IN THE MATTER OF

TOP FORM MILLS, INC., ET AL.

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

Docket 7166. Complaint, May 29, 1958—Decision, Dec. 2, 1958

Consent order requiring manufacturers of women's slips and other wearing apparel in New York City to cease setting out excessive and fictitious amounts as "Value" and "Special purchase" in advertising mats and other promotional material supplied to retailers and dealers, on tickets attached to the garments prior to sale, and in advertisements in Vogue, Harpers Bazaar, and Mademoiselle magazines.

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

Mr. David Sklaire of *Ostrow, Goldman & Sklaire,* of New York, N.Y., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) issued its complaint herein, charging the above-named respondents with having violated the provisions of the Federal Trade Commission Act in certain particulars. In accordance with the stipulation of the parties, the title of this proceeding has been amended by deleting therefrom the following language: "also known as SEYMOUR TOPOLOFF."

On October 7, 1958, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an "Agreement Containing Consent Order to Cease and Desist," which had been entered into by and between respondents signatory thereto, their counsel, and counsel supporting the complaint, under date of September 30, 1958, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

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

1. Respondent Top Form Mills, Inc., is a corporation organized,

existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 38 East 30th Street, New York, N. Y. Respondents Emanuel Kitrosser, also known as Manny Kay, and Seymour L. Topping, are officers of said corporation. These individual respondents formulate, direct and control the policies, acts and practices of the corporate respondent. Their address is the same as that of the corporate respondent.

2. Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on May 29, 1958, issued its complaint in this proceeding against respondents, and a true copy was thereafter duly served on respondents.

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

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

Seymour L. Topping has been referred to in the complaint as "also known as Seymour Topoloff." Said statement has been omitted from this agreement and the order contained herein for reasons stated in a letter from David Sklaire, attorney for respondents, dated September 3, 1958. Said letter is attached hereto and incorporated by reference into this agreement.

5. Respondents waive:

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

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

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

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

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

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

9. The following order to cease and desist may be entered in this proceeding by the Commission without further notice to

respondents. When so entered it shall have the same force and effect as if entered after a full hearing. It may be altered, modified or set aside in the manner provided for other orders. The complaint may be used in construing the terms of the order.

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

ORDER

It is ordered, That respondents, Top Form Mills, Inc., a corporation, and its officers, and Emanuel Kitrosser, also known as Manny Kay, and Seymour L. Topping, individually and as officers of said corporate respondent, and said respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of women's wearing apparel and other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing in any manner, directly or by implication:

a. That a certain amount is the regular and usual retail price of merchandise when such amount is in excess of the price at which such merchandise is usually and regularly sold at retail;

b. That the value of merchandise is any amount which is, in fact, in excess of the actual market value of said merchandise.

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 2d day of December 1958, become the decision of the Commission; and, accordingly;

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

IN THE MATTER OF

AMICALE YARNS, INC., ET AL.

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

Docket 7170. Complaint, June 9, 1958—Decision, Dec. 2, 1958

Consent order requiring distributors in New York City to cease violating the Wool Products Labeling Act by labeling and invoicing as "100% Cashmere," yarn which contained substantially less than 100% cashmere fibers, and by failing to label certain yarns as required.

Mr. John J. Mathias for the Commission.

Rothstein & Korzenik, by *Mr. Harold Korzenik,* of New York, N.Y., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents with misbranding certain of their wool products, and with the use of the false, misleading and deceptive statement, in sales invoices, that said products were composed of 100% cashmere fibers, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and of the Federal Trade Commission Act.

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

The agreement states that respondent Amicale Yarns, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal place of business located at 511 Fifth Avenue, New York, N.Y., and that individual respondent Gregory Schlomm is an officer of the corporate respondent and formulates, directs and controls the acts, practices and policies thereof, his address being the same as that of the corporate respondent.

All parties to the agreement recommend therein that the complaint, insofar as it relates to respondents Philip Brenner and Emanuel Mendelkern (erroneously referred to in the complaint as Emmanuel Mendelkern), be dismissed because their connection with the respondent corporation has been only in a professional

capacity, and neither of said respondents has any participation or control in the formulation or direction of the corporate respondent.

The agreement further states that the practices charged in the complaint involve some woolen weaving yarn imported by respondents from Japan in 1955 and 1956.

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

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

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

It is ordered, That respondents Amicale Yarns, Inc., a corporation, and its officers, and Gregory Schlomm, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection or through any corporate or other device, in connection with the introduction into commerce, or the

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

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

2. Failing to securely affix 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 fiber 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 products 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 Amicale Yarns, Inc., a corporation, and its officers, and Gregory Schlomm, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of yarns or other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, directly or indirectly, the fibers of which their products are composed, or the percentages or amounts thereof, in sales invoices, shipping memoranda, or in any other manner.

It is further ordered, That the complaint herein, insofar as it relates to respondents Philip Brenner and Emanuel Mendelkern, be, and the same hereby is, dismissed without prejudice to the

right of the Commission to take such action in the future as the facts may then warrant.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission having considered the hearing examiner's initial decision, filed October 17, 1958, accepting an agreement containing a consent order to cease and desist, theretofore executed by the respondents and counsel in support of the complaint, service of which was completed on November 30, 1958; and

The respondents, by motion filed November 5, 1958, having requested that the initial decision be amended to include a statement that the practices charged in the complaint involve some woolen weaving yarn imported by the respondents from Japan in 1955 and 1956; and

Counsel supporting the complaint having filed answer stating that he does not oppose such motion, and it appearing that said requested statement was included in the agreement of the parties as a material part thereof and that its omission from the initial decision results in an incomplete recitation of said agreement, and the Commission being of the opinion that the omission should be supplied:

It is ordered, That the initial decision be, and it hereby is, amended by inserting between the fourth and fifth paragraphs thereof the following:

"The agreement further states that the practices charged in the complaint involve some woolen weaving yarn imported by respondents from Japan in 1955 and 1956."

It is further ordered, That the initial decision as so amended shall, on the 2d day of December 1958, become the decision of the Commission.

It is further ordered, That the respondents, Amicale Yarns, Inc., a corporation, and Gregory Schlomm, individually and as an officer of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order contained in the aforesaid initial decision.

Complaint

IN THE MATTER OF

SIMON HAFNER DOING BUSINESS AS HAFNER COFFEE COMPANY

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

Docket 6961. Complaint, Nov. 26, 1957—Decision, Dec. 3, 1958

Consent order requiring a Pittsburgh company preparing and selling coffee under some 1,000 different private brand names and its own trade name to grocery wholesalers and jobbers, with annual sales approximating $3,000,000, to cease discriminating in price in violation of Sec. 2(d) of the Clayton Act by paying certain customers an allowance for advertising in connection with the sale of its coffee products while not making such payments available to their competitors on proportionally equal terms.

AMENDED COMPLAINT [1]

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

PARAGRAPH 1. Respondent Simon Hafner is an individual and does business under the trade style Hafner Coffee Company with his office and principal place of business located at Union Street, Etna, Pittsburgh, Pa.

PAR. 2. Respondent is now, and has been, engaged in the business of preparing and selling coffee. Respondent sells his coffee under approximately 1,000 different private brand names, and under his own trade name "Hafner." Respondent sells his products to grocery wholesalers and jobbers, and directly to customers who sell at retail, including chain store organizations. Sales made by respondent of his products are substantial amounting to approximately $3,000,000 a year.

PAR. 3. In the course and conduct of his business respondent has engaged, and is now engaging, in commerce, as "commerce" is defined in the Clayton Act, as amended. Respondent ships his products, or causes them to be transported, from his principal

[1] Complaint is published as amended by order of July 25, 1958.

place of business located in the State of Pennsylvania to customers located in the same and other States of the United States.

PAR. 4. In the course and conduct of his business in commerce respondent has paid, or contracted for the payment of, something of value to or for the benefit of some of his customers as compensation or in consideration for services or facilities furnished by or through such customers in connection with their offering for sale or sale of products sold to them by respondent, and such payments were not made available on proportionally equal terms to all other customers competing in the sale and distribution of respondent's products.

PAR. 5. For example, during the year 1956 respondent contracted to pay and did pay to Century Food Markets Company of Youngstown, Ohio, $750 as compensation or as an allowance for advertising or other service or facility furnished by or through Century Food Markets Company in connection with their offering for sale or sale of products sold to them by respondent. Such compensation or allowance was not offered or otherwise made available by respondent on proportionally equal terms to all other customers competing with Century Food Markets Company in the sale and distribution of respondent's products.

PAR. 6. The acts and practices of the respondent, as alleged above, violate subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. Andrew C. Goodhope and *Mr. John Perechinsky* for the Commission.

Mr. Harry L. Lentchner and *Mr. Paul J. Winschel*, of Pittsburgh, Pa., for respondent.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) issued its complaint herein, charging the above-named respondent with having violated the provisions of subsection (d) of Section 2 of the Clayton Act (U.S.C. Title 15, §13), as amended by the Robinson-Patman Act.

The complaint was amended pursuant to an order of the Commission, and on October 8, 1958, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an "Agreement Containing Consent Order to Cease and Desist," which had been entered into by and between respondent and the attorneys for both parties, under date of

October 6, 1958, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

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

1. Respondent Simon Hafner is an individual and does business under the trade style Hafner Coffee Company with his office and principal place of business located at Union Street, Etna, Pittsburgh, Pa.

2. Pursuant to the provisions of the Clayton Act, as amended by the Robinson-Patman Act, the Commission, on November 26, 1957, issued its complaint in this proceeding against Hafner Coffee Company and a true copy was thereafter duly served on Hafner Coffee Company. Thereafter, the amended complaint was issued and served upon respondent, Simon Hafner, an individual doing business as Hafner Coffee Company, in lieu of Hafner Coffee Company, and a true copy was thereafter duly served upon respondent, Simon Hafner.

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

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

5. Respondent waives:

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

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

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

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

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

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

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

ORDER

It is ordered, That respondent Simon Hafner, an individual doing business as Hafner Coffee Company, directly or through any corporate or other device in or in connection with the sale of coffee and instant coffee, in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, do forthwith cease and desist from:

Paying or contracting for the payment of anything of value to, or for the benefit of, any customer of respondent as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the offering for sale, sale or distribution of respondent's coffee or instant coffee, unless such payment or consideration is made available on proportionally equal terms to all other customers competing in the distribution of such products.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

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

It is ordered, That respondent Simon Hafner, an individual

doing business as Hafner Coffee Company, shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with the order to cease and desist.

IN THE MATTER OF

BANK STREET CLOTHES, INC., ET AL.

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

Docket 7198. Complaint, July 18, 1958—Decision, Dec. 3, 1958

Consent order requiring manufacturers in New York City to cease violating the Wool Products Labeling Act by falsely labeling men's suits as "All Wool Exclusive of Ornamentation"; by improperly describing a portion of the fiber content as "worsted"; by failing in other respects to conform to the labeling requirements of the Act; and by furnishing false guaranties that certain of their products were not misbranded.

Mr. Garland S. Ferguson for the Commission.
Respondents, for themselves.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents with misbranding certain of their wool products, and with furnishing false guaranties that said products were not misbranded, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and of the Federal Trade Commission Act.

After the issuance of the complaint, respondents and counsel supporting the complaint entered into an agreement containing consent order to cease and desist, which was approved by the director and an acting assistant director of the Commission's Bureau of Litigation, and thereafter transmitted to the hearing examiner for consideration.

The agreement states that respondent Bank Street Clothes, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 162 Fifth Avenue, New York, N.Y., and that individual respondents Jack Lifshitz, Seymour Lindell and Jerry Lindell are officers of said corporate respondent and formulate, direct and control the acts, practices and policies thereof, their address being the same as that of the corporate respondent.

The agreement provides, among other things, that the respondents admit all the jurisdictional facts alleged in the complaint, and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such al-

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

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

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

It is ordered, That respondents Bank Street Clothes, Inc., a corporation, and its officers, and Jack Lifshitz, Seymour Lindell and Jerry Lindell, individually and as officers of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, of men's suits or other wool products, as such products are defined in and subject to said Wool Products Labeling Act, do forthwith cease and desist from:

A. Misbranding such products by:

1. Falsely or deceptively stamping, tagging, labeling or other-

wise identifying such products as to the character or amount of the constituent fibers included therein;

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

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

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

3. Using a word or words to describe the fiber content of wool products on the tag, label or other means of identification attached to such product which is not the common generic name of the fiber described;

4. Failing to attach a stamp, tag, label or other means of identification containing the information required under §4(a)(2) of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder, to each unit of multiple wool products sold in combination;

5. Failing to set forth on the stamp, tag, label or other means of identification attached to wool products, all items and parts of the information required under §4(a)(2) of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder, consecutively and in immediate connection with each other;

B. Furnishing false guaranties that wool products are not misbranded when there is reason to believe that the wool products so guaranteed may be introduced into commerce or sold, transported or distributed in commerce.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

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

3d day of December 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Bank Street Clothes, Inc., a corporation, and Jack Lifshitz, Seymour Lindell and Jerry Lindell, individually and as officers of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

HARBOR HILLS SPORTSWEAR, INC., ET AL.

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

Docket 7253. Complaint, Sept. 11, 1958—Decision, Dec. 3, 1958

Consent order requiring manufacturers in New York City to cease violating the Wool Products Labeling Act by falsely labeling and invoicing as "silk and worsted" or "Made in Italy," men's slacks made of cloth which contained other fibers than silk and wool or contained no wool at all, and were manufactured in the United States; by failing to conform to other labeling requirements of the Act; and by furnishing false guaranties that their wool products were not misbranded.

Mr. Thomas F. Howder for the Commission.
Mr. Francis M. DeCaro, of New York, N.Y., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents with misbranding certain of their wool products, furnishing false guaranties that said products were not misbranded, and making false and misleading statements concerning such products on sales invoices and shipping memoranda, representing that said products were composed of silk and wool, and were made in Italy, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and of the Federal Trade Commission Act.

