Wash of Washington, Inc., a Delaware corporation with its principal place of business in Washington, D.C., and Harper L. Schimpff, Nellie P. Schimpff, John K. Jones and Mary S. Jones, its officers, agreed that in connection with the offer or sale of their diaper service in commerce, they, and each of them, will forthwith cease and desist from representing, directly, or by implication, that:

(1) Diapers washed at home are not safe for use on a baby;

(2) Only diapers processed by Dy-Dee Wash of Washington are safe for use on a baby;

(3) Their diapers are sterile when delivered to customers.

(4) Their diapers have an antiseptic action on the baby. (5823370, June 9, 1959.)

9173. Air-cooling Device.—Air-conditioning and Dehumidifying Properties.—J. J. Newberry Co., a Delaware corporation operating a chain of retail variety stores, with principal place of business in New York City, agreed that in connection with the offer and sale of a device or apparatus now designated "Travel-Aire," or any other device or apparatus of substantially similar construction or design, whether sold under that name or any other name, in commerce, it will forthwith cease and desist from:

(1) Using the words "Air Conditioner," or any other word or words of similar import or meaning, either alone or in combination with any other word or words, to designate, describe or refer to said device or apparatus;

(2) Representing, directly or by implication, that said device or apparatus will dehumidify air or otherwise produce results not attributable to it. (5923129, June 11, 1959.)

9174. Ladies' Coats and Suits—Removing Law-required Labels.—La Vogue Shoppe, Inc., a Virginia corporation with place of business in Newport News, Va., and Charles Segaloff, its officer, and Walter Segaloff, its manager, agreed that in connection with the purchase, offering for sale, sale or distribution of ladies' coats and suits, or any other wool product within the meaning of the Wool Products Labeling Act, they, and each of them will forthwith cease and desist from causing or participating in the removal or mutilation, contrary to the provisions of said Act, of any stamp, tag, label, or other means of identification, affixed to any such "wool product" pursuant to the provisions of the said Act, and which stamp, tag, label, or other means of identification purports to contain all or any part of the information required by the said Act. (5823357, June 2, 1959.)

9175. Dry Cell Batteries—Guarantee Performance.—United States Electric Mfg. Corp., a New York corporation, with place of business in New York City, and Henry Hyman and Harold Hyman, its officers, agreed that in connection with the offering for sale, sale and distribution, in commerce of dry cell batteries, or other products, they, and each of them, will forthwith cease and desist from:

Failing to perform under a guarantee in accordance with the terms thereof. (5823690, June 16, 1959.)

9176. Plastic Dinnerware—Fictitious Pricing.—Lenox Plastics, Inc., a Delaware corporation with principal office in St. Louis, Mo., agreed that in connection with the offer and sale in commerce of plastic dinnerware or other merchandise, it will forthwith cease and desist from representing, directly or by implication, or sup-

plying to or causing to be placed in the hands of others the means of representing, that the regular and usual retail price of merchandise is any amount greater than the price at which such merchandise is regularly and usually sold at retail. (5810120, June 18, 1959.)

9177. Fur Products—Noncompliance with Labeling Act.—Rosenfield's House of Fashion, Inc., a Louisiana corporation, with its principal place of business in Baton Rouge, La., and Isaac H. Rubenstein and Louis Selig, its officers, agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or 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, as the terms "fur," "fur product" and "commerce" are defined in the Fur Products Labeling Act, they, and each of them, will forthwith cease and desist from advertising fur products in any manner or by any means where the advertisement:

(1) Represents directly or by implication that their regular or usual price of a fur product is any amount which is in excess of the price at which they have usually and customarily sold such product in the recent regular course of business.

(2) Misrepresents in any manner the savings available to purchasers of their fur products.

(3) Fails to set out all of the required information in legible type of equal size and conspicuousness and in close proximity with each other.

(4) Makes use of comparative price representations or percentage savings claims unless there is maintained by said corporation and individuals an adequate record disclosing the facts upon which such claims or representations are based. (5923325, June 18, 1959.)

9178. Storage Batteries—Guarantees.—Atlas Supply Co., a Delaware corporation with its principal place of business in Newark, N.J., the owner of the trade mark "Atlas" for use on certain products including storage batteries and as such granting licenses to other companies to manufacture and sell batteries under such trade mark, and under the license agreements developing suggested uniform warranties or guarantees under which Atlas batteries may be sold, agreed that in connection with promoting the sale of batteries in commerce, it will forthwith cease and desist from representing, directly or by implication, that a battery is guaranteed unless the nature and extent of the guarantee and the manner

in which the guarantor will perform thereunder are clearly and conspicuously disclosed. (5520815, June 23, 1959.)