After the issuance of the complaint, respondents, their counsel, and counsel supporting the complaint entered into an Agreement Containing Consent Order to Cease and Desist, which was approved by the director and an assistant director of the Commission's Bureau of Litigation, and thereafter transmitted to the hearing examiner for consideration.

The agreement states that respondent Harbor Hills Sportswear, 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 928 Broadway, New York, N.Y., and that individual respondents David Platoff and Herbert Platoff are president and vice president, respectively, of said corporate respondent and are located at the same address.

The agreement provides, among other things, that respondents

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

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

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

It is ordered, That respondents Harbor Hills Sportswear, Inc., a corporation, and its officers, and David Platoff and Herbert Platoff, individually and as officers of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction into commerce, or the offering for sale, sale, transportation, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, of men's slacks or other "wool products" as such products are defined in said Wool Products Labeling Act, do forthwith cease and desist from:

A. Misbranding such products by:

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

2. Falsely or deceptively identifying such products or the fabric thereof as being made or manufactured in or imported from Italy or any other foreign country, or otherwise stamping, tagging, labeling, marking, or representing such product in a manner which is false, misleading, or deceptive in any respect;

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

4. Furnishing false guaranties that said men's slacks or other wool products are not misbranded under the provisions of said Wool Products Labeling Act, when there is reason to believe that the wool products so guaranteed may be introduced, sold, transported, or distributed in commerce as "commerce" is defined in said Act.

It is further ordered, That respondent Harbor Hills Sportswear, Inc., a corporation, and its officers, and David Platoff and Herbert Platoff, individually and as officers of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of men's slacks or any other such products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Misrepresenting the character or amount of the constituent

fibers contained in such products on invoices or shipping memoranda applicable thereto or in any other manner;

B. Misrepresenting the country of origin of such products or the fabric thereof on invoices or shipping memoranda applicable thereto 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 3d day of December 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Harbor Hills Sportswear, Inc., a corporation, and David Platoff and Herbert Platoff, individually and as officers of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

THE ATLAS MFG. & SALES CORP. ET AL.

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

Docket 6902. Complaint, Oct. 2, 1957—Decision, Dec. 4, 1958

Order requiring three affiliated Cleveland concerns selling vending machines and supplies therefor, to cease representing falsely in "bait" advertising placed in the classified columns of newspapers to obtain leads to purchasers, that employment was offered to selected person with opportunities for exceptional profits, that buyers' investment was working capital secured by inventory with no risk of loss, that the business was permanent and depression proof, etc.; and that the respondents were agents of Hershey Chocolate Corporation.

Mr. Terral A. Jordan for the Commission.
Mr. Wallace A. Jenkins, Jr., of Parma, Ohio, for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

This proceeding, in substance, involves numerous charges that respondents have violated the Federal Trade Commission Act by advertising, soliciting and selling commercially in interstate commerce bulk vending machines and the candy or other products to be used therein and sold therefrom to the public. It is alleged that respondents, by means of false and misleading advertising and promotional material, sold substantial quantities of said vending machines and supplies therefor in the course and conduct of their business. Respondents in their respective answers admit certain allegations but deny others, and in substance each denies that it or he has violated the Act in any way. This initial decision finds generally that the allegations of the complaint are amply substained upon the whole record by a preponderance of the reliable, probative and substantial evidence as required by Section 7(c) of the Administrative Procedure Act and the Commission's Rules of Practice for Adjudicative Proceedings adopted pursuant thereto and that respondents have violated the Federal Trade Commission Act in each of several particulars, except one which is not pressed by Commission's counsel, lacks evidence to support it, and is therefore dismissed. A cease and desist order is issued herein appropriate to the findings and conclusions which are hereinafter set forth.

This case was instituted by the filing of a complaint on October 2, 1957, legal service of which was duly had upon the several respondents, who in due course filed their separate answers during November 1957. Thereafter hearings wherein evidence was presented by Commission's counsel were held in Cleveland, Ohio, on January 14 and 15, 1958, and in Detroit, Mich., on January 17, 1958, at which latter time Commission's counsel conditionally rested his case in chief, resting it absolutely and waiving the presentation of rebuttal evidence at the end of respondents' evidence after they had finally rested. Respondents presented their evidence in Pittsburgh, Pa., April 14, 1958, and in Cleveland, Ohio, on April 15 and 16, 1958, and rested their respective defenses. In accordance with an order authorizing the filing of proposed findings of fact, conclusions of law and order, Commission's counsel filed his on June 6, 1958, and respondents filed theirs on June 9, 1958, all of which have been carefully considered in the light of the whole record presented herein. Since the evidence supports the proposed findings of fact, conclusions and order submitted by Commission's counsel, the examiner has adopted them either in *haec verbae* or in substance and effect. The proposals of respondents, except that relating to the dismissal of respondent Phillip Schwimmer, and one proposition of law, have been rejected as not in accord with the record and findings herein made.

The complaint charges respondents with having used statements and representations in their advertising and promotional material addressed to and read by the public, which statements and representations, it is charged, were false, misleading, and deceptive in twelve different particulars, reference to each of which will be hereinafter made in the order in which it appears in the complaint. The record consists of 611 pages of transcript and 138 documentary exhibits, of which Commission's counsel offered 124 and respondents offered 14. The testimony adduced consisted of that of the several individual respondents other than Phillip Schwimmer, a substantial number of so-called "consumer witnesses," some called by Commission's counsel and some by respondents in opposition thereto, and several other witnesses not falling into either of these two classes. On behalf of the Commission there was presented the testimony of six "consumer witnesses" residing in the vicinity of Detroit, Mich., and a stipulation as to similar testimony by another "consumer witness," resident of that area. These were people who had answered re-

spondents' newspaper advertising. Respondents called five "consumer witnesses" residing in Pittsburgh or eastern Ohio. With one exception these witnesses were large operators, one having some 1,100 bulk vending machines on location with 13 servicemen and another had about 11,500 on location and also engaged in the sale of such machines to the extent of about 6,000 per year. While some of these large operators had started in a small way and made a substantial success of the business, there is no evidence that they were induced to get into the business by reason of respondents' advertising although the smaller operators had done so. It would unduly extend this initial decision and serve no useful purpose to narrate the testimony or refer to most of the exhibits, and the references herein made are only to the highlighted parts of the entire record although the whole record has been fully considered and is inherently passed upon in the findings hereinafter made.

In his separate answer, respondent Phillip Schwimmer, an attorney at law in Cleveland, Ohio, vigorously challenged his connection with the matters involved herein and appeared personally to renew his challenge, making a motion to dismiss as to him, which, after the presentation of evidence absolving him from legal connection with the charges, was granted by the hearing examiner, and the complaint dismissed as to him subject to formal ratification in the initial decision (Tr. 6–10 and 84–87). In substance the record shows that this respondent had never been an official of respondents Atlas Manufacturing & Sales Corp. or American Products Corporation and had had no connection with either corporation other than the ownership of three percent of the stock in the former and holding a directorship therein but having no connection with the policies of any of the respondents. While he has been giving legal advice in the past, he has never received any income from his stock during the many years of ownership nor any legal fees. The motion to dismiss as to him was not resisted, and the order hereinafter entered dismisses the complaint and proceeding as to said Phillip Schwimmer. In the subsequent portions of this initial decision therefore, for brevity, reference to the respondents generally means all respondents except the said Phillip Schwimmer.

The hearing examiner, after hearing and observing all of the witnesses and their conduct and demeanor while testifying, has given full, careful and impartial consideration to their testimony and to all other evidence presented on the record and to the fair

and reasonable inferences arising therefrom, as well as to any and all facts pleaded in the complaint which are admitted by the respective answers of the respondents, limiting the effect of such admissions however strictly to those respondents who admit such pleaded facts. Proper recognition is also given to certain relevant matters of official notice as to which request has been made by Commission's counsel as hereinafter specifically referred to and as to which "any party shall on timely request be afforded an opportunity to show the contrary" as provided by §7(d) of the Administrative Procedure Act and §3.14(c) of the Commission's Rules of Practice for Adjudicative Proceedings. All statements, arguments and proposals of counsel for the parties have likewise been fully considered. Upon the whole record thus evaluated and weighed, it is found that the material allegations of the complaint are each and all fully and fairly established as to each of the charges as to all respondents, other than Phillip Schwimmer, by the preponderance of the evidence, with one exception hereinafter noted. The hearing examiner therefore specifically finds as follows:

Respondent, The Atlas Manufacturing & Sales Corp., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio. Respondents Wallace Jenkins and Frank Olsak are individuals and are president and vice president and secretary, respectively, of said corporate respondent. The individual respondents formulate, direct and control the acts, practices and policies of the corporate respondent. The principal office and place of business of said corporate and individual respondents is located at 12220 Trisket Road, Cleveland, Ohio. Respondents Wallace Jenkins, Frank Olsak and The Atlas Manufacturing & Sales Corp. each admit this by their answers, and the evidence shows that said Jenkins owns 52 percent of the stock and the said Olsak owns 42 percent of the stock of said corporation. While Olsak categorically denies that he has anything to do with the sales operations of the corporation and confines his duties strictly to those of the manufacturing end in the process of making the vending machines produced by the corporation, the record shows that major sales programs are voted on a stockholders' meetings and that all policies and major problems relating to sales and production are a matter of constant discussion between Olsak and Jenkins. In a closely held small corporation such as this, it would be manifestly naive to find

that either of these two stockholders and officers who own 94 percent of the stock could compartmentalize their work and duties so as to insulate either of them from legal responsibility for any corporate activities engaged in by the other.

American Products Corporation is a corporation duly organized, existing and doing business under and by virtue of the laws of the State of Ohio. Respondent Wallace Jenkins is the sole owner of the stock and the sole officer of the said American Products Corporation and in this capacity formulates, directs and controls the acts, practices and policies of the corporate respondent. The principal office and place of business of said American Products Corporation is located at 12220 Trisket Road, Cleveland, Ohio. These facts are admitted by respondents Wallace Jenkins and American Products Corporation in their answers, and it is also established by the testimony of the former.

Respondent Roland S. Jenkins is an individual trading and doing business as Atlas Enterprises. His office and principal place of business is located at 8693 Lynnhaven Road, Cleveland 30, Ohio. The answer admits and the testimony of this respondent establishes these facts.

Respondent, American Products Corporation, until August, 1956, and all other respondents are now, and for more than one year last past have been engaged in the business of manufacturing, advertising, selling and distributing vending machines and vending machine supplies. In the course and conduct of their business, respondents now cause and have caused said products, when sold, to be transported from their aforesaid places of business in the State of Ohio to purchasers thereof located in various other States of the United States and the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade, in commerce, between and among the various States of the United States and the District of Columbia in said products. The several respondents admit these facts in their answers and there is an abundance of other evidence to establish the substantial extent of respondents' dealings in vending machines throughout a substantial part of the United States.

In the course and conduct of their business as aforesaid, respondent, American Products Corporation, prior to August 1956, and all other respondents have been, and now are in direct and substantial competition in commerce with other individuals and with various firms and corporations engaged in the sale in commerce

of vending machines and supplies therefor. These facts are fully admitted by the answers of the several respondents and, of course, are well established upon the record, which discloses, among other things, that there are a vast number of concerns engaged in automatic merchandising and the manufacture of vending machines (RX–3, p. 2, stating, "It is estimated that at present [1956] there are 150 manufacturers of automatic merchandising machines").

Respondent, Wallace Jenkins, as an individual, and as an officer of The Atlas Manufacturing & Sales Corp., and The Atlas Manufacturing & Sales Corp. have in the past supplied and presently supply advertising and promotional material for use in the sale and distribution of vending machines and vending machine supplies to the respondent Roland S. Jenkins, trading under the name of Atlas Enterprises, and to numerous other persons, firms and corporations engaged in the sale and distribution of vending machines and vending machine supplies. The answers of respondents The Atlas Manufacturing & Sales Corp., Wallace Jenkins and Roland S. Jenkins admit this fact, and the testimony of Roland S. Jenkins identifies much of his sales material contained in his sales kits was supplied to him by Wallace Jenkins as an individual and officer of the corporation. Wallace Jenkins also testified several times that he had furnished such advertising material to various other persons, firms and corporations engaged in the sale and distribution of vending machines and supplies. Commission's counsel requests that official notice be taken of orders issued against certain customers of The Atlas Manufacturing & Sales Corp., who were furnished substantially the same advertising material that the evidence discloses herein was used by Roland S. Jenkins in his contacts and negotiations with the public. These orders are contained in the cases of *Robert L. Kniffen,* Docket No. 6315, and *Vendit, Inc., et al.,* Docket No. 6695. Of course, since consent orders were entered in the said proceedings, the facts therein agreed to in no respect bind any of the respondents herein since none of them were parties to said proceedings but consideration has been given to the type of orders issued by the Commission in such cases in resolving the propriety of the order hereinafter issued.

Wallace Jenkins, as an individual and as an officer of The Atlas Manufacturing & Sales Corp., and The Atlas Manufacturing & Sales Corp. have engaged in the sale and distribution of vending

machines and supplies therefor to the ultimate purchaser and have used the same sales plans and techniques as those employed by Roland S. Jenkins trading as Atlas Enterprises. Wallace Jenkins owns all of the stock of the American Products Corporation which was engaged in the sale and distribution of vending machines and vending machine supplies in the same manner as respondent Roland S. Jenkins. The Master Manufacturing and Sales Company was affiliated with The Atlas Manufacturing & Sales Corp. and was similarly engaged in the sale and distribution of vending machines and supplies therefor in the same manner as respondent Roland S. Jenkins. The testimony of both Roland S. Jenkins and Wallace Jenkins establishes these facts and shows that Roland S. Jenkins received his training and experience in the handling and sale of the products herein involved as an employee of his father and his corporations. Likewise, Commission's Exhibits 80–A & B through 95–B, a report made by Wallace Jenkins to the Cleveland Better Business Bureau narrates a part of these facts.

The evidence indisputably discloses that Roland S. Jenkins is the son of Wallace Jenkins, that he was employed by his father's corporations between 1946 and 1950, and following military service he returned in 1953 and 1955 to said employment and was sales manager of The Atlas Manufacturing & Sales Corp., as well as president during 1953–54 of American Products Corporation, which was then and now is owned 100 percent by his father, Wallace Jenkins, and which corporation carried on the sales operations of the Atlas machines and also sold the supplies to be vended therein until Roland began to carry on such business as a sole trader. During these years said American Products Corporation was in the vending machine business and operated in the same manner as Roland S. Jenkins has since operated and now operates the business of selling vending machines and supplies. Atlas Manufacturing & Sales Corp. put forth a letter of introduction, Commission's Exhibit 34, stating that Roland S. Jenkins is that corporation's authorized representative. While Roland S. Jenkins maintains in some instances a separate business address, he has free access to and use of the office and stationery of Atlas and in some of his advertising, Commission's Exhibit 110, uses the corporation's address as his business address. Numerous other exhibits tie these several addresses and the business of the father's companies and those of Roland inextricably together. No other customer of the father's business appears from

the record to have had the special privileges or connection therewith that Roland has had and now has. While Roland S. Jenkins now operates as a sole tradership under the name and style of Atlas Enterprises, the similarity of the word "Atlas" in both titles and the general methods of advertising to the public interlock the advertising of both concerns in the minds of prospective purchasers interviewed by Roland and his agents as being one and the same organization. The hearing examiner observed the friendliest of personal relations existing between the father and son during the hearing. It could not be successfully urged by respondents that their personal and business relationships are not so closely linked together as to be completely inseparable insofar as the public is concerned.

Behind the facades of the several corporate veils and the sole tradership, the respondents, both individual and corporate, cannot escape liability for the sales practices of Roland S. Jenkins in his dealings with the public. Both the senior Jenkins and Olsak necessarily profit from the many successful sales which have been made by the junior Jenkins. See *G. Howard Hunt Pen Co.* v. *F.T.C.* (C.A. 3, 1952), 197 F.2d 273, 281, and *Irwin* v. *F.T.C.* (C.C.A. 8, 1944), 143 F.2d 316, 325, and numerous cases cited, which hold that the author of false, misleading and deceptive advertising may not furnish even his independent customers with a means of misleading the public and thereby insulate himself against responsibility for the deception caused by said advertising. Federal Trade Commission proceedings are not premised on strict legal fraud and the good faith or bad faith of respondents is not material. See *Ford Motor Co.* v. *F.T.C.* (C.C.A. 6, 1941), 120 F.2d 175, 181–182, *cert. den.* 314 U.S. 668 (1941). As the Supreme Court has stated in *F.T.C.* v. *Algoma Lumber Co.*, 291 U.S. 67, 81 (1934), "though the practice condemned does not amount to fraud, as understood in courts of law * * * [i]ndeed, there is a kind of fraud, as courts of equity have long perceived, in clinging to a benefit which is the product of misrepresentation, however innocently made * * * That is the respondents' plight today, no matter what their motives may have been when they began. They must extricate themselves from it by purging their business methods of a capacity to deceive."

Respondent, Roland S. Jenkins, to induce the purchase of vending machines and vending machine supplies offered for sale by him, has placed and now places advertisements in newspapers

in Ohio and in various other States of the United States which advertisements are calculated to cause and do in fact cause persons to make inquiries of the said Roland S. Jenkins concerning the nature of the offer made therein. Persons making inquiries are then visited by the said Roland S. Jenkins, his employees, agents or representatives. Such salesmen show to the prospective purchaser a variety of advertising and promotional material contained in a sales kit carried by them and furnished by respondent Roland S. Jenkins. Substantially all of the material contained in said sales kit originated with and was supplied by the said Wallace Jenkins as aforesaid. Either Roland S. Jenkins or his employees, agents or representatives make numerous oral representations of the matters referred to in the sales kits or others such as agreeing to accept back the vending machines if the purchaser cannot place them on location, all of which are calculated to induce and do in fact induce the purchase of said vending machines and vending machine supplies. Roland S. Jenkins, in his answer and testimony, has admitted the use of classified advertisements as alleged in the complaint and evidenced by various exhibits of both the Commission and respondents. The wide dissemination of these advertisements in interstate commerce is thoroughly evidenced by the record. The classified advertisements hereinafter referred to were published by Roland S. Jenkins in various newspapers in different States including those in Detroit, Mich., wherein a number of the "consumer witnesses" testified they read them. Such classified ads are hereinafter set forth in some detail. They and other promotional material of respondents contain the several items of statement or inference contained therein which are alleged to have had the tendency and capacity to mislead and deceive, and as the record shows in many instances did actually mislead and deceive, the consuming public.

The newspaper ads first invite attention to the products of respondents and to the great financial possibilities to be realized if such ad is answered. This first contact is the important one. If "bait advertising" is used to solicit replies from members of the public inquiring about what a respondent has to sell, the subsequent transactions between them do not purge the original advertisement of its tendency to mislead or deceive the public. It has been held in *Carter Products, Inc., et al.* v. *F. T. C.* (C.A. 7, 1951), 186 F.2d 821, 824:

> . . . The law is violated if the first contact or interview is secured by deception (*Federal Trade Comm.* v. *Standard Education Society, et al.*, 302 U.S. 112,

115 [25 F.T.C. 1715, 2 S. & D. 429]), even though the true facts are made known to the buyer before he enters into the contract of purchase (*Progress Tailoring Co. et al.* v. *Federal Trade Comm.*, 7 Cir., 153 F. 2d 103, 104, 105 [42 F.T.C. 882, 4 S. & D. 455]). See also *Aronberg, et al.*, v. *Federal Trade Comm.*, 7 Cir., 132 F. 2d 165, 169 [29 F.T.C. 1634, 3 S. & D. 528].

It is immaterial, therefore, if either Roland S. Jenkins or his agents or representatives made clear to their prospective purchasers before any sales were actually made that such purchasers were not in fact obtaining employment from the Hershey Chocolate Company but were going into business for themselves with the risks of the business made their own. It is also immaterial that those who made the representations other than Roland S. Jenkins were his employees or agents or were independent contractors. See *G. Howard Hunt Pen Co.*, v. *F.T.C., supra,* and *Irwin* v. *F.T.C., supra.*

The classified advertisements which are quoted in paragraph 5 of the complaint and admitted by respondents are evidenced in the record also by Commission's Exhibits 96, 110, 111, and respondents' Exhibit 5. These advertisements are short and are quoted as follows:

START SPARE TIME
SERVICING
HERSHEY CANDY ROUTE

We will select a responsible person in your area to service our NEW HERSHEY CANDY DISPENSERS. No selling or experience necessary. Qualified person will have opportunity of earning $5,000 per year devoting spare time to start. About 6 hours per week required to service route and to manage business. To be eligible you must drive car and be able to make small investment of $594 CASH to handle inventory. For personal interview write giving particulars, phone and reference to: District Manager, Dept. 102, 8693 Lynnhaven road, Cleveland 30, Ohio. (CX-96)

SPARE OR FULL TIME SERVICING
HERSHEY CANDY ROUTE

We will select a responsible person in your area to service our NEW HERSHEY CANDY DISPENSERS. No selling or experience necessary. Qualified person will have opportunity of earning $5,000 per year devoting spare time to start. About 6 hours per week required to service route and managing business. To be eligible you must drive car and be able to make small investment of $594 CASH to handle inventory. For personal interview write giving particulars, phone and reference to District Manager, Dept. 194, 12220 Triskett Road, Cleveland 11, Ohio. (CX-110)

START SPARE TIME
SERVICING
HERSHEY CANDY
ROUTE

We will select a responsible person in your area to service our NEW

HERSHEY CANDY DISPENSERS. No selling or experience necessary. Qualified person will have opportunity of earning $5,000 per year devoting spare time to start. About 6 hours per week required to service route and managing business. To be eligible you must drive car and be able to make small investment of $594 CASH to handle inventory.

For personal interview write giving particulars, phone and reference to:
District Manager,
Dept. 179, 8693 Lynnhaven,
Cleveland 30, Ohio (CX–111)

As respondents concede, in proposing as one of their conclusions of law: "The important criterion in determining whether a product is falsely advertised is the net impression which the advertisement is likely to make upon the general public." *Charles-of-the-Ritz Distributors Corp.* v. *F.T.C.* (C.C.A. 2, 1944), 143 F.2d 676, 679, 680, and numerous cases cited. The Commission must consider the class of persons to whom the appeal is made, and in the case at bar these include many who, while not wholly ignorant, are so financially pressed that they will grasp at straws for financial succor and infer much more than a technical close examination of the advertisement might lead a prudent person to gather therefrom.

These lead or "bait advertisements" were published either under the heading of "Business Opportunities" or "Help Wanted" columns of numerous newspapers. Whatever the classified heading was is immaterial. These columns are for the most part read by persons seeking to better their financial situations, and the testimony of the "consumer witnesses" called by Commission's counsel amply attest the viewpoints and situations confronting persons who are typical of the public answering such ads who have not previously been in the vending machine business. The advertisements quoted above, as published in the newspapers and the other promotional material presented to the consuming public by respondents or their agents and representatives, in each of their several different appealing inducements had the tendency and capacity to mislead and deceive the public to whom the ads were addressed. The several specific representations are hereafter enumerated:

1. Respondents falsely represented that employment was offered to certain especially selected persons, the truth being that any person who answered the ads who could pay for vending machines was sold such machines and supplies therefor. The language of the ads nowhere states that it is necessary to pur-

chase the vending machines but to the contrary says, "We are looking for a reliable person * * * to refill and collect from our automatic merchandise dispensers" and "a responsible person * * * to serve our new Hershey candy dispensers," thereby clearly implying that the respondents would retain title and ownership and the applicant would merely be employed by them.

2. By the aforesaid language, the respondents also falsely represented that persons selected for employment would operate and service respondents' vending machines.

3. Respondents falsely have represented, directly or indirectly, that they were employees, agents or representatives of the Hershey Chocolate Company of Hershey, Pennsylvania, because the advertising does not refer to the name of any of the respondents but at the bottom refers to "District Manager Department ——," etc., below references to the Hershey Chocolate Company in one way or another in the preceding portion of the ad. Respondents admit by answer, testimony, or both, that none of respondents were employed by Hershey and did not represent it, but only bought its products for resale to the purchasers of their vending machines.

4. Respondents falsely represented, directly or indirectly, that persons selected by them for employment must own or be able to drive a car, have references, or have a specified sum of money. The quoted advertisements definitely state these requirements, but while the evidence indicates that no substantial route could be operated without a motor vehicle, respondents never made inquiry of those answering the ads as to any of such matters as references or car ownership and sold as few or many vending machines as the prospect could pay for.

5. Respondents falsely represented, directly or indirectly, that persons selected for employment must invest in amounts varying from $575 up to $1,250 in their several advertisements, which amount was to be used as working capital for the purchase of an inventory of merchandise for dispensing in the vending machines referred to in the advertisement. The evidence overwhelmingly establishes that the public believes that inventory refers to stock in trade, such as in this case, candy or other products to be dispensed in the vending machines. As a matter of fact, there was no such security, the money being substantially all required and used for the outright purchase of respondents' vending machines, a negligible amount of goods to be dispensed being usually also included in the sale.

6. Respondents falsely represented that any amount invested was secured by an inventory and there was no risk of losing the investment. Several of the advertising materials used by respondents said there was "no risk of losing your investment," whereas in fact there was no insurance against loss by inexperienced members of the public, and the amount of candy purchased would not secure anything like the amount invested in any event. Several of the "consumer witnesses" testified that they were "hooked," that most of the machines they purchased could not be located and had to be stored on their own premises. It is elementary that such an article which cannot be used to any advantage is a dead loss to its owner, and furthermore, there is abundant undisputed testimony in the record that secondhand vending machines sell for a very small fraction of what the witnesses paid respondents for theirs and also that old established customers of respondents could buy from them new machines at but a fraction of what new customers can. The machines in fact were not even security for their own real value due to a glutted secondhand market on such machines.

7. Respondents falsely represented that persons selected for employment would not be required to sell or engage in any kind of selling activity. While respondents and some of their witnesses indulged in considerable hair splitting as to what constitutes selling, the great preponderance of the evidence shows that anyone seeking to place vending machines or keep them on location must possess considerable persuasive powers to induce the owners of the location to permit the machines either to be placed or to be retained.

8. Respondents falsely represented, directly or indirectly, that persons selected for employment would earn an income of from $400 to $800 monthly, or $5,000 per year. The words of one classified ad specifically so state. Other promotional material promised a net profit of from 100 percent to 300 percent on the amount of the total investment. There is no qualification that it might take years of hard work and the purchase of numerous vending machines to acquire such an income. The exaggerated promise of earning $5,000 per year on a $400 investment seems ludicrous on its face but on this record members of the public who answered the ads credibly testified that they believed that they could make such a large sum for such a small investment with very little time devoted thereto. The fact that some large

and successful operators testified that it was possible with good attention to business and with machines in good locations for a first class operator to earn substantial sums, furnishes no absolute or reliable criterion of success for the type of persons who answered respondents' ads and tried to engage in such a business for the first time.

9. Respondents falsely represented, directly or indirectly, in their promotional material that their said vending machines dispensing Hershey candy or other types of candy or gum would sell out their entire contents at least once and usually twice a week. The evidence is entirely contrary to this. Even respondent Roland S. Jenkins admitted it would take from four to six weeks for the entire contents of a vending machine to be emptied in a good location, and other of respondents' witnesses, long experienced in the business, testified it would take from six weeks to two months to empty a machine if filled with Hersheyettes, particularly as in summer such product was unsalable to any great degree because of the seasonal change affecting chocolate sales. The experience testimony of the purchasers who testified shows that their machines emptied in about from one up to seven months, dependent upon location. No witness testified that these machines did regularly, on the average, sell out even once a week, let alone twice a week.

10. Respondents falsely represented, dirctly or indirectly, by their promotional material that profitable locations were easily secured where vending machines would sell out their entire contents at least once or twice a week. Much of the promotional material of respondents so represented, but the evidence of experienced and extensive operators testifying for respondents established that in fact good locations are unusual; that it is very difficult to secure profitable locations for vending machines; and that it is the average of numerous machines on location from which profit must be derived.