9179. **Storage Batteries—Guarantees.**—The Goodyear Tire & Rubber Co., an Ohio corporation with its principal place of business in Akron, Ohio, agreed that in connection with the offer or sale of its electric storage batteries in commerce, it will forthwith cease and desist from representing, directly or by implication, that a battery is guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed. (5923348, June 23, 1959.)

9180. **Storage Batteries—Guarantees.**—Gould-National Batteries, Inc., a Delaware corporation with place of business in St. Paul, Minn., agreed that in connection with the offer or sale of its electric storage batteries in commerce, it will forthwith cease and desist from representing, directly or by implication, that a battery is guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed. (5823467, June 23, 1959.)

9181. **Storage Batteries—Guarantees.**—General Motors Corp., a Delaware corporation with principal place of business in Detroit, Mich., and manufacturing Delco batteries through its Delco-Remy Division in Anderson, Ind., agreed that in connection with the offer or sale of its electric storage batteries in commerce, it will forthwith cease and desist from representing, directly or by implication, that a battery is guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed. (5723258, June 23, 1959.)

9182. **Storage Batteries—Guarantees.**—Gulf Tire & Supply Co., a Delaware corporation, with place of business in Pittsburgh, Pa., agreed that in connection with the offer or sale of its electric storage batteries in commerce, it will forthwith cease and desist from representing, directly or by implication, that a battery is guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed. (5923351, June 23, 1959.)

9183. **Storage Batteries—Guarantees.**—Firestone Tire & Rubber Co., an Ohio corporation, with its principal place of business in Akron, Ohio, agreed that in connection with the offer or sale of its electric storage batteries in commerce, it will forthwith cease and desist from representing, directly or by implication, that a battery is guaranteed unless the nature and extent of the guaran-

tee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed. (5923408, June 23, 1959.)

9184. **Storage Batteries—Guarantees.**—Western Auto Supply Co., a Missouri corporation, with its principal place of business in Kansas City, Mo., agreed that in connection with the offer or sale of its electric storage batteries in commerce, it will forthwith cease and desist from representing, directly or by implication, that a battery is guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed. (5923352, June 23, 1959.)

9185. **Storage Batteries—Guarantees.**—Charles Sodora and Donald C. Sodora, copartners trading as C. S. Battery Manufacturing Co., with place of business in Chicago, Ill., agreed that in connection with the offer or sale of their electric storage batteries in commerce, they will forthwith cease and desist from representing, directly or by implication, that a battery is guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed. (5923347, June 23, 1959.)

9186. **Storage Batteries—Guarantees.**—Bill's Auto Stores, Inc., a Kentucky corporation with place of business in Louisville, Ky., agreed that in connection with the offer or sale of its electric storage batteries in commerce, it will forthwith cease and desist from representing, directly or by implication, that a battery is guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed. (5923543, June 23, 1959.)

9187. **Storage Batteries—Guarantees.**—B. F. Goodrich Co., a New York corporation with its principal place of business in Akron, Ohio, agreed that in connection with the offering for sale or sale of its electric storage batteries in commerce, it will forthwith cease and desist from representing, directly or by implication, that a battery is guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed. (5923346, June 23, 1959.)

9188. **Convertible Tops, Seat Covers, etc.—Fictitious Pricing, Manufacture, Guarantees.**—Seat Cover Charlie, Inc., of Fort Wayne, Ind., Seat Cover Charlie, Inc., of Indianapolis, Ind., Seat Cover Charlie, Inc., of Northern Indiana; Seat Cover Charlie, Inc., of Louisville, Ky., Seat Cover Charlie, Inc., of Cincinnati, Ohio,

and Charles B. Fine, an officer of each and owning a majority of the stock in each, agreed that in connection with the offer, and sale in commerce of seat covers, auto tops and allied products, or other merchandise, they will forthwith cease and desist from representing directly or by implication:

(a) That a certain amount is the usual and regular retail price or value of merchandise being offered for sale when such amount is in excess of the price at which said merchandise is usually and regularly sold at retail;

(b) That the price at which a product is offered for sale constitutes a reduction of any stated percentage or amount which is in excess of the actual reduction from the price at which such product is usually and regularly sold at retail;

(c) That seat covers or other products are custom tailored when such is not a fact;

(d) That a product is guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed in close conjunction therewith. (5923118, June 23, 1959.)

9189. **Storage Batteries—Guarantees.**—Dunlop Tire and Rubber Corp., a New York corporation, with its principal place of business in Buffalo, N.Y., agreed that in connection with the offer or sale of its electric storage batteries in commerce, it will forthwith cease and desist from representing, directly or by implication, that a battery is guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed. (5923404, June 23, 1959.)