11. Respondents falsely represented, directly or indirectly, in their promotional material that the business opportunity offered by respondents was permanent and depression-proof. While in some aspects such representations might be considered mere "puffing," it is clear that in their context and in the entire circumstance of the sale of the machines in each of the several instances testified to, those purchasing them believed that they assuredly would make regular and easy money in substantial amounts through any kind of economic conditions. Although the evidence discloses

that pennies still circulate during depressions or recessions, and in some instances certain vending machines in certain areas do even better than in good times, the evidence clearly shows that the general situation over the country is such that there is no such thing as a permanent loss-proof business in the vending machine line, and that economic conditions affect that business the same as most others in bad times.

The alleged specific misrepresentation that Roland S. Jenkins held himself forth as a manufacturer of vending machines as charged in paragraph 6, subsection 12, and paragraph 7, subsection 12, is not sustained by the evidence and is therefore dismissed.

The protection of the gullible and unwary is one of the basic functions of the Federal Trade Commission in situations such as that which is so vividly presented in the instant case. As hereinbefore stated, it would unduly lengthen this decision to refer in detail to the evidence in all particulars whereby the unsuspecting readers of the ads were persuaded to go deeply into debt or to invest substantial savings in a precarious business in which such persons had utterly no experience. One need only read this record however, to see and understand that the practices of respondents are exactly those which are referred to in respondents' Exhibit 3. This exhibit is a business service bulletin, prepared and promulgated by the U.S. Department of Commerce, entitled, "Summary of Information on Automatic Merchandising," dated May 1956. It was offered by respondents generally, and was received generally in evidence by the examiner because of certain relevant information it appeared to contain. It gives a brief and illuminating history of the development of the vending machine business in all of its aspects, and while much of the material is disregarded since it has no relevancy of materiality to the particular type of vending machines in evidence in this case, that is bulk merchandise vending machines, nevertheless, much of its contents illustrate the vexing and difficult problems confronting the vending machine operators, particularly inexperienced ones, which were not disclosed by respondents to their prospective purchasers, either in their glowing advertising and promotional materials or in the ardent sales pitches of their representatives and agents. The following quotation from page 4 of said exhibit discloses the basic elements of this case far more succinctly and eloquently than the examiner could possibly state them:

During the past few years, the "Business Opportunity" columns of many newspapers have contained advertisements describing golden opportunities for people who could invest a few hundred dollars (or a few thousand dollars) and their spare time in an automatic vending machine route. Usually there is a clear implication that good locations are under contract and all the investor needs to do is to visit the machines once or twice a week, fill them with merchandise, and collect the receipts. In many cases, however, salesmen have merely obtained trial locations for the equipment, and often the entrepreneur finds that after a few weeks he is requested to remove the equipment and has no other location in which to install it. Such selling methods have done much harm to the whole industry and have been and are being fought by the more stable elements of the industry.

While there are undoubtedly opportunities for men of ability to enter the industry, both in the fields which have become reasonably well established and in those where new types of machines are creating new markets, success will require skilled salesmanship, mechanical aptitude, infinite attention to detail, and the efficiency necessary to operate on small profit margins.

Nothing stated in this initial decision must be taken to infer that the automatic merchandise business is not a legitimate business. The respondents' business of manufacturing and selling vending machines and the merchandise to be dispensed therefrom is a legitimate business in itself. It must be clearly distinguished from automatic machines which are devised for gambling purposes, that is, slot machines and the like. All that the complaint attacks and all that is decided herein are that certain specific sales methods and practices heretofore used by respondents are contrary to law and that respondents must purge their business thereof.

The public interest in this proceeding is manifest. The vending machine business when honestly conducted is a substantial business and as an industry in its entirety has permanence as indicate in respondents' Exhibit 3, hereinafter referred to. Nevertheless, the operating profits of such business to the investment are not large, and as shown on page 3 of said exhibit a 1950 survey of operators' costs and profits revealed that certain types of vending machines among those reporting who had sales of $100,000 or less only showed operating profits varying from one percent up to eight percent. The solicitation of the public for the purpose of selling vending machines on profits even of 100 percent, let alone an annual return of 10 to 12 times an investment of about $500, is so grossly mischievous as to require the Commission's intervention on behalf of the public to prevent such practices in the future. It must be recognized that the respondents may possibly manufacture and sell other types of vending machines than bulk

candy or gum dispensers in the future. It is therefore important that they be prohibited from using the sales methods heretofore employed in any future operations of their business; hence the breadth of the order herein issued. As far back as 1952 the value of shipments of automatic merchandising machines (except refrigerated) amounted to $22.8 millions (respondents' Exhibit 3, p. 2). The industry's substantial growth after 1947 (id.) and the increasing size and spread of the vending machine industry in interstate commerce requires that it be subjected to regulation by this Commission. It cannot be permitted to prosper on illicit methods any more than other types of businesses can.

The respondent Wallace Jenkins is sometimes referred to in the record as Wallace Jenkins, Sr., or Wallace A. Jenkins, Sr. Another son, Wallace A. Jenkins, Jr., appeared in this proceeding throughout as the attorney for all respondents except Phillip Schwimmer, their former attorney. The record does not disclose that the attorney son has had any connection with any of the acts and practices herein involved, but only acted professionally in this adjudicative proceeding. He and Commission's counsel represented their respective sides in a highly professional manner and their frequent stipulations as to evidence and the like made possible a much shorter record than would otherwise have been made, for which they have the unreserved commendation of the hearing examiner.

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

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

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

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

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

ORDER

It is ordered, That respondents The Atlas Manufacturing & Sales Corp., a corporation, and American Products Corporation, a corporation, and their officers, and Wallace Jenkins, individually and as an officer of each of said corporate respondents and Frank Olsak, individually and as an officer of The Atlas Manufacturing & Sales Corp., and Roland S. Jenkins, an individual, trading as Atlas Enterprises, or trading under any other name, and their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of vending machines, vending machine supplies or any other kind of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly, that:

1. Employment is offered or that employment is offered to specially selected persons either by respondents or by any other person, firm, or corporation;

2. Persons will be selected to operate and service a vending machine route owned by respondents;

3. Respondents are affiliated with, approved by or are agents or representatives of the Hershey Chocolate Corporation, Hershey, Pa., or of any other person, firm or corporation;

4. Purchasers of respondents' aforesaid products must own an automobile or be able to drive an automobile or furnish references or have a specified sum of money;

5. The money required to purchase respondents' aforesaid products is for the purpose of providing working capital for the purchase of an inventory of merchandise to be dispensed in vending machines; or otherwise representing that money is required for any purpose other than its true purpose;

6. The money required to purchase respondents' aforesaid products is secured or that there is no risk of losing the money so invested;

7. Purchasers of respondents' aforesaid products will not be required to sell or engage in any kind of selling activity in establishing or maintaining a vending machine route;

8. Purchasers of respondents' aforesaid products will derive any amount of earnings or profits from the operation of said vending machines in excess of the earnings or profits received by persons contemporaneously engaged in the operation of similar

vending machines situated in similar locations and dispensing the same kind of merchandise;

9. Vending machines will sell out their entire content within any time less than the time required by similar machines contemporaneously located in similar locations and dispensing the same kind of merchandise;

10. Locations for vending machines returning a rate of profit higher than that contemporaneously returned by similar vending machines, located in the usual and customary locations available to the purchaser and dispensing the same kind of merchandise may be secured with the expenditure of less time, money, effort or ingenuity than is in fact required;

11. The sale of merchandise by vending machines is a permanent business operation for individual purchasers of respondents' aforesaid products;

12. The sale of merchandise by vending machines is unaffected by economic depressions or other changes in the business cycle.

It is further ordered, That the complaint be and the same hereby is dismissed as to the respondent Phillip Schwimmer, individually and as an officer of said corporate respondent, The Atlas Manufacturing & Sales Corp.

It is still further ordered, That the alleged specific misrepresentation that Roland S. Jenkins held himself forth as a manufacturer of vending machines as charged in paragraph 6, subsection 12, and paragraph 7, subsection 12, is not sustained by the evidence and should be and hereby is dismissed.

OPINION OF THE COMMISSION

By GWYNNE, Chairman:

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

The complaint charged respondents with violation of the Federal Trade Commission Act by the making of false representations in connection with the sale of vending machines.

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

1. Respondents offered employment to certain specially selected persons;

2. Persons selected would operate and service vending machines owned by respondents;

3. Said advertisement was placed by the Hershey Chocolate Corporation of Hershey, Pa., or by respondents as the agents or representatives of the said Hershey Chocolate Corporation;

4. Persons selected must own or be able to drive a car, have references, or a specified sum of money;

5. Persons selected must invest $594 or $575 to $1,250, depending on which advertisement is read, which was to be used as working capital for the purchase of an inventory of merchandise to be dispensed in said vending machines;

6. Any amount invested as aforesaid was secured by an inventory worth the amount invested and there was no risk of losing the investment;

7. Persons selected would not be required to sell or engage in any kind of selling activity;

8. Persons selected could expect to earn an income of $400 to $800 monthly, or $5,000 per year, depending on which advertisement was read, and could expect to receive a net profit of from 100% to 300% on the amount of their total investment;

9. Respondents' said vending machines would sell out their entire content at least once and usually twice each week;

10. Profitable locations for vending machines purchased from respondents were easily secured;

11. The business opportunity offered by respondents was permanent and depression proof.

The initial order dismissed the complaint as to Phillip Schwimmer, individually and as an officer of The Atlas Manufacturing & Sales Corp. and dismissed the specific misrepresentation that Roland S. Jenkins held himself forth as a manufacturer of vending machines as charged in paragraph 6, subsection 12, and paragraph 7, subsection 12, of the complaint, as not sustained by the evidence.

Respondent, The Atlas Manufacturing & Sales Corp., is an Ohio corporation, with its principal place of business located at 12220 Triskett Road, Cleveland, Ohio. It is a manufacturer of vending machines.

Respondents, Wallace Jenkins and Frank Olsak are individuals and are president, and vice president and secretary, respectively, of The Atlas Manufacturing & Sales Corp. The former owns 52 percent of the corporation stock and the latter owns 42 percent. Both are active in the management of the corporation. While

respondent Olsak denies he had anything to do with the sales policies and activities of the corporation, the record shows that the major sales programs are voted on at the stockholders' meetings and that all policies and programs relating to sales and production are discussed by these two major stockholders and principal officers of the corporation.

Respondent, American Products Corporation, is an Ohio corporation with its principal place of business at 12220 Triskett Road, Cleveland, Ohio. Until August 1956 this corporate respondent was engaged in the business of manufacturing, selling and distributing vending machines and vending machine supplies. Respondent Wallace Jenkins is the sole owner of stock and the sole officer of this corporation and in this capacity, formulates and directs the policies and practices of this corporate respondent. The record shows that this corporation was engaged in sales of vending machines to the ultimate purchaser and utilized the same sales plan and technique as is now utilized by Roland S. Jenkins.

Respondent Roland S. Jenkins is an individual trading and doing business as Atlas Enterprises, with office and principal place of business at 8693 Lynnhaven Road, Cleveland 30, Ohio, and is engaged in the sale of vending machines.

This case is concerned with representations made in connection with the sale of coin-operated bulk vending machines. These machines have a large glass bowl filled with candy, nuts, gum or trinkets and are operated by a penny or nickel.

Respondent Roland S. Jenkins places classified advertisements in newspapers, generally in the form set out below, but may be differently phrased as indicated in the record:

SPARE OR FULL TIME SERVICING HERSHEY CANDY ROUTE

We will select a responsible person in your area to service our new Hershey candy dispensers. No selling or experience necessary. Qualified person will have opportunity of earning $5,000 per year devoting spare time to start. About six hours per week required to service route, and managing business. To be eligible you must drive car and be able to make small investment of $594 cash to handle inventory. For personal interview write giving particulars, phone and references to District Manager, Dept. 194, 12220 Triskett Road, Cleveland 11, Ohio.

In addition, certain of the advertising contains the representation "income can run up to $400 to $800 monthly with possibility of taking over full time, income accordingly increases. To qualify, applicant must have car, references, and $575 to $1,250 working

capital which is secured by inventory. We will allow liberal financial assistance for expansion."

Persons answering the advertisements receive from the respondent, Roland S. Jenkins, a letter of acknowledgment and a form entitled "Confidential Application." The application form requested information of a nature considerably beyond that usually required for credit purposes. Rather, it is of a nature usually associated with an offer of employment.

The prospective purchaser is visited by a representative of the respondents who, by use of certain sales materials and oral representations, attempts to sell vending machines and vending machine supplies.

The initial contact, having been made as a result of classified advertisements placed in newspapers, the prospect is then shown literature containing some of the questioned representations. Certain of this literature is supplied by The Atlas Manufacturing & Sales Corp. Examples of representations contained in such literature are as follows:

6. Its an ALL CASH Business. There are no charge accounts. No BAD accounts. YOUR NET PROFITS approximately 100%, and on some vendors like "OURS" the Net Profit may be 200% to 300%. Your average business is 10%.

20–1¢–5¢ Combination Vendors Emptying Twice a week at $4.79 net each would return operator $191.60 per week.

A wide awake operator, with our vendors, should have no difficulty in getting good possible locations.

3. No Selling or Soliciting.

The Safest Surest Business on Earth.

1. NO RISK of losing your investment . . .

8. And it is permanent . . . And it is depression proof.

10. And because you get your original investment back (plus a profit) . . .

It is to each of these representations that the hearing examiner made detailed findings. The respondents challenge these findings as not supported by the evidence. The initial decision reviews the evidence as to each matter in controversy.

Here, the basic sales promotional plan of the respondents is to secure leads to prospective purchasers through representations in newspapers calculated to suggest employment opportunities and to sell the prospects by means of exaggerated and false statements concerning opportunities in the vending machine field.

We agree with the findings of the hearing examiner that the false and deceptive character of the statements alleged in sub-

sections 1 through 11, inclusive, of paragraph 6 of the complaint have been established by the evidence.

Woven throughout respondents' brief are two basic contentions. Respondents claim each phrase of the challenged representations is literally true and that all they were doing through the advertisements was to set forth their position "in the most favorable light." Stated in another way, respondents contend there was no intent to deceive and that since each of the various representations, isolated from the context, is true, there is no element of deception.

We believe the law and the facts in this case to be to the contrary. The court in *Ford Motor Co.* v. *Federal Trade Commission,* 120 F.2d 175, stated:

> The question does not depend upon the purpose of the advertisement nor upon the good or bad faith of the advertiser. The point for consideration here is whether, under the facts and circumstances in connection with the publication of the advertisement, the language in and of itself, without regard to good faith, is calculated to deceive the buying public . . .

And, in *Rhodes Pharmacal Co., Inc.,* v. *Federal Trade Commission,* 208 F.2d 382, the court stated:

> The important question to be resolved is the impression given by an advertisement as a whole. Advertisements which are capable of two meanings, one of which is false, are misleading. *United States* v. *95 Barrels of Vinegar,* 265 U.S. 438, 442. Advertisements which create a false impression, although literally true, may be prohibited. *Koch* v. *Federal Trade Commission,* 206 F. 2d 311; *Consolidated Book Publishers* v. *Federal Trade Commission,* 7 Cir., 53 F. 2d 942, 944. The Federal Trade Commission Act provides, "* * * and in determining whether any advertisement is misleading, there shall be taken into account * * * representations made or suggested * * *." 15 U.S.C.A., Sec. 55(a)

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

FINAL ORDER

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

It is ordered, That the respondents, The Atlas Manufacturing & Sales Corp. and American Products Corporation, corporations,

and Wallace Jenkins, Frank Olsak, and Roland S. Jenkins, shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order contained in the aforesaid initial decision.

IN THE MATTER OF

POINT ADAMS PACKING CO., ET AL.

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

Docket 7210. Complaint, July 23, 1958—Decision, Dec. 5, 1958

Consent order requiring a canner of sea food products in Hammond, Ore., and a broker in New York City, to cease violating the brokerage section of the Clayton Act by reducing the net price to certain buyers by reduction of brokerage, by passing on payments out of brokerage as rebates for part of advertising or promotional allowances, and by passing on a part of the brokerage by agreement between the seller and broker to share one-half of price reductions granted in the form of promotional allowances; and to cease violating Sec. 2(d) of the Act by making special advertising allowances to certain favored customers but not to their competitors.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly designated and described, have been and are now violating the provisions of subsections (c) and (d) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Sec. 13), hereby issues its complaint, stating its changes with respect thereto as follows:

Count I

PARAGRAPH 1. Respondent Point Adams Packing Co., hereinafter referred to as Point Adams or as seller respondent, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oregon, with its principal office and place of business located at Hammond, Oreg. Respondent Point Adams has been for the past several years, and is now, engaged in canning, packing, selling and distributing salmon, tuna and crab meat, all of which are hereinafter referred to as seafood products. Seller respondent is a substantial distributor of seafood products, particularly Columbia River Salmon.

Respondent Charles L. Rogers, Sr., is an individual and is president and general manager of the seller respondent, with his principal office and place of business the same as that of the seller respondent. Respondent Rogers owns a substantial amount of the outstanding capital stock of the seller respondent, and as

president and general manager and as substantial owner, exercises authority and control over the seller respondent and its business practices and policies, including its sales and distribution policies. He is included in any reference hereinafter made to seller respondent.

PAR. 2. Respondent Trubenbach & Scheffold, Inc., hereinafter sometimes referred to as the broker respondent, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 100 Hudson Street, New York, N.Y. Respondent is now and for the past several years has been engaged in the brokerage business representing a number of West Coast packers of fruit, vegetable and seafood products, including respondent Point Adams Packing Co.

Respondents Edward H. Trubenbach and Joseph W. Scheffold are individuals and are president and vice president, respectively, of the broker respondent, with their principal office and place of business the same as that of said broker respondent. These individual respondents own all or substantially all of the outstanding stock of said broker respondent, and as officers and owners exercise authority and control over its business practices and policies, including its sales and distribution policies. They are included in any reference hereinafter made to broker respondent.

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

PAR. 4. The seller respondents, both corporate and individual, for the past several years have sold and distributed, and are now selling and distributing, their seafood products in commerce to buyers through brokers. The seller respondents pay these brokers, including the broker respondents named herein, for their

services in effecting such sales, a brokerage or commission usually at the rate of 5 percent of the net selling price of the product, except for crab meat which is usually at the rate of 2½ percent of the net selling price.

In a number of instances, however, both the seller respondents and the broker respondents, in the course and conduct of their business, have made payments, grants, allowances or rebates in substantial amounts in lieu of brokerage or have made price concessions which reflect brokerage to certain buyers.

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

(a) By reducing the net price to certain buyers on which sales the brokerage or commission to the broker was reduced by approximately the same amount as the price reduction.

(b) By the broker respondents passing on to certain buyers out of their brokerage earned or received, in the form of rebates or other payments for part of advertising or promotional allowances agreed to by and between the seller and the broker respondents.

(c) By the broker respondents passing on to certain buyers a part of their brokerage or commissions earned or received by agreeing with the seller respondents to share one-half of certain reductions in price granted to said buyers in the form of promotional allowances.

PAR. 5. The acts and practices of both the seller respondents and the broker respondents, both corporate and individual, as herein alleged and described constitute a violation of the provision of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Sec. 13).

Count II

PAR. 6. Each of the allegations contained in paragraphs 1 and 3 of this complaint, insofar as they pertain to the seller respondent, are here realleged and incorporated in this count the same as if they were set forth in full.

PAR. 7. The seller respondents both corporate and individual, in the course and conduct of their business, have been and are now paying advertising and promotional allowances to certain favored buyers without making such allowances available on proportionally equal terms to all other buyers competing in the distribution of their products.

For example the seller respondents have agreed to payments being made to at least one favored customer in the State of Pennsylvania as a special advertising or proportional allowance without agreeing to such payments being made available on proportionally equal terms or in fact on any terms, or in any amounts to other customers competing with the favored customer in the resale of the seller respondents' products. These payments were made by seller respondents on a flat monthly basis for a certain period of time at the rate of $50 per month. No such payments were made or even offered on proportionally equal terms or in fact on any terms to customers competing with the favored customer in the resale of the seller respondents' products.

Another example of such practice occurred in the State of New Jersey where the seller respondents agreed to a flat payment of $750 as a special advertising allowance to one favored customer without agreeing to such payment being made on proportionally equal terms to other customers competing with the favored customer in the resale of the seller respondents' seafood products. Two-thirds of this amount, or $500, was paid by the seller respondents and the other one-third, or $250, was paid by the broker respondents out of their brokerage. No such payments were made on proportionally equal terms or amounts, nor were any offered to customers competing with the favored customer in the resale of the seller respondents' seafood products.

PAR. 8. The acts and practices of the seller respondents, both corporate and individual, as hereinabove alleged and described constitute a violation of the provisions of subsection (d) of Section 2 of the Clayton Act, as amended (U.S.C., Title 15, Sec. 13).

Mr. Cecil G. Miles for the Commission.
Mr. Milton Lang, of New York, N.Y., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) issued its complaint herein, charging the above-named respondents with having violated the provisions of subsections (c) and (d) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Sec. 13). The respondents were duly served with process and the initial hearing canceled pending negotiations for settlement between the parties.

On October 10, 1958, there was submitted to the undersigned hearing examiner of the Commission for his consideration and

approval an "Agreement Containing Consent Order to Cease and Desist," which had been entered into by and between respondents and the attorneys for both parties, under date of October 9, 1958, subject to the approval of the Bureau of Litigation of the Commission. Such agreement had been thereafter duly approved by that Bureau.

On due consideration of the said "Agreement Containing Consent Order to Cease and Desist," the hearing examiner finds that said agreement, both in form and in content, is in accordance with §3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and that, by said agreement, the parties have specifically agreed that:

1. Respondent Point Adams Packing Co., is a corporation existing and doing business under and by virtue of the laws of the State of Oregon, with its office and principal place of business located in the town of Hammond, State of Oregon.

Respondent Charles L. Rogers, Sr., is an individual and is an officer of respondent Point Adams Packing Co., with his office and principal place of business located in the town of Hammond, State of Oregon.

Respondent Trubenbach & Scheffold, 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 100 Hudson Street, in the city of New York, State of New York.

Respondents Edward H. Trubenbach and Joseph W. Scheffold are individuals and are officers of respondent Trubenbach & Scheffold, Inc., with their office and principal place of business located at 100 Hudson Street in the city of New York, State of New York.

2. Pursuant to the provisions of subsections (c) and (d) of Section 2 of the Clayton Act, as amended (U.S.C., Title 15, §13), the Federal Trade Commission, on July 23, 1958, issued its complaint in this proceeding against respondents, and a true copy was thereafter duly served on respondents.

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

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

5. Respondents waive:

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

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

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

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

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

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

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

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

ORDER

It is ordered, That Point Adams Packing Co., a corporation, and its officers, and Charles L. Rogers, Sr., individually and as an officer of said corporation, and respondents' agents, representatives, or employees, directly or through any corporate or other device in connection with the sale of seafood products in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

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

2. Making or contracting to make, to or for the benefit of any customer, any payment of anything of value as compensation or in consideration for any advertising or promotional allowances, or other services or facilities furnished by or through such customer, in connection with the handling, offering for resale, or resale of seafood products sold to him by respondents, unless such payment is affirmatively offered or otherwise made available on proportionally equal terms to all other customers competing in the distribution or resale of such seafood products.

It is further ordered, That Trubenbach & Scheffold, Inc., a corporation, and its officers, and Edward H. Trubenbach and Joseph W. Scheffold, individually and as officers of said corporation, and respondents' agents, representatives, or employees, directly or through any corporate or other device in connection with the sale of seafood or other food products in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission having considered the hearing examiner's initial decision herein, filed October 15, 1958, wherein the hearing examiner accepted an agreement containing a consent order to cease and desist, theretofore executed by the respondents and counsel in support of the complaint, and entered his order in conformity therewith; and

It appearing that through inadvertence the initial decision fails to recite that the complaint alleges a violation by the respondents of subsection (d) of Section 2 of the Clayton Act, as amended, as well as a violation of subsection (c) of said Section 2; and

The Commission being of the opinion that this omission should be supplied:

It is ordered, That the initial decision be, and it hereby is, modified by striking therefrom the first sentence and substituting therefor the following:

"The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) issued its complaint herein, charging the above-named respondents with having violated the provisions of subsections (c) and (d) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Sec. 13)."

It is further ordered, That the initial decision, as so modified, shall, on the 5th day of December 1958, become the decision of the Commission.

It is further ordered, That the respondents, Point Adams Packing Co., a corporation, and Charles L. Rogers, Sr., individually and as an officer of said corporation, and Trubenbach & Scheffold, Inc., a corporation, and Edward H. Trubenbach and Joseph W. Scheffold, individually and as officers thereof, shall, within sixty (60) days after service upon them of this decision, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order contained in the aforesaid initial decision.

IN THE MATTER OF

RESERVE LIFE INSURANCE COMPANY

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

Docket 6250. Complaint, Oct. 14, 1954—Order, Dec. 10, 1958

Order vacating and setting aside initial decision filed prior to the per curiam opinion of the Supreme Court in the combined cases of *Federal Trade Commission* v. *National Casualty Company* and *Federal Trade Commission* v. *The American Hospital and Life Insurance Company*, 357 U.S. 560, in proceeding charging a Dallas, Tex., insurance company with misrepresenting the benefits provided by its accident and health insurance policies.

FINAL ORDER

This matter having come on to be heard by the Commission upon the cross-appeals of respondent and counsel in support of the complaint from the hearing examiner's initial decision filed prior to the *per curiam* opinion of the United States Supreme Court in the combined cases of *Federal Trade Commission,* v. *National Casualty Company* and *Federal Trade Commission v. The American Hospital and Life Insurance Company,* 357 U.S. 560 (decided June 30, 1958) ; and

Counsel for respondent additionally having filed a motion to dismiss the complaint, based upon the aforesaid decision of the Supreme Court, which motion is not opposed by counsel in support of the complaint; and

The Commission having considered respondent's motion to dismiss and the record, and having concluded that this proceeding should be dismissed on jurisdictional grounds upon the authority of the said ruling of the Supreme Court:

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

It is further ordered, That the complaint in this proceeding be, and it hereby is, dismissed.

IN THE MATTER OF

BARBEY PACKING CORPORATION ET AL.

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

Docket 7203. Complaint, July 22, 1958—Decision, Dec. 11, 1958

Consent order requiring packers of salmon and other sea foods in Astoria, Oreg., to cease violating the brokerage section of the Clayton Act by reducing their selling prices to direct buyers in the approximate amount of commissions which would have been paid to brokers.

COMPLAINT

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

PARAGRAPH 1. Respondent Barbey Packing Corporation, hereinafter sometimes referred to as corporate respondent, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Oregon. Its principal office and place of business is located in Astoria, Oreg.

Respondents Graham J. Barbey and Henry J. Barbey are individuals and are president and vice president, respectively, of corporate respondent and, with other members of their immediate family, are owners of all of the capital stock of corporate respondent. Respondents Graham J. Barbey and Henry J. Barbey, acting in cooperation and in conjunction with each other as officers and as individuals, formulate, direct and control the affairs and policies of corporate respondent, including its sales and distribution policies. The business address of the said individual respondents is the same as that of corporate respondent.

Respondents, both corporate and individual, are engaged in the business of packing, distributing and selling canned salmon and other seafood products.

PAR. 2. Respondents now sell and distribute, and for many years last past have sold and distributed, their canned salmon and other seafood products in commerce to customers located in

the several states of the United States. They sell and distribute their products through primary brokers, generally located in Seattle, Washington, and also through field brokers located in various marketing areas, to the buyers thereof located throughout the various states of the United States. Respondents also sell directly to some buyers from time to time, without utilizing the services of any broker.