9190. **Storage Batteries—Guarantees.**—The Electric Auto-Lite Co., an Ohio corporation, with its principal place of business in Toledo, Ohio, agreed that in connection with the offer or sale of its electric storage batteries in commerce, it will forthwith cease and desist from representing, directly or by implication, that a battery is guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed. (5923354, June 23, 1959.)

9191. **Storage Batteries—Guarantees.**—Esso Standard Oil Co., a Delaware corporation, with its principal place of business in New York City, agreed that in connection with the offer or sale of its electric storage batteries in commerce, it will forthwith cease and desist from representing, directly or by implication, that a battery is guaranteed unless the nature and extent of the guarantee and

the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed. (5923541, June 23, 1959.)

9192. **Storage Batteries—Guarantees.**—The Electric Storage Battery Co., a New Jersey corporation with its principal place of business in Philadelphia, Pa., agreed that in connection with the offer or sale of its electric storage batteries in commerce, it will forthwith cease and desist from representing, directly or by implication, that a battery is guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed. (5923355, June 23, 1959.)

9193. **Storage Batteries—Guarantees.**—Penn-Jersey Auto Stores, Inc., a Delaware corporation with its principal place of business located in Philadelphia, Pa., agreed that in connection with the offer or sale of its electric storage batteries in commerce, it will forthwith cease and desist from representing, directly or by implication, that a battery is guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed. (5923540, June 23, 1959.)

9194. **Storage Batteries—Guarantees.**—Sears, Roebuck & Co., a New York corporation with its principal place of business in Chicago, Ill., agreed that in connection with the offer or sale of its electric storage batteries in commerce, it will forthwith cease and desist from representing, directly or by implication, that a battery is guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed. (5923345, June 23, 1959.)

9195. **Storage Batteries—Guarantees.**—Montgomery Ward & Co., an Illinois corporation with its principal place of business in Chicago, Ill., agreed that in connection with the offer or sale of its electric storage batteries in commerce, it will forthwith cease and desist from representing, directly or by implication, that a battery is guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed. (5923350, June 23, 1959.)

9196. **Storage Batteries—Guarantees.**—United States Rubber Co., a New Jersey corporation with its principal place of business in New York City, agreed that in connection with the offer or sale of its electric storage batteries in commerce, it will forthwith cease and desist from representing, directly or by implication, that a battery is guaranteed unless the nature and extent of the guaran-

tee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed. (5923402, June 23, 1959.)

9197. Storage Batteries—Guarantees.—Hester Battery Manufacturing Co., a Tennessee corporation with its principal place of business in Nashville, Tenn., and Eugene N. Hester, Claude A. Hester, Willie Lucille Hester, and Grady Harris, its officers, agreed that in connection with the offer or sale of their electric storage batteries in commerce, they will forthwith cease and desist from representing, directly or by implication that a battery is guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed. (5923353, June 23, 1959.)

9198. Storage Batteries—Guarantees.—White Stores, Inc., a Delaware corporation with its principal place of business in Wichita Falls, Tex., agreed that in connection with the offer or sale of its electric storage batteries in commerce, it will forthwith cease and desist from representing, directly or by implication, that a battery is guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed. (5923403, June 23, 1959.)

9199. Storage Batteries—Guarantees.—Pierce W. Strider, an individual trading as Automatic Battery Co. of America with place of business in Goldsboro, N.C., agreed that in connection with the offer or sale of his electric storage batteries in commerce, he will forthwith cease and desist from representing, directly or by implication, that a battery is guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed. (5923349, June 23, 1959.)

9200. Floor Covering Material—Durability.—Wood-Mosaic Corp., a Kentucky corporation with principal place of business in Louisville, Ky., agreed that in connection with the offer or sale of floor covering material, including laminated hardwood block, in commerce, it will forthwith cease and desist from representing, directly or by implication:

That any of its products will last for a lifetime or any specified period other than in accordance with fact. (5923311, June 25, 1959.)

9201. Medicinal Preparation—Therapeutic Properties.—International Laboratories, Inc., a New York corporation with its principal place of business in Rochester, N.Y., and Fred W. Clements,

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Daisy E. Clements, William Blamire and Mary A. Holmes, its officers, agreed that they, and each of them, will forthwith cease and desist from disseminating or causing to be disseminated any advertisement for the product now designated Neutracid, or any other product of substantially the same composition or possessing substantially the same properties, whether sold under that name or any other name, which represents directly or by implication:

(1) That Neutracid is a remedy or cure for indigestion, gas pains, heartburn, or any other condition, or is of value in the treatment of any condition in excess of affording temporary relief when the condition is caused by excess stomach acid;

(2) That Neutracid is a remedy or cure for nervousness, headaches or dizziness or has any value in the treatment thereof.
(5923034, June 25, 1959.)