When selling through primary brokers, respondents pay a commission or brokerage fee, generally in the amount of 5% of the net selling price of the merchandise sold, to such broker for such service. When selling through field brokers, respondents pay a commission or brokerage fee, generally in the amount of 2½% of the net selling price of the merchandise sold, to such broker for such service.

PAR. 3. In the course and conduct of their business over the past several years, but more particularly from January 1, 1956, up to the present, respondents, and each of them, have sold and distributed and now sell and distribute, their canned salmon and other seafood products in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, to buyers located in the several States of the United States other than the State of Oregon in which respondents are located. Respondents, and each of them, transport or cause such canned salmon and other seafood products, when sold, to be transported from their place of business in the State of Oregon to customers located in various other States of the United States. There has been at all times mentioned herein a continuous course of trade in commerce in said canned salmon and other seafood products across state lines between said respondents and the respective buyers of such canned salmon and other seafood products.

PAR. 4. In the course and conduct of their business, as aforesaid, respondents have made substantial sales of canned salmon and other seafood products to direct buyers without utilizing the services of either primary brokers or field brokers, and in many such instances have reduced their selling prices to such direct buyers in the approximate amount of the brokerage fees or commissions which would otherwise have been paid to such brokers had they negotiated such sales.

Respondents have also, upon occasion, made sales through field brokers, without utilizing the services of a primary broker, at prices which have been reduced from those charged when

sales are made through primary brokers, and such reductions are in the approximate amount of the net brokerage fees or commissions which would have been earned by such primary brokers.

PAR. 5. In making payments of commissions, brokerage fees, or discounts or allowances in lieu thereof, as alleged and described above, respondents, and each of them, in the course and conduct of their business in commerce, as hereinabove described, have paid, granted or allowed, and are now paying, granting or allowing, something of value as a commission, brokerage or other compensation, or an allowance or discount in lieu thereof, in connection with the sale and distribution of their canned salmon and other seafood products to buyers who were and are purchasing for their own account for resale, or to agents or intermediaries who were, and are, in fact, acting for or in behalf of, or were and are subject to the direct or indirect control of such buyers.

PAR. 6. The acts and practices of respondents, and each of them, as above alleged and described, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C. Title 15, Sec. 13).

Mr. Cecil G. Miles, for the Commission.
Respondents, for themselves.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on July 22, 1958, charging respondents with paying, granting or allowing something of value as a commission, brokerage or other compensation, or an allowance or discount in lieu thereof, in connection with the sale and distribution of their canned salmon and other seafood products, to direct buyers purchasing for their own account for resale, or to agents or intermediaries acting for or in behalf of, or subject to the direct or indirect control of, said buyers, in violation of §2(c) of the Clayton Act as amended (U.S.C Title 15, §13).

Thereafter, on September 19, 1958, respondents and counsel supporting the complaint herein entered into an Agreement Containing Consent Order to Cease and Desist, which was approved by the director and an assistant director of the Commission's Bureau of Litigation, and thereafter submitted to the hearing examiner for consideration.

The agreement identifies Respondent Barbey Packing Corpora-

tion as an Oregon corporation, with its office and principal place of business located in Astoria, Oreg., and respondents Graham J. Barbey and Henry J. Barbey as individuals and officers of said respondent corporation, with their office and principal place of business also located in Astoria, Oreg.

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

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

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

It is ordered, That Barbey Packing Corporation, a corporation, and its officers, and Graham J. Barbey and Henry J. Barbey, individually and as officers of said respondent corporation, and respondents' agents, representatives or employees, directly or through any corporate or other device, in connection with the sale of seafood products in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

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

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 11th day of December 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Barbey Packing Corporation, a corporation, and Graham J. Barbey and Henry J. Barbey, as individuals and as officers of said corporation, shall within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

B & C DISTRIBUTORS CO. ET AL.

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

Docket 7077. Complaint, Feb. 28, 1958—Decision, Dec. 13, 1958

Order requiring a Paterson, N.J., distributor of radio and television tubes, principally to jobbers, to disclose clearly on cartons, in advertising, invoicing, and shipping memoranda, when the tubes sold were used, pull-outs, factory rejects, or JAN surplus.

All other respondents in the proceeding signed a consent agreement with the same provisions on Nov. 18, 1958, p. 741, preceding.

Mr. Kent P. Kratz for the Commission.

Brenman and Susser, by *Mr. Herbert Susser,* of Paterson, N.J., for all respondents except Edward Chernela.

INITIAL DECISION AS TO RESPONDENT EDWARD CHERNELA BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents with failure to disclose the true nature of the used, pull-out, factory reject and JAN surplus radio and television tubes which they sell and distribute in commerce, thereby misleading and deceiving the public into the erroneous belief that such tubes are unused, new, and first quality tubes, in violation of the provisions of the Federal Trade Commission Act.

In this proceeding, all respondents except Edward Chernela entered into an agreement containing consent order to cease and desist, and an initial decision based thereon has heretofore been issued.

Respondent Edward Chernela was duly served with a copy of the complaint, but filed no answer thereto. On August 2, 1958, said respondent was served with a copy of a notice that a hearing for the reception of evidence upon the issues as they relate to him would be held, beginning at 10:00 a.m. on September 26, 1958, in Room 332, Federal Trade Commission Building, Washington, D.C. No appearance was made at this hearing by Edward Chernela or by anyone else in his behalf. Said respondent is therefore, in default for answer and appearance in this proceeding, and, under the Rules of Practice of the Federal Trade Commission the hearing examiner is authorized without further notice to

respondent to find the facts to be as alleged in the complaint, and to enter an initial decision containing such findings, appropriate conclusions and order.

Accordingly, the following findings are made, conclusions reached, and order issued:

1. Respondents B & C Distributors Co. and Revere Labs., Inc., are New Jersey corporations with their principal office and place of business located at 840 Main Street, Paterson, N.J. Individual respondent Edward Chernela is treasurer of respondent B & C Distributors Co., and exercises a substantial degree of control and direction over the policies, affairs and activities of said respondent corporation. His office and principal place of business is located at 840 Main Street, Paterson, N.J.

2. Respondent corporations and individual respondent Edward Chernela, through his exercise of control and direction of the policies and activities of B & C Distributors Co., are now, and for more than two years last past have been, engaged in the sale and distribution of radio and television tubes principally to jobbers. In the course and conduct of such business they have caused and now cause their products, when sold, to be shipped from their place of business in the State of New Jersey to customers located in other States of the United States; and they maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

3. Said respondents are now, and at all times mentioned herein have been, in substantial competition with firms, persons, corporations and partnerships engaged in the sale and distribution of television and radio tubes in commerce, between and among the various States of the United States.

4. In the course and conduct of their business, said respondents have offered for sale, sold and distributed a large number of used, pull-out, factory reject and JAN surplus radio and television tubes without disclosing on the tube, box, carton, invoice or in advertising the nature of these tubes. By failing to disclose these material facts, said respondents place in the hands of their customers, and others, means and instrumentalities by which the purchasing public may be misled into believing that said tubes are new, unused and first quality tubes.

5. When such tubes are offered to the purchasing public without being clearly and conspicuously marked, labeled and advertised as used, pull-outs, factory rejects or JAN surplus tubes,

they are readily accepted by members of the purchasing public as new, unused and first quality tubes.

6. The failure of said respondents to disclose the true nature of their tubes as aforesaid has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such tubes were new, unused and first quality tubes, and into the purchase of respondents' products by reason of such erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has thereby been done to competition in commerce.

7. The aforesaid acts and practices of said respondents, as herein found, were and are all to the prejudice and injury of the public and of respondents' competitors, and constituted and now constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

8. This proceeding is in the public interest. Therefore,

It is ordered, That respondent Edward Chernela, individually and as an officer of B & C Distributors Co., a corporation, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of television or radio tubes in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling, offering for sale, or distributing used, pull-outs, factory rejects or JAN surplus radio or television tubes without clearly disclosing on the tubes or on individual cartons in which each tube is packaged when sold this way, and in advertising, invoices and shipping memoranda that they are used, pull-outs factory rejects, or JAN surplus tubes as the case may be;

2. Selling, offering for sale, or distributing any radio or television tube which is not new or first quality without clearly and conspicuously disclosing that fact on the tube or the individual carton in which such tube is packaged when sold this way, and in advertising, invoices and shipping memoranda.

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 13th

day of December 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Edward Chernela, individually and as an officer of B & C Distributors Co., shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with the order to cease and desist.

IN THE MATTER OF

KOCHTON PLYWOOD AND VENEER COMPANY, INC., ET AL.

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

Docket 7114. Complaint, Apr. 10, 1958—Decision, Dec. 17, 1958

Consent order requiring Chicago sellers of plywood paneling imported from Japan and grained or finished in the United States which was not made from either walnut or oak, to cease misrepresenting the paneling by distributing to retailers samples identified as "Blond Walnut," "Silver Oak," "Natural Walnut," etc.; and to cease distributing said samples, stamped with their name and address, without clearly disclosing that the paneling was made in Japan.

William A. Somers, Esq., for the Commission.
Mr. Lawrence J. West, of Chicago, Ill. for respondents.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

The complaint in this proceeding, issued April 10, 1958, charges the respondents Kochton Plywood and Veneer Company, Inc., a corporation, and Emil J. Kochton, individually and as an officer of the corporate respondent, with violation of the provisions of the Federal Trade Commission Act in connection with the sale and distribution of plywood paneling.

After the issuance of said complaint respondents, on October 6, 1958, entered into an agreement for a consent order with counsel in support of the complaint, disposing of all of the issues in this proceeding, which agreement was duly approved by the director and assistant director of the Bureau of Litigation of the Federal Trade Commission. It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

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

argument before the Commission, and all further and other procedure before the hearing examiner and the commission to which the respondents may otherwise be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission.

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

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

Said agreement recites that respondent Kochton Plywood and Veneer Company, Inc., is a corporation, existing and doing business under and by virtue of the laws of the State of Illinois. Respondent Emil J. Kochton is an individual and officer of said corporate respondent. Said corporate and individual respondents have their office and principal place of business located at 509 West Roosevelt Road, Chicago, Ill.

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

ORDER

It is ordered, That respondents Kochton Plywood and Veeneer Company, Inc., a corporation, and its officers, and Emil J. Kochton, individually and as an officer of said corporation, and their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or

distribution of "Beauty-Glo" plywood paneling, plywood paneling or any other product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale any product the whole or any substantial part of which originates in any foreign country without clearly disclosing such foreign origin on the product itself and on samples thereof.

2. Representing, directly or by implication, contrary to the fact, that any product is composed in whole or in part of wood or woods of any particular species.

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 17th day of December 1958, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

B. ALTMAN & CO.

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

Docket 7206. Complaint, July 23, 1958—Decision, Dec. 17, 1958

Consent order requiring a New York City department store to cease violating the Fur Products Labeling Act by newspaper advertising which failed to disclose the names of animals producing certain furs, offered furs as reduced from "regular" prices which were in fact fictitious, and contained comparative prices which failed to give a bona fide time of the compared price; and by failing to comply with the invoicing requirements.

Alvin D. Edelson, Esq., for the Commission.
Richard Lincoln, Esq., of New York, N.Y., for respondent.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

The complaint in this proceeding, issued July 23, 1958, charges the respondent above named with violation of the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and the Rules and Regulations promulgated under the last-named Act, in connection with the introduction into commerce and in the sale, advertising and offering for sale, transportation and distribution, in commerce, of fur products, as the designations "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act.

After the issuance of said complaint respondent, on October 7, 1958, entered into an agreement for a consent order with counsel in support of the complaint which agreement was duly approved by the director and assistant director of the Bureau of Litigation of the Federal Trade Commission.

The agreement disposes of all charges of the complaint as issued except as to paragraph 6 (b) of the complaint in which it was charged that respondent in advertising, "failed to disclose that fur products contained or were composed of bleached, dyed or otherwise artificially colored fur when such was the fact, in violation of Section 5 (a) (3) of the Fur Products Labeling Act," it being felt that the evidence on this point is not substantial enough to sustain this charge.

It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute

an admission by respondent that it has violated the law as alleged in the complaint.

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

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

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

Said agreement recites that respondent B. Altman & Co., 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 Fifth Avenue and 34th Street New York, N. Y.

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

is in the interest of the public, wherefore he issues the following order.

ORDER

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

1. Falsely or deceptively invoicing fur products by:

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

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

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

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

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

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

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

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

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

A. Fails to disclose:

(1) The name or names of the animal or animals 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. Bases comparative prices on former or original prices that are not the prevailing prices at the time of the advertisement without stating the dates or times of the compared prices.

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 respondent has usually and customarily sold such products in the recent regular course of business.

It is further ordered, That the allegation as to "bleached and dyed" fur products as alleged in paragraph 6(b) of the complaint be, and hereby is, dismissed.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 17th day of December 1958, become the decision of the Commission; and, accordingly:

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

Decision

IN THE MATTER OF

CANADIAN FUR COMPANY ET AL.

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

Docket 7246. Complaint, Sept. 4, 1958—Decision, Dec. 17, 1958

Consent order requiring furriers in Springfield, Mass., to cease violating the Fur Products Labeling Act by advertising in newspapers which failed to disclose the names of animals producing certain furs, or that certain products contained artificially colored fur, or to set forth the description "dyed mouton-processed lamb" as required; which represented prices as reduced from regular prices which were in fact fictitious, or as affording percentage savings not in accord with the facts, and falsely represented certain fur products as from stock being liquidated in a "Removal Sale"; and by failing to comply with the invoicing requirements.

Mr. S. F. House for the Commission.
Mr. Benjamin D. Novak, of Springfield, Mass., for respondents.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding issued September 4, 1958, charged respondents Canadian Fur Company, a corporation, located at 272 Bridge Street, Springfield, Mass., and Carl Riner and Harold Riner, individually and as officers of said corporation, their address being the same as that of the corporate respondent, with the use of unfair and deceptive acts and practices in interstate commerce in violation of the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder.

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

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

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

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

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

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

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

ORDER

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

A. Misbranding fur products by:

(1) Representing on labels affixed to the fur products or in

any other manner that certain amounts are the regular and usual prices of fur products when such amounts are in excess of the prices at which respondents usually and customarily have sold such products in the recent regular course of their business.

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

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

B. Falsely or deceptively invoicing fur products by:

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

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

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

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

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

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

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

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

(3) Failing to set forth the description "dyed mouton processed lamb" in the manner required by law.

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

(1) Fails to disclose:

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

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

(2) Fails to set forth the description "dyed mouton processed lamb" in the manner required by law.

(3) Sets forth information required under Section 5(a)(1) of

the Fur Products Labeling Act and the Rules and Regulations thereunder in abbreviated form.

(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 the respondents have usually and customarily sold such product in the recent and regular course of their business.

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

(6) Represents, directly or by implication, that certain fur products are part of the regular stock of the business, and not secured or purchased for purpose of a "Removal Sale" or other such special sale, when such is the fact.

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 17th day of December 1958, become the decision of the Commission; and, accordingly:

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

Decision

IN THE MATTER OF

ATLAS ROSE FARMS, INC., ET AL.

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

Docket 6896. Complaint, Sept. 27, 1957—Decision, Dec. 18, 1958

Consent order requiring Brooklyn, N.Y., sellers of rose bushes which had been used in the commercial greenhouse production of cut flowers under forced growing conditions, to cease representing falsely in newspaper advertising and in statements on packages that their roses were strong first-grade plants, certified as vigorous and tested for proven merit by a State agency, and packed by one of America's leading nurseries; to cease representing falsely, through use of the word "Farms" in their corporate name that they grew the roses they sold; and to cease representing falsely, by labels attached to the individual rose bushes and packages containing them, that each rose was of a particular variety and that the bloom would be of the color specified.

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

Samuel Bonom and Philip Wolfson of Brooklyn, N.Y., by *Mr. Philip Wolfson*, for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on September 27, 1957, charging respondents with making false representations, in connection with the sale and distribution of rose bushes, that such roses were strong, first-grade plants; that each rose bush had been inspected by a State agency and certified as vigorous and tested for proven merit; and that said rose bushes had been packed by one of America's leading nurseries. Respondents were further charged with failing to reveal that the rose bushes sold and distributed by them had been used for two to three years in the commercial production of cut flowers in greenhouses under forced growing conditions, which material fact was not disclosed in respondents' newspaper advertising, nor in printed statements on the packages in which said rose bushes were packed for sale by respondents. Respondents were also charged with falsely representing, through the use of the word "Farms" as part of the respondent corporation's name, that they maintain a farm on which they grow the rose bushes offered for sale and sold by them; and, further, that they have misrepresented said rose bushes by

placing on the packages thereof labels bearing flower illustrations and text which were not indicative of the variety or color of the bloom which would be produced by such bushes. The complaint further alleged that the use by respondents of the aforesaid representations, and their failure to disclose material facts in connection with their sale and distribution of rose bushes in commerce, constitute unfair and deceptive acts and practices and unfair methods of competition, in violation of the Federal Trade Commission Act.

Thereafter, on October 9, 1958, respondents Atlas Rose Farms Inc., Lee Atlas and Elias Abolafia, individually and as officers of said corporation, their counsel, and counsel supporting the complaint herein entered into an Agreement Containing Consent Order to Cease and Desist, which was approved by the director and an assistant director of the Commission's Bureau of Litigation, and thereafter submitted to the hearing examiner for consideration.

The agreement identifies Respondent Atlas Rose Farms, Inc., as a New York corporation, with its office and principal place of business located at 8930 Avenue D Street, Brooklyn, N. Y., and individual respondents Lee Atlas, Elias Abolafia, and Robert Abolafia as president, vice president and secretary-treasurer, respectively, of said corporate respondent, and having the same address as the corporate respondent. All parties signatory to the agreement, however, agreed that, inasmuch as respondent Robert Abolafia was only a nominal officer of the respondent corporation, has never been actually active in the dealings thereof and has no voice in its management, the complaint herein should be dismissed as to him.

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

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

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

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

It is ordered, That respondent Atlas Rose Farms, Inc., a corporation, and its officers, and respondents Lee Atlas and Elias Abolafia, individually and as officers of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of rose bushes which have been used in the commercial greenhouse production of cut flowers, do forthwith cease and desist from:

1. Representing, directly or by implication, that such rose bushes are:

(a) Strong, vigorous or first-grade plants;

(b) Individually inspected or tested; or

(c) Packed by a nursery;

2. Misrepresenting the variety or color of the bloom;

3. Failing to tag or label such rose bushes so as to clearly and conspicuously disclose that such rose bushes had been previously used in the commercial greenhouse production of cut flowers, and to clearly and conspicuously set out in advertising and sales promotional matter relating to such rose bushes that they had been so used;

4. Failing to clearly and conspicuously reveal in the same manner and in close conjunction with the disclosure made pursuant to 3. that such rose bushes when planted outdoors will not thrive and blossom or that they will thrive and blossom only if

given special treatment and attention, during and after their replanting, if such is the fact.

It is further ordered, That respondent Atlas Rose Farms, Inc., a corporation, and its officers, and respondents Lee Atlas and Elias Abolafia, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of rose bushes or other nursery products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from using, in its corporate name, or in any other manner, the word "farm," or any word or words of like import and meaning, in connection with such products that have not been grown by them.

It is further ordered ,That the complaint herein be dismissed as to respondent Robert Abolafia.

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 18th day of December 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Atlas Rose Farms, Inc., a corporation, and Lee Atlas and Elias Abolafia, individually and as officers of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

KEYSTONE MANUFACTURING COMPANY, INC., ET AL.

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

Docket 7118. Complaint, Apr. 10, 1958—Decision, Dec. 18, 1958

Consent order requiring a large Philadelphia jewelry chain which acted as buyer also for several affiliated stores, to cease violating the Federal Trade Commission Act by knowingly inducing and receiving discriminatory advertising allowances from respondents' suppliers in connection with the sale of the latters' home movie equipment, slide projectors, and related items; specifically inducing said suppliers to grant reimbursements in amounts in excess of the 5% of the amount of purchases and of 50% of the cost of a given advertisement allowed customers generally.

The matter as to Keystone supplier respondents was settled by consent order Mar. 5, 1959, p. 1391, herein.

COMPLAINT

The Federal Trade Commission, having reason to believe that Keystone Manufacturing Company, Inc., a corporation, and Keystone Camera Company, Inc., a corporation, have violated and are now violating the provisions of subsection (d) Section 2 of the Clayton Act (U.S.C. Title 15, Sec. 13), as amended by the Robinson-Patman Act, and the Commission having further reason to believe that Associated Barr Stores, Inc., a corporation, and Myer B. Barr, as an individual and as President of Associated Barr Stores, Inc., have violated and are now violating the provisions of Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges with respect thereto as follows:

Count I

PARAGRAPH 1. Respondents Keystone Manufacturing Company, Inc., and Keystone Camera Company, Inc., hereinafter sometimes referred to as respondents Keystone Companies, are corporations organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Massachusetts with their principal offices and places of business located at Hallet Square, Boston 24, Mass.

PAR. 2. Respondent Keystone Manufacturing Company, Inc.,

is engaged in the business of manufacturing home movie equipment, slide projectors, and related items at its factory located in the Commonwealth of Massachusetts.

Respondent Keystone Camera Company, Inc., is engaged in the business of distributing and selling home movie equipment, slide projectors, and related items manufactured by and supplied to it by respondent Keystone Manufacturing Company, Inc.

Respondent Keystone Camera Company, Inc., is a wholly owned subsidiary of respondent Keystone Manufacturing Company, Inc. Said respondent is an instrumentality of its parent in that its only functions are the distribution and sale of products manufactured by its parent corporation and activities incidental to those functions.

Respondents Keystone Manufacturing Company, Inc., and Keystone Camera Company, Inc., operate as one integrated business enterprise rather than as two distinct establishments.

Sales made by respondents Keystone Companies are substantial, being in excess of $10,000,000 for the year 1955.

PAR. 3. In the course and conduct of their business, as aforesaid, respondents Keystone Companies are now engaged, and for many years have been engaged in commerce as "commerce" is defined in the Clayton Act, as amended, having sold and distributed their home movie equipment, slide projectors, and related items manufactured in their factory in Massachusetts and caused the same to be transported from their place of business in Massachusetts to purchasers located in other States of the United States and other places under the jurisdiction of the United States in a constant current of commerce.

PAR. 4. Respondent Associated Barr Stores, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, having its principal office and place of business at 1112-1114 Chestnut Street, Philadelphia, Pa.

PAR. 5. Respondent Associated Barr Stores, Inc., is now and for many years has been engaged in the operation of a chain of retail jewelry stores selling jewelry and a variety of other products, including movie equipment, slide projectors, and related items to the consuming public. Said respondent operates six retail jewelry stores in and around Philadelphia, Pa., and one retail jewelry store in Norfolk, Va.

Respondent Associated Barr Stores, Inc., is affiliated with four other corporations, all of which are engaged in the retail jewelry

business in the Delaware Valley area of Pennsylvania and New Jersey. It is the practice of said respondent to purchase the merchandise requirements for all these affiliates as well as for its own requirements. These affiliates are: Barr's Jewelers, located in Camden, N.J.; Barr's, Inc., located in Chester, Pa.: Gemcraft, Inc., located in and around Philadelphia, Pa.; and Gemcraft of New Jersey, Inc., located in and around Camden, N.J. For brevity these affiliates will hereinafter sometimes be referred to as affiliated corporations. In addition to acting as buyer for said affiliated corporations, respondent Associated Barr Stores, Inc., also handles substantially all advertising, including that of the products of respondents Keystone Companies, sold in the stores of said affiliated corporations.

Sales made by respondent Associated Barr Stores, Inc., are substantial, being approximately $2,140,000 for the fiscal year ending June 30, 1955.

PAR. 6. Respondent Myer B. Barr, an individual, is president of respondent Associated Barr Stores, Inc., and personally directs and supervises its policies and operations. Substantially all the stock of respondent Associated Barr Stores, Inc., and its affiliated corporations, as hereinbefore set out, is owned by the said Myer B. Barr and individual members of his family. The acts and practices of respondent Associated Barr Stores, Inc., as described herein have been and now are under the direct personal supervision of the said Myer B. Barr.

PAR. 7. In the course and conduct of its business in commerce as set forth in paragraphs 2 and 3 above, and more specifically during the years 1955, 1956, and 1957, respondents Keystone Companies have sold and distributed substantial quantities of their home movie equipment, slide projectors, and related items to a number of retail dealers in such products in Philadelphia and Chester, Pa., Norfolk, Va., and Camden, N. J., including respondent Associated Barr Stores, Inc., and affiliated corporations. Respondents Keystone Companies have transported such products or caused the same to be transported from said respondents' factory in Massachusetts or from other places located outside the Commonwealths of Pennsylvania and Virginia and the State of New Jersey to such retailer customers, including respondent Associated Barr Stores, Inc., and its affiliated corporations located in the cities of Philadelphia and Chester, Pa., Camden, N.J., and Norfolk, Va.

PAR. 8. In the course and conduct of its business as aforesaid, respondent Associated Barr Stores, Inc., and its affiliated corporations are now and for many years have been in competition with other corporations, partnerships, firms, and individuals located in and around the cities of Philadelphia and Chester, Pa., Camden, N.J., and Norfolk, Va., who are also engaged in the selling at retail of home movie equipment, slide projectors, and related items manufactured, sold, and distributed by respondents Keystone Companies.

PAR. 9. In the course and conduct of their business, as aforesaid, and more specifically within the years 1955, 1956, and 1957, respondents Keystone Companies have paid or contracted for the payment of money, goods, or other things of value to or for the benefit of respondent Associated Barr Stores, Inc., and affiliated corporations as compensation or in consideration for services or facilities, including newspaper advertising, furnished or agreed to be furnished by or through respondent Associated Barr Stores, Inc., and affiliated corporations in connection with the handling, sale, or offering for sale by respondent Associated Barr Stores, Inc., and affiliated corporations of the home movie equipment, slide projectors, and related items manufactured, sold, and distributed by respondents Keystone Companies, and respondents Keystone Companies have not made available or contracted to make available, or authorized such payments, allowances, or considerations on proportionally equal terms to all other customers competing with respondent Associated Barr Stores, Inc., and affiliated corporations in the handling, selling, or offering for sale of the home movie equipment, slide projectors, and related items manufactured, sold, and distributed by respondents Keystone Companies.

PAR. 10. The acts and practices of respondents Keystone Companies, as alleged in paragraph 9 above, are in violation of subsection (d) of Section 2 of the aforesaid Clayton Act, as amended.

Count II

PAR. 11. Paragraphs 1 through 10 of Count I hereof are hereby set forth by reference and made a part of this Count as fully and with the same effect as if quoted here verbatim.

PAR. 12. In the course and conduct of their business as aforesaid, and more specifically during the years 1955, 1956, and 1957, respondents Associated Barr Stores, Inc., and Myer B. Barr know-

ingly induced and received, and knowingly contracted for the payment of money, goods, or other things of value to the said respondents and to the affiliated corporations of respondent Associated Barr Stores, Inc., and for the benefit of said respondents and said affiliated corporations from respondents Keystone Companies as compensation or in consideration for services or facilities furnished by or through said respondent Associated Barr Stores, Inc., and affiliated corporations in connection with the offering for sale or sale by said respondent and affiliated corporations of the home movie equipment, slide projectors, and related items manufactured, sold, and distributed by respondents Keystone Companies in the course of interstate commerce, which payments or considerations respondents Associated Barr Stores, Inc., and Myer B. Barr knew or should have known were not made available on proportionally equal terms to all other customers of respondents Keystone Companies competing with said respondent Associated Barr Stores, Inc., and affiliated corporations in the retail sale of respondents Keystone Companies' home movie equipment, slide projectors, and related items.

PAR. 13. As illustrative of the acts and practices alleged in paragraph 12 herein, although respondents Associated Barr Stores, Inc., and Myer B. Barr, knew or should have known that during the years 1955, 1956, and 1957 all other corporations, partnerships, firms, or individuals competing with said respondents in the sale or offering for sale of the home movie equipment, slide projectors, and related items of the respondents Keystone Companies were limited by said respondents Keystone Companies with regard to the extent to which they would be reimbursed or compensated for newspaper advertising undertaken in connection with said respondents Keystone Companies in the advertising of said respondents Keystone Companies' products, to an amount of money or other things of value not in excess of 5% of the amount of their purchases from respondents Keystone Companies for a given period of time, and also not in excess of 50% of the cost of any given advertisement; nevertheless respondents Associated Barr Stores, Inc., and Myer B. Barr knowingly induced respondents Keystone Companies to grant reimbursement or compensation to them in amounts in excess of both the above stated limits with regard to newspaper advertising undertaken by them in connection with the sale or offering for sale of the products of respondents Keystone Companies on numerous occasions during the years 1955, 1956, and 1957.

PAR. 14. On numerous occasions during the years 1955, 1956, and 1957 respondents Associated Barr Stores, Inc., and Myer B. Barr placed advertisements, including certain of those referred to in paragraph 13 herein, in newspapers the circulations of which were not limited to the States or States of the United States in which such newspapers were published but had in addition thereto substantial circulation in one or more States outside the State of publication.

PAR. 15. The acts and practices of respondents Associated Barr Stores, Inc., and Myer B. Barr as herein alleged are part of an extensive advertising program undertaken by said respondents in conjunction with a large number of suppliers. As a result of this program said respondents have achieved and continue to maintain a dominant position with regard to advertising on the part of retailers in the market areas in which said respondents are engaged. Such acts and practices enabled said respondents in 1954 to place more advertising space in the three leading newspapers circulated in Philadelphia, Pa., than all other jewelers competing with said respondents combined.

PAR. 16. The methods, acts, and practices of respondents Associated Barr Stores, Inc., and Myer B. Barr, including the inducing and receiving of payments for advertising of the products of respondents Keystone Companies and the advertising in interstate media of such products offered for sale and sold in the stores of respondent Associated Barr Stores, Inc., and affiliated corporations, knowing that such payments were not made available on proportionally equal terms to all other customers competing with respondent Associated Barr Stores, Inc., and affiliated corporations, as hereinbefore alleged, are methods, acts, and practices in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 17. The acts and practices of respondents Associated Barr Stores, Inc., and Myer B. Barr, as alleged in Count II hereof, of knowingly inducing and receiving payments or allowances from respondents Keystone Companies that respondents Associated Barr Stores, Inc., and Myer B. Barr knew or should have known were made by respondents Keystone Companies in violation of subsection (d) of Section 2 of the aforesaid Clayton Act, as alleged in Count I hereof, are all to the prejudice and injury of the public, and constitute unfair methods of competition and

unfair acts and practices in commerce within the intent and meaning and in violation of Section 5 of the Federal Trade Commission Act.

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

Abrahams & Loewenstein, by *Mr. Maurice J. Klein,* of Philadelphia, Pa., for Associated Barr Stores, Inc., and Myer B. Barr.

INITIAL DECISION AS TO THE RESPONDENTS ASSOCIATED BARR STORES, INC., AND MYER B. BARR BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on April 10, 1958. Count I thereof alleges that respondent Keystone Manufacturing Company, Inc., and its wholly owned subsidiary, respondent Keystone Camera Company, Inc., are engaged in the business of manufacturing, distributing and selling home movie equipment, slide projectors, and related items, operating as one integrated business enterprise rather than as two distinct establishments, their sales during the year 1955 having been in excess of ten million dollars. Said respondents are charged with violating §2(d) of the Clayton Act as amended, by paying or contracting for the payment of money, goods or other things of value, during the years 1955, 1956 and 1957, to, or for the benefit of, respondent Associated Barr Stores, Inc., and its affiliated corporations, as compensation or in consideration for services or facilities furnished or agreed to be furnished by or through respondent Associated Barr Stores, Inc., including newspaper advertising, in connection with the handling, sale, or offering for sale by respondent Associated Barr Stores, Inc., and its affiliated corporations of the home movie equipment, slide projectors, and related items manufactured, sold, and distributed by respondents Keystone Companies, which payments, allowances or considerations were not made available on proportionally equal terms to all of respondent Keystone Companies' other customers competing with respondent Associated Barr Stores, Inc.

Count II of the complaint charges respondent Associated Barr Stores, Inc., and its president, respondent Myer B. Barr, with unfair methods of competition and unfair acts and practices in commerce in violation of §5 of the Federal Trade Commission Act, by knowingly inducing, receiving and contracting for such unlawful payments, allowances or consideration, which they "knew

or should have known" were not being offered on proportionally equal terms to all those of their competitors who were also customers of respondents Keystone Companies.

On July 23, 1958, respondents Associated Barr Stores, Inc., and Myer B. Barr, their counsel, and counsel supporting the complaint entered into an Agreement Containing Consent Order to Cease and Desist, which was approved by the director, and an assistant director of the Commission's Bureau of Litigation, and thereafter submitted to the hearing examiner for consideration.

The agreement identifies respondent Associated Barr Stores, Inc., as a Delaware corporation, having its principal office and place of business at 1112–1114 Chestnut Street, Philadelphia, Pa., and respondent Myer B. Barr as an individual and president of said corporate respondent, and having the same address.

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

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

After consideration of the allegations of the complaint, the provisions of the agreement, and the proposed order, the hearing examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding as to respondents Associated Barr Stores, Inc., and Myer B. Barr. Accordingly, in consonance with the terms of the aforesaid agreement, the hearing examiner accepts the Agreement Containing Consent Or-

der to Cease and Desist; finds that the Commission has jurisdiction over the said respondents and over their acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That respondent Associated Barr Stores, Inc., a corporation, its officers, and Myer B. Barr, an individual, and their respective representatives, agents, and employees, directly or through any corporate or other device, in or in connection with the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of jewelry or other products, do forthwith cease and desist from:

Knowingly inducing, receiving, or contracting for the receipt of, the payment of anything of value from any supplier as compensation or in consideration for advertising or other services or facilities furnished by or through the corporate respondent, its affiliates, subsidiaries, or successors, in connection with the handling, offering for resale or resale by said corporate respondent, its affiliates, subsidiaries, or successors, of said products, when such payment or other consideration is not made available by such supplier on proportionally equal terms to all other customers competing with said corporate respondent, its affiliates, subsidiaries, or successors in the sale or distribution of such products.

DECISION OF THE COMMISSION AS TO RESPONDENTS ASSOCIATED BARR STORES, INC., AND MYER B. BARR

Pursuant to the provisions of §3.21 of the Commission's Rules of Practice, the hearing examiner's initial decision, filed October 31, 1958, wherein the hearing examiner accepted an agreement containing a consent order, theretofore executed by the respondents, Associated Barr Stores, Inc., and Myer B. Barr, and counsel in support of the complaint, and entered his order to cease and desist in conformity with said agreement, shall, on the 18th day of December 1958, become the decision of the Commission; and accordingly

It is ordered, That the respondents, Associated Barr Stores, Inc., a corporation, and Myer B. Barr, 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 contained in said initial decision.

IN THE MATTER OF

PERFECT WOOL BATTING CO., INC., ET AL.

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

Docket 7218. Complaint, Aug. 4, 1958—Decision, Dec. 18, 1958

Consent order requiring manufacturers in the Bronx, N.Y., to cease violating the Wool Products Labeling Act by tagging and invoicing as "95% Reprocessed Wool, 5% Other Fibers," "70% Reprocessed Wool, 30% Man Made Fibers," "80% Reused Wool, 20% Reused Unknown Fibers," etc., battings which contained substantially less than the stated quantities of woolen fibers; and by failing to comply with the labeling requirements of the Act.

John T. Walker, Esq., for the Commission.
Joseph J. Nesis, Esq., of New York, N.Y., for respondents.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on August 4, 1958, charging them with having violated the Wool Products Labeling Act, the rules and regulations issued thereunder, and the Federal Trade Commission Act, by misbranding and falsely representing their battings or other wool products. Respondents appeared by counsel and entered into an agreement, dated October 14, 1958, containing a consent order to cease and desist, disposing of all the issues in this proceeding without further hearings, which agreement has been duly approved by the director of the Bureau of Litigation. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with §3.25 of the Rules of Practice of the Commission.

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

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

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

1. Respondent Perfect Wool Batting Co., Inc., is a corporation organized and existing by virtue of the laws of the State of New York, with its principal place of business located at 1342 Inwood Avenue, Bronx, N.Y.

The individual respondents, Joseph Hersh and William Newman, are president and secretary, respectively, of the said corporate respondent and have the same address as that of the corporate respondent.

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

ORDER

It is ordered, That respondents Perfect Wool Batting Co., Inc., a corporation, and its officers, and Joseph Hersh and William Newman, individually and as officers of said corporation, and respondents' representatives, agents or 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, do forthwith cease and desist from misbranding such products by:

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

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

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

(b) The maximum percentage of the total weight of such wool 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 Perfect Wool Batting Co., Inc., a corporation, and its officers, and Joseph Hersh and William Newman, individually and as officers of said corporation, and respondents' representatives, agents or employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of battings, or any other wool products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the constituent fibers thereof on invoices or other 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 18th day of December 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Perfect Wool Batting Co., Inc., a corporation, and its officers, and Joseph Hersh and William Newman, individually and as officers of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

FRANK GURAK

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

Docket 7108. Complaint, Apr. 7, 1958—Decision, Dec. 19, 1958

Consent order requiring a furrier in Philadelphia, Pa., to cease violating the Fur Products Labeling Act by failing to comply with the labeling and invoicing requirements.

Mr. John T. Walker supporting the complaint.
Respondent, *Pro se.*

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on April 7, 1958, charging him with having violated the Fur Products Labeling Act, the rules and regulations issued thereunder, and the Federal Trade Commission Act by misbranding and falsely and deceptively invoicing certain of his fur products.

After being served with the complaint respondent entered into an agreement, dated September 27, 1958, containing a consent order to cease and desist, disposing of all the issues in this proceeding without hearing, which agreement has been duly approved by the assistant director and the director of the Bureau of Litigation. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with Section 3.25 of the Rules of Practice of the Commission.

Respondent, pursuant to the aforesaid agreement, has admitted all of the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that respondent waives all further procedural steps before the hearing examiner or the Commission, including the making of findings of fact or conclusions of law and the right to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has also been agreed that the record herein shall consist solely of the complaint and said agreement; that the agreement shall not become a part of the official record unless and until it

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

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

1. Respondent Frank Gurak is an individual trading as Frank Gurak with office and principal place of business located at Fifth and Lombard Streets, Philadelphia, Pa.

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

ORDER

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

A. Misbranding fur products by:

1. Failing to affix labels to fur products showing:

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

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

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

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

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

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

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

2. Setting forth on labels attached to fur products:

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

(b) The term "blended" as part of the information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder to describe the pointing, bleaching, dyeing or tip-dyeing of furs;

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

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

B. Falsely or deceptively invoicing fur products by:

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

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

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

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

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

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

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

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

2. Setting forth on invoices the name or names of any animal or animals other than the name or names provided for in paragraph 5(b)(1) of the Fur Products Labeling Act.

C. Failing to set forth on invoices the information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder concerning the new fur or used fur added to restyled, remodeled or repaired fur products.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the Initial Decision of the hearing examiner shall, on the 19th day of December 1958, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

HABER'S DEPARTMENT STORE, INC., ET AL.

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

Docket 7220. Complaint, Aug. 5, 1958—Decision, Dec. 19, 1958

Consent order requiring furriers in Tampa, Fla., to cease violating the Fur Products Labeling Act by failing to conform to the labeling and invoicing requirements, by advertising in newspapers which failed to disclose that fur products were artificially colored, and by failing to maintain adequate records as a basis for pricing claims.

Mr. Garland S. Ferguson supporting complaint.

Mr. Louis Schonbrun of *Schonbrun & Kessler,* of Tampa, Fla., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

The complaint in this proceeding charges Haber's Department Store, Inc., a corporation, and Leon A. Haber, and Albert Haber, individually and as officers of said corporation, hereinafter referred to as respondents, with violation of the Federal Trade Commission Act, the Fur Products Labeling Act, and the Rules and Regulations promulgated thereunder, in connection with the advertising and sale of furs. Specifically, respondents are charged with misbranding, false advertising, and false invoicing of furs. Also respondents are charged with failing to maintain full and adequate records.

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

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

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

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

JURISDICTIONAL FINDINGS

1. Corporate respondent Haber's Department Store, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 613 Franklin Street, Tampa, Fla. Individual respondents Leon A. Haber and Albert Haber are officers of said corporation. They formulate, direct and control the practices of the corporate respondent. The address of the individual respondents is the same as that of the corporate respondent.

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

ORDER

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

A. Misbranding fur products by:

1. Failing to affix labels to fur products showing:

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

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

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

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

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

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

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

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

3. Failing to set forth on labels attached to fur products all required information on one side of such labels.

4. Setting forth on labels attached to fur products:

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

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

B. Falsely or deceptively invoicing fur products by:

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

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

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

(c) That the fur product contains or is composed of bleached,

dyed or otherwise artificially colored fur, when such is the fact;

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

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

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

C. Falsely or deceptively advertising fur products, through the use of any advertisement, representation, public announcement or notice which is intended to aid, promote or assist, directly or indirectly, in the sale or offering for sale of fur products, and which fails to disclose that the fur product contains or is composed of bleached, dyed or otherwise artificially colored fur, when such is the fact.

D. Failing to maintain full and adequate records disclosing the facts upon which claims of price reductions and comparative pricing are made in their advertising as required by Rule 44(e).

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 19th day of December 1958, become the decision of the Commission; and, accordingly:

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